THE GENERAL STATUTES OF NORTH CAROLINA

1963 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 3C

Place in Pocket of Corresponding Volume of Main Set and Discard Previous Supplement

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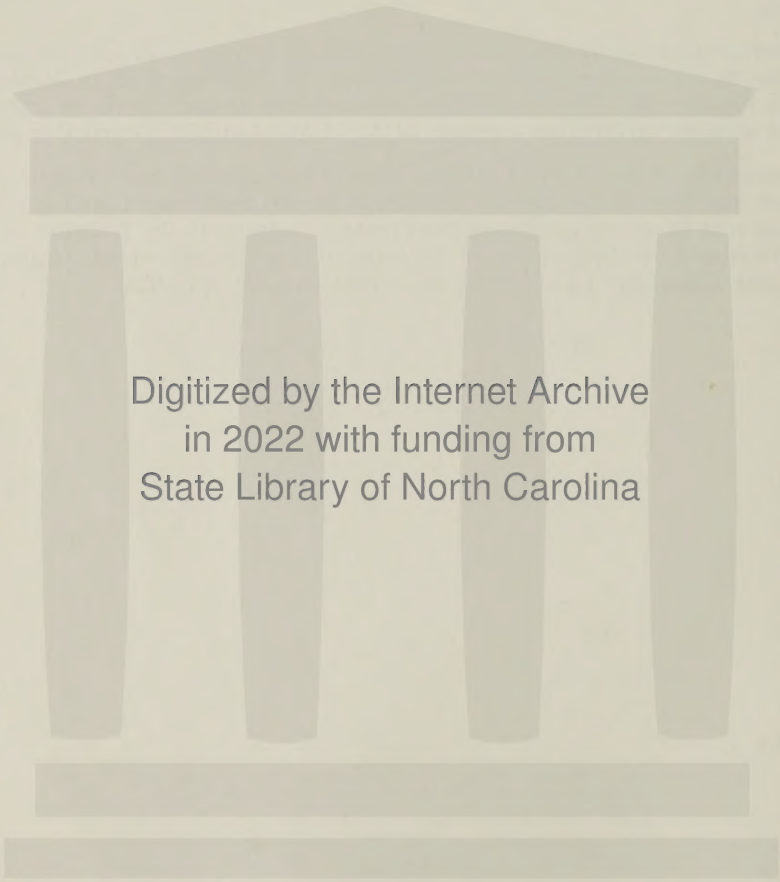
Preface

This Cumulative Supplement to recompiled volume 3C contains the general laws of a permanent nature enacted at the 1953, 1955, 1956, 1957, 1959, 1961 and 1963 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. An index to all statutes codified herein prior to 1961 appears in Replacement Volumes 4B and 4C. The Cumulative Supplements to such volumes contain an index to statutes codified as a result of the 1961 and 1963 legislative sessions.

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



Scope of Volume

Statutes:

Permanent portions of the general laws enacted at the 1953, 1955, 1956, 1957, 1959, 1961 and 1963 Sessions of the General Assembly affecting Chapters 151 through 167 of the General Statutes.

Annotations:

Sources of the annotations:

North Carolina Reports volumes 233 (p. 313)-260 (p. 132).
Federal Reporter 2nd Series volumes 186 (p. 745)-316.
Federal Supplement volumes 95 (p. 249)-216.
United States Reports volumes 340 (p. 367)-372.
Supreme Court Reporter volumes 71 (p. 474)-83 (p. 1559).
North Carolina Law Review volumes 29 (p. 227)-41 (p. 662).

The General Statutes of North Carolina
1963 Cumulative Supplement

VOLUME 3C

Chapter 151.

Constables.

§ 151-1. Election and term.

Local Modification.—Mecklenburg: 1963, c. 527.

§ 151-4. Fees of constables.

Local Modification. — Vance (Henderson Township): 1953, c. 368; 1961, c. 568.

§ 151-5. Special constables.

Deputation Should Be in Writing.—This section, by fair intendment, would seem to require that the deputation contemplated therein be in writing. State v. Johnson, 247 N. C. 240, 100 S. E. (2d) 494 (1957).

§ 151-7. Powers and duties.

Local Modification. — Onslow: 1957, c. 1213.

Chapter 152.

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§ 152-1. Election; vacancies in office; appointment by clerk in special cases.

Local Modification.—Alamance: 1959, c. 1105, s. 1; Buncombe (assistant coroner): 1963, c. 358; Burke (assistant coroner): 1963, c. 952; Forsyth (assistant coroner): 1955, c. 95, s. 1; Orange (assistant coroner): 1953, c. 278; Pitt: 1963, c. 330; Surry (assistant coroner): 1953, c. 291; Union (assistant coroner): 1961, c. 305, s. 1; Wake: 1957, c. 638.

§ 152-5. Fees of coroners.

Local Modification.—Alamance: 1959, c. 1105, s. 2; Burke: 1963, c. 952; Cabarrus: 1953, c. 567; Columbus: 1959, c. 467, s. 3; Cumberland: 1953, c. 90; Forsyth: 1955, c. 95, s. 2, amended by 1959, c. 942, s. 1; Graham: 1961, c. 572; Halifax: 1953, c. 362; Harnett: 1955, c. 752; 1959, c. 999; McDowell: 1963, c. 1199; Mitchell: 1953, c. 416; New Hanover: 1955, c. 1110; 1959, c. 1049; Northampton: 1953, c. 420, s. 4; Orange: 1953, c. 281, s. 3; Polk: 1959, c. 982; Richmond: 1959, c. 372; Transylvania: 1957, c. 757; Union: 1961, c. 305, s. 2; 1963, c. 440; Washington: 1963, c. 574; Watauga: 1959, c. 951.

§ 152-7. Duties of coroners with respect to inquests and preliminary hearings.

1. Whenever it appears that the deceased probably came to his death by the criminal act or default of some person, he shall go to the place where the body of such deceased person is and make a careful investigation and inquiry as to when and by what means such deceased person came to his death and the name of the deceased, if to be found out, together with all the material circumstances

attending his death, and shall make a complete record of such personal investigation: Provided, however, that the coroner shall not proceed to summon a jury as is hereinafter provided if he shall be satisfied from his personal investigation that the death of the said deceased was from natural causes, or that no person is blamable in any respect in connection with such death, and shall so find and make such finding in writing as a part of his report, giving the reason for such finding; unless an affidavit be filed with the coroner indicating blame in connection with the death of the deceased. A written report of said investigation shall be filed by the coroner with the clerk of the superior court who shall preserve the said report.

6. Immediately upon information of the death of a person within his county under such circumstances as, in his opinion, call for investigation, the coroner shall notify the solicitor of the superior court and the county medical examiner, who in turn shall notify the chairman of the committee, and thereafter, the coroner shall make such additional investigation as the solicitor may direct.

7. If an inquest or preliminary hearing be ordered, to arrange for the examination thereat of any and all witnesses including those who may be offered by the chairman of the committee on post-mortem medicolegal examinations or the county medical examiner.

10. To reduce to writing all of the testimony of all witnesses, and to have each witness to sign his testimony in the presence of the coroner, who shall attest the same, and, upon direction of the solicitor of the district, all of the testimony heard by the coroner and his jury shall be taken stenographically, and expense of such taking, when approved by the coroner and the solicitor of the district, shall be paid by the county. When the testimony is taken by a stenographer, the witness shall be caused to sign the same after it has been written out, and the coroner shall attest such signature. The attestation of all the signatures of witnesses who shall testify before the coroner shall include attaching his seal, and such statements, when so signed and attested, shall be received as competent evidence in all courts either for the purpose of contradiction or corroboration of witnesses who make the same, under the same rules as other evidence to contradict or corroborate may be now admitted. The coroner shall file a copy of all testimony given at the said hearing and required by the foregoing portion of this subdivision to be in writing with the clerk of the superior court who shall preserve it. (Code, s. 657; 1899, c. 478; 1905, c. 628; Rev., s. 1051; 1909, c. 707, s. 1; C. S., s. 1020; Ex. Sess. 1924, c. 65; 1955, c. 972, s. 2; 1957, c. 503, ss. 1, 2.)

Editor's Note. — The 1955 amendment, effective Jan. 1, 1956, rewrote subsections 6 and 7. The 1957 amendment added the last sentence of subsections 1 and 10. As only subsections 1, 6, 7 and 10 were affected, the rest of the section is not set out.

Section States Historical Function of Coroner.—This section is simply a statement of the historical function of a coroner. He is by this section commanded to make an investigation whenever it appears deceased probably came to his death by criminal act. He is not required to summon a jury unless satisfied from his personal investigation that death was the result of criminal conduct. Gillikin v. United States Fidelity & Guaranty Co., 254 N. C. 247, 118 S. E. (2d) 606 (1961).

Chapter 153.

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153-59. [Transferred.]

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ARTICLE 1.

Corporate Existence and Powers of Counties.

§ 153-1. County as corporation; acts through commissioners.

Cited in State v. Lenoir, 249 N. C. 96, 105 S. E. (2d) 411 (1958).

§ 153-2.1. Continuing contracts.—A county is authorized to enter into continuing contracts, some portion of which or all of which may be performed in an ensuing fiscal year, but no such contract shall be entered into unless sufficient funds have been appropriated to meet any amount to be paid under the contract in the fiscal year in which the contract is made. The board of county commissioners shall, in the budget resolution of each ensuing fiscal year during which any such contract is in effect, appropriate sufficient funds to meet the amount to be paid under the contract in such ensuing fiscal year. The statement required by G. S. 153-130 to be printed, written, or typewritten on all contracts, agreements, or requisitions requiring the payment of money shall be placed on a continuing contract only if sufficient funds have been appropriated to meet the amount to be paid under the contract in the fiscal year in which the contract is made. (1959, c. 250.)

Article 2.

County Commissioners.

§ 153-4. Election and number of commissioners.

Local Modification.—Columbus: 1953, c. 68; Forsyth: 1963, c. 802; Orange: 1953, c. 439; Person: 1961, c. 188, repealing 1955, c. 16.

Session Laws 1957, c. 1303, to become effective when approved by the voters, repeals 1953 Session Laws, c. 617, relating to Lee County.

§ 153-5. **Local modifications as to term and number.**—The number of commissioners shall be five instead of three in the counties of Alamance, Beaufort, Bertie, Buncombe, Cabarrus, Carteret, Caswell, Catawba, Chowan, Columbus, Craven, Cumberland, Durham, Edgecombe, Franklin, Gates, Granville, Greene, Guilford, Halifax, Harnett, Hertford, Iredell, Johnston, Jones, Lee, Lenoir, Lincoln, Martin, Mecklenberg, Nash, New Hanover, Perquimans, Pitt, Richmond, Rockingham, Rowan, Sampson, Tyrrell, Vance, Warren, Wayne and Wilson.

Only one member of the board of commissioners of Brunswick County shall be from any one township of said county.

In Gaston County six persons shall be elected, one of whom must be a resident of Gastonia township, one a resident of River Bend township, one a resident of South Point township, one a resident of Crowders Mountain township, one a resident of Cherryville township, and one a resident of Dallas township. If at any time the board of commissioners of Gaston County are equally divided upon any question pending before them and there is a tie vote, then the clerk of said board is authorized and empowered to cast the deciding vote and to determine such question.

At the election for county officers to be held in Greene County in 1964, there shall be elected five county commissioners. The two candidates receiving the highest number of votes shall serve for a term of four (4) years each. The three candidates receiving the next highest number of votes shall serve for a term of two (2) years each.

At the election for county officers to be held in Greene County in 1966, and quadrennially thereafter, there shall be elected three county commissioners who shall serve for terms of four (4) years each and until their successors are elected and qualified. At the election to be held in Greene County in 1968, and quadrennially thereafter, there shall be elected two county commissioners who shall serve for terms of four (4) years each and until their successors are elected and qualified.

In the primary and general elections in 1964, and biennially thereafter, there shall be nominated and elected five (5) members to the board of county commissioners of Person County. The voters as a whole shall nominate and elect the above board members.

Commencing with the election in 1960 and every four years thereafter, the county commissioners of Sampson County shall be elected for terms of four years each.

In Wake County five persons shall be elected, three of whom shall compose a class whose terms of office shall be for four years on and after the first Monday in December, one thousand nine hundred and ten, and two of whom shall compose a class whose terms of office shall be for four years on and after the first Monday in December, one thousand nine hundred and twelve.

There shall be elected in Wilkes County at the general election to be held in 1964 five (5) members of the board of county commissioners. The two (2) candidates receiving highest votes in the 1964 election shall be elected for a term of four (4) years, and the three (3) receiving next highest vote shall be elected for two (2) years. In the 1966 election and each two (2) years thereafter, there

shall be elected three (3) commissioners, the two (2) candidates receiving the highest vote to be for a term of four (4) years and the one (1) receiving the next highest vote for a term of two (2) years, and each two (2) years thereafter, there shall be elected three (3) commissioners, the two (2) receiving highest vote for a term of four (4) years and the one (1) receiving the lowest vote for a term of two (2) years. (1876-7, c. 141, s. 5; Code, s. 716; 1887, c. 307; 1895, c. 135; 1899, cc. 103, 147, 153, 187, 297, 301, 346, 450, 467, 488, 609; 1901, cc. 14, 60, 328, 330, 581; 1903, cc. 4, 7, 14, 36, 46, 59, 137, 191, 203, 206, 207, 228, 265, 446, 515, 790; 1905, cc. 37, 44, 58, 73, 148, 338, 340, 346, 397, 422, 553; Rev., ss. 1311, 1312; 1907, cc. 2, 16, 55, 61, 125, 178, 291, 350; 1909, cc. 12, 53, 213, 302, 625, 729; 1917, cc. 32, 175, 381; C. S., s. 1293; 1931, c. 68; 1941, c. 34; 1943, cc. 18, 43, 103, 109, 217, 345; c. 368, s. 2; 1953, c. 310; 1955, c. 16; 1959, c. 695; 1961, c. 101; 1963, cc. 215, 217, 351.)

Editor's Note.—

The 1953 amendment inserted "Sampson" in the first paragraph. The 1955 amendment added the former paragraph relating to Person County. The 1959 amendment added the last paragraph.

The 1961 amendment added the paragraph relating to Wilkes County.

Session Laws 1961, c. 188, repealing Session Laws 1955, c. 16, relating to Person County was itself repealed by Session Laws 1963, c. 215, codified as the fourth paragraph of this section.

The first 1963 amendment impliedly inserted the paragraph relating to Person County.

The second 1963 amendment rewrote the paragraph relating to Wilkes County.

The third 1963 amendment inserted the two paragraphs relating to Greene County.

§ 153-6. Vacancies in board; how filled. — In case of a vacancy occurring in the board of commissioners of a county, the clerk of the superior court for the county shall appoint to said office some person for the unexpired term: Provided that in the following counties, the board of county commissioners shall appoint to said office some person for the unexpired term: Alexander, Anson, Avery, Brunswick, Burke, Camden, Caswell, Chatham, Chowan, Columbus, Duplin, Durham, Forsyth, Gaston, Gates, Graham, Greene, Haywood, Hertford, Johnston, Lenoir, Lincoln, McDowell, Montgomery, Nash, New Hanover, Northampton, Orange, Pasquotank, Pitt, Rockingham, Rowan, Stanly, Swain, Transylvania and Yadkin. (Code, s. 719; 1895, c. 135, s. 7; Rev., s. 1314; 1909, c. 490, s. 1; C. S., s. 1294; 1959, c. 1325.)

Local Modification.—Davidson: 1955, c. 402; Iredell: 1955, c. 244; Wayne: 1959, c. 1180.

Editor's Note. — The 1959 amendment added the proviso.

§ 153-8. Meetings of the board of commissioners.—The board of commissioners of each county shall hold a regular meeting at the courthouse on the first Monday in each month unless the said first Monday falls on a legal holiday, in which event the meeting shall be held on the following Tuesday of the month. The board may adjourn its regular meetings from day to day until the business before it is disposed of. Special meetings may be held by call of the chairman of the board upon two days' written notice being given to each of the board members and posting such notice on the courthouse bulletin board. A majority of the board shall constitute a quorum. At each regular December meeting the board shall choose one of its members as chairman for the ensuing year, and the board may choose a vice-chairman to act in the event of the disability or absence of the chairman; in the absence of the chairman and vice-chairman at any regular, adjourned, or special meeting, the members present shall choose a temporary chairman. (Code, s. 706; Rev., s. 1317; C. S., s. 1296; 1945, c. 132; 1951, c. 904, s. 1; 1961, c. 154.)

Local Modification. — Guilford, Harnett, Moore, Nash, Orange, Person: 1955, c. 677; Richmond: 1963, c. 863.

Editor's Note.—

The 1961 amendment provided for choosing a vice-chairman.

§ 153-9. Powers of board.

2½. Expenditures of County Funds Directed by Commissioners.—The board of commissioners is invested with full power to direct the application of all moneys arising by virtue of this chapter for the purposes herein mentioned, and to any other good and necessary purpose for the use of the county, in a manner not inconsistent with the provisions of the County Fiscal Control Act. (1777, c. 129, s. 4, P. R.; R. C., c. 28, s. 16; Code, s. 753; Rev., s. 1379; C. S., s. 1325; 1953, c. 973, s. 2.)

Editor's Note.—The 1953 amendment, effective July 1, 1953, renumbered G. S. 153-59 as subsection 2½ of this section and added at the end of the subsection the words "in a manner not inconsistent with the provisions of the County Fiscal Control Act."

6. Special Tax Authorized for Certain Purposes; Limit of Rate.—

Local Modification.—Madison: 1957, c. 557.

7. Same—In Certain Counties. — Subject to the approval of the Director of Local Government, the boards of county commissioners of Alamance, Alleghany, Anson, Avery, Buncombe, Burke, Cherokee, Clay, Cleveland, Dare, Duplin, Durham, Edgecombe, Graham, Granville, Halifax, Henderson, Iredell, Jackson, Lincoln, McDowell, Macon, Mitchell, Montgomery, Orange, Pender, Perquimans, Person, Polk, Randolph, Rutherford, Sampson, Scotland, Stokes, Swain, Tyrrell, Watauga and Wilson counties are hereby authorized to levy such special property taxes as may be necessary not to exceed five cents on the one hundred dollars valuation for the following special purposes respectively, in addition to any tax now allowed by law for such purposes and in addition to the rate allowed by the Constitution: (1) For the expense of the quadrennial valuation or assessment of taxable property, (2) for the expense of holding courts in the county levying the tax and the expense of maintenance of jails and jail prisoners. (1931, c. 441; 1933, c. 54; 1935, c. 330; 1937, c. 41; 1939, cc. 190, 336; 1943, c. 646; 1951, c. 753; 1955, c. 932.)

Editor's Note.—The 1955 amendment inserted "Lincoln" in the list of counties set out in this subsection.

7a. Special Tax to Defray Expenses of Mapping Lands and Discovering Unlisted Land.—The board of county commissioners of any county is hereby authorized to levy annually on all taxable property within the county a special tax, and the General Assembly hereby gives special approval for the levy of such special tax, which tax shall not exceed five cents (5¢) on the one hundred dollar ($100.00) valuation, for the special purpose of defraying the expenses incurred in the mapping of the lands of the county and the discovery of lands therein not listed for taxes, including the county's share of the expenses incurred pursuant to any agreement entered into between county and the State of North Carolina providing for the mapping of the lands of the county and the discovery of lands therein not listed for taxes. (1959, c. 712.)

Editor's Note.—The 1959 amendment added this subsection.

8. To Erect and Repair County Buildings.—

Duties Inherent to Office of County Commissioner.—County commissioners, in approving the design the method of construction, the site for a public building, and the amount to be paid for the site, are performing duties inherent to their offices, expressly conferred by the legislature. Barbour v. Carteret County, 255 N. C. 177, 120 S. E. (2d) 448 (1961).

Courts cannot substitute their judgment for that of the county officials honestly and fairly exercised. For a court to enjoin a proposed expenditure, there must be allegation and proof that the county officials acted in wanton disregard of public good. Barbour v. Carteret County, 255 N. C. 177, 120 S. E. (2d) 448 (1961).

9. To Designate Site for County Buildings.—To remove or designate a new site for any county building; but the site of any county building already located shall not be changed, unless by a unanimous vote of all the members of the board at any regular monthly meeting, and unless upon notice of the proposed change, specifying the new site. Such notice shall be published in a newspaper printed in the county, if there is one, once in each of three calendar months, and posted in one or more public places in every township in the county for three months, next immediately preceding the monthly meeting at which the final vote on the proposed change is to be taken. Provided that where the notice is published in a newspaper printed in the county it shall not be necessary to post the notices in the townships. Such new site for the county courthouse shall not be more than one mile distant from the old, except upon the special approval of the General Assembly. (1868, c. 20, s. 8; Code, s. 707; Rev., s. 1318; C. S., s. 1297; 1925, c. 229; 1957, c. 909, s. 1; 1961, c. 811.)

Local Modification.—Caldwell: 1959, c. 26; Yadkin: 1953, c. 384.

Editor's Note.—

The 1957 amendment inserted the words "once in each of three calendar months" in line six of this subsection. Section 2 of the amendatory act provides that all actions heretofore taken by the board of commissioners of any county which complies with the requirements of this subsection as amended hereby is hereby ratified, approved and confirmed and declared to be in compliance with such requirements.

The 1961 amendment inserted the provision as to when not necessary to post notices in townships. It also inserted near the beginning of the last sentence the words "for the county courthouse."

Duties Inherent to Office of County Commissioner.—See same catchline under § 153-9(8).

Courts cannot substitute their judgment for that of the county officials.—See same catchline under § 153-9(8).

The site of a county building embraces only the space occupied by the building and such adjacent land as is reasonably required for the convenient use of the building. Brown v. Candler, 236 N. C. 576, 73 S. E. (2d) 550 (1952).

Selecting Part of Grounds of County Home as Site of High School.—Even though a county home be construed a county building within the purview of subsection 9 of this section, the statute refers to a change in the location of a county building, which embraces the space occupied by the building and such adjacent land as is reasonably required for its convenient use, and not to changes in the use of a part of the site of a county building, and therefore the statute does not preclude school authorities from selecting, without advertising, a part of the grounds of a county home for the site of a high school when its use would not interfere with the use of the remainder of the site for a county home. Brown v. Candler, 236 N. C. 576, 73 S. E. (2d) 550 (1952).

12a. To Fix Fees Charged by County Officers.—To fix, in their discretion, all fees and commissions which may be charged by registers of deeds, clerks of superior court, clerks of county domestic relations courts, clerks of general county courts, sheriffs, jailers, and coroners for the performance of any service or duty permitted or required by law. Such fees and commissions may be fixed from time to time, and once fixed may be changed at any time. Action to fix such fees and commissions shall be taken by resolution of the board of county commissioners. Such fees and commissions may be increased or decreased not exceeding twenty per cent (20%) during any one fiscal year of the county. Until the board of county commissioners takes such action to fix any fee or commission, such fee or commission shall continue to be charged as is now provided by law.

The provisions of this subsection shall apply to the following counties: Alamance, Bertie, Bladen, Buncombe, Caldwell, Camden, Carteret, Chatham, Cherokee, Columbus, Forsyth, Halifax, Hertford, Hoke, Jackson, Johnston, Lee, Lenoir, Lincoln, Martin, Montgomery, Moore, Nash, Onslow, Orange, Pamlico, Perquimans, Person, Pitt, Richmond, Rutherford, Sampson, Stanly, Surry, Swain, Union and Wayne. (1953, c. 1303; 1955, c. 768; 1957, c. 38, s. 1; cc. 247, 352, 570, 635, 774, 1306; 1959, c. 206, s. 1; cc. 664, 700; c. 1267, s. 1;

1961, c. 350, s. 1; c. 492, s. 2; cc. 691, 777, 816; c. 948, s. 1; 1963, cc. 181, 562; c. 569, s. 1; cc. 794, 833, 873.)

Editor's Note. — The 1955 amendment inserted "Caldwell" in the list of counties in this subsection.

The 1957 amendments inserted "Hertford," "Columbus," "Bertie," "Camden," "Bladen," "Nash," and "Onslow," respectively, in the list of counties in this subsection.

The 1959 amendments added Carteret, Chatham, Lee and Wayne to the list of counties.

Session Laws 1959, c. 376, s. 1, provides that the next to the last sentence of the first paragraph of this subsection shall not apply to Montgomery County.

The first 1961 amendment inserted "Perquimans" in the list of counties. The second 1961 amendment, effective July 1, 1961, inserted "Pitt" therein. The third and fourth 1961 amendments inserted "Cherokee" and "Martin" in the list, and the fifth and sixth 1961 amendments inserted "Moore" and "Richmond."

Session Laws 1961, c. 948, s. 2 provides that the next to the last sentence of the first paragraph of this subsection shall not apply to Richmond County.

The first 1963 amendment inserted "Swain" in the list of counties. The second 1963 amendment inserted "Sampson." The third 1963 amendment inserted "Jackson." The fourth 1963 amendment inserted "Person." The fifth 1963 amendment inserted "Forsyth." And the sixth 1963 amendment inserted "Halifax."

17. Roads and Bridges.—

This subsection applies to municipalities in closing a public street. Blowing Rock v. Gregorie, 243 N. C. 364, 90 S. E. (2d) 898 (1956).

This subsection and § 160-200 (11) may be harmonized, and therefore must be construed in pari materia, so that a municipality may not close a public road or street without giving notice by registered mail to individuals owning property adjoining the road or street, and notice by publication in the newspaper published in the county. Blowing Rock v. Gregorie, 243 N. C. 364, 90 S. E. (2d) 898 (1956).

Cited in Salisbury v. Barnhardt, 249 N. C. 549, 107 S. E. (2d) 297 (1959).

35. To Promote Farmers' Co-Operative Demonstration Work; Rules Governing Leave, etc., of County Extension Employees.—To co-operate with the State and national departments of agriculture to promote the farmers' co-operative demonstration work, and to appropriate such sum as they may agree upon for the purpose.

The rules and regulations adopted by the North Carolina Agricultural Extension Service governing annual leave, sick leave, hours of employment, and holidays for county extension employees shall be effective except when modified as follows: When a board of county commissioners has adopted rules and regulations governing such matters for other employees under its jurisdiction, that board of county commissioners may modify the rules and regulations of the North Carolina Agricultural Extension Service governing such matters with respect to that county's extension employees to conform to the rules and regulations applicable to the other employees of the county; and the modified rules and regulations shall then be effective in such county. (1911, c. 1; C. S., s. 1297; 1957, c. 1004, s. 5.)

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

35½. To Promote Farm Soil Conservation Work.—To cooperate with the National Soil Conservation Service and the State Soil and Water Conservation agencies and districts to promote soil and water conservation work, and to appropriate from nontax revenue such sums as they may deem advisable for this purpose. This section shall apply only to the following counties: Alamance, Alexander, Anson, Ashe, Beaufort, Bertie, Bladen, Brunswick, Burke, Cabarrus, Camden, Caswell, Chatham, Chowan, Clay, Cleveland, Columbus, Craven, Cumberland, Currituck, Dare, Davidson, Davie, Duplin, Edgecombe, Franklin, Gaston, Gates, Granville, Greene, Guilford, Halifax, Haywood, Henderson, Hertford, Hoke,

Hyde, Iredell, Jackson, Johnston, Jones, Lee, Lenoir, Lincoln, Macon, Madison, Martin, McDowell, Mitchell, Montgomery, Nash, Northampton, Onslow, Orange, Pamlico, Pasquotank, Pender, Perquimans, Person, Pitt, Randolph, Richmond, Rowan, Rutherford, Sampson, Stanly, Stokes, Surry, Swain, Transylvania, Union, Vance, Wake, Warren, Wayne, Wilkes, and Yadkin. (1959, c. 1213; 1961, cc. 266, 290, 301, 579, 581, 582, 584, 656, 693, 705, 809, 1126; 1963, cc. 290, 701.)

Editor's Note.—The 1959 amendment added this subsection.

The first 1961 amendment inserted "Martin" in the list of counties, the second 1961 amendment inserted "Guilford," the third 1961 amendment inserted "Bertie," the fourth 1961 amendment inserted "Montgomery," the fifth 1961 amendment inserted "Granville," the sixth 1961 amendment inserted "Davie" and the seventh 1961 amendment inserted "Lincoln" therein.

The eighth 1961 amendment rewrote the first sentence. The ninth 1961 amendment inserted "Rutherford" in the list of counties. The tenth 1961 amendment inserted "Wilkes," the eleventh 1961 amendment inserted "Stokes" and the twelfth 1961 amendment inserted "Currituck."

The first 1963 amendment inserted "Jackson" and the second 1963 amendment inserted "McDowell" in the list of counties.

37. To Make Appropriations for Libraries.—

Cited in Jamison v. Charlotte, 239 N. C. 682, 80 S. E. (2d) 904 (1954).

39. County Fire Departments.—

Local Modification.—Lenoir: 1959, cc. 539, 981.

39a. County Fire Marshal.—The board of commissioners of any county may appoint a county fire marshal, to serve at the will of the board, to receive such compensation as the board may determine, to have such assistants and employees as the board may provide, and to perform such duties as the board may require. The duties of the county fire marshal may include, but shall not be limited to

(1) The coordination of all fire fighting activities in the county which are within the jurisdiction of the board of commissioners,

(2) The coordination of all fire prevention activities in the county which are within the jurisdiction of the board of commissioners, and

(3) The making of inspections and reports of the public schools required by article 17, chapter 115, of the General Statutes: Provided, that the county fire marshal shall not make the electrical inspections required by said article unless he is qualified to do so under the provisions of G. S. 160-122.

In lieu of appointing a county fire marshal, the board may impose any duties, which could be imposed upon a county fire marshal if one were appointed, on any other officer or employee of the county. The board of commissioners may make necessary appropriations to cover expenses incurred pursuant to the provisions of this subsection. (1959, c. 290.)

Editor's Note.—The 1959 amendment added this subsection.

40. County Planning Board. — The county commissioners are authorized to create a board to be known as the planning board, whose duty it shall be to make a careful study of the resources, possibilities and needs of the county, particularly with respect to the conditions which may be injurious to the public welfare or otherwise injurious, and to make plans for the development of the county. The commissioners shall appoint to the board such number of persons as in its discretion appears desirable, but such number of persons shall not be less than three and shall not exceed in number the number of townships in the county, and no act heretofore done, or that may hereafter be done, and no expenditure

of funds heretofore made or that may hereafter be made, by any county planning board or by any county board of commissioners in connection with or on behalf of any county planning board, shall be held invalid on account of the number of persons composing the county planning board.

The planning board, when established, shall make a report at least annually to the county commissioners, giving information regarding the condition of the county, and any plans or proposals for the development of the county and estimates of the cost thereof.

The county commissioners may appropriate to the planning board such amount as they may deem necessary to carry out the purposes of its creation and for the improvement of the county, and shall provide what sums, if any, shall be paid to such board as compensation.

The county commissioners are hereby authorized to enter into any agreements with any other county, city or town for the establishment of a joint planning board.

Any planning board established under the authority of this subsection by any one county, city, or town or any joint planning board or agency established by agreement, pursuant to this subsection, between two or more city or county governing bodies may, with the concurrence of the governing body or bodies to which it is responsible,

(1) Enter into and carry out contracts with the State or federal government or any agencies thereof under which said government or agencies grant financial or other assistance to said planning board,
(2) Accept such assistance or funds as may be granted by the State or federal government with or without such a contract,
(3) Agree to and comply with any reasonable conditions which are imposed upon such grants,
(4) Make expenditures from any funds so granted.

The appropriate city and county governing bodies are hereby authorized to concur in such contracts or to enter into them as co-makers. Any planning agency established pursuant to general or special act of the North Carolina General Assembly which has been granted extraterritorial planning jurisdiction, or a joint planning agency of two or more political subdivisions that have been granted joint planning jurisdiction or a county-wide planning agency shall be deemed a regional or metropolitan planning agency for the purpose of accepting such assistance or funds as may be granted by the federal government.

Any planning board or agency established by special act of the General Assembly shall have the same power and authority as granted in the preceding paragraph to planning boards and agencies established pursuant to the general law.

Any planning board established under the authority of this section, or pursuant to a special act of the General Assembly, may, with the concurrence of the governing body or bodies to which it is responsible,

(1) Enter into and carry out contracts with any other city, county, or joint planning board or boards under which it agrees to furnish technical planning assistance to such other planning board or boards; or
(2) Enter into and carry out contracts with any other city, county, or joint planning board or boards under which it agrees to pay such other planning board or boards for technical planning assistance to be furnished by the staff of such other board or boards.

The appropriate city and county governing bodies are hereby authorized to concur in such contracts or to enter into them as co-makers.

Said governing bodies are authorized to make such appropriations as may be necessary to carry out any activities or contracts authorized by this section, and to levy annually taxes for the payment of the same as a special purpose, in ad-

dition to any allowed by the Constitution. (1945, c. 1040, s. 1; 1955, c. 1252; 1957, c. 947; 1959, c. 327, s. 1; c. 390.)

Local Modification. — Wayne: 1955, c. 191.

By virtue of Session Laws 1957, c. 1176, "Buncombe" should be stricken from the recompiled volume.

By virtue of Session Laws 1959, c. 978, "Wake" should be stricken from the recompiled volume.

Editor's Note. — The 1955 amendment added the last two paragraphs of this subsection.

The 1957 amendment rewrote and greatly extended the second sentence of the first paragraph of this subsection.

The first 1959 amendment inserted the words "State or" in subdivisions (1) and (2) of the fifth paragraph. The second 1959 amendment added the last three paragraphs. Session Laws 1959, c. 659, provides that the amendments shall not apply to Lenoir County.

42. Delinquent Taxes.—To pay into the general fund all or any part of the proceeds of taxes which are, when collected, two or more years delinquent. (1953, c. 827.)

Local Modification.—Edgecombe: 1959, c. 1097; Franklin: 1959, c. 808; McDowell: 1953, c. 827; Montgomery: 1959, c. 967.

Editor's Note. — For brief comment, questioning the constitutionality of this subsection, see 31 N. C. Law Rev. 442.

43. Tax Levies for Certain Special Purposes in Certain Counties.—The board of county commissioners of any county is hereby authorized, in its discretion, to levy annually on all taxable property in the county any one or more of the following special taxes for the special purposes indicated, and the General Assembly does hereby give special approval for the levy of such taxes, and the authority granted in this subsection is in addition to and not in substitution for existing powers of boards of commissioners, whether such existing powers be granted by general or special act:

(1) For the special purpose of paying the salary and office expenses of the county accountant made necessary for the performance of his duties as prescribed in the County Fiscal Control Act, being article 10 of chapter 153 of the General Statutes of North Carolina;

(2) For the special purpose of paying the salaries and expenses of the farm demonstration agent and the home demonstration agent and other expenses incurred in farm and home demonstration;

(3) For the special purpose of paying the salary and expenses of the veteran's service officer and other expenses incurred in maintaining a veteran's service office.

The provisions of this subsection shall apply only to the following counties: Alamance, Beaufort, Buncombe, Carteret, Chatham, Chowan, Cleveland, Columbus, Craven, Cumberland, Currituck, Edgecombe, Forsyth, Franklin, Greene, Halifax, Haywood, Henderson, Hertford, Hoke, Lenoir, Lincoln, McDowell, Macon, Madison, Martin, Montgomery, Orange, Perquimans, Randolph, Richmond, Robeson, Rutherford, Stokes, Tyrrell, Union, Warren, Wayne, Wilkes, and Yadkin. (1953, c. 895; 1955, cc. 201, 234, 363, 473, 717, 918, 931, 944; 1957, cc. 388, 389, 868, 896, 1033; 1959, cc. 388, 394, 625, 724, 860, 1317; 1961, cc. 193, 631, 1045, 1082, 1083; 1963, c. 314.)

Editor's Note.—Chapters 201, 234, 363, 473, 717, 918, 931, 944 of the 1955 Session Laws added to the list of counties in the last paragraph the following, respectively: Wilkes, Warren, Stokes, Currituck, Hertford, Macon, Lincoln, Madison.

Chapters 388, 389, 868, 896 and 1033 of the 1957 Session Laws added to the list of counties, respectively: Chowan, Tyrrell, Richmond, Martin and Franklin.

The 1959 amendments inserted Beaufort, Carteret, Greene, Henderson, Hoke, Montgomery and Yadkin in the list of counties.

Session Laws 1959, c. 388, provides for inserting "Beaufort" between "Alamance" and "Bertie." Note that there is no "Bertie" mentioned in the section.

Session Laws 1959, c. 64, provides that paragraph (b) of this subsection shall apply to Johnston County.

The first 1961 amendment inserted "Hal-

ifax" in the list of counties. The second 1961 amendment inserted "Cleveland," the third 1961 amendment inserted "Robeson," the fourth 1961 amendment inserted "Wayne" and the fifth 1961 amendment inserted "Edgecombe" therein.

The 1963 amendment inserted "Perquimans" in the list of counties.

44. Obtaining Liability Insurance and Waiver of Immunity from Liability for Damages.—The board of county commissioners of any county, by securing liability insurance as hereinafter provided, is hereby authorized and empowered to waive the county's governmental immunity from liability for damage by reason of death, or injury to person or property, caused by the negligence or tort of the county or by the negligence or tort of any official or employee of such county when acting within the scope of his authority or within the course of his employment. Such immunity shall be deemed to have been waived by the act of obtaining such insurance, but such immunity is waived only to the extent that the county is indemnified by insurance from such negligence or tort.

Any contract of insurance purchased pursuant to this subsection must be issued by a company or corporation duly licensed and authorized to execute insurance contracts in this State, and such contract of insurance may cover such negligent acts or torts and such officials and employees as the board of county commissioners may decide. The board may purchase one or more contracts of insurance pursuant to this subsection, each such contract covering different negligent acts or torts or different officials or employees from every other contract. Any company or corporation which enters into a contract of insurance as above described with a county by such act waives any defense based upon the governmental immunity of such county.

Every board of county commissioners is authorized and empowered to pay, as a necessary expense, the lawful premiums for such insurance.

Any person sustaining damages, or in case of death his personal representative, may sue a county insured under this subsection for the recovery of such damages in any court of competent jurisdiction in such county; and it shall be no defense to any such action that the negligence or tort complained of was in pursuance of a governmental or discretionary function of such county, if, and to the extent, such county has insurance coverage as provided in this subsection.

Except as hereinbefore expressly provided, nothing in this subsection shall be construed to deprive any county of any defense whatsoever to any such action for damages, or to restrict, limit, or otherwise affect any such defense which said county may have at common law or by virtue of any statute; and nothing in this subsection shall be construed to relieve any person sustaining damages or any personal representative of any decedent from any duty to give notice of such claim to said county or to commence any civil action for the recovery of damages within the applicable period of time prescribed or limited by statute.

A county may incur liability pursuant to this subsection only with respect to a claim arising after the board of county commissioners has procured liability insurance pursuant to this subsection and only during the time when such insurance is in force.

No part of the pleadings which relates to or alleges facts as to a defendant's insurance against liability shall be read or mentioned in the presence of the trial jury in any action brought pursuant to this subsection. Such liability shall not attach unless the plaintiff shall waive the right to have all issues of law or fact relating to insurance in such an action determined by a jury and such issues shall be heard and determined by the judge without resort to a jury and the jury shall be absent during any motions, arguments, testimony, or announcement of findings of fact or conclusions of law with respect thereto unless the defendant shall ask for a jury trial thereon. (1955, c. 911, s. 1.)

Local Modification. — Davie and Scotland: 1955, c. 911, s. 1½.

Editor's Note. — The 1955 amendment added this subsection. Section 2 of the amendatory act validated the action of the board of county commissioners of any

county which has prior to May 11, 1955, taken out liability insurance of the type provided for in this subsection.

Cited in Walker v. Randolph County, 251 N. C. 805, 112 S. E. (2d) 551 (1960).

45. Designating the Names of Roads or Streets in Unincorporated Areas.—The board of county commissioners of any county is hereby authorized, in its discretion, to designate, change, alter or add to the name of any street, road, highway, or other thoroughfare open to the public outside of the corporate limits of any incorporated city or town, and to assign street numbers to be used on said roads or streets. This power may be exercised on the same street, road, highway, or other thoroughfare open to the public as often as the board deems it expedient.

Before exercising any power granted herein, the board shall make such effort as it deems expedient to make certain that a new name assigned to a street, road, highway, or other thoroughfare open to the public will not duplicate or be confused with the name of any existing street, road, highway, or other thoroughfare open to the public in the vicinity or within the corporate limits of any nearby city or town.

Nothing herein shall be construed to allow the board to change the number assigned to any street, road, highway, or other thoroughfare by the State Highway Commission; but the board may give such street, road, highway, or other thoroughfare a name in addition to its number.

After the board of county commissioners has designated, changed, altered, or added to the name of any street, road, highway, or other thoroughfare open to the public, and assigned street numbers, if any, it shall notify the local postmaster, the State Highway Commission, and any nearby city or town of its action. Provided, that this subsection shall not affect the provisions of chapter 945 of the Session Laws of 1953. (1957, c. 1068.)

Editor's Note. — The 1957 amendment added this subsection, and by virtue of § 136-1.1 "State Highway Commission" was substituted for "State Highway and Public Works Commission."

46. Water Systems and Sanitary Sewer Systems.—To acquire, construct, reconstruct, extend, improve, operate, maintain, lease and dispose of water systems and sanitary sewer systems, to contract for the operation, maintenance and lease of any such systems, and to contract for a supply of water and the disposal of sewage. (1957, c. 266, s. 3.)

Editor's Note. — The 1957 amendment added this subsection.

This subsection is constitutional, violating neither § 5 nor § 17 of Art. I of the N. C. Constitution. Ramsey v. Board of Comm'rs for Cleveland County, 246 N. C. 647, 100 S. E. (2d) 55 (1957).

The limitation upon the counties contained in N. C. Const., Art. VII, § 7, requiring that bonds for the construction of water and sewer systems be approved by the voters in such county, does not impair the constitutionality of the grant of the power to construct such systems in any respect. Ramsey v. Board of Comm'rs for Cleveland County, 246 N. C. 647, 100 S. E. (2d) 55 (1957).

47. County Plumbing Inspectors.—The county commissioners may designate and appoint one or more plumbing inspectors whose duties shall be: To inspect and approve the installation of all plumbing and water systems, either or both, hereafter installed in unincorporated areas; to issue certificates of approval of such inspections; to enforce regulations pertaining to plumbing as adopted by respective county boards of health; to collect inspection fees, determined by the county commissioners, and deliver same to the county treasurer; and to furnish a surety bond approved by the county commissioners. The county commissioners may pay the plumbing inspector a fixed salary, or apply inspection fees collected in lieu thereof, for services rendered. It shall be unlawful for the plumbing inspector to be financially connected in any way with persons, firms or corporations who install plumbing systems or sell plumbing fixtures, and his

services may be terminated when deemed wise and necessary by the county commissioners.

This subsection shall apply only to Bladen, Buncombe, Cumberland, Durham, Forsyth, Granville, Guilford, Haywood, Lee, Montgomery, Orange, Pamlico, Rockingham, Rowan, Stanly, Stokes, Surry, Transylvania and Wake counties. (1953, c. 984; 1955, cc. 144, 942, 1171; 1957, cc. 415, 456, 1286, 1294; 1959, cc. 399, 1031; 1961, cc. 763, 884, 1036; 1963, c. 868.)

Editor's Note.—Prior to the 1957 amendments the statute affected fewer than ten counties and therefore was not codified, but the amendments added the number requisite for codification.

By Session Laws 1953, c. 984, this subsection was made applicable to Bladen, Buncombe, Forsyth, Guilford and Pamlico counties.

Session Laws 1955, cc. 144, 942 and 1171 added Surry, Rowan and Stokes, respectively, to the list of counties. And Session Laws 1957, cc. 415, 456, 1286 and 1294 added Stanly, Montgomery, Granville and Durham, respectively, to the list.

The 1959 amendments added Cumberland and Wake to the list of counties.

The first 1961 amendment inserted "Transylvania" in the list of counties, the second 1961 amendment inserted "Rockingham" and the third 1961 amendment inserted "Haywood" in the list.

The 1963 amendment added Lee and Orange to the list of counties.

48. Funds for Defense of Election Officials.—The board of county commissioners of any county is authorized to appropriate funds for the payment of reasonable fees for counsel employed to defend any election officer or election board of the county in actions brought or now pending against such officials on account of orders, acts or decisions rendered in the discharge of official duties pertaining to the administration of the election laws. (1957, c. 436.)

Editor's Note. — The 1957 amendment added this subsection.

49. Office Hours, Workdays, and Holidays. — The board of county commissioners of any county may prescribe the office hours, workdays, and holidays to be observed by the various offices and departments of the county, and the officers and employees of the county may observe such office hours, workdays, and holidays, notwithstanding any other provision of law. (1959, c. 251.)

Editor's Note. — The 1959 amendment added this subsection.

50. Mapping and Discovery Contracts.—The board of county commissioners of any county may enter into contracts for the mapping of the lands of the county and the discovery of lands therein not listed for taxes. The board may enter into continuing contracts for these purposes, some portion of which or all of which may be performed in an ensuing fiscal year, but no such contract shall be entered into unless sufficient funds have been appropriated to meet any amount to be paid under the contract in the fiscal year in which the contract is made. The board of county commissioners shall, in the budget resolution of each ensuing fiscal year during which any such contract is in effect, appropriate sufficient funds to meet the amount to be paid under the contract in such ensuing fiscal year. The statement required by G. S. 153-130 to be printed, written, or typewritten on all contracts, agreements, or requisitions requiring the payment of money shall be placed on a continuing contract only if sufficient funds have been appropriated to meet the amount to be paid under the contract in the fiscal year in which the contract is made. (1959, c. 683, s. 5.)

Editor's Note.—The 1959 amendment added this subsection.

51. Special Tax Levy; Revaluation Expense.—The boards of county commissioners of the several counties are hereby authorized to levy such special property tax at such rate as may be necessary for the special purpose of meeting the expense of the revaluation of real property as required by G. S. 105-278;

such special property tax shall be in addition to any tax allowed by law for such purpose and shall be in addition to the rate allowed by the Constitution for general expenses. (1959, c. 704, s. 5.)

Editor's Note.—The 1959 amendment added this subsection.

52. County Building Inspectors. — The board of county commissioners may appoint one or more building inspectors to serve at the will of the board, whose duties shall be: To enforce the State Building Code adopted under article 9 of chapter 143 of the General Statutes; to enforce any county building regulations adopted under G. S. 143-138 (b) or 143-138 (e); to enforce any county zoning ordinance or ordinances; to collect inspection fees determined by the board of county commissioners, which the board is hereby authorized to impose, and deliver same to the county treasurer; to furnish a surety bond for the faithful performance of his duties and the safeguarding of any public funds coming into his hands, approved as to amount, form, and solvency of sureties by the board of county commissioners; and to carry out such related duties as may be specified by the board of county commissioners.

In lieu of appointing a separate building inspector, the board of county commissioners may designate as county building inspectors:

(1) A building inspector of any other county or counties, with the approval of the board of county commissioners of such other county or counties;

(2) A municipal building inspector of any municipality or municipalities within the county, with the approval of the municipal governing body;

(3) The county fire marshal;

(4) A county electrical inspector appointed under the provisions of G. S. 160-122;

(5) A county plumbing inspector appointed under the provisions of G. S. 153-9 (47); or

(6) Any other person or persons whom they deem to be qualified.

The board of county commissioners may pay a building inspector a fixed salary or may in lieu thereof reimburse him for his services by paying over any inspection fees which he collects. The board of county commissioners may make necessary appropriations for the special purpose of paying the salary or salaries of county building inspectors and any expenses pertaining to building inspection.

The board of county commissioners may enter into and carry out contracts with any municipality or municipalities within the county, or with any other county or counties, under which the parties agree to support a joint building inspection department. The board of county commissioners and the municipal governing body may make any necessary appropriations for such a purpose.

On official request of the governing body of any municipality within the county, the board of county commissioners may direct the county building inspector to exercise his powers within said municipality, and he shall thereupon be empowered to do so until such time as the municipal governing body officially withdraws its request.

This subsection shall not apply to Cherokee, Clay, Graham, Harnett, Lenoir, Macon and Scotland counties. (1959, c. 940; 1963, c. 639.)

Editor's Note.—The 1959 amendment added this subsection. The 1963 amendment deleted New Hanover from the last line of this subsection.

53. Suppression of Riots, Insurrections, etc.; Tax for Additional Expense.— The board of county commissioners of any county is hereby authorized to take action to suppress riots or insurrections or to handle any extraordinary breach of law and order which occurs or which threatens to occur within the county. The board may levy annually on all taxable property in the county a special tax for

the special purpose of meeting the expense of additional law-enforcement personnel and equipment which may be required in suppressing riots or insurrections or in handling any extraordinary breach of law and order which occurs or which threatens to occur within the county, and the General Assembly does hereby give its special approval for the levy of such special tax. (1959, c. 1250, s. 1.)

Editor's Note.—The 1959 amendment added this subsection.

54. To Regulate and Control Parking of Motor Vehicles on County Owned Property.—To regulate and control by resolution the parking of motor vehicles on county owned property, and to provide that violation of regulations adopted pursuant to such resolution shall be a misdemeanor punishable by a fine of not more than one dollar ($1.00): Provided, that such resolution shall not apply to streets, roads or highways in the county. (1961, c. 191.)

Editor's Note. — The 1961 amendment added this subsection.

55. Regulate and Prohibit Certain Activities.—In that portion of the county, or any township of the county, lying outside the limits of any incorporated city or town, or lying outside of the jurisdiction of any incorporated city or town, to prevent and abate nuisances, whether on public or private property; to supervise, regulate, or suppress or prohibit in the interest of public morals, public recreations, amusements, and entertainments; to define, prohibit, abate, or suppress all things detrimental to the health, morals, comfort, safety, convenience and welfare of the people including but not limited to the regulation and prohibition of the sale of goods, wares and merchandise on Sunday; and to make and enforce any other types of local police, sanitary, and other regulations: provided, that the board of county commissioners may make such regulations applicable within the limits of any incorporated city or town, or within the jurisdiction of any incorporated city or town, whose governing body, by resolution, agrees to such regulation, and during such time as the governing body continues to agree to such regulation. Nothing herein shall affect the authority of local boards of health to adopt rules and regulations for the protection and promotion of public health.

This subsection shall not apply to the following counties: Alamance, Alexander, Alleghany, Anson, Ashe, Avery, Cabarrus, Caldwell, Carteret, Catawba, Chatham, Cherokee, Clay, Craven, Dare, Duplin, Gaston, Graham, Halifax, Harnett, Hoke, Jackson, Johnston, Jones, Lee, Lenoir, Macon, Madison, Onslow, Pamlico, Pasquotank, Pender, Pitt, Polk, Randolph, Richmond, Rowan, Rutherford, Scotland, Stokes, Surry, Swain, Transylvania, Warren, Watauga, Wilkes, Wilson and Yancey. (1963, c. 1060, ss. 1, 1½.)

Editor's Note.—The 1963 amendment added this subsection.

Section 2 of Session Laws 1963, c. 1060, provides that all laws and clauses of laws in conflict with the act are repealed, except any other law specifically prohibiting the sale of certain articles on Sunday.

Only Part of Section Set Out.—Only the subsections changed by the amendments are set out.

§ 153-9.1. Contract for photographic recording of instruments and documents filed for record.—The board of county commissioners of any county in North Carolina is hereby authorized and empowered to contract for the photographic recording of any instruments or documents filed for record in the offices of the register of deeds, the clerk of the superior court and other county offices, and such recording shall constitute a sufficient recording, provided the original sizes of such instruments or documents are not reduced to less than two-thirds the original sizes; and provided further that no such contract shall be made for such photographic service, for a longer period than five years from the date of the commencement of such contracted service, except that the contract may

contain a provision for automatic extensions for additional five year periods in the absence of a sixty day written notice by either party to contract, given sixty days or more before the expiration of any five year period, terminating the contract at the end of such period. (1945, c. 286, s. 1; 1953, c. 675, s. 23.)

Editor's Note.—The 1953 amendment substituted "given" for "giving" in line eleven.

§ 153-10. Local: Authority to interdict certain shows.—The boards of commissioners of the several counties shall have power to direct the sheriff or tax collector of the county to refuse to issue any license to any carnival company and shows of like character, moving picture and vaudeville shows, museums and menageries, merry-go-rounds and Ferris wheels, and other like amusement enterprises conducted for profit under the same management and filling week-stand engagements or in giving week-stand exhibitions, whether under canvas or not, whenever in the opinion of the board of county commissioners the public welfare will be endangered by the licensing of such companies. This section shall apply only to the counties of Anson, Bladen, Burke, Cabarrus, Carteret, Caswell, Catawba, Duplin, Edgecombe, Forsyth, Greene, Harnett, Haywood, Iredell, Lee, Madison, Martin, Mitchell, Nash, Orange, Pamlico, Pasquotank, Polk, Randolph, Robeson Scotland, Tyrrell, Washington, Wayne, Wilkes, Wilson, Yadkin. (1919, c. 164; C. S., s. 1298; 1949, c. 111; 1951, cc. 1071, 1174; 1953, c. 102; 1961, cc. 279, 452.)

Editor's Note.—The 1953 amendment inserted "Caswell" in the list of counties. The first 1961 amendment inserted "Martin" in the list of counties, and the second 1961 amendment inserted "Wayne" therein.

§ 153-10.1. Local: Removal and disposal of trash, garbage, etc. — The board of county commissioners is hereby authorized and empowered, in its discretion, to issue, pass and promulgate ordinances, rules and regulations governing the removal, method or manner of disposal, depositing or dumping of any trash, debris, garbage, litter, discarded cans or receptacles or any waste matter whatsoever within the rural areas of the county and outside and beyond the corporate limits of any municipality of said county. A violation of any of the ordinances, rules or regulations issued, passed or promulgated under the authority of this section shall be a misdemeanor, and upon plea of nolo contendere, or a plea of guilty, or upon a conviction, any offender shall be fined not exceeding fifty dollars ($50.00) or imprisoned not exceeding thirty (30) days, and each week that any such violation continues to exist shall be a separate offense.

The provisions of this section shall apply to Cabarrus, Gates, Graham, Guilford, Henderson, Hertford, Hoke, Jackson, Martin, McDowell, Mecklenburg, Northampton, Polk, Scotland, Stokes, Transylvania, Wayne and Wilson counties. (1955, c. 1050; 1957, cc. 120, 376; 1961, cc. 40, 711, 803; c. 806, s. 1.)

Local Modification.—Town of Brevard: 1961, c. 806, s. 1½.

Cross Reference.—As to garbage collection and disposal generally, see article 22 of this chapter, § 153-272 et seq.

Editor's Note. — The act from which this section was codified made it applicable to Gates, Jackson, McDowell, Mecklenburg and Polk counties. The first 1957 amendment made it apply to Graham County, and the second 1957 amendment made it applicable to Cabarrus, Guilford, Henderson, Hertford, Martin, Northampton, Scotland and Wilson counties.

The first 1961 amendment added "Wayne" to the list of counties. The second 1961 amendment inserted "Stokes" in the list. And the third and fourth 1961 amendments inserted "Hoke" and "Transylvania".

§ 153-11.2. Appropriations for construction of water and sewer lines.—The board of county commissioners in any county in North Carolina is authorized and empowered to appropriate, make available and spend from any surplus funds or any funds not derived from tax sources which are available to said board to be used in such amounts in the discretion of said boards for

the purpose of building water and sewer lines from the corporate limits of any municipality in said county to communities or locations outside the corporate limits of any municipality therein. Said water lines shall be built and constructed for the purposes of public health and to promote the public health in communities and locations in the State where large groups of employees live in and around factories and mills and where said water and sewerage is necessary to promote industrial purposes. (1955, c. 370.)

§ 153-13. Compensation of county commissioners.

Local Modification.—Alamance: 1959, c. 150; Alleghany: 1957, c. 254; Brunswick: 1953, c. 541; Catawba: 1953, c. 462; Gaston: 1959, c. 935, s. 2; 1963, c. 1069; Hyde: 1953, c. 606, s. 1; Orange: 1953, c. 281, s. 2; 1963, c. 182; Richmond: 1953, c. 862; 1955, c. 1138; Transylvania: 1957, c. 174, s. 5.

Article 2A.

Photographic Reproduction of Records.

§ 153-15.4. Disposition of originals. — Whenever an official, person in charge of, or head of any office or department, or board of county government shall have photographed, photocopied, microphotographed, or otherwise reproduced all or any part of the papers on file or any records kept by said person in a manner and on film or other material that complies with the provisions of this article, and said reproductions are placed in conveniently accessible files and provisions made for preserving, examining and using same, as herein set out, and said official being of the opinion that said inactive papers, documents, books and records kept and on file in the office of the clerk of superior court, the register of deeds, or any of the county offices are consuming valuable space, and have no practical or historical value, may destroy or otherwise dispose of said original papers, documents, books and records upon a resolution being adopted by the board of county commissioners giving authority therefor, and when entered in the minutes of said board, and with the consent of the North Carolina State Department of Archives and History, or its successors: Provided, that said official person shall first furnish the State Department of Archives and History a complete description of the kind and type of papers, documents, books and public records intended to be destroyed or otherwise disposed of and turn over to the Department of Archives and History all or any of such papers, documents, books and records as the Department may desire to preserve. (1951, c. 19, s. 4; 1953, c. 675, s. 24; 1957, c. 330, s. 3.)

Editor's Note.— The 1953 amendment inserted the comma after "official" in line one. The 1957 amendment deleted the former last sentence.

Article 4.

State Association of County Commissioners.

§§ 153-34 to 153-39: Repealed by Session Laws 1957, c. 317.

Article 5.

Clerk to Board of Commissioners.

§ 153-40. Clerk to board; compensation.—The register of deeds shall be ex officio clerk of, and the compensation for his duties as clerk shall be fixed by, the board of commissioners: Provided, that the board of commissioners in its discretion may, at any time on or after the first Monday in December, one thousand nine hundred and fifty-six, designate some other county officer or employee as ex officio clerk of the board, to serve as clerk at the will of the board,

and the compensation of such officer or employee for his duties as clerk shall be fixed by the board. Once a board of county commissioners designates as clerk of the board an officer or employee other than the register of deeds, it shall not thereafter be precluded from again exercising its discretion to designate some other officer or employee, including the register of deeds, as clerk of the board. The proviso appearing next above shall not apply to Alleghany, Avery, Caswell, Catawba, Dare, Davie, Guilford, Hyde, Jones, Polk, Randolph, Richmond, Transylvania, Tyrrell, and Washington counties. (Const., art. 7, s. 2; Code, s. 710; 1895, c. 135, s. 4; Rev., s. 1324; C. S., s. 1309; 1955, c. 247, s. 1; 1963, c. 372.)

Local Modification. — Avery: 1957, c. 1022, s. 1; Madison: 1955, c. 261.

Editor's Note.—The 1955 amendment added the proviso and the last two sentences.

Session Laws 1961, c. 172, provides that the provision of this section, relating to the compensation of the register of deeds as ex officio clerk of the board of county commissioners, shall apply to Caswell County.

The 1963 amendment deleted "McDowell" from the list of counties in the last sentence.

§ 153-41. Duties of clerk.

4: Repealed.

Editor's Note.—Session Laws 1953, c. 973, s. 3, effective July 1, 1953, repealed subsection 4 of this section. As the rest of the section was not affected by the act it is not set out.

§ 153-42: Repealed by Session Laws 1953, c. 973, s. 3.

Article 6A.

County Officials and Employees.

§ 153-48.1. Boards of commissioners empowered to fix number of salaried county employees.—The several boards of county commissioners of this State are authorized and empowered to fix and determine, in their discretion, the number of salaried deputies, clerks, assistants and other employees which may be employed or appointed in the offices of the clerk of superior court, the register of deeds, the sheriff, and in the other offices of their respective counties. (1953, c. 1227, s. 1.)

§ 153-48.2. Boards of commissioners empowered to fix compensation of county officials and employees.—The several boards of county commissioners are authorized and empowered to fix, in their discretion, all salaries, travel allowances, and other compensation paid by their respective counties to all elective and appointive county officials and employees, except such as may be paid to the members of the board of county commissioners. (1953, c. 1227, s. 2.)

§ 153-48.3. How compensation to be fixed and paid. — The salaries, travel allowances and other compensation authorized to be fixed by the several boards of county commissioners in the preceding sections are prescribed and regulated as follows:

(a) All salaries, travel allowances and other compensation fixed by the several boards for such positions shall be paid from the general or special funds of the respective counties.

(b) Action to fix salaries, travel allowances, and other compensation may be taken by separate resolution of the board of county commissioners, provided that proper provision for the payment of such salaries, compensation and travel allowances shall have been made in the annual appropriation resolution then governing the finances of the county; or, such salaries, compensation, and travel allowances may be fixed and provided for in the annual appropriation resolution passed in accordance with the provisions of the County Fiscal Control Act.

(c) No salary, travel allowance or compensation presently being paid under acts of the General Assembly specifically fixing the amount of such salary, travel allowance or compensation shall be reduced by any board of commissioners prior to the expiration of the present term of office of such officer or employee.

(d) The salary, travel allowance or compensation of any officer or employee, not specifically fixed by acts of the General Assembly shall not be reduced nor increased by any board of commissioners more than twenty per cent (20%) in any fiscal year nor more than twenty per cent (20%) in any fiscal year as compared with the preceding fiscal year.

(e) No provision of this article shall be construed to diminish the authority of the several boards of commissioners established in §§ 153-218, 153-226 and 155-8 of the General Statutes of North Carolina. (1953, c. 1227, s. 3.)

Editor's Note.—Session Laws 1959, c. 376, s. 2, provides that subsection (d) shall not apply to Montgomery County.

§ 153-48.4. Article not applicable to employees within jurisdiction of Merit System Council.—This article shall not apply to county employees who come within the jurisdiction of the North Carolina Merit System Council, nor shall anything contained herein be held to repeal or amend the provisions of chapter 126 of the General Statutes of North Carolina. (1953, c. 1227, s. 4.)

§ 153-48.5. Counties to which article applicable.—The provisions of this article shall apply only to the following counties: Alamance, Anson, Ashe, Bertie, Bladen, Buncombe, Caldwell, Carteret, Catawba, Chatham, Cherokee, Columbus, Currituck, Dare, Davidson, Davie, Graham, Greene, Hertford, Hoke, Iredell, Jackson, Johnston, Lee, Lenoir, Lincoln, Martin, Montgomery, Moore, Nash, Northampton, Onslow, Orange, Pamlico, Pasquotank, Perquimans, Person, Pitt, Robeson, Rockingham, Rutherford, Sampson, Scotland, Surry, Swain, Transylvania, Union, Wake, Warren, Wayne, Wilkes, Yadkin.

Provided that nothing in this article will authorize the boards of county commissioners to fix the salaries of the elective officials in the counties of Alamance, Graham, Iredell, Lee, Lenoir, Rutherford and Wake, and provided further that nothing in this article will authorize the board of county commissioners of Person County to fix the salary of the judge of the Person County court. (1953, c. 1227, s. 5-A; 1955, c. 1032; 1957, c. 38, s. 2; cc. 165, 233, 435, 580; 1959, c. 206, s. 2; cc. 231, 497; c. 1267, s. 2; c. 1288; 1961, cc. 108, 296; c. 350, s. 2; c. 467, s. 1; c. 492, s. 1; cc. 692, 713, 1135; 1963, c. 30, s. 1; c. 181; c. 208, ss. 1, 2; c. 558; c. 569, s. 2; cc. 580, 799, 1263.)

Local Modification.—Bladen: 1961, c. 467, s. 2.

Editor's Note.—The 1955 amendment inserted Sampson in the list of counties in the first paragraph of this section.

Session Laws 1957, cc. 38, 165, 435 and 580 inserted Hertford, Columbus, Bertie and Bladen, respectively, in the list of counties in the first paragraph; and chapter 233 deleted Hoke from the list of counties in the second paragraph. The act inserting Bladen provided minimum annual salaries for certain named officers of the county.

Session Laws 1959, cc. 206, 231, 497 and 1267 inserted Wayne, Currituck, Catawba and Carteret, respectively, in the list of counties in the first paragraph. The act inserting Catawba provides that the county commissioners of Catawba County shall during the month of February, immediately prior to the day upon which an election of county officers is scheduled by law to be held, fix a minimum salary for the term of each officer to be elected at said election or elections.

Session Laws 1959, c. 1288, inserted "Alamance" in the second paragraph.

The first 1961 amendment inserted "Transylvania" in the list of counties in the first paragraph. The second 1961 amendment inserted "Davie" therein, and the third 1961 amendment inserted "Perquimans". The fourth 1961 amendment deleted "Bladen" from the list of counties in the second paragraph. The fifth 1961 amendment, effective July 1, 1961, inserted "Pitt" in the list of counties in the first paragraph. The sixth and seventh 1961 amendments inserted "Cherokee" and

"Martin" and the eighth 1961 amendment inserted "Northampton" therein.

The first 1963 amendment inserted "Ashe" in the list of counties in the first paragraph. Section 2 of the act provides that the authority granted by it to the board of county commissioners shall be applicable to the year ending December 1, 1963, and thereafter.

The second 1963 amendment inserted "Swain" in the first paragraph.

The third 1963 amendment inserted "Person" in the first paragraph and added the second proviso to the second paragraph.

The fourth 1963 amendment inserted "Pasquotank" in the first paragraph.

The fifth 1963 amendment inserted "Jackson" in the first paragraph.

The sixth 1963 amendment inserted "Wilkes" in the first paragraph.

The seventh 1963 amendment deleted "Moore" from the second paragraph.

The eighth 1963 amendment inserted "Greene" in the list of counties in the first paragraph.

Article 7.

Courthouse and Jail Buildings.

§ 153-54: Repealed by Session Laws 1957, c. 1373.

Article 8.

County Revenue.

§§ 153-55 to 153-58: Repealed by Session Laws 1953, c. 973, s. 3.

§ 153-59: Transferred to § 153-9 by Session Laws 1953, c. 973, s. 2.

Editor's Note.—Session Laws 1953, c. 973, s. 2, effective July 1, 1953, amended and transferred this section to become subsection 2½ of G. S. 153-9.

§§ 153-60 to 153-63: Repealed by Session Laws 1953, c. 973, s. 3.

§ 153-64. Demand before suit against municipality; complaint.

Cross Reference. — For construction as to application of two-year limitation for filing of tort claims, see note to § 1-53.

Cited in Muncie v. Travelers Ins. Co., 253 N. C. 74, 116 S. E. (2d) 474 (1960).

§ 153-64.1. Annual tax to meet costs of revaluation of real property.—The board of county commissioners, to meet the costs of revaluation of real property as required by G. S. 105-278, shall annually levy a tax on taxable property in the county the proceeds of which, when added to other available funds, is calculated to produce, by accumulation during the period between required revaluations, sufficient funds to pay for revaluation of real property by actual visitation and appraisal as required by G. S. 105-278 and G. S. 105-295. All funds raised and set aside for this purpose from such special levy or from other sources shall be placed in a sinking fund or otherwise earmarked and shall not be available or expended for any other purpose. Any unexpended balance remaining in said fund following a required revaluation shall be retained in said fund for use in financing the next periodic revaluation of real property by actual appraisal under the provisions of G. S. 105-278 and G. S. 105-295. The levy herein authorized is hereby declared to be for a necessary expense and for a special purpose. (1959, c. 704, s. 6.)

"Necessary Expenses" within meaning of N. C. Const., Art. VII, § 7. See Deloatch v. Beamon, 252 N. C. 754, 114 S. E. (2d) 711 (1960).

§§ 153-65 to 153-68: Repealed by Session Laws 1953, c. 973, s. 3.

Article 9.

County Finance Act.

§ 153-77. Purposes for which bonds may be issued and taxes levied.—The special approval of the General Assembly is hereby given to the is-

suance by counties of bonds and notes for the special purposes named in this section, and to the levy of property taxes for the payment of such bonds and notes and interest thereon. Accordingly, authority is hereby given to all counties in the State, under the terms and conditions herein described, to issue bonds and notes, and to levy property taxes for the payment of the same, with interest thereon, for the following purposes, including therein purchase of the necessary land and, in the case of buildings, the necessary equipment, and the remodeling, enlarging and reconstructing of any buildings erected or purchased:

(b1) Erection and purchase of county office buildings for housing offices, departments, bureaus, and agencies of the county government.

(n) Purchase of voting machines.

(o) Acquisition, construction, reconstruction, extension and improvement of water systems, either singly or jointly with other counties or municipalities.

(p) Acquisition, construction, reconstruction, extension and improvement of sanitary sewerage systems, either singly or jointly with other counties or municipalities.

(q) Erection of community colleges, including the purchase of land and the erection of classrooms, laboratories, administrative offices, utility plants, libraries, cafeterias and auditoriums and the purchase and installation of equipment therefor: Provided, bonds for such purpose shall be deemed to be school bonds and the statement filed with the clerk after introduction and before final passage of an order authorizing such bonds shall be filed pursuant to the provisions of G. S. 153-83.

(r) To repay any loan made by the State Board of Education from the State Literary Fund to counties for the use of county and city boards of education under the provisions of article 11 of chapter 115 of the General Statutes.

(s) To meet the expense of additional law-enforcement personnel and equipment which may be required in suppressing riots or insurrections or in handling any extraordinary breach of law and order which occurs or which threatens to occur within the county. (1927, c. 81, s. 8; 1929, c. 171, s. 1; 1931, c. 60, s. 54; 1933, c. 259, s. 2; 1935, c. 302, s. 2; 1939, c. 231, s. 2(c); 1947, cc. 520, 931; 1949, c. 354; 1949, c. 766, s. 3; 1949, c. 1270; 1953, c. 1065, s. 1; 1957, c. 266, s. 1; c. 1098, s. 16; 1959, c. 525; c. 1250, s. 2; 1961, c. 293; c. 1001, s. 2.)

Local Modification.—Bertie: 1957, c. 441, s. 2; Davie: 1953, c. 704; Henderson: 1955, c. 485; Johnston: 1959, c. 82; Lincoln: 1955, c. 906, s. 1; Pamlico: 1953, c. 125, s. 1; Sampson: 1955, c. 925, s. 1; Washington: 1953, c. 852, s. 2.

Editor's Note.—

The 1953 amendment added subsection (n). The first 1957 amendment added subsections (o) and (p), and the second 1957 amendment added subsection (q).

Section 4 of the 1953 amendatory act, which also amended §§ 153-80, 153-87 and 153-93, provided that "The powers conferred upon counties to authorize bonds pursuant to the County Finance Act, as amended by this act, * * * for the purchase of voting machines, or to raise or appropriate money therefor, as provided in this act, shall be subject to the provisions and limitations of any general, special or local act relating to the use of voting machines enacted before adjournment of the regular session of the General Assembly in 1953."

The first 1959 amendment added subsection (r), and the second 1959 amendment added subsection (s).

The first 1961 amendment added at the end of the introductory paragraph the words "and the remodeling, enlarging and reconstructing of any buildings erected or purchased:". It also inserted subsection (b1).

The second 1961 amendment added the words "either singly or jointly with other counties or municipalities" at the end of subsections (o) and (p).

As the rest of the section was not affected by the amendments it is not set out.

Subsections (o) and (p) Are Constitutional.—The General Assembly may grant to a county the authority to issue bonds for the construction of water and sewer systems when "approved by a majority of those who shall vote thereon in any election held for such purpose" as required by N. C. Const., Art. VII, § 7. Session Laws 1957, c. 266, which added subsections (o) and (p) to this section, is constitutional. Ramsey v. Board of Comm'rs for Cleve-

land County, 246 N. C. 647, 100 S. E. (2d) 55 (1957).

Use of Proceeds of Bonds Limited by Bond Order.—Where, pursuant to this and sections following, a bond order approved by the voters of the county authorizes the issuance of bonds in an aggregate amount to finance a new building or buildings to be used as a public hospital and the acquisition of a suitable site therefor, the use of the proceeds of the bonds is limited by the bond order, and the county may not use the surplus left after completing the project contemplated in the bond order toward the construction of a clinic in another municipality of the county. Lewis v. Beaufort County, 249 N. C. 628, 107 S. E. (2d) 77 (1959).

The construction and operation of a public hospital is not a necessary expense in the sense that expression is used in the Constitution. Bonds cannot, therefore, be issued by a county for the purpose of providing hospital facilities, unless approved by a majority voting at an election held for that purpose. Barbour v. Carteret County, 255 N. C. 177, 120 S. E. (2d) 448 (1961).

Stated, as to subsection (b), in Wilson v. High Point, 238 N. C. 14, 76 S. E. (2d) 546 (1953).

Cited in Parker v. Anson County, 237 N. C. 78, 74 S. E. (2d) 338 (1953); as to subsection (m), Jamison v. Charlotte, 239 N. C. 423, 79 S. E. (2d) 797 (1954); Jamison v. Charlotte, 239 N. C. 682, 80 S. E. (2d) 904 (1954).

§ 153-78. Order of governing body required.

The bond order is the crucial foundation document which supports and explains the proposal to be submitted, and material representations set out in the bond order ordinarily become essential elements of the proposition submitted to the voters. Accordingly, where the bond order contains a stipulation definitely fixing the maximum amount of county funds to be expended on a proposed project, such stipulation, treated as a compact, becomes a limitation upon subsequent official acts based on a favorable vote and may not be materially varied. Rider v. Lenoir County, 236 N. C. 620, 73 S. E. (2d) 913 (1952).

Where public funds are to supplement bond moneys, it is not required that the bond order specify, or the voters be advised, that the proceeds of the proposed bond issue are to be used with, or in addition to, a sum of money on hand or otherwise available for the proposed improvement. Rider v. Lenoir County, 236 N. C. 620, 73 S. E. (2d) 913 (1952).

Where Bond Order Stipulates Total Sum to Be Expended, Appropriation of Large Additional Sum Is Unauthorized.—While a county may ordinarily expend unallocated nontax moneys for the public purpose of a county hospital even in those instances in which a bond order for the hospital does not specify that the proceeds of the bonds are to be used together with such unallocated nontax moneys, where the bond order specifically specifies that the total maximum amount to be expended by the county for the hospital is not to exceed $465,000 the allocation of an additional supplemental appropriation of over $138,000 out of nontax moneys on hand is a material variance from the compact as set forth in the bond order, and the county should be restrained in a proper suit from issuing the bonds and disbursing county funds in accordance with hospital plans predicated upon such increased appropriation. Rider v. Lenoir County, 236 N. C. 620, 73 S. E. (2d) 913 (1952).

§ 153-80. Maturities of bonds.

(h) Voting machines, ten years.

(i) Water systems or sanitary sewer systems, forty years. (1927, c. 81, s. 11; 1929, c. 171, s. 2; 1931, c. 60, s. 56; 1933, c. 259, s. 2; 1953, c. 1065, s. 1; 1957, c. 266, s. 2.)

Local Modification. — Bertie: 1957, c. 441, s. 3; Buncombe: 1955, c. 32, s. 2; Lincoln: 1955, c. 906, s. 2; Pamlico: 1953, c. 125, s. 2; Sampson: 1955, c. 925, s. 2; Washington: 1953, c. 852, s. 3.

Cross Reference.—As to power of county to issue bonds for the purpose of voting machines, see note under § 153-77.

Editor's Note.—

The 1953 amendment added subsection (h), and the 1957 amendment added subsection (i). As the rest of the section was not affected by the amendments it is not set out.

§ 153-83. Sworn statement of debt before authorization of bonds for school purposes.

Applied in Parker v. Anson County, 237 N. C. 78, 74 S. E. (2d) 338 (1953).

§ 153-86. Publication of bond order.

Cited in Rider v. Lenoir County, 236 N. C. 620, 73 S. E. (2d) 913 (1952).

§ 153-87. Hearing; passage of order; debt limitations.

No order for the issuance of bonds for the purchase of voting machines may be passed if the amount of the bonds authorized thereby is in excess of two hundred thousand dollars ($200,000.00), and such bonds shall not be exempt from the foregoing limitation of net indebtedness for other than school purposes. (1927, c. 81, s. 17; 1953, c. 1065, s. 1.)

Local Modification. — Buncombe: 1955, c. 32, s. 1; Cabarrus: 1963, c. 602; Carteret: 1953, c. 807; 1955, cc. 562, 713; Columbus: 1959, c. 478; Davidson: 1955, c. 712; Davie: 1959, c. 728; Harnett: 1963, c. 695; Lincoln: 1959, c. 205; Person: 1963, c. 192; Scotland: 1959, c. 1220.

Cross Reference.—As to power of county to issue bonds for the purchase of voting machines, see note under § 153-77.

Editor's Note.—

The 1953 amendment added the above sentence at the end of this section. As the rest of the section was not changed only this sentence is set out.

Applied in Parker v. Anson County, 237 N. C. 78, 74 S. E. (2d) 338 (1953).

Cited in Rider v. Lenoir County, 236 N. C. 620, 73 S. E. (2d) 913 (1952).

§ 153-88. Material of construction and other details.

Amendment of Resolution. — Session Laws 1953, c. 1206, s. 2 provides that any resolution adopted pursuant to this section and prior to April 30, 1953, may be amended so as to provide that any unissued balance of bonds authorized by a bond order, or by two or more bond orders, may be made redeemable prior to their respective maturities as provided in G. S. 153-103.1.

§ 153-89. Further publication of bond order.

Cited in Rider v. Lenoir County, 236 N. C. 620, 73 S. E. (2d) 913 (1952).

§ 153-90. Limitation of action to set aside order.

Suit to Restrain Issuance of Bonds.— Action to enjoin issuance of hospital bonds and to restrain disbursement of county funds therefor on the ground of irregularities in the bond order and form of ballot held precluded by this section or § 153-100 because not instituted until after thirty days subsequent to the statement of the result of election. Rider v. Lenoir County, 236 N. C. 620, 73 S. E. (2d) 913 (1952).

§ 153-92.1. General application of provision as to majority vote.

Cited in Barbour v. Carteret County, 255 N. C. 177, 120 S. E. (2d) 448 (1961).

§ 153-93. When election held.—Whenever the taking effect of an order authorizing the issuance of bonds is dependent upon the approval of the order by the voters of a county, the governing body may submit the order to the voters at an election to be held not more than one year after the passage of the order. The governing body may call a special election for that purpose, or may submit the order to the voters at the regular election for county officers next succeeding the passage of the order, but no such special election shall be held within one month before or after a regular election for county officers. Several orders or other matters may be voted upon at the same election. The governing body shall not call a special election for the sole and exclusive purpose of submitting to the voters the proposition of approving or disapproving an order for the issuance of

bonds for the purchase of voting machines, but such order may be submitted at any primary election for the nomination of county officers or at any general election for the election of county officers or at any special election at which another order or another matter is to be voted upon. (1927, c. 81, s. 23; 1953, c. 1065, s. 1.)

Cross Reference. — As to power of county to issue bonds for the purchase of voting machines, see § 153-77 and note.

Editor's Note.—The 1953 amendment added the fourth sentence.

This statute does not declare as a matter of fixed legislative policy that a bond election must be held more than a month before or after any other election, on a day specially set apart for such election. The statute leaves it for the board of commissioners to say whether in their discretion the bond proposition shall be submitted at a special election called for that purpose, or passed on by the voters at the regular election for county officers next succeeding the passage of the bond order. It is only when the board decides to call a special election that the statute inhibits holding the special election within one month "before or after a regular election for county officers." Rider v. Lenoir County, 236 N. C. 620, 73 S. E. (2d) 913 (1952).

The term "regular election for county officers," as used in this section, does not include a party primary. Rider v. Lenoir County, 236 N. C. 620, 73 S. E. (2d) 913 (1952).

Submission of More than One Question or Proposal at Same Election.— While this section permits the submission of more than one question or proposal in one and the same election, this contemplates questions authorized by law. Parker v. Anson County, 237 N. C. 78, 74 S. E. (2d) 338 (1953).

§ 153-96. Ballots.

This section and § 163-150 are to be construed in pari materia. Parker v. Anson County, 237 N. C. 78, 74 S. E. (2d) 338 (1953).

Ballot Held to Comply with Section.—A ballot for a school bond election which states the question submitted for approval or disapproval followed by a brief statement of the purposes for which the proceeds of the proposed bonds are to be used and that a tax would be levied to pay the principal and interest on the bonds in event of approval, followed by the word "Yes" and the word "No" and a square opposite each with instructions as to how the ballot should be marked, is held to comply with this section and § 163-150, and the fact that the number of proposed projects necessarily results in a ballot somewhat longer than usual is not objectionable. Parker v. Anson County, 237 N. C. 78, 74 S. E. (2d) 338 (1953).

§ 153-100. Limitation as to actions upon elections.

Suit to Restrain Issuance of Bonds.— See note to § 153-90.

Cited in Rider v. Lenoir County, 236 N. C. 620, 73 S. E. (2d) 913 (1952).

§ 153-102. Within what time bonds issued.—After a bond order takes effect, bonds may be issued in conformity with its provisions at any time within five years after the order takes effect, unless the order shall have been repealed, which repeal is permitted (without the privilege of referendum upon the question of repeal), unless notes issued in anticipation of the proceeds of the bonds shall be outstanding: Provided, that the provisions of this paragraph shall apply to all bonds authorized by any bond order taking effect on or after July 1st, 1952.

Notwithstanding the foregoing limitations of time which might otherwise prevent the issuance of bonds, bonds authorized by an order which took effect prior to July 1st, 1952, and which have not been issued by July 1st, 1955, may be issued in accordance with all other provisions of law at any time prior to July 1st, 1957, unless such order shall have been repealed, and any loans made under authority of § 153-108 of this article in anticipation of the receipt of the proceeds of the sale of such bonds, or any renewals thereof, may be paid on or at any time prior to but not later than June 30th, 1957, notwithstanding the limitation of time for payment of such loans as contained in said section. (1927, c. 81, s. 32; 1939, c. 231, s. 2(d); 1947, c. 510, s. 1; 1949, c. 190, s. 1; 1951, c. 439, s. 1; 1953, c. 693, s. 1; 1955, c. 704, s. 1.)

Editor's Note.—
The 1953 amendment substituted "five years" for "three years" in line three and rewrote the proviso appearing at the end of the first paragraph. It also made changes in the dates appearing in the second paragraph.

The 1955 amendment changed the last three dates in the second paragraph.

§ 153-103.1. Redemption of bonds.—The bonds authorized by a bond order, or by two or more bond orders if the bonds so authorized shall be consolidated into a single issue, may be made subject to redemption prior to their respective maturities with or without premium as the governing body may by resolution provide, with the approval of the Local Government Commission. (1953, c. 1206, s. 1.)

Editor's Note.—Section 2 of the act inserting this section provided that any resolution adopted pursuant to G. S. 153-88 and prior to April 30, 1953, may be amended so as to provide that any unissued balance of bonds authorized by a bond order, or by two or more bond orders, may be made redeemable prior to their respective maturities as provided in G. S. 153-103.1.

§ 153-107. Application of funds.

Right to Transfer and Allocate Funds.—
In accord with original. See Mauldin v. McAden, 234 N. C. 501, 67 S. E. (2d) 647 (1951).

Applied in Mauldin v. McAden, 234 N. C. 501, 67 S. E. (2d) 647 (1951).

§ 153-108. Bond anticipation loans.—At any time after a bond order has taken effect, as provided in § 153-78, a county may borrow money for the purposes for which the bonds are to be issued, in anticipation of the receipts of the proceeds of the sale of bonds, and within the maximum authorized amount of the bond issue. Such loans shall be paid not later than five years after the time of taking effect of the order authorizing the bonds upon which they are predicated. The governing body may, in its discretion, retire any such loans by means of current revenues or other funds, in lieu of retiring them by means of bonds: Provided, however, that the governing body, at or before the actual retirement of any such loans by any means other than the issuance of bonds under the bond order upon which such loans are predicated, shall amend or repeal such order so as to reduce the authorized amount of the bond issue by the amount of the loan to be so retired. Such an amendatory or repealing order shall take effect upon its passage, and need not be published. Negotiable notes shall be issued for all moneys so borrowed. Such notes may be renewed from time to time, and money may be borrowed upon 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. No money shall be borrowed under this section at a rate of interest exceeding the maximum rate permitted by law. The said notes may be disposed of by public or private negotiations as provided in the Local Government Act. The issuance of such notes shall be authorized by resolution of the governing body, which shall fix the actual or maximum face amount of the notes and the actual or maximum rate of interest to be paid upon the amount borrowed. The governing body may delegate to any officer the power to fix said face amount and rate of interest with the limitations prescribed by said resolution, and the power to dispose of said notes. All such notes shall be executed in the manner provided in § 153-105 for the execution of bonds. They shall be submitted to and approved by the attorney for the county before they are issued, and his written approval endorsed on the notes. (1927, c. 81, s. 39; 1953, c. 693, s. 2.)

Editor's Note.—The 1953 amendment substituted "five years" for "three years" in the second sentence, and rewrote the eighth sentence.

Prerequisite to Issuance of Bond Anticipation Note.—No valid bond anticipation note may be issued unless authority exists for the issuance of bonds to provide funds to pay the note. Barbour v. Carteret County, 255 N. C. 177, 120 S. E. (2d) 448 (1961).

§ 153-111. Destruction of paid bonds and interest coupons.—All paid bonds and interest coupons of a county may, in the discretion of the board of county commissioners, be destroyed in accordance with one of the following methods:

Method 1. Before any such bonds and coupons are destroyed as hereinafter provided the county accountant shall make a descriptive list of the same in a substantially bound book kept by him for the purpose of recording destruction of paid bonds and coupons. Said list shall include, with respect to bonds, (i) designation or purpose of issue, (ii) date of issue, (iii) bond numbers, (iv) denomination, (v) maturity date and (vi) total principal amount and, with respect to coupons, the designation of purpose of issue and date of bonds to which such coupons appertain, the maturity date of such coupons and, as to each such maturity date, the denomination, quantity and total amount of coupons. After such list has been made the paid bonds and coupons so described shall be destroyed, either by burning or by shredding, in the presence of the chairman of the board of county commissioners, the county accountant, the county attorney and the clerk of the board of county commissioners, each of whom shall certify under his hand in such book that he saw such bonds and coupons so destroyed. No paid bonds or coupons shall be so destroyed within one year from their respective maturity dates.

Method 2. The board of county commissioners may contract with any bank or trust company for the destruction, as hereinafter provided, of bonds and interest coupons which are paid and canceled. The contract shall substantially provide, among such other stipulations and provisions as may be agreed upon, that such bank or trust company shall furnish the county, periodically or from time to time, with a written certificate of destruction containing a description of bonds and coupons destroyed, including with respect to bonds, (i) designation or purpose of issue, (ii) date of issue, (iii) bond numbers, (iv) denomination, (v) maturity dates and (vi) total principal amount and, with respect to coupons, designation or purpose of issue and date of bonds to which such coupons appertain, the maturity dates of such coupons and, as to each such maturity date, the denomination, quantity and total amount, and certifying that such paid and canceled bonds and coupons have been destroyed either by burning or by shredding. No paid and canceled bonds or coupons shall be destroyed within one (1) year after their respective maturities or, in the case of bonds paid prior to their maturities, within one (1) year from such payment. Each such certificate shall be filed by the county accountant among the permanent records of his office.

The provisions of G. S. 121-5 and 132-3 shall not apply to the paid bonds and coupons referred to in this section. (1941, c. 293; 1961, c. 663, s. 1; 1963, c. 1172, s. 1.)

Editor's Note. — The 1961 amendment rewrote this section.

The 1963 amendment rewrote the paragraph headed "Method 2," which formerly required the contract to be with a bank or trust company acting as the paying agent of the county.

ARTICLE 10.

County Fiscal Control.

§ 153-114. Title; definitions.—This article shall be known and may be cited as "The County Fiscal Control Act."

In this article, unless the context otherwise requires, certain words and expressions have the following meaning:

(a) "Subdivision" means a township, school district, school taxing district or other political corporation or subdivision within a county, including drainage and other districts, the taxes for which (taxes as here and elsewhere used in this

article include special assessments) are under the law levied by the board of county commissioners of the county.

(b) "Debt service" means the payment of principal and interest on bonds and notes as such principal or interest falls due, and the payments of moneys required to be paid into sinking funds.

(c) The "fiscal year" is the annual period for the compilation of fiscal operations, and begins on the first day of July and ends on the thirtieth day of June.

(d) The "budget year" is the fiscal year for which a budget is being prepared.

(e) The "surplus" of a fund at the close of a fiscal year is the amount by which the cash balance exceeds the current total of liabilities, the encumbrances, and the taxes or other revenue collected in advance. Encumbrances are obligations in the form of purchase orders, contracts, or salary commitments which are chargeable to an appropriation made in the year just closing and which are unpaid at the close of such year. Taxes or other revenue collected in advance are sums received in the year just closing but which are not due until after the beginning of the new fiscal year.

(f) "Fund" means a sum of money or other resources segregated for the purpose of carrying on specific activities or attaining certain objectives and constituting an independent fiscal and accounting entity. Each county shall maintain the following funds and such other funds as the board of county commissioners may require:

(1) General fund.
(2) County debt service fund.
(3) School current expense fund.
(4) School capital outlay fund.
(5) School debt service fund: Provided that this fund may be combined with the county debt service fund if the board of county commissioners deems it advisable to do so.
(6) A fund for each special purpose tax for the levy of which the General Assembly has given its special approval.
(7) A bond fund to account for the application of the proceeds of the sale of bonds to the specific purpose for which such bonds were duly authorized.
(8) A fund for each subdivision to account for the collection of each special tax levied for a particular function or purpose of such subdivision. (1927, c. 146, ss. 1, 2; 1955, c. 724.)

Editor's Note. — The 1955 amendment rewrote §§ 153-114 through 153-141 in their entirety.

§ 153-115. County accountant.—It shall be the duty of the board of county commissioners in each county in the State to appoint some person of honesty and ability, who is experienced in modern methods of accounting, as county accountant, to hold such office at the will of the board; but, in lieu of appointing a county accountant in counties in which there is an auditor or accountant holding office under the provisions of a special act of the General Assembly, the board shall impose and confer upon such auditor or accountant all the powers and duties herein imposed and conferred upon county accountants; and in any county of the State in which there is no auditor or accountant holding office under the provisions of a special act, the board may impose and confer such powers and duties upon any county officer, except the sheriff or the tax collector or the county treasurer or any person or bank acting as county financial agent or performing the duties ordinarily performed by a county treasurer or county financial agent. The board may set the salary of the county accountant and such other assistants as the board determines are necessary to aid in the performance of his duties, except where such salary or salaries are set by special act. If the duties and powers herein imposed and conferred on county accountants are imposed

and conferred on any officer of the county, the board may revise and adjust the salary or compensation of such officer in order that adequate compensation may be paid to him for the duties of his office. Wherever in this article reference is made to the county accountant, such reference shall be deemed to include either the person appointed as county accountant or the officer upon which th powers and duties thereof are imposed and conferred. (1927, c. 146, s. 3; 1955, c. 724.)

Local Modification.—Wayne: 1953, c. 341.

§ 153-116. Additional duties of county accountant.—In addition to the duties imposed and powers conferred upon the county accountant by this article, he shall have the following duties and powers:

(a) He shall act as accountant for the county and subdivisions in settling with all county officers.

(b) He shall keep or cause to be kept a record of the date, source, and amount of each item of receipt, and the date, the payee or contractor, the specific purpose, and the amount of every disbursement or contract made; and he shall keep or cause to be kept a copy of every contract made requiring the payment of money.

(c) He shall require and it shall be the duty of every officer and employee receiving or disbursing money of the county or its subdivision to keep a record of the date, source, and amount of each item of receipt, and the date, the payee or contractor, the specific purpose, and the amount of every disbursement or contract made.

(d) He shall examine once a month, or at such other times as the board may direct, all books, accounts, receipts, vouchers, and other records of all officers and employees receiving or expending money of the county or of any subdivision thereof, including the county board of education and other subdivisions and including justices of the peace and other judicial officials; provided, that the board of county commissioners may relieve the county accountant of the duty of examining the records of any such officer or employee whose records are audited at least annually by a certified public accountant or by a public accountant registered under chapter 93 of the General Statutes.

(e) He shall require and it shall be the duty of all officers and employees in the county who collect fines, penalties, and other money to be applied to public purposes, to file with him each month, or oftener if the board so directs, a report showing amounts collected by such officers, including a report of all fees collected for the performance of their duties, whether they are entitled to such fees as the whole or part of their compensation or are not entitled to same: Provided, that in the case of elected officials, audits which include fees collected for the performance of their duties and to which they are entitled as a part of their compensation, shall not be required more than once a year and at the end of such official's tenure in office.

(f) He shall, as often as he may be directed by the board of county commissioners, file with the board a complete statement of the financial condition of the county and its subdivisions, showing the receipts and expenditures of the different officers, departments, institutions, and agencies.

(g) He shall advise with the heads of offices, departments, institutions, and agencies of the county and its subdivisions and with State officers as to the best and most convenient method of keeping accounts, and shall inform himself as to the best and simplest methods of keeping accounts, so as to bring about as far as possible a simple, accurate, and uniform system of keeping accounts of the county and subdivisions.

(h) He shall not allow any bill or claim unless the same be so itemized as to show the nature of the services rendered.

(i) He shall perform such other duties having relation to the purposes of this article as may be imposed upon him by the board of county commissioners. (1927, c. 146, s. 4; 1953, c. 973, s. 1; 1955, c. 724.)

Local Modification.—Mitchell, as to subsection (e): 1955, c. 1112.

Editor's Note.—The 1953 amendment, rewrote subsection (g) as it appeared before the 1955 amendment.

§ 153-117. Heads of offices, departments, institutions, and agencies to file budget statements before June 1.—It shall be the duty of all heads of offices, departments, institutions, and agencies of the county and its subdivisions to file with the county accountant on such date subsequent to the fifteenth day of March and prior to the first day of June of each year as the county accountant may direct (a) a complete statement of the amounts expended for each object of expenditure in his office, department, institution, or agency, in the fiscal year preceding the then current fiscal year, and (b) a complete statement of the amount expended and estimated to be expended for each object in his office, department, institution, or agency in the current fiscal year, and (c) an estimate of the requirements of his office, department, institution or agency for each object in the budget year. Such statements and estimates shall list each object of expenditure in such form and in such detail as may be prescribed by the county accountant, and shall include such other supporting information as may be prescribed by the county accountant. (1927, c. 146, s. 5; 1955, c. 724.)

§ 153-118. Budget estimate.—Upon receipt of such statements and estimates, the county accountant shall prepare (a) his estimate of the amounts necessary to be appropriated for the budget year for the various offices, departments, institutions, and agencies of the county and its subdivisions, listing the same under the appropriate funds maintained as required by § 153-114, which estimate shall include the full amount of all debt service which the county accountant through the exercise of due diligence determines will be due and payable in the budget year, and also shall include the full amount of any deficit in any fund, and may include a contingency estimate for each fund to meet expenditures for which need develops subsequent to the passage of the budget resolution, and (b) an itemized estimate of the revenue to be available during the budget year, separating revenue from taxation from revenue from other sources and classifying the same under the appropriate funds maintained as required by § 153-114, and (c) an estimate of the amount of surplus in each fund as of the beginning of the budget year which he recommends be appropriated to meet expenditures for the budget year. These estimates shall be broken down into as much detail and have appended thereto such information as the board of county commissioners may direct and otherwise to take such form as the county accountant may determine. The estimates of revenue when added to the surplus figure for each fund shall equal the estimates of appropriations for the fund. The county accountant shall also include with such estimates a statement of the rate of tax which will have to be levied in each fund in order to raise the amount of revenue from taxation included in the estimate of revenue: Provided, that the county accountant shall indicate clearly in such statement the percentage of taxes levied which he estimates will be collected in the budget year and on which he has based the rate of tax necessary to raise the amount of revenue from taxation included in the estimate of revenue. Such estimates and statements of the county accountant shall be termed the "budget estimate," and shall be submitted to the board not later than the first Monday of July of each year: Provided, that the budget estimate may be submitted to the board on such earlier date as the county accountant, with the approval of the board, may determine. The county accountant may submit a budget message with the budget estimate which may contain an outline of the proposed financial policies of the county for the budget year, may describe in connection therewith the important features of the budget plan, may set forth the reasons for stated changes from the previous year in appropriation and revenue items, and may explain any major changes in financial policy. (1927, c. 146, s. 6; 1955, c. 724.)

§ 153-119. Time for filing budget estimate. — Immediately upon the submission of the budget estimate, and at least twenty days before the adoption of the budget resolution, the board shall: (a) File the budget estimate in the office of the clerk of the board where it shall remain for public inspection, and (b) make available a copy of the budget estimate for all newspapers published in the county, and (c) cause to be published in at least one newspaper published in the county a statement that the budget estimate has been presented to the board and that a copy of the same is on file for inspection in the office of the clerk of the board, which statement may also include such other information as the county accountant may determine: Provided, however, that if no newspaper be published in the county, such statement shall be posted at the courthouse door and at least three other public places in the county at least twenty days before the passage of the budget resolution. (1927, c. 146, s. 7; 1955, c. 724.)

§ 153-120. Budget resolution. — It shall be the duty of the board of county commissioners, at least twenty days subsequent to the publication of the statement required by § 153-119 but not later than the twenty-eighth day of July in each year, to adopt and record on its minutes a budget resolution, the form of which shall be prescribed by the county accountant. The budget resolution shall, on the basis of the estimates and statements submitted by the county accountant, make appropriations for the several offices, departments, institutions, and agencies of the county and its subdivisions, and the budget resolution shall provide for the financing of the appropriations so made. The appropriations shall be made in such sums as the board may deem sufficient and proper, whether greater or less than the recommendations of the budget estimate, and the appropriation or appropriations for each office, department, institution, or agency shall be made in such detail as the board deems advisable: Provided, however, that (a) no appropriation recommended by the county accountant for debt service shall be reduced, and (b) the board shall appropriate the full amount of all lawful deficits reported in the budget estimate, and (c) no contingency appropriation shall be included in any fund in excess of five per cent (5%) of the total of the other appropriations in the fund: Provided, that before any or all of such contingency appropriation be expended, the board must by resolution authorize the expenditure, and (d) no appropriations shall be made which will necessitate the levy of a tax in excess of any constitutional or statutory limits of taxation, and (e) the total of all appropriations in each fund shall not be in excess of the estimated revenues and surplus available to that fund. The revenue portion of the budget resolution shall include the following: (a) A statement of the revenue estimated to be received in the budget year in each fund maintained as required by § 153-114, separating revenues from taxes to be levied for the budget year from revenues from other sources and including such amount of the surplus of each fund on hand or estimated to be on hand at the beginning of the budget year as the board deems advisable to appropriate to meet expenditures of such fund for the budget year; and (b) the levy of such rate of tax for each fund in the budget year as will be necessary to produce the sum appropriated less the estimates of revenue from sources other than taxation and less that part of the surplus of the fund which is proposed to be appropriated to meet expenditures in the budget year. In determining the rate of tax necessary to produce such sums, the board shall decide what portion of the levy is likely to be collected and available to finance appropriations and shall make the levy accordingly; and further the board shall not estimate the revenue from any source other than the property tax in an amount in excess of the amount received or estimated to be received in the year preceding the budget year unless it shall determine that the facts warrant the expectation that such excess amount will actually be realized in cash during the budget year. (1927, c. 146, s. 8; 1955, c. 724.)

§ 153-121. Copies of resolution filed with county treasurer and county accountant.—A copy of the budget resolution shall be filed with the

county treasurer or other officer or agent performing the functions ordinarily assigned to the county treasurer, and another copy thereof shall be filed with the county accountant, both copies as so filed to be kept on file for their direction in the disbursement of county funds. (1927, c. 146, s. 9; 1955, c. 724.)

§ 153-122: Repealed by Session Laws 1955, c. 724.

§ 153-123. Publication of statement of financial condition of county. —As soon as practicable after the close of each fiscal year, the county accountant shall prepare and cause to be published in a newspaper published in the county, or if no newspaper be published in the county, then by posting at the courthouse door and at least three other public places in the county, a statement of the financial condition of the county, containing such figures and information as the county accountant may consider it advisable to publish, which statement as so published or posted may include a statement of the assets and liabilities of the several funds of the county as of the close of the preceding fiscal year together with a summary statement of the revenue receipts and expenditures of such funds in the preceding year, a statement of the bonded debt of the county as of the close of the preceding fiscal year, and a statement of assessed valuations, tax rates, tax levies, and uncollected taxes for the preceding three fiscal years. (1927, c. 146, s. 11; 1955, c. 724.)

Local Modification. — Harnett: 1959, c. 1199.

§ 153-124: Repealed by Session Laws 1955, c. 724.

§ 153-125. Failure to raise revenue a misdemeanor; emergencies. —Any county commissioner of any county who shall fail to vote to raise sufficient revenue for the operating expenses of the county as provided for in § 153-120, shall be guilty of a misdemeanor, punishable by fine or imprisonment, or both, in the discretion of the court; provided, that in case of an emergency upon application to the Local Government Commission such Local Government Commission may permit the board of commissioners for any county to anticipate the taxes of the next fiscal year by not more than five per cent (5%) of the tax levy for the current year. (1929, c. 321, s. 1; 1955, c. 724.)

§ 153-126. Execution of notes in anticipation of taxes.—In the event of the approval of such anticipation of the taxes of the next fiscal year by the Local Government Commission, the county commissioners of any such county are authorized to provide by resolution for the issuance of a note or notes in an amount not in excess of the amount authorized by such Local Government Commission, and such note or notes shall be payable not later than June thirtieth of the next fiscal year and shall be paid by a special tax levied for such purpose. Any such note or notes shall be issued in a manner consistent with the provisions of the County Finance Act. (1929, c. 321, s. 2; 1955, c. 724.)

§ 153-127. Amendments to the budget resolution.—The board of county commissioners, in the event the members thereof deem it necessary, may by resolution amend the budget resolution after its passage in any or all of the following ways: (a) By transferring the unencumbered balance of any appropriation, or any portion of such balance, to any other appropriation within the same fund or to any new appropriation within the same fund; (b) by making a supplemental appropriation in any fund in all or any portion of the amount of the unappropriated surplus of such fund or the amount by which total revenue receipts have exceeded total estimated revenues in such fund as of the date of the making of the supplemental appropriation; (c) by transferring all or any portion of the unencumbered balance of any appropriation in the general fund to any existing appropriation or to any new appropriation in another fund or by making a supple-

mental appropriation in another fund financed by unappropriated surplus or excess revenue receipts of the general fund: Provided, that no amendment to the budget resolution shall be made if the effect of such amendment is to authorize an expenditure for a purpose which could not have been legally authorized in the original budget resolution. Copies of any resolution made pursuant to this section shall be made available to the county treasurer, county accountant, and the head of each office, department, institution, or agency affected thereby. (1927, c. 146, s. 13; 1955, c. 724.)

§ 153-128. Interim appropriations.—In case the adoption of the budget resolution is delayed until after the beginning of the budget year, the board of county commissioners may make appopriations for the purpose of paying salaries, the principal and interest of indebtedness, the stated compensation of officers and employees, and the usual ordinary expenses of the county and its subdivisions for the interval between the beginning of the budget year and the adoption of the annual budget resolution. The interim appropriations so made shall be chargeable to the several appropriations, respectively, thereafter made in the annual budget resolution for the year. (1927, c. 146, s. 14; 1955, c. 724.)

§ 153-129: Repealed by Session Laws 1955, c. 724.

§ 153-130. Provisions for payment.—No contract or agreement requiring the payment of money, or requisition for supplies or materials, shall be made, and no warrant or order for the payment of money shall be drawn upon the treasury of the county, or a subdivision, unless provision for the payment thereof has been made by (a) an appropriation as provided by this article, or (b) through the means of bonds or notes duly authorized by the General Assembly and by the board of county commissioners, and further authorized, in all cases required by law or by the Constitution, by a vote of qualified voters or taxpayers, or otherwise; nor shall such contract, agreement, or requisition be made unless the unencumbered balance of such appropriation or provision remains sufficient for such payment. No contract or agreement or requisition requiring the payment of money shall be valid unless the same be in writing, and unless the same shall have printed, written, or typewritten thereon a statement signed by the county accountant, as follows: "Provision for the payment of moneys to fall due under this agreement has been made by appropriation duly made or by bonds or notes duly authorized, as required by the 'County Fiscal Control Act'." Such certificate shall not, however, make valid any agreement or contract made in violation of this section. Before making such certificate, the county accountant shall ascertain that a sufficient unencumbered balance of the specific appropriation remains for the payment of the obligation, or that bonds or notes have been so authorized the proceeds of which are applicable to such payment, and the appropriation or provision so made shall thereafter be deemed encumbered by the amount to be paid on such contract or agreement until the county is discharged therefrom. (1927, c. 146, s. 15; 1955, c. 724.)

§ 153-131. Warrants for payment.—No bill or claim against the county or any subdivision shall be paid unless the same shall have been approved by the head of the office, department, institution, or agency for which the expense was incurred nor unless the same shall have been presented to and approved by the county accountant, or in case of his disapproval of such bill or claim, by the board of county commissioners. The board shall not approve any bill or claim which has been disallowed by the county accountant without entering upon the minutes of the board its reason for approving the same in such detail as may show the board's reason for reversing the county accountant's disallowance. No bill or claim against the county or any subdivision shall be paid except by means of a warrant or order on the county treasurer or county depository, and no warrant, or order, except a warrant or order for payment of maturing bonds, notes,

or interest coupons thereto appertaining, and except a warrant or order for the payment of any bill or claim approved by the board of county commissioners over the disallowance of the county accountant, as above provided, shall be valid unless the same shall bear the signature of the county accountant below a statement which he shall cause to be written, printed, or typewritten thereon containing the words: "Provision for the payment of this warrant (or order) has been made by an appropriation duly made or a bond or note duly authorized, as required by the 'County Fiscal Control Act'."

The board of county commissioners may provide, by appropriate resolution, for the use of facsimile signature machines or signature stamps in connection with the affixing of signatures or countersignatures to some or all of such warrants or orders, whether such signatures or countersignatures are required by this section, or by any other law, or by any resolution of the board. The board shall fix upon one or more bonded officers or employees of the county or its subdivisions the responsibility for the custody and use of any such signature machine, or the signature plate or plates used in any such machine, and for the custody and use of any such signature stamp. The officers and employees on whom such responsibility is fixed, and the sureties on their official bonds, shall be liable for any illegal, improper, or unauthorized use of such machines, plates or stamps. (1927, c. 146, s. 16; 1935, c. 382; 1955, c. 724; 1957, c. 213.)

Editor's Note. — The 1957 amendment added the second paragraph. Section 2 of the amendatory act provided: "This act shall not repeal any local or special acts permitting or affecting the use of such facsimile signature machines or stamps."

§ 153-132. Contracts or expenditures in violation of preceding sections. — If any county accountant shall make any certificate on any contract, agreement, requisition, warrant, or order as required by G. S. 153-130 or G. S. 153-131, when there is not a sufficient unencumbered balance remaining for the payment of the obligation, he shall be personally liable for all damages caused thereby. If any officer or employee shall make any contract, agreement, or requisition without having obtained the certificate of the county accountant as required by G. S. 153-130, or if any officer or employee shall pay out or cause to be paid out any funds in violation of the provisions of G. S. 153-131, he shall be personally liable for all damages caused thereby. (1955, c. 724.)

§ 153-133. Accounts to be kept by county accountant. — Accounts shall be kept by the county accountant for each appropriation made in the budget resolution or amendment thereto, which appropriations shall be classified under the various funds maintained as required in G. S. 153-114, and every warrant or order upon the county treasury shall state specifically against which of such funds the warrant or order is drawn; information shall be kept for each such account so as to show in detail the amount appropriated thereto, the amount drawn thereupon, the unpaid obligations charged against it, and the unencumbered balance to the credit thereof. (1927, c. 146, s. 17; 1955, c. 724.)

§ 153-134. Bond of county accountant.—The county accountant shall furnish bond in some surety company authorized to do business in North Carolina, the amount to be fixed by the board of commissioners in a sum not less than five thousand dollars ($5,000.00), which bond shall be approved by the board of county commissioners and shall be conditioned for the faithful performance of his duties under this article: Provided, that where the powers and duties of the county accountant have been imposed and conferred as provided in G. S. 153-115 or an auditor or accountant holding office under the provisions of a special act, and such auditor or accountant is required to give bond under the terms of a special act, the bond required of such auditor or accountant under the special act shall be sufficient compliance with this section, and no additional bond shall be required of such officer to cover his duties as county accountant. (1927, c. 146, s. 18; 1955, c. 724.)

§ 153-135. Daily deposits by collecting or receiving officers.—Every public officer and employee whose duty it is to collect or receive any funds or money belonging to any county or subdivision thereof shall deposit the same daily, or if the board of county commissioners grants its approval he shall be required to deposit the same only when he has as much as two hundred fifty dollars ($250.00) in his possession, with the county treasurer or in a bank, banks, or trust company designated by the board of county commissioners in an account approved by the county accountant and secured as provided in G. S. 159-28, and he shall report the same immediately following such deposit to the county accountant by means of a treasurer's receipt or duplicate deposit ticket signed by the depository: Provided, that a deposit shall in any event be made on the last business day of each month. He shall settle with the county accountant monthly, or oftener if the board of county commissioners so directs, reporting to the county accountant at such time the amount of money collected or received from each of the various sources of revenue. If such officer or employee collects or receives such public moneys for a taxing district for which he is not an officer or an employee, he shall pay over periodically, as directed by the board of county commissioners, to the proper officer of such district the amount so collected or received and take receipt therefor.

The board of county commissioners is hereby authorized and empowered to select and designate, by recorded resolution, some bank or banks or trust company in this State as official depository or depositories of the funds of the county, which funds shall be secured in accordance with G. S. 159-28.

It shall be unlawful for any public moneys to be deposited by any officer or employee in any place, bank, or trust company other than those selected and designated as official depositories. Any person or corporation violating the provisions of this section or aiding or abetting in such violation shall be guilty of a misdemeanor and punished by fine or imprisonment or both, in the discretion of the court. (1927, c. 146, s. 19; 1929, c. 37; 1939, c. 134; 1955, c. 724.)

Local Modification.—Guilford: 1953, c. 369.

§ 153-136. Conduct by county accountant constituting misdemeanor. — If a county accountant shall knowingly approve any fraudulent, erroneous, or otherwise invalid claim or bill, or make any statement required by this article, knowing the same to be false, or shall willfully fail to perform any duties imposed upon him by this article, he shall be guilty of a misdemeanor and punishable for each offense by a fine of not less than fifty dollars ($50.00) or imprisonment for not less than twenty days, or both fine and imprisonment, in the discretion of the court, and shall be liable for all damages caused by such violation or failure. (1927, c. 146, s. 20; 1955, c. 724.)

§ 153-137. Liability for damages for violation by officer or person.—If any county officer or head of any office, department, institution, or agency or other official or person of whom duties are required by this article shall willfully violate any part of this article, or shall willfully fail to perform any of such duties, he shall be guilty of a misdemeanor and punishable for each offense by a fine of not less than fifty dollars ($50.00) or imprisonment for not less than twenty days, or both fine and imprisonment, in the discretion of the court and shall be liable for all damages caused by such violation or failure. (1927, c. 146, s. 21; 1955, c. 724.)

§ 153-138. Recovery of damages.—The recovery of all damages allowed by this article may be made in the court having jurisdiction of the suit of the county, any subdivision thereof, or any taxpayer or other person aggrieved. (1927, c. 146, s. 22; 1955, c. 724.)

§ 153-139. Chairman of county commissioners to report to solicitor.—It shall be the duty of the chairman of the board of county commissioners to report to the solicitor of the district within which the county lies all facts and circumstances showing the commission of any offense as defined herein, and it shall be the duty of the solicitor to prosecute. At the request of the solicitor, the board of county commissioners is authorized, within its discretion, to provide legal assistance to the solicitor in prosecuting such cases and any other case involving official misconduct or violation of a public trust within such county and pay the cost of same out of the general fund of the county. (1927, c. 146, s. 23; 1939, c. 112, s. 1; 1955, c. 724.)

§ 153-140. Purpose of article.—It is the purpose of this article to provide a uniform procedure for the preparation and administration of budgets to the end that every county in the State may balance its budget on the basis of actual cash receipts within the budget period and carry out its functions without incurring deficits. Its provisions are intended to enable boards of county commissioners to make financial plans to meet expenditures, to insure that county officials administer their respective offices, departments, institutions, and agencies in accordance with these plans, and to permit taxpayers and bondholders to form intelligent opinions based on sufficient information as to the financial policies and administration of the counties in which they are interested. (1927, c. 146, s. 24; 1955, c. 724.)

§ 153-141. Construction and application of article.—Section 105-339 and all other laws and parts of laws heretofore or hereafter enacted, whether general, local, or special, which are in conflict with this article are hereby repealed, except a law hereafter enacted expressly repealing or amending this article. (1927, c. 146, s. 25; 1955, c. 724.)

Article 10A.

Capital Reserve Funds.

§ 153-142.9. Purposes for which a capital reserve fund may be used.—A capital reserve fund may be withdrawn in whole or in part at any time or from time to time, and applied to or expended for:

(1) Any one or more of the following improvements or properties:

a. Erection and purchase of schoolhouses, erection of additions to schoolhouses, school building equipment, acquisition of lands for school purposes;

b. Erection and purchase of courthouse and jails, including public auditorium within and as a part of a courthouse, erection of additions to courthouse and jails, acquisition of lands for same;

c. Erection and purchase of county homes for the aged and infirm, erection of additions to county homes, acquisition of lands for county homes;

d. Erection and purchase of hospitals, erection of additions to hospitals, acquisition of lands for hospitals;

e. Erection and purchase of public auditoria and acquisition of lands therefor;

f. Acquisition and improvement of lands for public parks and playgrounds;

g. Acquiring, constructing and improving airports or landing fields for the use of airplanes or other aircraft;

h. Supplementing proceeds of the sale of bonds or bond anticipation notes of the county issued for any one or more of the purposes stated in paragraphs b, c, d, e, f and g of this subdivision, or supplementing federal or State grants for any one or more of such purposes;

i. Supplementing proceeds of sale of bonds or bond anticipation notes of the county issued for the purpose stated in paragraph a of this subdivision, or supplementing loans from the State Literary Fund, or supplementing federal or State grants for such purpose.

j. Carrying out any of the purposes set forth in paragraph 46 of § 153-9, as the same appears in the 1959 Supplement to the General Statutes, to the extent and in such amounts as such capital reserve funds do not represent ad valorem tax levies of the county.

(2) Temporary borrowing for meeting appropriations made for the current fiscal year in anticipation of the collections of taxes and other revenues of such current fiscal year: Provided, however, the aggregate amount of such withdrawal or withdrawals for meeting appropriations shall not at any time exceed twenty-five per centum of the total appropriations of the fiscal year in which such withdrawal or withdrawals shall be made in an ensuing fiscal year unless and until the capital reserve fund has been fully repaid for the amount or amounts so previously withdrawn. Each such withdrawal shall be repaid not later than thirty days after the close of the fiscal year in which made;

(3) Purchasing at market prices and retiring outstanding bonds of the county maturing more than five years from the date of such withdrawal;

(4) Investment in bonds, notes or certificates of indebtedness of the United States of America, in bonds or notes of the State of North Carolina, or in bonds of the county.

(5) Payment of maturing serial bonds or notes and interest on bonds or notes of the county in accordance with a determined plan of amortization.

(6) When the order authorizing and establishing a capital reserve fund contains, as provided in clause (1) (a) of § 153-142.4, collections of ad valorem taxes levied for a special purpose, such special purpose. (1943, c. 593, s. 9; 1945, c. 464, s. 2; 1949, c. 196, s. 1; 1961, c. 430.)

Local Modification. — Halifax: 1957, c. 99.

Editor's Note.— The 1961 amendment inserted paragraph j of subdivision (1).

§ 153-142.11. Authorization of withdrawal from the capital reserve fund.

Local Modification.—Halifax: 1957, c. 99.

ARTICLE 13.

County Poor.

§ 153-152. Support of poor; superintendent of county home; paupers removing to county; hospital treatment.—The board of commissioners of each county is authorized to provide by taxation for the maintenance of the poor, and to do everything expedient for their comfort and well-ordering. They may employ biennially some competent person as superintendent of the county home for the aged and infirm, and may remove him for cause. They may institute proceedings against any person coming into the county who is likely to become chargeable thereto, and cause his removal to the county where he was last legally settled; and they may recover from such county by action all charges and expenses incurred for the maintenance or removal of such poor person. The board of county commissioners of each county is hereby authorized to levy, impose and collect special taxes upon all taxable property, not to exceed five cents on the one hundred dollars valuation, required for the special and necessary purposes set forth above in addition to any taxes authorized by any other special or

general act and in addition to the constitutional limit of taxes levied for general county purposes, it being the purpose of the General Assembly hereby to give its approval for the levy of such special taxes for such necessary purposes.

The board of commissioners of each county, when deemed for the best interest of the county, is hereby given authority to contract for periods not to exceed thirty years with public or private hospitals or institutions located within or without the county to provide for the medical treatment and hospitalization of the sick and afflicted poor of the county upon such terms and conditions as may be agreed; provided the annual payments required under such contract shall not be in excess of ten thousand ($10,000.00) dollars. The full faith and credit of each county shall be deemed to be pledged for the payment of the amounts due under said contracts and the special approval of the General Assembly is hereby given to the execution thereof and to the levy of a special ad valorem tax in addition to other taxes authorized by law for the special purpose of the payment of the amounts to become due thereunder. The contracts provided for in this paragraph and the appropriations and taxes therefor are hereby declared to be for necessary expenses and for a special purpose within the meaning of the Constitution of North Carolina and for which the special approval of the General Assembly is hereby given, and shall be valid and binding without a vote of the majority of the qualified voters of the county and are expressly exempted and excepted from any limitation, condition or restriction prescribed by the County Fiscal Control Act and acts amendatory thereof: Provided, that the county commissioners of Lincoln County shall not enter into any such contract except after a public hearing at the county courthouse, notice of which hearing shall be published for two successive weeks in a newspaper published in the county. The commissioners of Catawba County shall not act under this paragraph until a majority of the people of the county have voted favorably. This paragraph shall not apply to the counties of Ashe, Avery, Bertie, Buncombe, Clay, Columbus, Cumberland, Durham, Edgecombe, Forsyth, Gaston, Gates, Guilford, Halifax, Henderson, Iredell, Jackson, Johnston, Lee, McDowell, Macon, Mecklenburg, Moore, New Hanover, Pasquotank, Pitt, Richmond, Robeson, Rockingham, Rowan, Stanly, Surry, Transylvania, Union, Vance, Warren, Washington, Wilkes, Yadkin and Yancey. (Code, s. 3540; 1891, c. 138; Rev., s. 1327; C. S., s. 1335; 1935, c. 65; 1945, c. 151; 1945, c. 562, s. 1; 1947, cc. 160, 672; 1951, cc. 734, 790; 1961, c. 838.)

Local Modification.—Currituck: 1961, c. 838; Martin: 1961, c. 1017.

Editor's Note.—

The 1961 amendment deleted "Currituck" from the list of counties at the end of the second paragraph.

Applied in Rex Hospital v. Wake County Board of Com'rs, 239 N. C. 312, 79 S. E. (2d) 892 (1954).

Cited in Board of Managers of James Walker Memorial Hospital v. Wilmington, 237 N. C. 179, 74 S. E. (2d) 749 (1953).

§ 153-154. Records for county, how to be kept.—The keeper or superintendent in charge of each county home in North Carolina, or the board of county commissioners in each county where there is no county home, shall keep a record book showing the following: Name, age, sex, and race of each inmate; date of entrance or discharge; mental and physical condition; cause of admission; family relation and condition; date of death if in the home; cost of supplies and per capita expense of home per month; amount of crops and value, and such other information as may be required by the board of county commissioners or the State Board of Public Welfare; and give a full and accurate report to the county commissioners and to the State Board of Public Welfare. Such report to be filed annually on or before the first Monday of December of each year. (1919, c. 72; C. S., s. 1337; 1961, c. 139, s. 1.)

Cross Reference.—As to change of name of State Board of Charities and Public Welfare to State Board of Public Welfare, see § 108-1.1.

Editor's Note. — The 1961 amendment substituted "State Board of Public Welfare" for "State Board of Charities and Public Welfare."

§ 153-159. Legal settlements; how acquired. — Legal settlements may be acquired in any county, so as to entitle the party to be supported by such county, in the manner following, and not otherwise:

(1) By One Year's Residence.—Every person who has resided continuously in any county for one year shall be deemed legally settled in that county: Provided, that every person who has legal settlement in any county of this State shall, after having resided continuously in any other county for three months, be deemed legally settled in such other county, for purposes of the county poor law codified as article 13 of chapter 153 of the General Statutes.

(2) Married Women to Have Settlement of Their Husbands. — A married woman shall always follow and have the settlement of her husband. if he have any in the State; otherwise, her own at the time of her marriage, if she then had any, shall not be lost or suspended by the marriage, but shall be that of her husband, till another is acquired by him, which shall then be the settlement of both.

(3) Legitimate Children to Have Settlement of Father.—Legitimate children shall follow and have the settlement of their father, if he has any in the State, until they gain a settlement of their own; but if he has none, they shall, in like manner, follow and have the settlement of their mother, if she has any.

(4) Illegitimate Children to Have Settlement of Mother.—Illegitimate children shall follow and have the settlement of their mother, at the time of their birth, if she then have any in the State. But neither legitimate nor illegitimate children shall gain a settlement by birth in the county in which they may be born, if neither of their parents had any settlement therein.

(5) Settlement to Continue until New One Acquired.—Every legal settlement shall continue till it is lost or defeated by acquiring a new one, within or without the State; and upon acquiring such new settlement, all former settlements shall be defeated and lost. (1777, c. 117, s. 16, P. R.; R. C., c. 86, s. 12; Code, s. 3544; Rev., s. 1333; C. S., s. 1342; 1931, c. 120; 1943, c. 753, s. 2; 1959, c. 272.)

Editor's Note.—
The 1959 amendment added the proviso to subdivision (1).

ARTICLE 14.

District Hospital-Home.

§ 153-166. Organization meeting; site and buildings.—This board of trustees shall, as soon as possible after appointment, assemble and organize by the election of a chairman, a secretary and a treasurer, which last officer shall be bonded. They shall proceed promptly with the purchase of a site for such hospital-home, including, if they deem it desirable, a farm of suitable size, location and fertility, giving due consideration to sanitary surroundings and transportation facilities, and shall then cause to be erected suitable plain, substantial, comfortable and permanent buildings for the accommodation of those for whom this article is intended, giving due regard to the separation of the sexes and races, and such other plans for segregation as their judgment and existing conditions may suggest. Said buildings are to be furnished with plain, substantial furniture, and such other equipment as conditions demand. Necessary hospital facilities may be included, but provisions for such facilities and equipment shall have the approval of the State Board of Public Welfare and the State Board of Health. (1931, c. 129, s. 5; 1961, c. 139, s. 1.)

Editor's Note. — The 1961 amendment substituted "State Board of Public Welfare" for "State Board of Charities and Public Welfare."

§ 153-168. Plans and specifications for hospital-home.—The State Board of Public Welfare shall have prepared plans for such district hospital-home and shall furnish such plans on request to any board of trustees of any district hospital-home at cost; and all such hospital-homes shall be built in accordance with plans furnished or approved by the State Board of Public Welfare. (1931, c. 129, s. 7; 1961, c. 139, s. 1.)

Editor's Note. — The 1961 amendment substituted "State Board of Public Welfare" for "State Board of Charities and Public Welfare."

§ 153-174. Sending of inmates to institution.—The counties constructing, operating and maintaining a district hospital-home for the aged and infirm shall, as required by law now in force for the care and maintenance of those not able to care for themselves, send such person or persons to the district hospital-home for the age and infirm in lieu of the county home if it appears to the commissioners and the director of public welfare that such persons need institutional care. (1931, c. 129, s. 13; 1961, c. 186.)

Editor's Note. — The 1961 amendment substituted "director" for "superintendent" in line six.

§ 153-175. Annual report on affairs of institution.—As soon after the first day of January of each year as may be practicable the board of trustees shall cause a report to be made of the hospital-home, which report shall show the number of inmates, the county admitting them, date of admission, age, condition of health, sex, color, educational acquirements, diagnosis of disease if diseased, total number of inmates received during the year, average number cared for per month, names and disposition of those dismissed, pro rata cost of maintenance, the total amount of money expended, the total amount of money received from each county, and such information as the State Board of Public Welfare and the board of trustees of the district hospital-home may request. It shall also show an inventory and appraisement of property, real and personal, and give a strict account of receipts from farm and expenditure thereon, and such other information as may be required to check up the institution from all viewpoints. (1931, c. 129, s. 14; 1961, c. 139, s. 1.)

Editor's Note. — The 1961 amendment substituted "State Board of Public Welfare" for "State Board of Charities and Public Welfare."

Article 14A.

Medical Care of Sick and Afflicted Poor.

§ 153-176.1. Authority to provide hospitalization and medical care; contracts with hospitals.—Authority is hereby granted to the board of commissioners of any county in the State now or hereafter having a population of sixty thousand (60,000) or over and a city within its borders now or hereafter having a population of thirty thousand (30,000) or over to provide adequate hospitalization, medical care and attention of the indigent sick and afflicted poor of such county or city. The board of commissioners of any such county and the governing body of any such city are hereby authorized and empowered, separately or jointly, to enter into a contract with public, quasi-public or private hospitals or joint municipally owned hospitals providing for the hospitalization, medical care and medical attention of the indigent sick and afflicted poor of said county and city, upon such terms, over such periods of time and in such amount or amounts as the said county commissioners and the governing body of any such city may determine necessary, proper and appropriate for said purposes, acting separately or jointly. (1953, c. 878, s. 1; 1963, c. 505.)

Editor's Note. — The 1963 amendment substituted "thirty thousand (30,000)" for "forty-four thousand" in the first sentence.

Contracting Hospital Not a State Agency Subject to Federal Interdiction.— Funds paid to a memorial hospital by a

city and county under contract, as provided in this section, did not make the hospital a State agency and hence subject to federal interdiction. Eaton v. Board of Managers of James Walker Memorial Hospital, 261 F. (2d) 521 (1958).

Cited in Eaton v. Board of Managers of James Walker Memorial Hospital, 164 F. Supp. 191 (1958).

§ 153-176.2. Appropriations and taxes for cost of services. — The exercise of the authority granted by this article and the appropriations and taxes for and covering the cost of the services aforesaid are hereby declared to be for necessary expenses and for a special purpose within the meaning of the Constitution of North Carolina and for which the special approval of the General Assembly of North Carolina is hereby given, and any such expenditures and any contract made and entered into as in this article authorized shall be binding without a vote of the majority of the qualified voters of such county or of such city and are expressly exempted and excepted from any limitation, condition or restriction prescribed by the County Fiscal Control Act and acts amendatory thereof. The full faith and credit of any such county and any such city shall be deemed to be pledged for the payment of the amounts due under said contract or contracts and the special approval of the General Assembly of North Carolina is hereby given to the execution thereof and to the levy of a special ad valorem tax necessary for the purposes aforesaid in addition to other taxes for other purposes authorized by law and for the special purpose of the payment of amounts due and to become due under the provisions of this article. The governing body of any such city is also authorized to levy for the purposes herein authorized and provided a special ad valorem tax in addition to other taxes levied for other purposes authorized by law for the purpose of payment of any amount or amounts due or to become due under the provisions of this article. (1953, c. 878, s. 2.)

§ 153-176.3. Expenditures not provided for by contract.—The commissioners of any such county and the governing body of any such city are hereby authorized and empowered, acting separately or jointly, to appropriate and pay to any hospital as set forth in G. S. 153-176.1, such amounts as they or either of them deem necessary to cover the cost of hospitalization and medical care of the indigent sick and afflicted poor, certified to any such hospital for such attention, during any fiscal year or part thereof, for which such cost has not otherwise been provided for by contract, as authorized by this article. Expenditures made as authorized by this section are hereby found and declared to be necessary expenses of any such county and city. (1953, c. 878, s. 3.)

§ 153-176.4. Supplementary legislation granting additional powers. —The powers granted by this article are in addition to, and not in substitution for, existing powers of counties and cities to provide for the medical care of the indigent sick and afflicted poor, and this article shall be construed to be as additional and supplementary legislation to existing powers on this same subject matter and shall not repeal the provisions of article 2B of chapter 131 of Volume 3B of the General Statutes. (1953, c. 878, s. 4.)

ARTICLE 15.

County Prisoners.

§ 153-180. Fees of jailers.

Local Modification.—Carteret: 1957, c. 631; Caswell: 1953, c. 512; Cumberland: 1953, c. 545; Edgecombe: 1953, c. 166; Mitchell: 1953, c. 415, s. 4; 1955, c. 1105, s. 4; Pender: 1953, c. 422; Randolph: 1955, c. 556, s. 8; 1961, c. 458; Rowan: 1963, c. 703; Transylvania: 1957, c. 174, s. 12; Wayne: 1955, c. 614; Yancey: 1957, c. 78.

§ 153-189.1. Transfer of prisoners when necessary for safety and security.—Whenever necessary for the safety of a prisoner held in any county jail or to avoid a breach of the peace in any county, the resident judge of the superior court or any judge holding superior court in the district may order the prisoner transferred to a fit and secure jail in some other county, or to a unit of the State Prison System designated by the Director of Prisons or his authorized representative, where the prisoner shall be held for such length of time as the judge may direct. The sheriff of the county from which the prisoner is removed shall be responsible for conveying the prisoner to the jail or prison unit where he is to be held, and for returning him to the common jail of the county from which he was transferred. The return shall be made at the expiration of the time designated in the court order directing the transfer unless the judge, by appropriate order, shall direct otherwise. The sheriff or keeper of the jail of the county designated in the court order, or the officer in charge of the prison unit designated by the Director of Prisons, shall receive and release custody of the prisoner in accordance with the terms of the court order. The county from which a prisoner is transferred shall pay to the county receiving the prisoner in its jail, or to the State Prison Department if he is received in a prison unit, the actual costs of maintaining the prisoner in that jail or prison unit for the time designated by the court. (1957, c. 1265.)

§ 153-190.1. Duty to receive and retain prisoners brought in by law enforcement officers.—It shall be the duty of the jailer of any county jail of this State where there are available facilities to receive, incarcerate and retain any prisoner brought to such county jail by any law enforcement officer of such county or of any municipality in such county or by any law enforcement officer of the State; provided, however, the foregoing provisions shall not be applicable with regard to prisoners arrested by law enforcement officers of a municipality which has its own jail or to prisoners not arrested in the county. Any jailer willfully refusing to comply with the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be fined or imprisoned in the discretion of the court. (1957, c. 1439.)

Article 18.

Consolidation, Annexation and Joint Administration of Counties.

§ 153-246. Joint administrative functions of contiguous counties.

Local Modification. — Edgecombe and Nash and municipalities therein: 1961, c. 694.

By virtue of Session Laws 1955, c. 831 the reference to Guilford County in the recompiled volume should be deleted.

Article 19.

Assistance to Historical Organizations.

§ 153-247. Purpose of article.—The purpose of this article is to authorize counties and municipalities to assist in and promote programs for the preservation of historic sites or buildings and the recording and preservation of the history of North Carolina. (1955, c. 371, s. 1.)

§ 153-248. Counties and municipalities authorized to make appropriations to historical organizations. — Upon the request of a local historical society, historical museum or other historical organization, based upon a resolution adopted by such society, museum or organization, the governing body of any county or municipality may, in its discretion, make appropriations from non ad valorem tax revenues to such society, museum or organization. (1955, c. 371, s. 2; 1957, c. 398.)

Editor's Note. — The 1957 amendment inserted "ad valorem" in the last line.

§ 153-249. Expenditure of appropriations; annual report of organization.—Any such society, museum or organization to which such an appropriation may be made may expend the same for the preservation of historic sites or buildings, the recording and publication of materials relating to the history of the area, the establishment or maintenance of historical museums, the payment of salaries of personnel employed thereby, the costs of recording and maintaining, the cost of acquiring, recording and maintaining materials and equipment, and such other purposes as may be approved by said governing body and said society, museum or organization. Such society, museum or organization shall make an annual report to said county or municipal governing body showing the manner in which appropriated funds have been expended during each fiscal year thereafter. (1955, c. 371, s. 3.)

§ 153-250. Assignment of room in public building, etc., for use of historical organization.—The governing body of any county or municipality or the custodians or governing bodies of schools or libraries are authorized and empowered to set aside and assign for the uses and activities of local historical societies, historical museums or other historical organization such rooms or space as may be available in any school, library or public building, under the jurisdiction of said governing body or board of custodians. (1955, c. 371, s. 4.)

Article 20.

Planning and Zoning Areas.

§ 153-251. Authority of county commissioners to create areas. — For the purpose of promoting health, safety, morals, and the general welfare of the several unincorporated communities of the counties of North Carolina, the board of commissioners of any county is hereby empowered to create planning and zoning areas within the county in accordance with the provisions of this article. (1957, c. 416, s. 1.)

§ 153-252. Petition by freeholders to establish area.—A majority of the resident freeholders of any unincorporated area may petition a board of county commissioners of the county in which the area is located to establish a planning and zoning area. The petition shall be written, shall contain a legal description of the proposed planning and zoning area, and shall contain a suggested name for the proposed area. The petition shall be signed by a majority of the resident freeholders of the area, and the area shall have an assessed valuation for taxes of at least two hundred thousand dollars ($200,000.00) and shall have seventy-five (75) or more residences therein. (1957, c. 416, s. 2.)

§ 153-253. Investigation and order for hearing; notice of hearing. —(a) Upon presentation of a petition requesting that a planning and zoning area be established, the chairman of the board of county commissioners shall as soon as practicable cause an investigation to be made to determine whether the petition and the proposed area substantially comply with the provisions of this article. If upon the investigation, which must be completed within ten (10) days, it appears that the petition and the proposed area are in substantial compliance with this article, the chairman shall immediately order a hearing upon the merits of the petition and the advisability of establishing the proposed planning and zoning area. The hearing must be held by the board of county commissioners at least thirty (30) days after the date of the order setting the hearing.

(b) Notice of the hearing shall contain the date, time, place and purpose thereof and shall be published once a week for four (4) successive weeks immediately preceding the hearing in a newspaper published in the county in which the proposed planning and zoning area is located. Notice of the hearing must also be posted at five (5) or more public places in the proposed planning and

zoning area at least thirty (30) days immediately preceding the date of the hearing. (1957, c. 416, s. 3.)

§ 153-254. Expressing opinion at hearing; continuances; county commissioners to enter order; minimum requirements for areas; amendment of petition.—(a) At the hearing provided under § 153-253 any citizen residing within the proposed area shall have the right to express his opinion as to the desirability or advisability of establishing the whole of said area or any part thereof as a planning and zoning area. The hearing may be continued from time to time without further advertising.

(b) At the close of the hearing the board of county commissioners shall enter an order:

(1) Creating the entire area as a planning and zoning area; or

(2) Creating a portion of the area as a planning and zoning area; or

(3) Refusing to create the whole or any part of the area as a planning and zoning area.

No area shall be created as a planning and zoning area unless such area shall have property with a tax valuation of at least two hundred thousand ($200,000.00) and seventy-five (75) or more residences and in which a majority of the resident freeholders sign the petition for the creation of a planning and zoning area.

(c) During the course of the hearings, the original petition for the creation of a planning and zoning area may be amended by the addition of signatures of additional resident freeholders who desire the establishment of such an area, but no signatures may be removed from the petition after the board of county commissioners has begun consideration of the petition. (1957, c. 416, s. 4.)

§ 153-255. Contents of order creating area; recordation of order and map.—The order creating a planning and zoning area hereinbefore provided for shall contain a legal description of the planning and zoning area and shall designate the area as, "The Planning and Zoning Area of ..... Community". In the order, the board of county commissioners shall direct that a map of the planning and zoning area be made by some competent engineer or surveyor; and the board of county commissioners shall cause said order and map to be recorded in the office of the register of deeds of the county in which the planning and zoning area is situated. (1957, c. 416, s. 5.)

§ 153-256. Planning and zoning commissioners; appointment and term; recordation of appointments; expenses.—Upon recordation of the map and order creating the planning and zoning area, the county commissioners shall appoint three resident freeholders of the area as planning and zoning commissioners, for a term of two (2) years from the date of their appointment. Successor planning and zoning commissioners shall be appointed by the board for a term of two (2) years; provided, all planning and zoning commissioners shall hold office during such term at the will of the county commissioners. The order appointing planning and zoning commissioners shall be recorded in the office of the register of deeds of the county in which the area is located. The planning and zoning commissioners shall serve without compensation and all necessary expenses incurred by the planning and zoning commission in the performance of its duties shall be paid by the county in which the planning and zoning area is located. (1957, c. 416, s. 6.)

§ 153-257. Organization meeting; duties of chairman and secretary.—As soon as practicable after their appointment the planning and zoning commissioners shall meet and organize by electing one of the members chairman and one secretary. It shall be the duty of the chairman to preside at all meetings and hearings of said planning and zoning commission and to be its executive officer. It shall be the duty of the secretary to keep minutes of the meetings and hearings of said planning and zoning commission in a permanent record book

and to perform such other duties as are usual for secretaries of similar organizations. (1957, c. 416, s. 7.)

§ 153-258. Power to formulate rules and regulations.—The planning and zoning commission of every planning and zoning area created under this article is hereby granted the necessary police power to formulate rules and regulations applicable in such planning and zoning area prescribing the height and number of stories and the type and size of buildings in the area; the number of buildings or other structures which may be placed on one lot or acreage; the minimum width and depth of any lot on which buildings or other structures may be placed; the minimum size of yards, courts, open spaces, parks or playgrounds in the area; the location of buildings and other structures used for trade, industry, residences, and all other purposes; the width and location of streets or roads; building lines as they relate to streets or roads and contiguous lots or other property and the establishing of new subdivisions in the area. (1957, c. 416, s. 8.)

§ 153-259. Public hearing on regulations; recording and indexing; nonconforming uses; lands and areas excepted.—Before regulations for planning and zoning or any amendments, changes, or modifications thereof shall be enacted by the planning and zoning commission, there shall be a public hearing in relation thereto conducted by such commission at which any citizen of the planning and zoning area desiring to be heard concerning said rules and regulations may be heard. The commission shall give the citizens of the area notice of such hearing by posting notices thereof at five (5) or more public places in the area at least ten (10) days before the hearing. Such public hearing may be adjourned by the planning and zoning commission from time to time without further advertising. At the conclusion of the hearings, such rules and regulations or any amendments, changes, or modifications thereof which are adopted shall be placed in the minute book of the commission, and a copy thereof, signed by the chairman and attested by the secretary of the commission, shall be filed in the office of the register of deeds of the county in which the area is located. The register of deeds shall record such rules and regulations, or any amendments, changes, or modifications thereof, and index the same in the name of the planning and zoning area to which they shall apply.

In the rules and regulations pertaining to any planning and zoning areas created under this article, provision shall be made for the continuance of nonconforming uses in existence at the time of the adoption of such rules and regulations; but an extension, restoration, or alteration of such existing nonconforming use shall be subject to regulation consistent with the purpose of this article and to the extent and subject to the limitations as provided by law.

None of the provisions of this article shall in any way be construed to grant directly or indirectly to any planning and zoning commission any power or authority to zone, regulate, control, or prohibit the use of any lands or use of construction of any buildings, structures, or improvements on any lands devoted to farming or agriculture. Neither shall said planning and zoning commission have power under this article to regulate any area within the limits of any incorporated cities or towns situated in such county, or within any unincorporated area contiguous thereto in which such city or town by authority duly conferred upon it shall have exercised any power of planning or zoning. (1957, c. 416, s. 9.)

§ 153-260. When regulations become effective. — When the order creating the planning and zoning area and the map thereof shall have been filed in the office of the register of deeds of the county in which such area shall be situated, such area shall thereupon be and become a planning and zoning area; and the rules and regulations and any amendments, changes, or alterations thereof, when recorded as in this article provided, shall have the full force and effect

of law and may be enforced by the planning and zoning commission or by any interested citizen by appropriate civil action which shall include injunction. (1957, c. 416, s. 10.)

§ 153-261. Contiguous planning and zoning areas; consolidation. —When two or more planning and zoning areas are contiguous, the board of county commissioners is authorized and empowered but not directed to consolidate them; and in case of consolidation, the term of office of the planning and zoning commissioners shall expire, and the board of county commissioners shall appoint a new planning and zoning commission of three (3) members for a term of two (2) years; but any member serving as a planning and zoning commissioner of either of the pre-existing planning and zoning areas shall be eligible to serve as a planning and zoning commissioner of the consolidated area. The rules and regulations in force in the areas before consolidation shall remain in full force and effect until new rules and regulations are formulated and become effective; and the order consolidating the planning and zoning areas shall be recorded in the office of the register of deeds of the county in which the planning and zoning area lies. (1957, c. 416, s. 11.)

§ 153-262. Adding or removing territory from area; area annexed or adjacent to municipality. — The board of county commissioners either upon petition or upon its own motion may remove any real estate from a planning and zoning area; or upon petition it may add any real estate to an area, provided such removed or added real estate shall border upon the outer boundaries of said planning and zoning area. Any order adding or removing territory from a planning and zoning area shall be duly recorded in the office of the register of deeds of the county in which such area lies, together with a plat or map of such area removed or added.

In the event the whole or any part of a planning and zoning area as provided for in this article shall become annexed to a municipality, or shall be situated in an unincorporated area adjacent to a municipality in which such municipality by authority duly conferred upon it shall have exercised authority of planning and zoning, then and in either of such events, such area shall cease to be a planning and zoning area or a part thereof. (1957, c. 416, s. 12.)

§ 153-263. Planning and zoning areas organized under other laws. —Where in any county there is situated a planning and zoning area organized under a public, public-local, or private act of the General Assembly of North Carolina, said area is hereby continued as a planning and zoning area; and said area shall be subject to all the provisions of this article as fully as it would be had it been created and organized under the provisions hereof; and all existing rules and regulations of said planning and zoning areas are hereby ratified; but they may be modified or abrogated in accordance with the provisions of this article. (1957, c. 416, s. 13.)

§ 153-264. Permit for erection or alteration of structure; fee; appeal to county commissioners upon refusal; recording and indexing orders altering regulations. — Any person, association, or corporation desiring to build or alter a structure of any kind in a planning and zoning area shall present to the planning and zoning commission of said area plans thereof and a map showing the location of said structure for approval in accordance with the rules and regulations of such area. Upon approval by said commission, a permit shall be issued by it for the erection or alteration of such structure. A fee for such permit in an amount to be fixed by the zoning commission not to exceed ten dollars ($10.00) shall be paid to the treasurer of the county in which such area is situated. In the event a permit is refused, the person, association, or corporation may appeal to the board of county commissioners by filing notice of such appeal with the secretary of the planning and zoning commission and the

clerk to the board of county commissioners within five (5) days from the refusal of said commission to issue or grant a permit. The board of county commissioners shall hear the appeal as soon as it may conveniently be heard and shall have the authority to reverse the decision appealed from or to alter, amend, or rescind any rule or regulation under which the appeal was brought. Provided, in the event any order or resolution of the said board of county commissioners shall have the effect of altering, amending, or rescinding any rule or regulation of a planning and zoning area, then such order or resolution shall be incorporated in and become a part of the rules and regulations of the planning and zoning area and shall be recorded in the office of the register of deeds of the county in which such area lies and indexed in the name of the planning and zoning area to which the same shall apply. (1957, c. 416, s. 14.)

§ **153-265. Penalty for violation of rule or regulation.**—Any person, association, or corporation violating any rule or regulation of a planning and zoning area established under this article shall be guilty of a misdemeanor punishable by a fine not exceeding fifty dollars ($50.00) or imprisonment not exceeding thirty (30) days, and each day's violation thereof shall be considered a separate offense. (1957, c. 416, s. 15.)

§ **153-266. Counties within article.** — This article shall apply to counties having two or more cities each having population in excess of thirty-five thousand (35,000) people, as shown by the last federal census. (1957, c. 416, s. 17.)

Article 20A.

Subdivisions.

§ **153-266.1. Regulations authorized for territory outside municipal jurisdiction; approval of regulations within municipal jurisdiction; withdrawal of approval.**—The board of county commissioners of any county is hereby authorized to enact an ordinance regulating the platting and recording of any subdivision of land as defined by this article, lying within the county and outside the subdivision-regulation jurisdiction of any municipality. Such ordinance may also regulate territory within the subdivision-regulation jurisdiction of any municipality whose governing body by resolution agrees to such regulation; provided, however, that any such municipal governing body may, upon one year's written notice, withdraw its approval of the county subdivision regulations, and those regulations shall have no further effect within the municipality's jurisdiction. (1959, c. 1007.)

§ **153-266.2. Public hearing on subdivision control ordinance or amendment; notice.**—Before the county commissioners may adopt a subdivision control ordinance or any amendment thereto under the provisions of this article, the said board of county commissioners shall hold a public hearing on the proposed ordinance. A notice of such public hearing shall be given once a week for two successive calendar weeks in a newspaper published in the county, or if there be no newspaper published in the county, by posting such notice at four public places in the county, said notice to be published the first time, or posted, not less than fifteen days nor more than twenty-five days prior to the date fixed for said hearing. (1959, c. 1007.)

§ **153-266.3. Regulation only by ordinance; contents and requirements of ordinance generally; plats.**—No county shall regulate the platting and recording of subdivisions in any manner other than through the adoption of an ordinance pursuant to the provisions of this article. Such ordinance may provide for the orderly development of the county; for the coordination of streets and highways within proposed subdivisions with existing or planned streets and highways and with other public facilities; for the dedication or reservation of rights of way

or easements for street and utility purposes; and for the distribution of population and traffic which shall avoid congestion and overcrowding and which shall create conditions essential to public health, safety and the general welfare. Such ordinance may include requirements for the final plat, plat to show sufficient data to determine readily and reproduce accurately on the ground the location, bearing, and length of every street and alley line, lot line, easement boundary line, and other property boundaries, including the radius and other data for curved property lines, to an appropriate accuracy and in conformance with good surveying practice. (1959, c. 1007.)

§ 153-266.4. Ordinance to contain procedure for plat approval; certain agencies to be given opportunity to make recommendations; approval prerequisite to plat recordation; statement by owner.—Any subdivision ordinance adopted pursuant to this article shall contain provisions setting forth the procedures to be followed in granting or denying approval of a subdivision plat prior to its registration. Such ordinance shall give the following agencies an opportunity to make recommendations prior to the approval of any individual subdivision plat:

(1) The district highway engineer as to proposed streets, highways, and drainage systems;
(2) The county health director as to proposed water and sewerage systems;
(3) The county school superintendent as to proposed school sites;
(4) Such other agencies and officials as the county commissioners may deem necessary or desirable.

The ordinance may provide that final approval of each individual subdivision plat is to be given by

(1) The board of county commissioners,
(2) The board of county commissioners on recommendation of the county planning board, or
(3) The county planning board.

From and after the time that a subdivision ordinance is filed with the register of deeds of the county, no subdivision plat of land within the county's subdivision-regulation jurisdiction shall be filed or recorded until it shall have been submitted to and approved by the appropriate board, as specified in the subdivision ordinance, and until such approval shall have been entered on the face of the plat in writing by the chairman of said board. The register of deeds shall not file a plat of a subdivision of land located within the territorial jurisdiction of the county commissioners as defined in G. S. 153-266.1 hereof which has not been approved in accordance with these provisions, nor shall the clerk of superior court order or direct the recording of a plat where such recording would be in conflict with this section. The owner of land shown on a subdivision plat submitted for recording, or his authorized agent, shall sign a statement on the plat stating whether or not any land shown thereon is within the subdivision-regulation jurisdiction of the board of county commissioners. (1959, c. 1007.)

§ 153-266.5. Approval of plat not to constitute acceptance of streets, etc.—The approval of a plat pursuant to regulations adopted under this article shall not be deemed to constitute or effect the acceptance by the county or the public of the dedication of any street or other ground, public utility line, or other public facility shown on the plat. (1959, c. 1007.)

§ 153-266.6. Sale of land by reference to unapproved plat a misdemeanor; injunctions.—If a board of county commissioners adopts an ordinance regulating the subdivision of land as authorized herein, any person who, being the owner or agent of the owner of any land located within the platting jurisdiction granted to the county commissioners by G. S. 153-266.1, thereafter transfers or sells such land by reference to a plat showing a subdivision of land before such

plat has been properly approved under such ordinance and recorded in the office of the appropriate register of deeds, shall be guilty of a misdemeanor. The description by metes and bounds in the instrument of transfer or other document used in the process of selling or transfering shall not exempt the transaction from such penalties. The county, through its county attorney or other official designated by the board of county commissioners, may enjoin such illegal transfer or sale by action for injunction. (1959, c. 1007.)

§ 153-266.7. Subdivision defined.—For the purpose of this article, the following definition shall apply:

Subdivision.—A "subdivision" shall include all divisions of a tract or parcel of land into two or more lots, building sites, or other divisions, for the purpose, whether immediate or future, of sale or building development, and shall include all divisions of land involving the dedication of a new street or a change in existing streets; provided, however, that the following shall not be included within this definition nor be subject to the regulations authorized by this article:

(1) The combination or recombination of portions of previously platted lots where the total number of lots is not increased and the resultant lots are equal to or exceed the standards of the county as shown in its subdivision ordinance;

(2) The division of land into parcels greater than five acres where no street right of way dedication is involved;

(3) The public acquisition by purchase of strips of land for the widening or opening of streets;

(4) The division of a tract in single ownership whose entire area is no greater than two acres into not more than three lots, where no street right of way dedication is involved and where the resultant lots are equal to or exceed the standards of the county as shown in its subdivision ordinance. (1959, c. 1007.)

§ 153-266.8. Article deemed supplementary.—The powers granted to counties by this article shall be deemed supplementary to any powers heretofore or hereafter granted by local act for the same or a similar purpose, and in any case where the provisions of this article conflict with or are different from such provisions of any local act, the board of county commissioners may in its discretion proceed in accordance with the provisions of this article or, as an alternative method, in accordance with the provisions of such local act. (1959, c. 1007.)

§ 153-266.9. Counties excepted from article.—This article shall not apply to the following counties: Bertie, Brunswick, Caswell, Craven, Franklin, Greene, Hoke, Lenoir, Moore, Pender, Scotland and Washington. (1959, c. 1007; 1961, cc. 29, 260; c. 390, s. 1; cc. 554, 596, 977; 1963, cc. 715, 872.)

Editor's Note.—The first 1961 amendment deleted "Person" from the list of counties in this section, its purpose being to make the provisions of the article applicable to Person County.

The second and third 1961 amendments deleted "Surry" and "Warren" from the list.

The fourth and fifth 1961 amendments deleted "Martin" and "Iredell", respectively, from the list so as to make the article applicable to such counties.

The sixth 1961 amendment deleted "Alleghany," "Ashe," "Bladen," "Currituck," "Duplin," "Tyrrell" and "Wayne" from the list of counties.

The first 1963 amendment deleted "Harnett" from the list of counties. The second 1963 amendment deleted "Halifax" from the list of counties.

Article 20B.

Zoning and Regulation of Buildings.

§ 153-266.10. Authority of county commissioners.—For the purpose of promoting health, safety, morals, or the general welfare, the board of county commissioners of any county is hereby empowered to regulate and restrict

(1) The height, number of stories, and size of buildings and other structures,
(2) The percentage of lot that may be occupied,
(3) The size of yards, courts, and other open spaces,
(4) The density of population, and
(5) The location and use of buildings, structures, and land for trade, industry, residence or other purposes, except farming.

No such regulations shall effect bona fide farms, but any use of such property for non-farm purposes shall be subject to such regulations. Such regulations may provide that a board of adjustment may determine and vary their application in harmony with their general purpose and intent and in accordance with general or specific rules therein contained. (1959, c. 1006, s. 1.)

§ **153-266.11. Districts.** — For any and all said purposes, the board of commissioners may divide the county, or portions of it as determined in accordance with the provisions of G. S. 153-266.13 below, into districts of such number, shape, and area as may be deemed best suited to carry out the purposes of this article; and within such districts it may regulate and restrict the erection, construction, reconstruction, alteration, repair, or use of buildings, structures, or land. All such regulations shall be uniform for each class or kind of building throughout each district, but the regulations in one district may differ from those in other districts. (1959, c. 1006, s. 1.)

§ **153-266.12. Comprehensive plan and design.**—Such regulations shall be made in accordance with a comprehensive plan and designed to lessen congestion in the streets; to secure safety from fire, panic, and other dangers; to promote health and the general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements. Such regulations shall be made with reasonable consideration, among other things, as to the character of each district and its peculiar suitability for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout such county. Such regulations shall further be made with reasonable consideration to expansion and development of municipalities within the county, so as to provide for the orderly growth and development of such municipalities. (1959, c. 1006, s. 1.)

§ **153-266.13. Territory which may be regulated; areas less than entire county.**—The county zoning ordinance may regulate all territory in the county outside the zoning jurisdiction of any municipalities within the county. In addition, the county zoning ordinance may regulate territory within the zoning jurisdiction of any municipality whose governing body, by resolution, agrees to such regulation; provided, however, that any such municipal governing body may, upon one year's written notice, withdraw its approval of the county zoning regulations, and those regulations shall have no further effect within the municipality's jurisdiction.

Where the board of commissioners determines that it is not necessary to zone the entire county in order to serve the public interest, the board may, after a public hearing, designate one or more portions of the county as a zoning area or areas. Any such area or areas may be regulated in the same manner as if the entire county were zoned, and the remainder of the county need not be regulated. No zoning area may be designated which is less than six hundred forty (640) acres in area, or which contains less than ten separate tracts of land in separate ownership. (1959, c. 1006, s. 1.)

§ **153-266.14. Planning board; advisory commissions.** — In order to avail itself of the powers conferred by this article, the board of commissioners shall appoint a county planning board or a joint planning board under the provisions of G. S. 153-9 (40) or of a special act of the General Assembly. If the board of

commissioners creates one or more zoning areas within the county under the provisions of G. S. 153-266.13 hereof, it shall also appoint an advisory commission for each such zoning area, composed of residents of the area. Each advisory commission shall be charged with the duty of making recommendations to the planning board and the board of commissioners concerning zoning regulations for its area. (1959, c. 1006, s. 1.)

§ 153-266.15. Preparation of zoning plan by board; certification to county commissioners; hearings; action by county commissioners; amendments.—The county planning board or joint planning board shall have the duty of preparing a zoning plan, including both the full text of a zoning ordinance and a map or maps showing proposed district boundaries. The planning board may hold such public hearings as it deems necessary in the course of preparing this plan. The planning board shall certify this plan to the board of county commissioners.

On receipt of a zoning plan from the county planning board, the board of commissioners shall hold a public hearing thereon, after which it may adopt the zoning ordinance and map as recommended, adopt it with modifications, or reject it.

The zoning ordinance, including the map or maps, may from time to time be amended, supplemented, changed, modified, or repealed. No amendment shall become effective unless it first be submitted to the planning board for its recommendations; failure of the planning board to make recommendations for a period of thirty days after the amendment has been referred to it shall constitute a favorable recommendation. No amendment may be adopted until after a public hearing thereon. (1959, c. 1006, s. 1.)

§ 153-266.16. Requirements for public hearings. — Whenever in this article a public hearing is required, all parties in interest and other citizens shall be given an opportunity to be heard. A notice of such public hearing shall be given once a week for two successive calendar weeks in a newspaper published in the county, or, if there be no newspaper published in the county, by posting such notice at four public places in the county, said notice to be published the first time or posted not less than fifteen days prior to the date fixed for said hearing. (1959, c. 1006, s. 1.)

§ 153-266.17. Board of adjustment; appeals; special exceptions; hardship cases; review of decisions.—If it exercises the powers granted by this article, the board of commissioners shall provide for the appointment of a board of adjustment consisting of five members, each to be appointed for three years; provided, that the board of commissioners in the appointment of the original members of such board, or in the filling of vacancies caused by the expiration of the terms of the existing members of any such board, may make appointments of certain members for less than three years to the end that thereafter the terms of all members shall not expire at the same time. The board of commissioners may, in its discretion, appoint not more than two alternate members to serve on such board in the absence, for any cause, of any regular members. Such alternate member or members shall be appointed for the same term or terms as regular members, and shall be appointed in the same manner as regular members and at the regular times for appointment. Each alternate member, while attending any regular or special meeting of the board and serving in the absence of any regular member, shall have and exercise all the powers and duties of such regular member so absent.

Such board of adjustment shall hear and decide appeals from and review any order, requirement, decision, or determination made by an administrative official charged with the enforcement of any ordinance adopted pursuant to this article. Such appeal may be taken by any person aggrieved or by an officer, department, board, or bureau of the county. Such appeal shall be taken within such time as

shall be prescribed by the board of adjustment by general rule, by filing with the officer from whom the appeal is taken and with the board of adjustment a notice of appeal, specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken. An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the board of adjustment, after notice of appeal shall have been filed with him, that by reason of facts stated in the certificate, a stay would, in his opinion, cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order, which may be granted by the board of adjustment or by a court of record on application, on notice to the officer from whom the appeal is taken and on due cause shown. The board of adjustment shall fix a reasonable time for the hearing of the appeal and give due notice thereof to the parties, and decide the same within a reasonable time. The board of adjustment may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from, and shall make such order, requirement, decision, or determination as in its opinion ought to be made in the premises, and to that end shall have all the powers of the officer from whom the appeal is taken.

The zoning ordinance may provide that the board of adjustment may permit special exceptions to the zoning regulations in the classes of cases or situations and in accordance with the principles, conditions, safeguards, and procedures specified in the ordinance. The ordinance may also authorize the board to interpret the zoning maps and pass upon disputed questions of lot lines or district boundary lines and similar questions as they arise in the administration of the ordinance. The board shall hear and decide all such matters referred to it or upon which it is required to pass under any such ordinance.

Where there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of such ordinance, the board of adjustment shall have the power, in passing upon appeals, to vary or modify any of the regulations or provisions of such ordinance relating to the use, construction or alteration of buildings or structures or the use of land, so that the spirit of the ordinance shall be observed, public safety and welfare secured, and substantial justice done.

The concurring vote of four members of the board shall be necessary to reverse any order, requirement, decision, or determination of any administrative official charged with the enforcement of an ordinance adopted pursuant to this article, or to decide in favor of the applicant any matter upon which it is required to pass under any such ordinance, or to grant a variance from the provisions of such ordinance. Every decision of such board shall be subject to review by the superior court by proceedings in the nature of certiorari. (1959, c. 1006, s. 1.)

§ 153-266.18. Remedies for violations; violation a misdemeanor. —In case any building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained, or any building, structure, or land is used in violation of this article or of any ordinance or other regulation made under authority conferred hereby, the proper authorities of the county, in addition to other remedies, may institute any appropriate action or proceedings

(1) To prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use,
(2) To restrain, correct, or abate such violation,
(3) To prevent the occupancy of said building, structure, or land, or
(4) To prevent any illegal act, conduct, business, or use in or about such premises.

A violation of this article or of any ordinance or other regulation made under authority conferred hereby shall also constitute a misdemeanor, punishable, up-

on conviction thereof, by a fine not exceeding fifty dollars ($50.00) or imprisonment not exceeding thirty days. (1959, c. 1006, s. 1; 1961, c. 414.)

Editor's Note. — The 1961 amendment added the last paragraph.

§ 153-266.19. Conflict with other laws or regulations.—Wherever the regulations made under authority of this article require a greater width or size of yards or courts, or require a lower height of building or less number of stories, or require a greater percentage of lot to be left unoccupied, or impose other higher standards than are required in any other statute or local ordinance or regulation, the provisions of the regulations made under authority of this article shall govern. Wherever the provisions of any other statute or local ordinance or regulation require a greater width or size of yards or courts, or require a lower height of building or a less number of stories, or require a greater percentage of lot to be left unoccupied, or impose other higher standards than are required by the regulations made under authority of this article, the provisions of such statute or local ordinance or regulation shall govern. (1959, c. 1006, s. 1.)

§ 153-266.20. Other laws not repealed; article deemed supplementary.—This article shall not have the effect of repealing any zoning act or county planning act, local or general, now in force; but it shall be construed to be in enlargement of the duties, powers, and authority contained in such statutes and all other laws authorizing the appointment and proper functioning of county planning boards or zoning commissions by any county in the State of North Carolina. (1959, c. 1006, s. 1.)

§ 153-266.21. Article applicable to buildings constructed by State and its subdivisions.—All of the provisions of this article and any ordinance adopted pursuant hereto are hereby made applicable to the erection and construction of buildings by the State of North Carolina and its political subdivisions. (1959, c. 1006, s. 1.)

§ 153-266.22. Counties excepted from article.—This article shall not apply to the following counties: Bertie, Brunswick, Craven, Cumberland, Franklin, Greene, Harnett, Hoke, Johnston, Lenoir, Moore, Pender, Scotland and Washington. (1959, c. 1006, ss. 1, 1½; 1961, cc. 28, 61, 102; c. 390, s. 2; cc. 551, 553, 586, 598, 638, 978; 1963, cc. 275, 529, 1035.)

Editor's Note. — The first 1961 amendment deleted "Person" from the list of counties in this section, its purpose being to make the provisions of the article applicable to Person County. The second 1961 amendment deleted "Surry" from the list of counties. The third 1961 amendment inserted "Vance" in the list of counties.

The fourth 1961 amendment deleted "Warren" from the list of counties.

The fifth 1961 amendment deleted "Halifax" from the list of counties.

The sixth 1961 amendment deleted "Martin" from the list of counties thereby making this article applicable to Martin County.

The seventh 1961 amendment deleted "Onslow" from the list of counties in this section.

The eighth 1961 amendment deleted "Iredell" from the list of counties so as to make the whole article applicable to such county.

Both the ninth and tenth 1961 amendments deleted "Wayne" from the list of counties. And the tenth 1961 amendment also deleted "Alleghany," "Ashe," "Bladen," "Currituck," "Duplin," "Tyrrell" and "Watauga" from the list.

The first 1963 amendment deleted "New Hanover" from the list of counties. The second 1963 amendment deleted "Caswell" from the list and the third 1963 amendment deleted "Vance."

ARTICLE 21.

Western North Carolina Regional Planning Commission.

§ 153-267. Western North Carolina Regional Planning Commission created.—(a) Creation; Membership; Terms.—There is hereby created

the Western North Carolina Regional Planning Commission. Said Commission shall be composed of a representative of each county and each municipality whose governing body by resolution designates such a representative and agrees to appropriate such funds as may be agreed upon for the support of the Commission, as hereinafter provided; provided however that any county electing to designate a representative on said Western North Carolina Regional Planning Commission having a population according to the 1950 federal census of fifty thousand or more shall have one additional representative on said Planning Commission. Members shall serve for two-year terms, beginning on May 1 of odd-numbered years; provided, that initial members may be appointed for shorter terms, to the end that the terms of their successors may begin on May 1 of the next odd-numbered year. Members shall be eligible for reappointment. The governing body appointing any member shall have authority to remove such member at any time for cause stated in writing and after hearing. Any vacancy in the membership of the Commission shall be filled by the appropriate governing body for the unexpired term.

(b) Compensation. — Members of the Western North Carolina Regional Planning Commission shall serve without compensation, other than reimbursement of necessary traveling and other expenses while engaged in the work of or for the Commission, which reimbursement shall be subject to limitations fixed by the Commission and to the availability of funds appropriated to the Commission. (1957, c. 1427, s. 1.)

§ 153-267.1. State planning agency and instrumentality; Executive Budget Act applicable; annual auditing; annual report to Governor.— The Commission created by this article is hereby declared to be a State planning agency and instrumentality of the State within the meaning of section 701 of the Housing Act of 1959, Public Law 86-372, and is acceptable to the State as capable of carrying out the planning functions contemplated by said section. The provisions of the Executive Budget Act, article 1 of chapter 143 of the General Statutes, shall apply to the administration of this article. There shall be annually made by the Auditor of the State of North Carolina a full audit and examination of the receipts and disbursements of the Commission, and the Commission shall report to the Governor annually at the end of each fiscal year a full and complete statement of receipts and disbursements and accomplishments during each such year. (1961, c. 743.)

§ 153-268. Organization of the Commission. — (a) First Meeting; Organization; Rules and Regulations. — Within sixty (60) days after June 12, 1957, the Commission shall meet in the city of Asheville on call of the representative designated by Western North Carolina Associated Communities. The Commission shall elect from among its members a chairman and such other officers as it may choose, for such terms as it may prescribe in its rules and regulations. The Commission shall adopt such rules and regulations not inconsistent herewith as it may deem necessary for the proper discharge of its duties. The chairman shall appoint an executive committee, which shall be authorized to exercise such powers and duties as the Commission may delegate to it, and he may appoint such other committees as the work of the Commission may require.

(b) Meetings. — The Commission shall meet regularly, at least once every three months, at places and dates to be determined by the Commission. 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 Commission. 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. All meetings shall be open to the public.

(c) Staff.—Within the limits of appropriated funds, the Commission may

(1) Hire and fix the compensation of a planning director (who shall pref-

erably be qualified by training and experience in city, regional or State planning) and such other employees and staff as it may deem necessary for its work;

(2) Contract with planners and other experts for such services as it may require;

(3) Contract with the State of North Carolina or the federal government, or any agency or department thereof, for such services as may be provided by such agencies, and carry out the provisions of such contracts.

(d) Office.—The State Highway Commission is authorized to make available to the Commission, without charge, space in any of its divisions or district offices in the area served by the Western North Carolina Regional Planning Commission.

(e) Fiscal Affairs. — The Commission may accept, receive, and disburse in furtherance of its functions any funds, grants and services made available by the federal government and its agencies, the State government and its agencies, any municipalities or counties, and by private and civic sources.

The Commission shall by agreement of its members determine the contributions to be made to its support by each member municipality or county. The Commission shall distribute during the month of May each year to each member municipality or county a statement of the proposed scale of contributions. Each member municipality or county shall, prior to June 15, signify to the Commission in writing its willingness or unwillingness to make such contributions; in the event of unwillingness to make such contribution, the municipality or county shall forfeit its membership in the Commission during the fiscal year for which the contribution would be made.

The Commission shall annually prepare and adopt during the month of June a budget for the fiscal year beginning on July 1. Copies of such budget shall be distributed to member municipalities and counties. The budget may be amended from time to time during the year, by vote of a majority of all the members of the Commission.

The Commission shall prepare each year a report of its activities, including a financial statement, and this report shall be distributed to all member municipalities and counties during the month of April.

Each municipality and county in the area to which this article applies shall have authority to appropriate funds to the Commission out of surplus funds or funds derived from nontax sources and in addition may levy annually taxes for the payment of such appropriation as a special purpose, in addition to any allowed by the Constitution.

Contributions as provided herein shall be made by each county or city according to its population as it relates to the total population of the area represented on the Western Carolina Regional Planning Commission as the population was enumerated in the 1950 federal census. (1957, c. 1427, s. 2.)

Editor's Note.—By virtue of G. S. 136-1.1, the words "State Highway Commission" were substituted for "State Highway and Public Works Commission" in subsection (d).

§ 153-269. Powers and duties.—The Western North Carolina Regional Planning Commission shall:

(1) Prepare and from time to time revise, amend, extend or add to a plan or plans for the development of the region, which plan or plans collectively shall be known as the regional development plan. Such plan shall be based on studies of physical, social, economic and governmental conditions and trends and shall aim at the coordinated development of the region in order to promote the general welfare and prosperity of its people. In preparing the regional development plan, the Commission shall take account of and shall seek to har-

monize the planning activities of federal, State, county, municipal, or other local or private agencies within the area. In preparing such plan, or any part thereof, and in preparing, from time to time, revisions, amendments, extensions or additions, the Commission may seek the cooperation and advice of appropriate departments, agencies and instrumentalities of federal, State and local governments, of other regional planning commissions, educational institutions and research organizations, whether public or private, and of civic groups and private persons and organizations. The regional development plan shall embody the policy recommendations of the Commission in regard to the physical development of the region and shall contain:

a. A statement of the objectives, standards and principles sought to be expressed in the regional development plan;

b. Recommendations for the most desirable pattern of land use within the region in the light of the best available information concerning topography, climate, soil and underground conditions, watercourses and bodies of water, and other natural or environmental factors, as well as in the light of the best available information concerning the present and prospective economic bases of the region, trends of industrial, population, or other developments, the habits and standards of life of the people of the region, and the relation of land use within the region to land use in adjoining areas. Such recommendations shall, insofar as appropriate, indicate areas for residential uses and maximum recommended densities therein; areas for farming and forestry, mining and other extractive industries; areas for manufacturing and industrial uses, with classification of such areas in accordance with their compatibility with land use in adjoining areas; areas for the concentration of wholesale, retail, business, and other commercial uses; areas for recreational uses, and for open spaces, and areas for mixed uses;

c. The circulation pattern recommended for the region, including routes and terminals of transit, transportation and communication facilities, whether used for movement within the region or for movement from and to adjoining areas;

d. Recommendations concerning the need for and the proposed general location of public and private works and facilities, such as utilities, flood control works, water reservoirs and pollution control facilities, military or defense installations, which works or facilities, by reason of their function, size, extent or for any other causes are of regional as distinguished from purely local concern, or which for any other cause are appropriate subjects for inclusion in the regional development plan;

e. Such other recommendations of the Commission concerning current and impending problems as may affect the region as a whole;

(2) Make or assist in studies and investigations, insofar as may be relevant to regional planning, of the resources of the region and of existing and emerging problems of agriculture, industry, commerce, transportation, population, housing, public service, local government and of allied matters affecting the development of the region, and in making such studies to seek the cooperation and collaboration of appropriate departments, agencies and instrumentalities of federal, State and local governments, educational institutions and research organiza-

tions, whether public or private, and of civic groups and private persons and organizations;

(3) Prepare and from time to time revise inventory listings of the region's natural resources, and of major public and private works and facilities of all kinds which are deemed of importance to the development of the region as a whole;

(4) Cooperate with, and provide planning assistance, including but not limited to surveys, land use studies, urban review plans, technical services and other planning work, to county, municipal or other local governments, instrumentalities or planning agencies; coordinate its planning activities with the planning activities of the State, and of the counties, municipalities, or other local units within its region, and cooperate with and assist departments and other agencies or instrumentalities of federal, State and local government as well as other regional planning commissions in the execution of their planning functions with a view to harmonizing their planning activities with the regional development plan. The Commission shall also cooperate and confer with, and upon request supply information to, federal agencies, and to local or regional agencies created pursuant to a federal program or which receive federal support, and shall cooperate and confer, as far as possible, with planning agencies of other states or of regional groups of states adjoining its area. Whenever cooperation or assistance under this subdivision includes the rendering of technical services, such services may be rendered free or in accordance with an agreement for reimbursement;

(5) Advise and supply information, as far as available, to civic groups and private persons and organizations who may request such information or advice, and who study or otherwise concern themselves with the region's problems and development in the fields of agriculture, business and industry, labor, natural resources, urban growth, housing and public service activities such as public health and education, insofar as such problems and development may be relevant to regional planning;

(6) Provide information to officials of departments, agencies and instrumentalities of State and local governments, and to the public at large, in order to foster public awareness and understanding of the objectives of the regional development plan and of the functions of regional and local planning, and in order to stimulate public interest and participation in the orderly, integrated development of the region;

(7) Hold public or private hearings and sponsor public forums in any part of its area whenever it deems it necessary or useful in the execution of its other functions;

(8) Cooperate, in the exercise of its planning functions, with federal and State agencies in planning for civil defense;

(9) Exercise all other powers necessary and proper for the discharge of its duties. (1957, c. 1427, s. 3.)

§ 153-270. Cooperation by local governments and planning agencies.—To facilitate effective and harmonious planning of the region, all county and municipal legislative bodies in the region, and all county and municipal or other local planning agencies in the region, shall file with the Commission, for its information, all county and municipal plans, zoning ordinances, official maps, building codes, subdivision regulations, or amendments or revisions of any of them, as well as copies of their regular and special reports dealing in whole or in part with planning matters. County or municipal legislative bodies, or county, municipal, or other local planning agencies, may also submit proposals for such plans, ordinances, maps, codes, regulations, amendments, or revisions prior to

their adoption, in order to afford an opportunity to the Commission or its staff to study such proposals and render its advice thereon. (1957, c. 1427, s. 4.)

§ **153-271. Counties to which article applies.**—The provisions of this article shall apply only to the following counties and to municipalities therein: Avery, Buncombe, Cherokee, Clay, Graham, Haywood, Henderson, Jackson, Macon, Madison, McDowell, Mitchell, Polk, Rutherford, Swain, Transylvania and Yancey. (1957, c. 1427, s. 6; 1959, c. 1083; 1961, c. 270.)

Editor's Note.—The 1959 amendment inserted McDowell and Rutherford in the list of counties.

The 1961 amendment inserted Avery, Mitchell and Yancey in the list of counties.

Article 22.

Garbage Collection and Disposal.

§ **153-272. Control of private collectors.**—The board of county commissioners of any county is hereby empowered to regulate the collection and disposal of garbage by private persons, firms, or corporations outside of the incorporated cities and towns of the county for the purpose of encouraging and attempting to insure an adequate and continuing service of garbage collection and disposal where the board deems it to be desirable. In the exercise of such power, the board may issue a license to any private person, firm, or corporation to collect and/or dispose of garbage; may prohibit the collection and/or disposal of garbage by unlicensed persons, firms, or corporations; may grant to licensed persons, firms, or corporations the exclusive right to collect and/or dispose of garbage for compensation within a specified area and prohibit unauthorized persons, firms, or corporations from collecting and/or disposing of garbage within said area; and may regulate the fees charged by licensed persons, firms, and corporations for the collection and/or disposal of garbage to the end that reasonable compensation may be provided for such services. The board may adopt regulations pursuant to the power herein granted, and the violation of any such regulation shall be a misdemeanor, subject to a fine not exceeding fifty dollars ($50.00), or imprisonment not exceeding thirty days; each week that any such violation continues to exist shall be a separate offense. (1961, c. 514, s. 1.)

Local Modification. — Johnston (entire article): 1961, c. 904; Vance (entire article): 1961, c. 514, s. 1a.

§ **153-273. County collection and disposal.**—The board of county commissioners of any county is hereby empowered to establish and operate garbage collection and/or disposal facilities in areas outside of incorporated cities and towns where, in its opinion, the need for such facilities exists. The board may contract with any city or town to collect and/or dispose of garbage in any such area. In the disposal of garbage, the board may use any vacant land owned by the county, or it may acquire suitable sites for such purpose. The board may make appropriations to carry out the activities herein authorized. The board may impose fees for the use of disposal facilities, and in the event it shall provide for the collection of garbage, it shall charge fees for such collection service sufficient in its opinion to defray the expense of collection. (1961, c. 514, s. 1.)

Local Modification.—Dare: 1961, c. 912; Transylvania (power of eminent domain): 1963, c. 494.

§ **153-274. Powers of local boards of health unaffected.**—Nothing in this article shall affect the powers of local boards of health to control the keeping, removal, collection, and disposal of garbage, insofar as the exercise of any such power is necessary to protect and advance the public health. (1961, c. 514, s. 1.)

§ 153-275. Powers granted herein supplementary. — The powers granted to counties by this article shall be deemed supplementary to any powers heretofore or hereafter granted by any other law, either general, special, or local, for the same or a similar purpose, and in any case where the provisions of this article conflict with or are different from the provisions of such other law, the board of county commissioners may in its discretion proceed in accordance with the provisions of such other law, or, as an alternative method, in accordance with the provisions of this article. (1961, c. 514, s. 1.)

Article 23.

Regional Planning Commissions.

§ 153-276. Creation of regional planning commissions authorized; procedure; withdrawal of governmental unit.—Any two or more municipalities and/or counties may, by agreement of their respective governing bodies, create a regional planning commission to have and exercise the powers and duties herein granted. Such creation shall be through the adoption by each governing body concerned, acting individually, of a joint resolution. Said resolution shall provide the membership of the commission, the terms of the members, procedures for removing or replacing members, the compensation (if any) and extent of reimbursement of expenses of members, the method for determining the financial support to be given the commission by each governmental unit concerned, and the budgetary procedures to be followed. Said resolution may be modified, amended, or repealed at any time through unanimous action of the governmental units concerned. Any individual governmental unit may withdraw from the regional planning commission after giving two years' notice to the other units concerned. Any municipality or county may join a regional planning commission at any time with the concurrence of the other units concerned. (1961, c. 722, s. 3.)

§ 153-277. Organization of commission; rules and regulations; committees; meetings.—Upon its creation, the commission shall meet at a time and place agreed upon by the governing boards concerned. It shall elect from among its members a chairman and such other officers as it may choose, for such terms as it may prescribe in its rules and regulations. The commission 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 such committees as may be authorized by the commission's rules and regulations. The commission shall meet regularly at such times and places as may be specified in its rules and regulations, and special meetings may be called pursuant to such rules. All meetings shall be open to the public. (1961, c. 722, s. 3.)

§ 153-278. Planning director and other employees; contracts for services.—Within the limits of appropriated funds, the commission may:

(1) Hire and fix the compensation of a planning director (who shall preferably be qualified by training and experience in city, regional, or State planning) and such other employees and staff as it may deem necessary for its work;

(2) Contract with planners and other experts for such services as it may require;

(3) Contract with the State of North Carolina or the federal government, or any agency or department thereof, for such services as may be provided by such agencies, and carry out the provisions of such contracts. (1961, c. 722, s. 3.)

§ 153-279. Fiscal affairs generally; reports; appropriations. — The commission may accept, receive, and disburse in furtherance of its functions any funds, grants, and services made available by the federal government and its agencies, the State government and its agencies, any municipalities or counties, and by

private and civic sources. All fiscal procedures shall be in accordance with the resolution adopted for its creation. The commission shall prepare each year a report of its activities, including a financial statement, and this report shall be distributed to all member municipalities and counties.

Each municipality and county having membership on the commission shall have authority to appropriate funds to the commission and may also levy annually taxes for the payment of such appropriation as a special purpose, in addition to any allowed by the Constitution. (1961, c. 722, s. 3.)

§ **153-280. Powers and duties.** — Any regional planning commission formed pursuant to this article shall:

(1) Prepare and from time to time revise, amend, extend or add to a plan or plans for the development of the region, which plan or plans collectively shall be known as the regional development plan. Such plan shall be based on studies of physical, social, economic and governmental conditions and trends and shall aim at the coordinated development of the region in order to promote the general welfare and prosperity of its people. In preparing the regional development plan, the commission shall take account of and shall seek to harmonize the planning activities of federal, State, county, municipal, or other local or private agencies within the area. In preparing such plan, or any part thereof, and in preparing, from time to time, revisions, amendments, extensions or additions, the commission may seek the cooperation and advice of appropriate departments, agencies and instrumentalities of federal, State and local governments, of other regional planning commissions, educational institutions and research organizations, whether public or private, and of civic groups and private persons and organizations. The regional development plan shall embody the policy recommendations of the commission in regard to the physical and economic development of the region and shall contain:

a. A statement of the objectives, standards, and principles sought to be expressed in the regional development plan;

b. Recommendations for the most desirable pattern of land use within the region in the light of the best available information concerning topography, climate, soil and underground conditions, watercourses and bodies of water, and other natural or environmental factors, as well as in the light of the best available information concerning the present and prospective economic bases of the region, trends of industrial, population, or other developments, the habits and standards of life of the people of the region, and the relation of land use within the region to land use in adjoining areas. Such recommendations shall, insofar as appropriate, indicate areas for residential uses and maximum recommended densities therein; areas for farming and forestry, mining and other extractive industries; areas for manufacturing and industrial uses, with classification of such areas in accordance with their compatibility with land use in adjoining areas; areas for the concentration of wholesale, retail, business, and other commercial uses; areas for recreational uses, and for open spaces, and areas for mixed uses;

c. The circulation pattern recommended for the region, including routes and terminals of transit, transportation and communication facilities, whether used for movement within the region or for movement from and to adjoining areas;

d. Recommendations concerning the need for and the proposed general location of public and private works and facilities, such as utilities, flood control works, water reservoirs and pollution

control facilities, military or defense installations, which works or facilities, by reason of their function, size, extent or for any other causes are of regional as distinguished from purely local concern, or which for any other cause are appropriate subjects for inclusion in the regional development plan;

e. An economic development program for the region, including but not limited to individual projects to further the prosperity of various areas within the region;

f. Such other recommendations of the commission concerning current and impending problems as may affect the region as a whole;

(2) Make or assist in studies and investigations, insofar as may be relevant to regional planning, of the resources of the region and of existing and emerging problems of agriculture, industry, commerce, transportation, population, housing, public service, local government and of allied matters affecting the development of the region, and in making such studies to seek the cooperation and collaboration of appropriate departments, agencies and instrumentalities of federal, State and local governments, educational institutions and research organizations, whether public or private, and of civic groups and private persons and organizations;

(3) Prepare and from time to time revise inventory listings of the region's natural resources, and of major public and private works and facilities of all kinds which are deemed of importance to the development of the region as a whole;

(4) Cooperate with, and provide planning assistance, including but not limited to surveys, land use studies, urban renewal plans, technical services and other planning work, to county, municipal or other local governments, instrumentalities or planning agencies; coordinate its planning activities with the planning activities of the State, and of the counties, municipalities, or other local units within its region, and cooperate with and assist departments and other agencies or instrumentalities of federal, State and local government as well as other regional planning commissions in the execution of their planning functions with a view to harmonizing their planning activities with the regional development plan. Copies of all studies and plans developed by the commission shall be furnished to the Governor, for distribution to appropriate State agencies. The commission shall also cooperate and confer with, and upon request supply information to, federal agencies, and to local or regional agencies created pursuant to a federal program or which receive federal support, and shall cooperate and confer, as far as possible, with planning agencies of other states or of regional groups of states adjoining its area. Whenever cooperation or assistance under this subdivision includes the rendering of technical services, such services may be rendered free or in accordance with an agreement for reimbursement;

(5) Advise and supply information, as far as available, to civic groups and private persons and organizations who may request such information or advice, and who study or otherwise concern themselves with the region's problems and development in the fields of agriculture, business and industry, labor, natural resources, urban growth, housing and public service activities such as public health and education, insofar as such problems and development may be relevant to regional planning;

(6) Encourage the formation of economic development commissions by the

various governmental units in the region and of private business development corporations, to the extent that such agencies are deemed necessary to carrying out its economic development program;

(7) Grant approval, as may be required by any federal legislation, of any governmental or private development projects which are in accordance with its economic development program, so as to qualify such projects for financial assistance from the federal government;

(8) Provide information to officials of departments, agencies and instrumentalities of State and local governments, and to the public at large, in order to foster public awareness and understanding of the objectives of the regional development plan and the functions of regional and local planning, and in order to stimulate public interest and participation in the orderly, integrated development of the region;

(9) Hold public or private hearings and sponsor public forums in any part of its area whenever it deems them necessary or useful in the execution of its other functions;

(10) Create one or more Citizens Advisory Committees to assist it in the performance of its functions;

(11) Cooperate, in the exercise of its planning functions, with federal and State agencies in planning for civil defense;

(12) Exercise all other powers necessary and proper for the discharge of its duties. (1961, c. 722, s. 3.)

§ 153-281. Cooperation by local governments and planning agencies.—To facilitate effective and harmonious planning of the region, all county and municipal legislative bodies in the region, and all county and municipal or other local planning agencies in the region, shall file with the commission, for its information, all county and municipal plans, zoning ordinances, official maps, building codes, subdivision regulations, or amendments or revisions of any of them, as well as copies of their regular and special reports dealing in whole or in part with planning matters. County or municipal legislative bodies, or county, municipal, or other local planning agencies, may also submit proposals for such plans, ordinances, maps, codes, regulations, amendments, or revisions prior to their adoption, in order to afford an opportunity to the commission or its staff to study such proposals and render its advice thereon. (1961, c. 722, s. 3.)

§ 153-282. Regional planning and economic development commissions authorized.—Any municipalities and/or counties desiring to exercise the powers granted by this article may, at their option, create a regional planning and economic development commission, which shall have and exercise all of the powers and duties granted to a regional planning commission under this article and in addition the powers and duties granted to an economic development commission under article 2 of chapter 158. In the event that such a combined commission is created, it shall keep separate books of accounts for appropriations and expenditures made pursuant to this article and for appropriations and expenditures made pursuant to article 2 of chapter 158. The financial limitations set forth in each such article shall govern expenditures made pursuant to such article. (1961, c. 722, s. 3.)

§ 153-283. Powers granted supplementary.—The powers granted to municipalities and counties by this article shall be deemed supplementary to any powers heretofore or hereafter granted by any general or local act for the same or similar purposes, and in any case where the provisions of this article conflict with or are different from the provisions of any other act, the governing body of the unit or units concerned may, in its discretion, proceed in accordance with the

provisions of this article, or, as an alternative method, in accordance with the provisions of such other act. (1961, c. 722, s. 3.)

Editor's Note.—Session Laws, 1961, c. 722, s. 5, provided that all laws and clauses of laws in conflict herewith, except as indicated in G. S. 158-15 and this section are repealed to the extent of such conflict.

Article 24.

Water and Sewerage Facilities.

§ 153-284. Acquisition and operation authorized; contracts and agreements.—The board of commissioners of any county is hereby authorized to:

(1) Acquire, lease as lessor or lessee, construct, reconstruct, improve, extend, enlarge, equip, repair, maintain and operate any water system and any sanitary sewerage system or parts thereof, either within or without the boundaries of the county, and to acquire in the name of the county by gift, purchase or the exercise of the right of eminent domain, which right shall be exercised in accordance with the provisions of chapter 40, and improved or unimproved lands or rights in land, and to acquire such personal property or water rights as it may deem necessary in connection with the foregoing, and to hold and dispose of all real and personal property under its control; and

(2) To make and enter into all contracts and agreements necessary or incidental to the execution of the powers herein provided, including the contracting or otherwise providing for the leasing, repairing, maintaining and operating of any such system or systems or parts thereof. (1961, c. 1001, s. 1.)

Cross Reference. — As to water and sewer authorities generally, see §§ 162A-1 to 162A-19.

§ 153-285. Authority to furnish services; nonliability for failure to furnish.—The board of commissioners of any county is hereby further authorized to provide water and sewerage services to any and all persons including individuals, firms, partnerships, associations, public or private institutions, municipalities, political subdivisions, governmental agencies, and private or public corporations organized and existing under the laws of this State or any other state or county, either within or without the boundaries of the county, but in no case shall the county be liable for damages for failure to furnish any such services. (1961, c. 1001, s. 1.)

§ 153-286. Rates and charges. — The board of commissioners of any county may fix, and may revise from time to time, rents, rates, fees and charges for the use of and for the services furnished or to be furnished by any such system or systems. Such rents, rates, fees and charges may vary, if determined by the governing body of the county to be reasonable, for the same class of service in one area of the county from those imposed in another area of the county. The rents, rates, fees and charges imposed for services provided outside the boundaries of the county may vary from those imposed for services provided within the boundaries of the county and may vary for the same class of service provided in one area outside the county from those imposed for services provided in another area outside the county. (1961, c. 1001, s. 1.)

§ 153-287. Joint action by counties and municipalities authorized; procedure.—Any county or municipality and any other county or counties or municipality or municipalities (which municipality or municipalities need not be within such county or counties) are hereby authorized, jointly to acquire, lease

as lessor or lessee, construct, reconstruct, improve, extend, enlarge, equip, repair, maintain and operate any water system and any sanitary sewerage system or parts thereof, either within or without the boundaries of any such counties or municipalities, and to acquire by gift, purchase or the exercise of the right of eminent domain in accordance with the provisions of this article or of other provisions of the General Statutes of North Carolina as are applicable to the exercise of such powers, any improved or unimproved lands or rights in land, and to acquire such personal property or water rights as may be deemed necessary in connection with the foregoing, and to hold and dispose of all real and personal property.

Any such counties or municipalities may enter into such contracts or agreements with each other or with any and all persons including individuals, firms, partnerships, associations, public or private institutions, municipalities, political subdivisions, governmental agencies, and private or public corporations organized and existing under the laws of this State or any other state or county, either within or without the boundaries of any such counties or municipalities, which the governing bodies of any such counties or municipalities shall deem necessary or incidental to the execution jointly of the powers herein provided and which may contain, as to contracts between any such counties or municipalities, provisions as to the apportionment of the cost of any such system or systems and the distribution of the revenues thereof.

Joint action with respect to any of the foregoing shall be taken pursuant to resolutions adopted by the governing bodies of each such county or municipality. Joint action taken and the contract or contracts herein authorized may provide for and may be of such duration as the participating counties and municipalities may determine to be reasonable. (1961, c. 1001, s. 1.)

§ 153-288. Joint agencies for exercising powers provided in § 153-287.—Any such counties or municipalities are hereby authorized to establish, by mutual agreement, a joint agency (which may be termed a board, commission, council or such other name as may be agreed upon which shall be subject to the control of the governing bodies of such counties or municipalities) to be charged with the responsibility, in whole or in part, of exercising the powers provided in the foregoing section. The joint agency may continue in operation for such period of time as the participating counties and municipalities may agree upon. Funds may be appropriated by the governing bodies of such counties or municipalities to any such joint agency to be used to carry out its responsibilities, and any such appropriations shall be on the basis of an annual budget recommended by such joint agency and submitted to such governing bodies for approval. The accounting for all funds of such a joint agency and the disbursement of all funds thereof shall be in accordance with the terms of the agreement establishing such joint agency. (1961, c. 1001, s. 1.)

§ 153-289. Special taxes and appropriations authorized.—Expenditures by counties to provide water and sewerage services under the authority granted by this article are hereby declared to be a special purpose and a necessary expense, and all counties of the State shall have authority and are hereby given special approval to levy special taxes and to appropriate money for all such services. (1961, c. 1001, s. 1.)

§ 153-290. Powers granted deemed supplementary. — The powers granted to counties and municipalities by this article shall be deemed supplementary to any powers heretofore or hereafter granted by any general or local act for the same or similar purposes, and in any case where the provisions of this article conflict with or are different from the provisions of any other act, the board of commissioners of the county or the municipal governing board may in its discretion proceed in accordance with the provisions of this article or, as an

alternative method, in accordance with the provisions of such act. (1961, c. 1001, s. 1.)

§ 153-291. Prerequisites to acquisition of water, water rights, etc. —The word "authority" as contained in G. S. 162A-7 shall be deemed to include counties and municipalities acting collectively or jointly under this article and joint agencies as referred to in this article. No diversion of water by those acting collectively or jointly under this article from one stream or river to another shall be permitted nor shall proceedings in the nature of eminent domain be instituted by those acting collectively or jointly under this article to acquire water, water rights, or lands having water rights attached thereto unless such diversion or acquisition is first authorized by a certificate from the Board therein referred to. The provisions of G. S. 162A-7 (b)-(f), inclusive, shall be applicable thereto. (1961, c. 1001, s. 1.)

§ 153-292. Law with respect to riparian rights not changed.— Nothing contained in this article shall change or modify existing common or statute law with respect to the relative rights of riparian owners or others concerning the use of or disposal of water in the streams of this State. (1961, c. 1001, s. 1.)

§ 153-293. Diversion of water from certain river basins prohibited.—Diversion of water from any major river basin, the main stem of which is not located entirely within North Carolina downstream from the point of such diversion, is prohibited, except where such diversion is now permitted by law. (1961, c. 1001, s. 1.)

§ 153-294. Venue for actions by riparian owners. — Any riparian owner alleging injury as a result of any act taken by any county, municipality or joint agency pursuant to this article may maintain an action for relief against such act or acts either in the county where the lands of such riparian owner lie or in any county taking such action or in which any such municipality or joint agency is located or operates. (1961, c. 1001, s. 1.)

Article 24A.

Special Assessments for Water and Sewerage Facilities.

§ 153-294.1. Authority to make special assessments.—The board of commissioners of any county, in constructing, reconstructing, and extending water and sewerage systems, or either of them in whole or in part as authorized in article 24 of this chapter, may specially assess all, or part, of the costs thereof against the property served, or subject to being served, by the construction, reconstruction, or extension, and which will benefit therefrom: Provided, that no property lying within the corporate limits of any municipality shall be subject to assessment unless the governing body of the municipality has by resolution given its approval to the project, all or part of the costs of which is being assessed. (1963, c. 985, s. 1.)

§ 153-294.2. Basis for making assessments. — Assessments may be made on the basis of:

(1) The frontage abutting on the lines of the systems or extensions, at an equal rate per foot of frontage, or

(2) The acreage of land served, or subject to being served, by the system or extension, at an equal rate per acre of land, or

(3) The valuation of land served, or subject to being served, by the system or extension, the valuation to be based upon the value of the land without improvements as shown on the tax assessment records of the county, at an equal rate per dollar of valuation, or

(4) The number of lots served, or subject to being served, where the extension of the system (or systems) is to residential or commercial subdivisions, at an equal rate per lot, or

(5) A combination of two or more of these bases.

Whenever the basis selected for assessment is either acreage or value of land, the board of commissioners may provide for the laying out of benefit zones according to the distance of benefited property from the project, or projects, being undertaken, and establish differing rates of assessment to apply uniformly throughout each benefit zone. (1963, c. 985, s. 1.)

§ 153-294.3. Corner lot exemptions.—The board of commissioners shall have authority to establish schedules of exemptions from assessments for water and sewer extensions for corner lots when water and sewer lines are installed along both sides of such lots. The schedules of exemptions shall be based on land use (residential, commercial, industrial, or agricultural) and shall be uniform for each category of land use. Provided, no schedule of exemption may provide for exemption of more than seventy-five per cent (75%) of the frontage of any side of a corner lot, or 150 feet, whichever is greater. (1963, c. 985, s. 1.)

§ 153-294.4. Lands exempt from assessment.—No lands within a county, except as herein provided, shall be exempt from special assessments except lands belonging to the United States which are exempt under the provisions of federal statutes, and lands within the flood plain of any stream as designated by the board of commissioners. No land shall be designated as a flood plain for the purposes of this section unless there is evidence to indicate that it is flooded on an average of at least once every twenty (20) years. (1963, c. 985, s. 1.)

§ 153-294.5. Preliminary resolution to be adopted; contents.—Whenever the board of commissioners of any county determines to undertake any project, or projects, for the construction, reconstruction or extension of water and sewerage systems and assess all, or part, of the cost thereof, the board shall first adopt a preliminary resolution setting forth its intention and describing the nature of the project, or projects, and the proposed terms and conditions by which it is to be undertaken. Specifically, the preliminary resolution shall contain the following:

(1) A statement of intent to undertake the project(s);

(2) A general description of the nature and location of the proposed project(s);

(3) A statement as to the proposed basis for making assessments, which shall include a general description of the boundaries of the area benefited if the basis of assessment is either acreage or value of land;

(4) A statement as to the percentage of the cost of the work which is to be specially assessed;

(5) If any assessments are proposed to be held in abeyance, a statement as to which assessments shall be so held and the period they will be held in abeyance;

(6) A statement as to the proposed terms of payment of the assessment; and

(7) An order setting a time and place at which a public hearing on all matters covered by the preliminary resolution will be held before the board, said public hearing to be not earlier than three (3) weeks, nor later than ten (10) weeks, from the date of the adoption of the preliminary resolution. (1963, c. 985, s. 1.)

§ 153-294.6. Publication of preliminary resolution.—The board of commissioners shall cause a copy of the preliminary resolution to be published

in a newspaper having general circulation in the county at least ten (10) days prior to the date set for the public hearing on the proposed project or projects. In addition, the board of commissioners shall cause a copy of the preliminary resolution, containing the order for the public hearing, to be mailed to the owners of all property subject to assessment if the project, or projects, should be undertaken. The mailing of copies of the preliminary resolution shall be to the owners of that property as shown on the tax records of the county, and shall take place at least ten (10) days prior to the date set for the public hearing on the preliminary resolution. The person designated to mail these resolutions shall file a certificate with the board of commissioners that such resolutions were mailed, the certificates to include the date of mailing. Such certificates shall be conclusive in the absence of fraud. (1963, c. 985, s. 1.)

§ **153-294.7. Hearing on preliminary resolution; resolution directing undertaking of project.**—At the time and place set for the public hearing, the board of commissioners shall hear all interested persons who appear with respect to any matter covered by the preliminary resolution. After the public hearing, if the board of commissioners so determines, the board may adopt a resolution directing that the project, or projects, covered by the preliminary resolution, or part of them, be undertaken. This resolution shall describe the project, or projects, to be undertaken in general terms (which may be by reference to projects described in the preliminary resolution) and shall set forth the following:

(1) The basis on which the special assessments shall be levied, which shall include a general description of the boundaries of the area benefited if the basis of assessment is either acreage or value of land;

(2) The percentage of the cost to be specially assessed;

(3) The terms of payment, including the conditions under which assessments are to be held in abeyance, if any.

Provided, the percentage of cost to be assessed as set forth in the resolution directing the undertaking of the project, or projects, may not be different from the percentage proposed in the preliminary resolution. If the board of commissioners decides that a different percentage of the cost should be assessed, following the hearing, the board of commissioners shall adopt and advertise a new preliminary resolution as herein provided. (1963, c. 985, s. 1.)

§ **153-294.8. Determination of costs.**—Upon completion of the project, or projects, the board of commissioners shall ascertain the total cost. In addition to the cost of construction, there may be included therein the cost of all necessary legal services, the amount of interest paid during construction, costs of rights of way, and the costs of publication of notices and resolutions. The determination of the board of commissioners as to the total cost of any project shall be conclusive. (1963, c. 985, s. 1.)

§ **153-294.9. Preliminary assessment roll to be prepared; publication.**—Upon determination of the total cost of any assessment project, the board of commissioners shall cause to be prepared a preliminary assessment roll, on which shall be entered a brief description of each lot, parcel, or tract of land assessed, the basis for the assessment, the amount assessed against each, the terms of payment, and the name or names of the owners of each parcel of land as far as the same can be ascertained; provided, that a map of the project on which is shown each parcel assessed and the basis for its assessment, together with the amount assessed against each such parcel and the name or names of the owner or owners, as far as the same can be ascertained, shall be a sufficient assessment roll.

After the preliminary assessment roll has been completed, it shall be filed in the office of the clerk to the board of commissioners where it shall be available for inspection. A notice of the completion of the assessment roll, setting forth in

general terms a description of the project, noting the availability of the assessment roll in the office of the clerk for inspection, and stating the time and place for a hearing before the board of commissioners on the preliminary assessment roll, shall be published in a newspaper having general circulation in the county at least ten (10) days prior to the date set for the hearing on the preliminary assessment roll. In addition, the board of commissioners shall cause a notice of the hearing on the preliminary assessment roll to be mailed to the owners of property listed on the preliminary assessment roll at least ten (10) days prior to the date of the hearing. In addition to the notice of the hearing, the notice mailed to the owners shall note the availability of the preliminary assessment roll for inspection in the office of the clerk to the board and shall state the amount of the assessment against the property of the owner or owners, as shown on the preliminary assessment roll. The person designated to mail these notices shall file a certificate with the board of commissioners that such notices were mailed, the certificate to include the date of mailing. Such certificates shall be conclusive in the absence of fraud. (1963, c. 985, s. 1.)

§ **153-294.10. Hearing on preliminary assessment roll; revision; confirmation; lien.**—At the time set for the public hearing, or at some other time to which the public hearing may be adjourned, the board of commissioners shall hear objections to the preliminary assessment roll from all persons interested who appear. Then, or thereafter, the board of commissioners shall either annul, or modify, or confirm, in whole or in part, the assessments, either by confirming the preliminary assessments against any or all of the lots or parcels described in the preliminary assessment roll, or by canceling, increasing, or reducing the same as is determined to be proper in accordance with the basis for the assessment. If any property is omitted from the preliminary assessment roll, the board of commissioners may place it on the roll and levy the proper assessment. Whenever the board of commissioners shall confirm assessments for any project, the clerk to the board shall enter on the minutes of the board and on the assessment roll the date, hour, and minute of confirmation, and from the time of confirmation the assessments shall be a lien on the property assessed of the same nature and to the same extent as county and city taxes and shall be superior to all other liens and encumbrances. After the assessment roll is confirmed, a copy of the same shall be delivered to the county tax collector for collection in the same manner as taxes, except as herein provided. (1963, c. 985, s. 1.)

§ **153-294.11. Publication of notice of confirmation of assessment roll.**—After the expiration of twenty (20) days from the confirmation of the assessment roll, the county tax collector shall cause to be published once in a newspaper having general circulation in the county a notice of confirmation of the assessment roll, and that assessments may be paid at any time before the expiration of thirty (30) days from the date of the publication of the notice without interest, but if not paid within this time, all installments thereof shall bear interest at the rate of six per centum (6%) per annum from the date of the confirmation of assessment roll. (1963, c. 985, s. 1.)

§ **153-294.12. Appeal to superior court.**—If the owner of, or any person interested in, any lot or parcel of land against which an assessment is made is dissatisfied with the amount of the assessment, he may, within ten (10) days after the confirmation of the assessment roll, file with the board of commissioners and the court a written notice that he takes an appeal to the superior court of the county, in which case he shall within twenty (20) days after the confirmation of the assessment roll serve on the chairman of the board of commissioners or the clerk to the board of commissioners a statement of facts upon which he bases his appeal. The appeal shall be tried as other actions at law. (1963, c. 985, s. 1.)

§ 153-294.13. Reassessment.—The board of commissioners shall have the power, when in its judgment there is any irregularity, omission, error or lack of jurisdiction in any of the proceedings relating thereto, to set aside the whole of any special assessment made by it, and thereupon to make a reassessment. In such case there shall be included, as a part of the cost of the project, all additional interest paid, or to be paid, as a result of the delay in confirming the assessment. The proceeding shall, as far as practicable, be in all respects as in the case of original assessments, and the reassessment shall have the same force as if it had originally been properly made. (1963, c. 985, s. 1.)

§ 153-294.14. Payment of assessments in cash or by installments.—The owner or owners of any property assessed shall have the option, within thirty (30) days following the publication of the notice of the confirmation of the assessment roll, of paying the assessment in cash or of paying in not less than two and not more than ten annual installments, as may have been determined by the board of commissioners in the resolution directing the undertaking of the project giving rise to the assessment. With respect to payment by installment, the board of commissioners may provide (i) that the first installment with interest shall become due and payable on the date when property taxes are due and payable and one subsequent installment and interest shall be due and payable on the same date in each successive year until the assessment is paid in full, or (ii) that the first installment with interest shall become due and payable sixty (60) days after the date of the confirmation of the assessment roll, and one subsequent installment and interest shall be due and payable on the same day of the month in each successive year until the assessment is paid in full. (1963, c. 985, s. 1.)

§ 153-294.15. Enforcement of payment of assessments.—No statute of limitations shall bar the right of the county to enforce any remedy provided by law for the collection of unpaid assessments, save from and after ten (10) years from default in the payment thereof, or if payable in installments, ten (10) years from the default in the payment of any installments. Such assessments shall bear interest at the rate of six per centum (6%) per annum only.

Upon the failure of any property owner to pay any installment when due and payable, all of the installments remaining unpaid shall immediately become due and payable, and property and rights of way may be sold by the county under the same rules and regulations (except that the sale of liens shall not be required), rights of redemption and savings as are now prescribed by law for the sale of land for unpaid taxes. Provided, after the default in the payment of any installment of an assessment, the board of commissioners may, on the payment of all installments in arrears, together with interest due thereon and on reimbursement of any expense incurred in attempting to obtain payment, reinstate the remaining unpaid installments of such assessment so that they shall become due in the same manner as they would have if there had been no default, and such extension may be granted at any time prior to the institution of an action to foreclose. (1963, c. 985, s. 1.)

§ 153-294.16. Assessments in case of tenant for life or years; apportionment of assessments.—The following provisions of the General Statutes concerning municipal special assessments, as they now exist and as they may be amended, with modifications as specified, shall apply to assessments levied by counties for the construction, reconstruction and extension of water and sewerage systems:

G. S. 160-95 to 160-97, which relate to assessments in case of tenants for life or years;

G. S. 160-98, which relates to liens in favor of cotenants or joint tenants paying assessments;

G. S. 160-191, which relates to apportionment of assessments where property

has been or is subject to be subdivided (except that for "governing board," read "board of commissioners.") (1963, c. 985, s. 1.)

§ 153-294.17. Authority to hold assessments in abeyance. — The board of commissioners of any county may, by resolution, provide that assessments levied as authorized in this article be held in abeyance without the payment of interest for any benefited property assessed. In providing for the holding of assessments in abeyance, the board of commissioners shall classify the property specially assessed according to general land use, location with respect to water or sewerage systems, or other relevant factors, and shall provide that the period of abeyance be the same for all assessed property in any classification. Provided, said resolution may not provide for the holding in abeyance of any assessment for more than ten (10) years, or beyond the date on which improvements on any assessed property is actually connected to the water or sewerage construction, reconstruction, or extension for which the assessment was levied, whichever is less. Any assessment held in abeyance shall, upon the termination of the period of abeyance, be paid in accordance with the terms set out in the confirming resolution.

All statutes of limitations are hereby suspended during the time that any assessment is held in abeyance without the payment of interest, as provided in this section. Such time shall not be a part of the time limited for the commencement of action for the enforcement of the payment of any such assessment, and such action may be brought at any time within ten (10) years from the date of termination of the period of abeyance. (1963, c. 985, s. 1.)

§ 153-294.18. Authority to require connections.—The board of commissioners of any county may require owners of improved property located so as to be served by any water or sewerage system to connect with said systems and fix charges for such connections. (1963, c. 985, s. 1.)

§ 153-294.19. Counties excepted from article.—This article shall not apply to the following counties: Ashe, Avery, Bertie, Bladen, Brunswick, Buncombe, Cabarrus, Camden, Carteret, Catawba, Chatham, Cherokee, Chowan, Clay, Columbus, Craven, Cumberland, Currituck, Davidson, Davie, Duplin, Edgecombe, Forsyth, Franklin, Gaston, Gates, Graham, Granville, Greene, Harnett, Haywood, Henderson, Hertford, Hoke, Jackson, Jones, Lee, Lincoln, Macon, Madison, Martin, McDowell, Mecklenburg, Mitchell, Nash, New Hanover, Northampton, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Pitt, Polk, Rowan, Scotland, Stokes, Swain, Warren, Watauga, Wayne, Wilson, and Yancey. (1963, c. 985, s. 1½.)

Article 25.

Metropolitan Sewerage Districts.

§ 153-295. Short title.—This article shall be known and may be cited as the "North Carolina Metropolitan Sewerage Districts Act." (1961, c. 795, s. 1.)

§ 153-296. Definitions; description of boundaries.—(a) Definitions. —As used in this article the following words and terms shall have the following meanings, unless the context shall indicate another or different meaning or intent:

(1) The term "board of commissioners" shall mean the board of commissioners of the county in which a metropolitan sewerage district shall be created under the provisions of this article.

(2) The word "cost" as applied to a sewerage system shall mean the cost of acquiring, constructing, reconstructing, improving, extending, enlarging, repairing and equipping any such system, and shall include the cost of all labor and materials, machinery and equipment, lands, prop-

erty, rights, easements and franchises, plans and specifications, surveys and estimates of cost and of revenues, and engineering and legal services, financing charges, interest prior to and during construction and, if deemed advisable by the district board, for one year after the estimated date of completion of construction, and all other expenses necessary or incident to determining the feasibility or practicability of any such undertaking, administrative expense and such other expenses, including reasonable provision for working capital and a reserve for interest, as may be necessary or incident to the financing herein authorized, and may also include any obligation or expense incurred by the district or by any political subdivision prior to the issuance of bonds under the provisions of this article in connection with any such undertaking or any of the foregoing items of cost.

(3) The word "district" shall mean a metropolitan sewerage district created under the provisions of this article.

(4) The term "district board" shall mean a sewerage district board established under the provisions of this article as the governing body of a district or, if such sewerage district board shall be abolished, any board, body or commission succeeding to the principal functions thereof or upon which the powers given by this article to the sewerage district board shall be given by law.

(5) The term "general obligation bonds" shall mean bonds of a district for the payment of which and the interest thereon all the taxable property within such district is subject to the levy of an ad valorem tax without limitation of rate or amount.

(6) The term "governing body" shall mean the board, commission, council or other body, by whatever name it may be known, of a political subdivision in which the general legislative powers thereof are vested, including, but without limitation, as to any political subdivision other than the county, the board of commissioners for the county when the general legislative powers of such political subdivision are exercised by such board.

(7) The word "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 and existing under the laws of this State or any other state or county.

(8) The term "political subdivision" shall mean any county, city, town, incorporated village, sanitary district, water district, sewer district, special purpose district or other political subdivision or public corporation of this State now or hereafter created or established.

(9) The term "revenue bonds" shall mean bonds the principal of and the interest on which are payable solely from revenues of a sewerage system or systems.

(10) The word "sewage" shall mean the water-carried wastes created in and carried or to be carried away from residences, hotels, schools, hospitals, industrial establishments, commercial establishments or any other private or public buildings, together with such surface or ground water or household and industrial wastes as may be present.

(11) The term "sewage disposal system" shall mean any plant, system, facility or property, either within or without the limits of the district, used or useful or having the present capacity for future use in connection with the collection, treatment, purification or disposal of sewage, or any integral part thereof, including but not limited to treatment plants, pumping stations, intercepting sewers, trunk sewers, pressure lines, mains and all necessary appurtenances and equipment, and

all property, rights, easements and franchises relating thereto and deemed necessary or convenient by the district board for the operation thereof.

(12) The term "sewerage system" shall embrace both sewers and sewage disposal systems and any part or parts thereof, either within or without the limits of the district, all property, rights, easements and franchises relating thereto, and any and all buildings and other structures necessary or useful in connection with the ownership, operation or maintenance thereof.

(13) The word "sewers" shall mean any mains, pipes and laterals, including pumping stations, either within or without the limits of the district, for the reception of sewage and carrying such sewage to an outfall or some part of a sewage disposal system.

(b) Description of Boundaries.—Whenever this article requires that the boundaries of an area be described, it shall be sufficient if the boundaries are described in a manner which conveys an understanding of the location of the land and may be

(1) By reference to a map,

(2) By metes and bounds,

(3) By general description referring to natural boundaries, boundaries of political subdivisions, or boundaries of particular tracts or parcels of land, or

(4) Any combination of the foregoing. (1961, c. 795, s. 2.)

§ 153-297. Procedure for creation; resolutions and petitions for creation; notice to and action by State Stream Sanitation Committee; notice and public hearing; resolutions creating districts; actions to set aside proceedings.—Any two or more political subdivisions in a county, or any political subdivision or subdivisions and any unincorporated area or areas located within the same county, which political subdivisions or areas need not be contiguous, may petition the board of commissioners for the creation of a metropolitan sewerage district under the provisions of this article by filing with the board of commissioners:

(1) A resolution of the governing body of each such political subdivision stating the necessity for the creation of a metropolitan sewerage district under the provisions of this article in order to preserve and promote the public health and welfare within the area of the proposed district, and requesting the creation of a metropolitan sewerage district having the boundaries set forth in said resolution, and

(2) If any unincorporated area is to be included in such district, a petition, signed by not less than fifty-one per centum (51%) of the freeholders resident within such area, defining the boundaries of such area, stating the necessity for the creation of a metropolitan sewerage district under the provisions of this article in order to preserve and promote the public health and welfare within the proposed district, and requesting the creation of a metropolitan sewerage district having the boundaries set forth in such petition for such district.

Upon the receipt of such resolutions and petitions requesting the creation of a metropolitan sewerage district, the board of commissioners, through its chairman, shall notify the State Stream Sanitation Committee of the receipt of such resolutions and petitions, and shall request that a representative of the State Stream Sanitation Committee hold a joint public hearing with the board of commissioners concerning the creation of the proposed metropolitan sewerage district. The chairman of the State Stream Sanitation Committee and the chairman of the board of 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 commis-

sioners 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 circulating in the proposed district at least once a week for four successive weeks, the first publication to be at least thirty days prior to such hearing. In the event all matters pertaining to the creation of such metropolitan sewerage district cannot be concluded at such hearing, such hearing may be continued to a time and place within the proposed district determined by the board of commissioners with the concurrence of the representative of the State Stream Sanitation Committee.

If, after such hearing, the State Stream Sanitation Committee and the board of commissioners shall deem it advisable to comply with the request of such resolutions and petitions, and determine that the preservation and promotion of the public health and welfare in the area or areas described in such resolutions and petitions require that a metropolitan sewerage district should be created and established, the State Stream Sanitation Committee shall adopt a resolution to that effect, defining the boundaries of such district and declaring the territory within such boundaries to be a metropolitan sewerage district under the name and style of "..... Metropolitan Sewerage District of ..... County;" provided that the State Stream Sanitation Committee may make minor deviations in the boundaries from those prescribed in the resolutions and petitions upon the State Stream Sanitation Committee determining that such deviations are advisable in the interest of the public health, provided no such district shall include any political subdivision which has not petitioned for inclusion as provided for in this article.

The State Stream Sanitation Committee shall cause copies of the resolution creating the metropolitan sewerage district to be sent to the board of commissioners and to the governing body of each political subdivision included in the district. The board of commissioners shall cause a copy of such resolution of the State Stream Sanitation Committee to be published in a newspaper circulating within the district once in each of two successive weeks, and a notice substantially in the following form shall be published with such resolution:

The foregoing resolution was passed by the State Stream Sanitation Committee 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 the metropolitan sewerage district therein described must be commenced within thirty days after the first publication of said resolution.

.....
Clerk, Board of Commissioners
for ..... County.

Any action or proceeding in any court to set aside a resolution creating a metropolitan sewerage district or to obtain any other relief upon the ground that such resolution or any proceeding or action taken with respect to the creation of such district is invalid, must be commenced within thirty days after the first publication of the resolution and said notice. After the expiration of such period of limitation, no right of action or defense founded upon the invalidity of the resolution or the creation of the metropolitan sewerage district therein described shall be asserted, nor shall the validity of the resolution or of the creation of such metropolitan sewerage district be open to question in any court upon any ground whatever, except in an action or proceeding commenced within such period. (1961, c. 795, s. 3.)

§ 153-298. District board; composition, appointment, term, oaths and removal of members; organization; meetings; quorum; compensation and expenses of members.—(a) Immediately after the creation of the district, the board of commissioners shall appoint three members of the district board and the governing body of each political subdivision included in the district shall

appoint one member, except that if any city or town has a population, according to the latest decennial census, in excess of the total population of the remaining cities and towns within the district, or where there are no other cities or towns involved, if the census population is in excess of the total population of the remainder of the district, the governing body shall appoint three members. No appointment of a member of the district board shall be made by or in behalf of any political subdivision of which the board of commissioners shall be the governing body, the three appointees designated by the board of commissioners shall be selected from within the district and shall be deemed to represent all such political subdivisions. The members of the district board first appointed shall have terms expiring one year, two years and three years, respectively, from the date of adoption of the resolution of the State Stream Sanitation Committee creating the district, as the board of commissioners shall determine; provided that of the three members appointed by any governing body, not more than one such member shall be appointed for a three-year term. Successive members shall each be appointed for a term of three years, but any person appointed to fill a vacancy shall be appointed to serve only for the unexpired term and any member of the district board may be reappointed. Appointments of successor members shall, in each instance, be made by the governing body making the initial appointment or appointments. All members shall serve until their successors have been duly appointed and qualified, and any member of the district board may be removed for cause by the governing body appointing him.

Each member of the district board before entering upon his duties shall take and subscribe an oath or affirmation to support the Constitution and laws of the United States and of this State and to discharge faithfully the duties of his office, and a record of each such oath shall be filed with the clerk of the board of commissioners.

The district board shall elect one of its members as chairman and another as vice chairman and shall appoint a secretary and a treasurer who may but need not be members of the district board. The offices of secretary and treasurer may be combined. The terms of office of the chairman, vice chairman, secretary and treasurer shall be as provided in the bylaws of the district board.

The district board shall meet regularly at such places and dates as determined by the board. Special meetings may be called by the chairman on his own initiative and shall be called by him upon request of two or more members of the board. All members shall be notified in writing at least twenty-four hours in advance of such meeting. A majority of the members of the district board shall constitute a quorum and the affirmative vote of a majority of the members of the district board present at any meeting thereof shall be necessary for any action taken by the district board. No vacancy in the membership of the district board shall impair the right of a quorum to exercise all the rights and perform all the duties of the district board. Each member including the chairman shall be entitled to vote on any question. The members of the district board may receive compensation in an amount to be determined by the board, but not to exceed ten dollars ($10.00) for each meeting attended, and may be reimbursed the amount of actual expenses incurred by them in the performance of their duties.

(b) Any metropolitan sewerage district wholly within the corporate limits of two or more municipalities shall be governed by a district board consisting of members appointed by the governing body of each political subdivision (municipal corporation) included wholly or partially in the district and an additional at-large member appointed by the other members of the district board as provided in this subsection. The governing body of each constituent municipality shall initially appoint two members from its qualified electors, one for a term expiring the first day of July after the first succeeding regular election in which municipal officers shall be elected by the municipality from which he is appointed, and

the other for a term expiring the first day of July after the second succeeding regular election of municipal officers in the municipality. Thereafter, subsequent to each ensuing regular election of municipal officers the governing body of each municipal corporation composing any part of the metropolitan sewerage district shall appoint one member to the district board for a term of four (4) years beginning on the first day of July. The one additional at-large member of the district board shall be a qualified elector of a constituent municipality of the district and appointed initially and quadrennially thereafter by majority vote of the other district board membership for a term of four (4) years which shall expire on the first day of August in every fourth calendar year thereafter.

Any vacancy in district board membership shall be filled by appointment of the original appointing authority for the remainder of the unexpired term.

The provisions of subsection (a) in particular and of this article generally not inconsistent with this subsection shall also apply. (1961, c. 795, s. 4; 1963, c. 471.)

Editor's Note. — The 1963 amendment redesignated the former section as subsection (a) and added subsection (b).

§ 153-299. Procedure for inclusion of additional political subdivision or unincorporated area; notice and hearing; elections; actions questioning validity of elections.—If, at any time subsequent to the creation of a district, there shall be filed with the district board a resolution of the governing body of a political subdivision, or a petition, signed by not less than fifty-one per centum (51%) of the freeholders resident within an unincorporated area, requesting inclusion in the district of such political subdivision or unincorporated area, and if the district board shall favor the inclusion in the district of such political subdivision or unincorporated area, the district board shall notify the board of commissioners and the board of commissioners, through its chairman, shall thereupon request that a representative of the State Stream Sanitation Committee hold a joint public hearing with the board of commissioners concerning the inclusion of such political subdivision or unincorporated area in the district. The chairman of the State Stream Sanitation Committee and the chairman of the board of commissioners shall name a time and place within the district at which the public hearing shall be held. The chairman of the board of 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 circulating in the district and in any such political subdivision or unincorporated area at least once a week for four successive weeks, the first publication to be at least thirty days prior to such hearing. In the event all matters pertaining to the inclusion of such political subdivision or unincorporated area cannot be included at such hearing, such hearing may be continued to a time and place within the district determined by the board of commissioners with the concurrence of the representative of the State Stream Sanitation Committee.

If, after such hearing, the State Stream Sanitation Committee and the board of commissioners shall determine that the preservation and promotion of the public health and welfare require that such political subdivision or unincorporated area be included in the district, the State Stream Sanitation Committee shall adopt a resolution to that effect, defining the boundaries of the district including such political subdivision or unincorporated area which has filed a resolution or petition as provided for in this section, and declaring such political subdivision or unincorporated area to be included in the district, subject to the approval, as to the inclusion of such political subdivision, of a majority of the qualified voters of such political subdivision, or as to the inclusion of such unincorporated area, of a majority of the qualified voters of such unincorporated area, voting at an election thereon to be called and held in such political subdivision or unincorporated area. When an election is required to be held within both a political subdivision and an unincorporated area, a separate election shall be called and held for the unin-

corporated area and a separate election shall be called and held for the political subdivision. Such separate elections, although independent one from the other, shall be called and held within each political subdivision and within the unincorporated area simultaneously on the same date.

If, at or prior to such public hearing, there shall be filed with the district board a petition signed by not less than ten per centum (10%) of the freeholders residing in the district requesting an election to be held therein on the question of including any such political subdivision or unincorporated area, the district board shall certify a copy of such petition to the board of commissioners and the board of commissioners shall order and provide for the submission of such question to the qualified voters within the district. Any such election may be held on the same day as the election in the political subdivision or unincorporated area proposed to be included in the district. Elections and the registration therefor within the district and an unincorporated area may be held pursuant to a single notice. Notice of registration and election within a political subdivision shall be given by separate notice.

The date or dates of any such election or elections, the election officers, the polling places and the election precincts shall be determined by the board of commissioners which shall also provide any necessary registration and polling books, and the expenses of holding any such election shall be paid from the funds of the district; provided, however, that elections held within a city or town shall be conducted as required by law for special municipal elections, except as such may be modified by the provisions of this article, and the expense of such municipal elections shall be paid for by such city or town.

Notice of any such election shall be given by publication once a week for three successive weeks, the first publication to be at least thirty days before any such election, in a newspaper circulating in the political subdivision or unincorporated area to be included in the district, and, if an election is to be held in the district, in a newspaper circulating in the district. The notice shall state (i) the boundaries of such political subdivision or unincorporated area, (ii) the boundaries of the district after the inclusion of such political subdivision or unincorporated area, and (iii) in the case of a political subdivision proposed to be included in the district, that if a majority of the qualified voters voting at such election in such political subdivision and, if an election is held in the district, a majority of the qualified voters voting at such election in the district, shall vote in favor of the inclusion of such political subdivision, then such political subdivision so included in the district shall be subject to all debts of the district, and, in the case of an unincorporated area proposed to be included in the district, that if a majority of the qualified voters voting at such election in such unincorporated area and, if an election is held in the district, a majority of the qualified voters voting at such election in the district, shall vote in favor of the inclusion of such unincorporated area, then such unincorporated area so included in the district shall be subject to all debts of the district.

A new registration of the qualified voters in the political subdivision or unincorporated area to be included in the district shall be ordered by the board of commissioners and, if an election is to be held in the district and such election is the first election held in the district after its creation, a new registration of the qualified voters of the district shall be ordered; provided, however, that within a city or town which is voting on the question of inclusion in the district, a new registration may be ordered at the discretion of the governing body thereof and such registration shall be conducted in accordance with the law applicable to the registration of voters in municipal elections. If an election has previously been held in the district, a supplemental registration of all qualified voters not theretofore registered may, at the discretion of the board of commissioners, be ordered and held in accordance with the provisions for registration as herein set forth. Notice of any such registration shall be given by the board of commissioners by

publication once at least thirty days before the close of the registration books and such notice of registration may be considered one of the three notices required of the election. The time and manner of any such registration shall, as near as may be, conform with that of the registration of voters provided in G. S. 163-31. The notice of any such registration shall state the days on which the books will be open for the registration of voters and the place or places at which they will be open on Saturdays. The books for any such registration shall close on the second Saturday before the election. The Saturday before election day shall be challenge day and, except as otherwise provided in this section, any such election shall be held in accordance with the law governing general elections.

A ballot shall be furnished to each qualified voter in any such election, which ballot may contain the words "For inclusion in the ..... Metropolitan Sewerage District of ..... County of ....." and the words "Against inclusion in the ..... Metropolitan Sewerage District of ..... County of .....", with squares opposite said affirmative and negative forms of the question of inclusion 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.

If a majority of the qualified voters voting at such election in a political subdivision proposed to be included in the district and, if an election is held in the district, a majority of the qualified voters voting at such election in the district, shall vote in favor of the inclusion of such political subdivision, then the district shall be deemed to be enlarged to include such political subdivision from and after the date of the declaration of the result of the election by the district board, and such political subdivision shall be subject to all debts of the district. If a majority of the qualified voters voting at such election in an unincorporated area proposed to be included in the district and, if an election is held in the district, a majority of the qualified voters voting at such election in the district shall vote in favor of the inclusion of such unincorporated area, then the district shall be deemed to be enlarged to include such unincorporated area from and after the date of the declaration of the result of the election by the district board, and such unincorporated area shall be subject to all debts of the district.

The returns of any such election held in an unincorporated area shall be canvassed by the board of commissioners and certified to the district board. The returns of any such election held within a municipality shall be canvassed by the municipal governing body and certified to the district board. Upon receipt of the certified election returns, the district board shall declare the results thereof.

A statement of the result of any such election shall be prepared and signed by a majority of the members of the district board, which statement shall show the date of any such election, the number of qualified voters within the political subdivision or unincorporated area who voted for and against the inclusion thereof and, if an election has been held within the district, the number of qualified voters within the district who voted for and against such inclusion. If a majority of the qualified voters voting at the election in the political subdivision or unincorporated area to be included and, if an election has been held in the district, a majority of the qualified voters voting at the election in the district shall vote in favor of such inclusion, the statement of result shall so declare the result of the election and state that such political subdivision or unincorporated area is from the date of such declaration a part of the district and subject to all debts thereof. Such statement shall be published once. No right of action or defense founded upon the invalidity of any such election shall be asserted, nor shall the validity of any such 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. (1961, c. 795, s. 5.)

§ 153-300. Powers generally; fiscal year.—Each district shall be deemed to be a public body and body politic and corporate exercising public and

essential governmental functions to provide for the preservation and promotion of the public health and welfare, and each district is hereby authorized and empowered:

(1) To adopt bylaws for the regulation of its affairs and the conduct of its business not in conflict with this or other law;

(2) To adopt an official seal and alter the same at pleasure;

(3) To maintain an office at such place or places in the district as it may designate;

(4) To sue and be sued in its own name, plead and be impleaded;

(5) To acquire, lease as lessor or lessee, construct, reconstruct, improve, extend, enlarge, equip, repair, maintain and operate any sewerage system or part thereof within or without the district; provided, however, that no such sewerage system or part thereof shall be located in any city, town or incorporated village outside the district except with the consent of the governing body thereof, and each such governing body is hereby authorized to grant such consent;

(6) To issue general obligation bonds and revenue bonds of the district as hereinafter provided to pay the cost of a sewerage system or systems;

(7) To issue general obligation refunding bonds and revenue refunding bonds of the district as hereinafter provided;

(8) To fix and revise from time to time and to collect rents, rates, fees and other charges for the use of or for the services and facilities furnished by any sewerage system;

(9) To cause taxes to be levied and collected upon all taxable property within the district sufficient to meet the obligations of the district, to pay the cost of maintaining, repairing and operating any sewerage system or systems, and to pay all obligations incurred by the district in the performance of its lawful undertakings and functions;

(10) To acquire in the name of the district, either within or without the corporate limits of the district, by gift, purchase or the exercise of the right of eminent domain, which right shall be exercised in accordance with the provisions of chapter 40 of the General Statutes of North Carolina, any improved or unimproved lands or rights in land, and to acquire such personal property, as it may deem necessary in connection with the acquisition, construction, reconstruction, improvement, extension, enlargement, repair, equipment, maintenance or operation of any sewerage system, and to hold and dispose of all real and personal property under its control;

(11) 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, including a trust agreement or trust agreements securing any revenue bonds issued hereunder;

(12) To employ such consulting and other engineers, superintendents, managers, construction and financial experts, accountants, attorneys, employees and agents as may, in the judgment of the district board be deemed necessary, and to fix their compensation; provided, however, that the provisions of G. S. 159-20 shall be complied with to the extent that the same shall be applicable;

(13) To receive and accept from the United States of America or the State of North Carolina or any agency or instrumentality thereof loans, grants, advances or contributions for or in aid of the planning, acquisition, construction, reconstruction, improvement, extension, enlargement, repair, equipment, maintenance or operation of any sewerage system or systems, to agree to such reasonable conditions or requirements as may be imposed, and to receive and accept 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 loans, grants, advances or contributions may be made; and

(14) To do all acts and things necessary or convenient to carry out the powers granted by this article.

Each district shall keep its accounts on the basis of a fiscal year commencing on the first day of July and ending on the thirtieth day of June of the following year. (1961, c. 795, s. 6.)

§ 153-301. Authority to issue bonds generally.—Each district is hereby authorized and empowered to issue its general obligation bonds or revenue bonds, at one time or from time to time, for the purpose of providing funds for paying all or any part of the cost of a sewerage system or systems. (1961, c. 795, s. 7.)

§ 153-302. Contents of order authorizing issuance of general obligation bonds.—The issuance of general obligation bonds of a district may be authorized by an order of the district board which 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 of and the interest on the bonds when due shall be annually levied and collected on all taxable property within the district.

(4) That the order shall take effect when and if it is approved by a majority of the qualified voters of the district voting at an election thereon. (1961, c. 795, s. 8.)

§ 153-303. Securing payment of general obligation bonds.—Any general obligation bonds of a district may be additionally secured by a pledge of the revenues of the sewerage system or any portion thereof. In the discretion of the district board the order authorizing any such general obligation bonds may state that there may be pledged to the payment of the bonds and the interest thereon revenues of the sewerage system available therefor if and to the extent that the district board shall thereafter determine by resolution prior to the issuance of bonds, and that a tax sufficient to pay the principal of and the interest on the bonds shall be annually levied and collected on all taxable property within the district but in the event that any revenues of the sewerage system shall be pledged to the payment of the bonds such tax may be reduced by the amount of such revenues available for the payment of such principal and interest. (1961, c. 795, s. 9.)

§ 153-304. General obligation bonds may be issued within five years of order; repeal of order. — After an order authorizing general obligation bonds takes effect, bonds may be issued in conformity with its provisions at any time within five (5) years after the order takes effect, unless the order shall within such period have been repealed by the district board, which repeal is permitted (without the privilege of referendum upon the question of repeal) unless notes shall have been issued in anticipation of the receipt of the proceeds of the bonds and shall be outstanding. (1961, c. 795, s. 10.)

§ 153-305. Publication of order authorizing general obligation bonds; actions questioning validity of order.—An order authorizing general obligation bonds shall be published in a newspaper circulating in the district once in each of two successive weeks after its passage. A notice substantially in the following form shall be published with the order:

The foregoing order was passed by the sewerage district board of the ..... Metropolitan Sewerage District of ..... County on the ..... day of ....., 19....., and was first published on the ..... day of ....., 19.....

Any action or proceeding questioning the validity of said order must be commenced within thirty (30) days after the first publication of said order.

.....
Secretary

Any action or proceeding in any court to set aside an order authorizing general obligation bonds, or to obtain any other relief upon the ground that such order is invalid, must be commenced within thirty (30) days after the first publication of the order and said notice. After the expiration of such period of limitation, no right of action or defense founded upon the invalidity of the order shall be asserted, nor shall the validity of the order be open to question in any court upon any ground whatever, except in an action or proceeding commenced within such period. (1961, c. 795, s. 11.)

§ 153-306. Election on issuance of general obligation bonds; actions questioning validity.—Upon the adoption of an order authorizing general obligation bonds, the district board shall request the board of commissioners to call an election within the district on the issuance of such bonds.

The date of any such election, the election officers, the polling place or places and the election precinct or precincts shall be determined by the board of commissioners which shall also provide any necessary registration and polling books, and the expenses of holding any such registration and election shall be paid from funds of the district.

Notice of any such election shall be given by publication once a week for three successive weeks, the first publication to be at least thirty (30) days before any such election, in a newspaper circulating in the district. Such notice shall state briefly the purpose for which the bonds are to be issued, the maximum amount of the bonds, that a tax will be levied for the payment thereof and the date of the election and the location of the polling place or places. If such election is the first election to be held in the district, a new registration of the qualified voters of the district shall be ordered. If an election has previously been held in the district, a new registration or a supplemental registration of all qualified voters not theretofore registered may, at the discretion of the board of commissioners, be ordered and held in accordance with the provisions for registration as herein set forth. Notice of any such registration shall be given by the board of commissioners by publication once at least thirty (30) days before the close of the registration books and such notice of registration may be considered one of the three notices required of the election. The time and manner of any such registration shall, as near as may be, conform with that of the registration of voters provided in G. S. 163-31. The notice of any such registration shall state the days on which the books will be open for the registration of voters and the place or places at which they will be open on Saturdays. The books for any such 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, any such election shall be held in accordance with the law governing general elections.

A ballot shall be furnished to each qualified voter, which ballot may contain the words "For approval of the bond order adopted by the sewerage district board of the ..... Metropolitan Sewerage District of ..... County on the .... day of ....., 19...., authorizing the issuance of not exceeding $..... general obligation bonds of said Metropolitan Sewerage District for the purpose of (briefly stating the purpose) and the levy of a tax for the payment thereof", and the words "Against approval of the bond order adopted by the sewerage district board of the ..... Metropolitan Sewerage District of ..... County on the ..... day of ....., 19...., authorizing the issuance of not exceeding $..... general obligation bonds of said Metropolitan Sewerage District for the purpose of (briefly stating the purpose) and the levy of a tax for the payment thereof", with squares opposite said affirmative and negative forms of the question, in one of which squares the voter may make a cross (X) mark, but this form of ballot is not prescribed.

The returns of any such election shall be canvassed by the board of commissioners and certified to the district board which shall declare the result thereof.

The district board shall prepare a statement showing the number of votes cast for and against the order and declaring the result of the election, which statement shall be signed by a majority of the members of the district board, recorded in the minutes of the district board and published once in a newspaper circulating in the district.

A notice substantially in the following form shall be published with the statement of the result of the election:

No right of action or defense founded upon the invalidity of the above-mentioned election shall be asserted, nor shall the validity of such election be open to question in any court upon any ground whatever, except in an action or proceeding commenced within thirty (30) days after the publication of this statement.

.....

Secretary

Any action or proceeding in any court to set aside an election on the issuance of bonds of a district or to obtain any other relief upon the ground that such election or any proceeding or action taken with respect to the holding of such election are invalid, must be commenced within thirty (30) days after the publication of the statement of the result of the election. After the expiration of such period of limitation, no right of action or defense founded upon the invalidity of the election shall be asserted, nor shall the validity be open to question in any court upon any ground whatever, except in an action or proceeding commenced within such period.

If at such election a majority of the qualified voters who vote thereon shall vote in favor of the issuance of such bonds, such bonds may be sold and issued in the manner hereinafter provided. If the issuance of such bonds shall not be approved, the district board may, at any time thereafter, cause another election to be held for the same objects and purposes or for any other objects and purposes. (1961, c. 795, s. 12.)

§ 153-307. Borrowing upon bond anticipation notes; issuance, renewal and retiral of notes.—At any time after a general obligation bond order has taken effect, a district may borrow money for the purposes for which the bonds are to be issued, in anticipation of the receipt of the proceeds of the sale of the bonds, and within the maximum authorized amount of the bond issue, and negotiable bond anticipation notes shall be issued for all moneys so borrowed. Such notes shall be payable not later than five (5) years after the time of taking effect of the order authorizing the bonds in anticipation of which such notes are issued. The district board may, in its discretion, retire any such notes by means of current revenues or other funds, in lieu of retiring them by means of bonds. Before the actual retirement of any such notes by any means other than the issuance of bonds, the district board shall amend such order so as to reduce the authorized amount of the bond issue by the amount of the notes to be so retired. Such an amendatory order shall take effect upon its passage and need not be published. Any bond anticipation notes may be renewed from time to time and money may be borrowed upon bond anticipation notes from time to time for the payment of any indebtedness evidenced thereby, but all such notes shall mature not later than five (5) years after the time of taking effect of said order. The issuance of such notes shall be authorized by resolution of the district board which shall fix the actual or maximum face amount of the notes and the actual or maximum rate of interest to be paid thereon. The district board may delegate to any officer thereof the power to fix said face amount and rate of interest within the limitations prescribed by said resolution. Any such notes shall be executed in the manner herein provided for the execution of bonds. (1961, c. 795, s. 13.)

§ 153-308. Full faith and credit pledged for payment of bonds and notes; ad valorem tax authorized.—The full faith and credit of the district

shall be deemed to be pledged for the punctual payment of the principal of and the interest on every general obligation bond and note issued under the provisions of this article. There shall be annually levied and collected a tax ad valorem upon all the taxable property in the district sufficient to pay the interest on and the principal of all such general obligation bonds as such interest and principal become due; provided, however, that such tax may be reduced by the amount of other moneys actually available for such purpose. There may also be levied and collected in any year a tax ad valorem upon all the taxable property in the district (which tax shall not be subject to any limitation as to rate or amount contained in any other law) for the purpose of paying all or any part of the cost of maintaining, repairing and operating a sewerage system or systems. (1961, c. 795, s. 14.)

§ 153-309. Determination of tax rate by district board; levy and collection of tax; remittance and deposit of funds.—After each assessment for taxes following the creation of the district, the board of commissioners shall file with the district board the valuation of assessable property within the district. The district board shall then determine the amount of funds to be raised by taxation for the ensuing year in excess of available funds to provide for the payment of the interest on and the principal of all outstanding general obligation bonds as the same shall become due and payable, to pay the cost of maintaining, repairing and operating any sewerage system or systems, and to pay all obligations incurred by the district in the performance of its lawful undertakings and functions.

The district board shall determine the number of cents per one hundred dollars ($100.00) necessary to raise said amount and certify such rate to the board of commissioners. The board of commissioners in its next annual levy shall include the number of cents per one hundred dollars ($100.00) certified by the 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 district board and deposited by the district board in a separate account in a bank in the State of North Carolina. Such levy may include an amount for reimbursing the county for the additional cost to the county of levying and collecting such taxes, pursuant to such formula as may be agreed upon by the district board and the board of commissioners, to be deducted from the collections and stated with each remittance to the district board. 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. (1961, c. 795, s. 15.)

§ 153-310. Covenants securing revenue bonds; rights of holders.—Any resolution or resolutions authorizing the issuance of revenue bonds under this article to finance all or any part of the cost of any sewerage system or systems, or any trust agreement or agreements securing any such revenue bonds, may contain convenants as to:

(1) The rents, rates, fees and other charges for the use of or for the services and facilities furnished by the sewerage system or systems;

(2) The use and disposition of the revenues of the sewerage system or systems;

(3) The creation and maintenance of reserves or sinking funds and the regulation, use and disposition thereof;

(4) The purpose or purposes to which the proceeds of the sale of said bonds may be applied, and the use and disposition of such proceeds;

(5) Events of default and the rights and liabilities arising thereupon, the terms and conditions upon which revenue bonds issued under this article shall become or may be declared due before maturity, and the

terms and conditions upon which such declaration and its consequences may be waived;

(6) The issuance of other or additional bonds or instruments payable from or charged against all or part of the revenue of a sewerage system;

(7) Any insurance to be carried on a sewerage system or any part thereof and the use and disposition of any insurance moneys;

(8) Books of account and the inspection and audit thereof;

(9) Limitations or restrictions as to the leasing or other disposition of any sewerage system while any of the revenue bonds or interest thereon remain outstanding and unpaid; and

(10) The continuous operation and maintenance of a sewerage system.

Revenue bonds issued under this article and payable solely from revenues of a sewerage system or systems shall not be payable from or charged upon any funds of the district other than such revenues, nor shall the district be subject to any pecuniary liability thereon. No holder or holders of any such revenue bonds shall ever have the right to compel any exercise of the taxing power to pay any such revenue bonds or the interest thereon, or to enforce payment thereof against any property of the district other than the revenues so pledged. (1961, c. 795, s. 16.)

§ 153-311. Form and execution of bonds; terms and conditions; use of proceeds; interim receipts or temporary bonds; replacement of lost, etc., bonds; consent for issuance.—All bonds issued under the provisions of this article shall be dated, shall mature at such time or times not exceeding forty (40) years from their date or dates and shall bear interest at such rate or rates not exceeding six per centum (6%) per annum, all as may be determined by the district board, and may be made redeemable before maturity, at the option of the district board, at such price or prices and under such terms and conditions as may be fixed by the district board prior to the issuance of the bonds. The district board shall determine the form and the manner of execution of the bonds, including any interest coupons to be attached thereto, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest, which may be at any bank or trust company within or without the State. In case any officer whose signature or a facsimile of whose signature shall appear on any bonds or coupons shall cease to be such officer before the delivery of such bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery, and any bond may bear the facsimile signature of, or may be signed by, such person as at the actual time of the execution of such bond shall be duly authorized to sign such bond although at the date of such bond such person may not have been such officer. Notwithstanding any other provisions of this article or any recitals in any bonds issued under the provisions of this article, all such bonds shall be deemed to be negotiable instruments under the laws of this State. The bonds shall be issued in coupon form, and provisions may be made by the district board for the registration of any bonds as to principal alone.

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 district board may provide in the resolution authorizing the issuance of such bonds or in any trust agreement securing any revenue bonds.

Prior to the preparation of definitive bonds, the district board may, under like restrictions, issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds shall have been executed and are available for delivery, except that such interim receipts or temporary bonds shall be approved by the Local Government Commission in the same manner as the definitive bonds are approved by the Local Government Commission under the provisions of this article. Delivery of interim receipts or temporary bonds

or of the bonds authorized pursuant to this article to the purchaser or order, or delivery of definitive bonds in exchange for interim receipts or temporary bonds, shall be made in the same manner as municipal bonds may be delivered under the provisions of the Local Government Act. The district board may also provide for the replacement of any bonds which shall become mutilated or shall be destroyed or lost.

Excepting the requirement herein that approval of the Local Government Commission shall be obtained, bonds and bond anticipation notes may be issued under the provisions of this article without obtaining the consent of any commission, board, bureau or agency of the State or of any political subdivision, 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. (1961, c. 795, s. 17.)

§ 153-312. Bonds and notes subject to provisions of Local Government Act; approval and sale.—All general obligation bonds and bond anticipation notes issued under the provisions of this article shall be subject to the provisions of the Local Government Act.

All revenue bonds issued under the provisions of this article shall be approved and sold by the Local Government Commission in the same manner as municipal bonds are approved and sold by the Local Government Commission, except that the Local Government Commission may sell any such revenue bonds at private sale and without advertisement if the Local Government Commission shall determine that such private sale is in the public interest, and except that, with the consent of the district board, the Local Government Commission may sell any such revenue bonds at less than par and accrued interest, 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 six per centum (6%) per annum, computed with relation to the absolute maturity or maturities of the bonds or notes 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 such bonds or notes prior to maturity. (1961, c. 795, s. 18.)

§ 153-313. Rates and charges for services.—The district board may fix, and may revise from time to time, rents, rates, fees and other charges for the use of and for the services furnished or to be furnished by any sewerage system. Such rents, rates, fees and charges shall not be subject to supervision or regulation by any bureau, board, commission, or other agency of the State or of any political subdivision. Any such rents, rates, fees and charges pledged to the payment of revenue bonds of the district shall be fixed and revised so that the revenues of the sewerage system, together with any other available funds, shall be sufficient at all times to pay the cost of maintaining, repairing and operating the sewerage system the revenues of which are pledged to the payment of such revenue bonds, including reserves for such purposes, and to pay the interest on and the principal of such revenue bonds as the same shall become due and payable and to provide reserves therefor. If any such rents, rates, fees and charges are pledged to the payment of any general obligation bonds issued under this article, such rents, rates, fees and charges shall be fixed and revised so as to comply with the requirements of such pledge. The district board may provide methods for collection of such rents, rates, fees and charges and measures for enforcement of collection thereof, including penalties and the denial or discontinuance of service. (1961, c. 795, s. 19.)

§ 153-314. Pledges of revenues; lien.—All pledges of revenues under the provisions of this article shall be valid and binding from the time when such pledge is made. All such revenues so pledged and thereafter received by the district board shall immediately be subject to the lien of such pledge without any

physical delivery thereof or further action, and the lien of such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the district, irrespective of whether such parties have notice thereof. (1961, c. 795, s. 20.)

§ **153-315. Bondholder's remedies.**—Any holder of general obligation or revenue bonds issued under the provisions of this article or of any of the coupons appertaining thereto, and the trustee under any trust agreement, except to the extent the rights herein given may be restricted by the resolution authorizing the issuance of such bonds or by such trust agreement, may, either at law or in equity, by suit, action, mandamus or other proceeding, protect and enforce any and all rights under the laws of the State or granted hereunder or under such resolution or trust agreement, and may enforce and compel the performance of all duties required by this article or by such resolution or trust agreement to be performed by the district board or by any officer thereof, including the fixing, charging and collection of rents, rates, fees and charges for the use of or for the services and facilities furnished by a sewerage system. (1961, c. 795, s. 21.)

§ **153-316. Refunding bonds.**—A district is hereby authorized to issue from time to time general obligation refunding bonds or revenue refunding bonds for the purpose of refunding any general obligation bonds or revenue bonds or bonds representing bonded indebtedness assumed by the district under the provisions of this article or any or all of such bonds then outstanding, 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 district board, for the additional purpose of paying all or any part of the cost of a sewerage system. The provisions of this article relating to general obligation bonds shall control as to any general obligation bonds issued under the provisions of this section, insofar as such provisions may be applicable, except that an order authorizing general obligation bonds under the provisions of this section for the sole purpose of refunding any general obligation bonds of the district or any bonds representing bonded indebtedness assumed by the district shall become effective upon its passage and need not be submitted to the voters, and the provisions of this article relating to revenue bonds shall control as to any revenue bonds issued under the provisions of this section insofar as the same may be applicable. (1961, c. 795, s. 22.)

§ **153-317. Authority of governing bodies of political subdivisions.**—The governing body of any political subdivision is hereby authorized and empowered:

(1) Subject to the approval of the Local Government Commission, to transfer jurisdiction over, and to lease, lend, sell, grant or convey to a district, upon such terms and conditions as the governing body of such political subdivision may agree upon with the district board, the whole or any part of any existing sewerage system or systems or such real or personal property as may be necessary or useful in connection with the acquisition, construction, reconstruction, improvement, extension, enlargement, equipment, repair, maintenance or operation of any sewerage system by the district, including public roads and other property already devoted to public use;

(2) To make and enter into contracts or agreements with a district, upon such terms and conditions and for such periods as such governing body and the district board may determine:

a. For the collection, treatment or disposal of sewage;

b. For the collecting by such political subdivision or by the district of rents, rates, fees or charges for the services and facilities provided to or for such political subdivision or its inhabitants by

any sewerage system, and for the enforcement of collection of such rents, rates, fees and charges; and

c. For the imposition of penalties, including the shutting off of the supply of water furnished by any water system owned or operated by such political subdivision, in the event that the owner, tenant or occupant of any premises utilizing such water shall fail to pay any such rents, rates, fees or charges;

(3) To fix, and revise from time to time, rents, rates, fees and other charges for the services furnished or to be furnished by a sewerage system under any contract between the district and such political subdivision, and to pledge all or any part of the proceeds of such rents, rates, fees and charges to the payment of any obligation of such political subdivision to the district under such contract;

(4) To pay any obligation of such political subdivision to the district under such contract from any available funds of the political subdivision and to levy and collect a tax ad valorem for the making of any such payment; and

(5) In its discretion or if required by law, to submit to its qualified electors under the election laws applicable to such political subdivision any contract or agreement which such governing body is authorized to make and enter into with the district under the provisions of this article.

Any such election upon a contract or agreement, may, at the discretion of the governing body, be called and held under the election laws applicable to the issuance of bonds by such political subdivision. (1961, c. 795, s. 23.)

§ 153-318. Rights of way and easements in streets and highways.—A right of way or easement in, along, or across any State highway system road, or street, and along or across any city or town street within a district is hereby granted to a district in case such right of way is found by the 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 system, road, street, or property shall be done in accordance with the rules and regulations and any reasonable requirements of the State Highway Commission, and any work done in, along, or across any municipal street or property shall be done in accordance with any reasonable requirements of the municipal governing body. (1961, c. 795, s. 24.)

§ 153-319. Submission of preliminary plans to planning groups; cooperation with planning agencies.—Prior to the time final plans are made for the location and construction of any sewerage system, the district board shall present preliminary plans for such improvement to the county, municipal or regional planning board for their consideration, if such facility is to be located within the planning jurisdiction of any such county, municipal or regional planning group. The district board shall make every effort to cooperate with the planning agency, if any, in the location and construction of a proposed facility authorized under this article. Any district board created under the authority of this article is hereby directed, wherever possible, to coordinate its plans for the construction of sewerage system improvements with the overall plans for the development of the planning area, if such district is located wholly or in part within a county, municipal or regional planning area; provided, however, that the approval of any such county, municipal or regional planning board as to any such plan of the district shall not be required. (1961, c. 795, s. 25.)

§ 153-320. Water system acting as billing and collecting agent for district; furnishing meter readings.—The owner or operator, including any political subdivision, of a water system supplying water to the owners, lessees or

tenants of real property which is or will be served by any sewerage system owned or operated by a district is authorized to act as the billing and collecting agent of the district for any rents, rates, fees or charges imposed by the district for the services and facilities provided by such sewerage system, and such district is authorized to arrange with such owner or operator to act as the billing and collecting agent of the district for such purpose. Any such owner or operator shall, if requested by a district, furnish to the district copies of such regular periodic meter reading and water consumption records and other pertinent data as the district may require to do its own billing and collecting. The district shall pay to such owner or operator the reasonable additional expenses incurred by such owner or operator in rendering such services to the district. (1961, c. 795, s. 26.)

§ 153-321. District may assume sewerage system indebtedness of political subdivision; approval of voters; actions founded upon invalidity of election; tax to pay assumed indebtedness.—A district may assume all outstanding indebtedness of any political subdivision in the district lawfully incurred for paying all or any part of the cost of a sewerage system, subject to approval thereof by a majority of the qualified voters of the district voting at an election thereon. Any such election shall be called and held in accordance with the provisions of G. S. 153-306, insofar as the same may be made applicable, and the returns of such election shall be canvassed and a statement of the result thereof prepared, recorded and published as provided in said G. S. 153-306. No right of action or defense founded upon the invalidity of the election shall be asserted nor shall the validity of the election be open to question in any court upon any ground whatever, except in an action or proceeding commenced within thirty days after the publication of such statement of result. In the event that any such indebtedness of a political subdivision is assumed by the district, there shall be annually levied and collected a tax ad valorem upon all the taxable property in the district sufficient to pay such assumed indebtedness and the interest thereon as the same become due and payable; provided, however, that such tax may be reduced by the amount of other moneys actually available for such purpose. Such tax shall be determined, levied and collected in the manner provided by G. S. 153-309 and subject to the provisions of said section.

Nothing herein shall prevent any political subdivision from levying taxes to provide for the payment of its debt service requirements as to indebtedness incurred for paying all or any part of the cost of a sewerage system if such debt service requirements shall not have been otherwise provided for. (1961, c. 795, s. 27.)

§ 153-322. Advances by political subdivisions for preliminary expenses of districts.—Any political subdivision is hereby authorized to make advances, from any moneys that may be available for such purpose, in connection with the creation of such district and to provide for the preliminary expenses of such district. Any such advances may be repaid to such political subdivision from the proceeds of bonds issued by such district or from other available funds of the district. (1961, c. 795, s. 28.)

§ 153-323. Article regarded as supplemental.—This article shall be deemed to provide an additional and alternative method for the doing of the things authorized hereby and shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of or as repealing any powers now existing under any other law, either general, special or local; provided, however, that the issuance of bonds under the provisions of this article need not comply with the requirements of any other law applicable to the issuance of bonds except as herein provided. (1961, c. 795, s. 29.)

§ **153-324. Inconsistent laws declared inapplicable.**—All general, special or local laws, or parts thereof, inconsistent herewith are hereby declared to be inapplicable, unless otherwise specified, to the provisions of this article. (1961, c. 795, s. 30.)

Chapter 154.

County Surveyor.

§ **154-1. County commissioners may appoint.**—A county surveyor may be appointed in each county by the county commissioners. The county surveyor shall serve at the pleasure of the county commissioners and his duties shall be as directed by the county commissioners not inconsistent with provisions of the General Statutes of North Carolina. (Const., art. 7, s. 1; Rev., s. 4296; C. S., s. 1383; 1959, c. 1237, s. 1.)

Editor's Note.—The 1959 amendment rewrote this chapter which formerly contained four sections. This section formerly related to the election and term of office of surveyor.

§ **154-2. Qualifications.** — The county surveyor shall have qualifications for his employment consistent with appropriate provisions of chapter 89, General Statutes of North Carolina, as amended (1959, c. 1237, s. 1.)

§ **154-3. Counties excepted from article.**—This article shall not apply to Alexander, Ashe, Avery, Burke, Carteret, Cherokee, Clay, Cumberland, Davie, Greene, Harnett, Hyde, Jackson, Johnston, Lee, Lincoln, Macon, Madison, Mitchell, Northampton, Onslow, Pender, Person, Polk, Sampson, Stanly, Swain, Tyrrell, Washington, Watauga and Wilkes counties. (1959, c. 1237, ss. 1A, 1.1; 1961, c. 426.)

Editor's Note.—The 1961 amendment inserted "Onslow" in the list of counties.

Chapter 155.

County Treasurer.

§ **155-3. Local: Commissioners may abolish office and appoint bank.**—In the counties of Ashe, Bladen, Carteret, Chatham, Cherokee, Chowan, Craven, Edgecombe, Granville, Hyde, Madison, Mitchell, Montgomery, Martin, Moore, Onslow, Perquimans, Polk, Rowan, Stanly, Transylvania, Tyrrell, and Union, the board of county commissioners is hereby authorized and empowered, in its discretion, to abolish the office of county treasurer in the county; but the board shall, before abolishing the office of treasurer, pass a resolution to that effect at least sixty days before any primary or convention is held for the purpose of nominating county treasurer.

(1955, c. 107.)

Editor's Note. — The 1955 amendment inserted Ashe in the first sentence. As the rest of the section was not affected by the amendment, only the first sentence is set out.

§ **155-7. Duties of county treasurer.**—It is the duty of the treasurer to receive all moneys belonging to the county, and all other moneys by law directed

to be paid to him; to keep them separate and apart from his own affairs, and to apply them and render account of them as required by law. (Code, ss. 96, 773; 1889, c. 242; Rev., s. 1398; C. S., s. 1393; 1953, c. 973, s. 3.)

Editor's Note.—Session Laws 1953, c. 973, s. 3, effective July 1, 1953, repealed subsections 2 through 5, leaving only the preliminary paragraph and the provisions of former subsection 1 to form the present section.

§ 155-9: Repealed by Session Laws 1953, c. 973, s. 3.

§ 155-15: Repealed by Session Laws 1953, c. 973, s. 3.

Chapter 156.

Drainage.

SUBCHAPTER III. DRAINAGE DISTRICTS.

Article 5.

Establishment of Districts.

Article 6.

Drainage Commissioners.

Article 7A.

Maintenance.

Article 7B.

Improvement, Renovation, Enlargement and Extension of Canals, Structures and Boundaries.

Article 8.

Assessments and Bond Issue.

Article 10.

Report of Officers.

Article 11.

General Provisions.

SUBCHAPTER I. DRAINAGE BY INDIVIDUAL OWNERS.

Article 1.

Jurisdiction in Clerk of Superior Court.

Part 1. Petition by Individual Owner.

§ 156-1. Name of proceeding.

Various Statutes Harmonized.—In accord with original. See Sawyer Canal Co. v. Keys, 234 N. C. 360, 67 S. E. (2d) 259 (1951).

Cited in Chappell v. Winslow, 258 N. C. 617, 129 S. E. 2d) 101 (1963).

§ 156-2. Petition filed; commissioners appointed.

Readjustment.—In accord with original. See Sawyer Canal Co. v. Keys, 234 N. C. 360, 67 S. E. (2d) 259 (1951).

§ 156-10. Right to drain into canal.

Stated in Sawyer Canal Co. v. Keys, 234 N. C. 360, 67 S. E. (2d) 259 (1951).

§ 156-15. Amount of contribution for repair ascertained.

Proceeding under This Section Is in Effect, etc.—In accord with original. See Sawyer Canal Co. v. Keys, 234 N. C. 360, 67 S. E. (2d) 259 (1951).

SUBCHAPTER II. DRAINAGE BY CORPORATION.

Article 3.

Manner of Organization.

§ 156-42. Organization; corporate name, officers and powers.

Cited in In re Atkinson-Clark Canal Co., 234 N. C. 374, 67 S. E. (2d) 276 (1951).

§ 156-43. Incorporation of canal already constructed; commissioners; reports.

Finality of Judgment of Clerk of Superior Court.—A judgment entered by a clerk of the superior court in a special proceeding under this section will stand as a judgment of the court, if not excepted to and reversed or modified on appeal, as allowed by law. In re Atkinson-Clark Canal Co., 234 N. C. 374, 67 S. E. (2d) 276 (1951).

Where the clerk's decision was erroneous, and the petitioner undertook to appeal therefrom and the appeal was dismissed in the superior court, and notice of appeal was given to the Supreme Court, but the appeal was not perfected the judgment of the clerk of the superior court was as final and effective as if no appeal therefrom had been attempted. In re Atkinson-Clark Canal Co., 234 N. C. 374, 67 S. E. (2d) 276 (1951).

Article 4.

Rights and Liabilities in the Corporation.

§ 156-51. Penalty for nonpayment of assessments.

Cited in Sawyer Canal Co. v. Keys, 234 N. C. 360, 67 S. E. (2d) 259 (1951).

SUBCHAPTER III. DRAINAGE DISTRICTS.

ARTICLE 5.

Establishment of Districts.

§ 156-54. Jurisdiction to establish districts.

Drainage Districts Are Quasi-Municipal Corporations.—Drainage districts created pursuant to the provisions of this subchapter are quasi-municipal corporations. In re Albemarle Drainage Dist., Beaufort County No. 5, 255 N. C. 338, 121 S. E. (2d) 599 (1961).

And Can Alter Their Boundaries Only as Permitted by Statute.—Municipal or quasi-municipal corporations created and having their boundaries fixed by statutory formula can alter their boundaries only as permitted by statute. In re Albemarle Drainage Dist., Beaufort County No. 5, 255 N. C. 338, 121 S. E. (2d) 599 (1961). See § 156-93.2 et seq.

§ 156-56. Petition filed.

Applied in In re Ahoskie Creek, 257 N. C. 337, 125 S. E. (2d) 908 (1962).

Stated in In re Albemarle Drainage Dist., Beaufort County No. 5, 255 N. C. 338, 121 S. E. (2d) 599 (1961).

§ 156-58. Publication in case of unknown owners.—If, at the time of the filing of the petition, or at any time subsequent thereto, it shall be made to appear to the court by affidavit or otherwise that the names of the owners of the whole or any share of any tracts of land are unknown, and cannot after due diligence be ascertained by the petitioners, the court shall order a notice in the nature of a summons to be given to all such persons by a publication of the petition, or of the substance thereof, and describing generally the tracts of land as to which the owners are unknown, with the order of the court thereon, in some newspaper published in the county wherein the land is located, or in some other county if no newspaper shall be published in the first-named county, which newspaper shall be designated in the order of the court, and a copy of such publication shall be also posted in at least three conspicuous places within the boundaries of the proposed district, and at the courthouse door of the county. Such publication in a newspaper and by posting shall be made for a period of four weeks. After the time of publication shall have expired, if no person claiming and asserting title to the tracts of land and entitled to notice shall appear, the court in its discretion may appoint some disinterested person to represent the unknown owners of such lands, and thereupon the court shall assume jurisdiction of the tracts of land and shall adjudicate as to such lands to the same extent as if the true owners were present and represented, and shall proceed against the land itself. If at any time during the pendency of the drainage proceeding the true owners of the lands shall appear in person, they may be made parties defendant of their own motion and without the necessity of personal service, and shall thereafter be considered as parties to the proceeding; but they shall have no right to except to or appeal from any order or judgment theretofore rendered, as to which the time for filing exceptions on notice shall have expired. (1911, c. 67, s. 1; C. S., s. 5316; 1953, c. 675, s. 25.)

Editor's Note.—

The 1953 amendment rewrote the first part of the first sentence of this section.

§ 156-59. Board of viewers appointed by clerk.—The clerk shall, on the filing of petition and bond, appoint a disinterested and competent civil and drainage engineer and two resident freeholders of the county or counties in which the lands are located as a board of viewers to examine the lands described in the petition and make a preliminary report thereon. The drainage engineer shall be appointed upon the recommendation of the Department of Water Resources; and no member of the board of viewers so appointed shall own any land

within the boundaries of the proposed district. In the selection of the two members of the board of viewers, other than the engineer, the clerk before making the appointment shall make careful inquiry into the character and qualifications of the proposed members, to the end that the members so appointed shall possess the necessary character, capacity, fitness, and impartiality for the discharge of their important duties. (1909, c. 442, s. 2; 1917, c. 152, s. 1; C. S., s. 5317; 1961, c. 614, s. 4; c. 1198.)

Editor's Note.—The first 1961 amendment deleted from the beginning of the section the words "Upon the return day the clerk shall" and inserted in lieu thereof the words "The clerk shall, on the filing of petition and bond."

The second 1961 amendment substituted "Department of Water Resources" for "Board of Conservation and Development."

Applied in In re Ahoskie Creek, 257 N. C. 337, 125 S. E. (2d) 908 (1962).

§ 156-61. Estimate of expense and manner of payment; advancement of funds and repayment from assessments.—The clerk may make an estimate of the aggregate sum of money which shall appear to be necessary to pay all the expenses incident to the performance of the duties by the board of viewers, including the compensation of the drainage engineer and his necessary assistants, and also including the sum for the compensation of the attorney for the district, and such court costs as may probably accrue, which estimates shall embrace the period of services up to and including the establishment of the drainage district and the selection and appointment of the board of drainage commissioners. The clerk shall then estimate the number of acres of land owned or represented by the petitioners, as nearly so as may be practicable without actual survey, and shall assess each acre so represented a level rate per acre, to the end that such assessment will realize the sum of money which he has estimated as necessary to pay all necessary costs of the drainage proceeding up to the time of the appointment of the drainage commissioners, as above provided. The assessment above provided for which has been or may hereafter be levied shall constitute a first and paramount lien, second only to State and county taxes, upon the lands so assessed, and shall be collected in the same manner and by the same officers as county taxes are collected. The board of viewers, including the drainage engineer, shall not be required to enter upon the further discharge of their duties until the amount so estimated and assessed shall be paid in cash to the clerk of the court, which shall be retained by him as a court fund, and for which he shall be liable in his official capacity, and he shall be authorized to disburse the same in the prosecution of the drainage proceeding. Unless all the assessments shall be paid within a time to be fixed by the court, which may be extended from time to time, no further proceedings shall be had, and the proceeding shall be dismissed at the cost of the petitioners. If the entire sum so estimated and assessed shall not be paid to the clerk within the time limited, the amounts so paid shall be refunded to the petitioners pro rata after paying the necessary costs accrued. Nothing herein contained shall prevent one or more of the petitioners from subscribing and paying any sum in addition to their assessment in order to make up any deficiency arising from the delinquency of one or more of the petitioners. When the sum of money so estimated shall be paid, the board of viewers shall proceed with the discharge of their duties, and in all other respects the proceeding shall be prosecuted according to the law. After the district shall have been established and the board of drainage commissioners appointed, it shall be the duty of the board of drainage commissioners to refund to each of the petitioners the amount so paid by them as above provided, out of the first moneys which shall come into the hands of the board from the sale of bonds or otherwise, and the same shall be included in ascertaining the total cost of improvement.

In lieu of the procedures set forth in the preceding paragraph, the board of county commissioners may advance funds, or any part thereof, for the purposes

set forth in the preceding paragraph. Such advances shall be made to a county official designated by the commissioners, and shall be disbursed upon such terms as the county commissioners may direct. If the district shall be organized, the funds advanced shall be repaid from assessments thereafter levied. (1917, c. 152, s. 1; C. S., s. 5319; 1941, c. 342; 1961, c. 614, s. 6; c. 662.)

Editor's Note.—
The first 1961 amendment substituted "may" for "shall," being the third word of the section. And the second 1961 amendment added the second paragraph.

§ 156-62. Examination of lands and preliminary report.

Applied in In re Ahoskie Creek, 257 N. C. 337, 125 S. E. (2d) 908 (1962).
Stated in In re Albemarle Drainage Dist., Beaufort County No. 5, 255 N. C. 338, 121 S. E. (2d) 599 (1961).

§ 156-63. First hearing of preliminary report.

Applied in In re Ahoskie Creek, 257 N. C. 337, 125 S. E. (2d) 908 (1962).

§ 156-64. Notice of further hearing.—If the petition is entertained by the court, notice shall be given by publication once a week for at least two (2) consecutive weeks in some newspaper of general circulation within the county or counties, if one shall be published in such counties, and also by posting a written or printed notice at the door of the courthouse and at five conspicuous places within the drainage district, that on the date set, naming the day, the court will consider and pass upon the report of the viewers. At least fifteen days shall intervene between the date of the publication and the posting of the notices and the date set for the hearing. (1909, c. 442, s. 5; C. S., s. 5322; 1963, c. 767, s. 1.)

Editor's Note. — The 1963 amendment substituted "once a week for at least two (2) consecutive weeks" for "for two consecutive weeks" near the beginning of the section.

Applied in In re Ahoskie Creek, 257 N. C. 337, 125 S. E. (2d) 908 (1962).
Stated in In re Albemarle Drainage Dist., Beaufort County No. 5, 255 N. C. 338, 121 S. E. (2d) 599 (1961).

§ 156-65. Further hearing, and district established.

Boundaries Must Include All Lands Benefited.—The court has no authority to decree the establishment of a drainage district which does not include within its boundaries all lands benefited by the work to be done. It must enlarge the boundaries to include all such land. In re Albemarle Drainage Dist., Beaufort County No. 5, 255 N. C. 338, 121 S. E. (2d) 599 (1961).
Applied in In re Ahoskie Creek, 257 N. C. 337, 125 S. E. (2d) 908 (1962).

§ 156-66. Right of appeal.

Cited in In re Ahoskie Creek, 257 N. C. 337, 125 S. E. (2d) 908 (1962).

§ 156-69. Nature of the survey; water retardant structures and storage of water.—The engineer and viewers shall have power to employ such assistants as may be necessary to make a complete survey of the drainage district, and shall enter upon the ground and make a survey of the main drain or drains and all its laterals. The line of each ditch, drain, or levee shall be plainly and substantially marked on the ground. The course and distance of each ditch shall be carefully noted and sufficient notes made, so that it may be accurately plotted and mapped. A line of levels shall be run for the entire work and sufficient data secured from which accurate profiles and plans may be made. Frequent bench marks shall be established among the line, on permanent objects, and their elevation recorded in the field books. If it is deemed expedient by the engineer and viewers, other levels may be run to determine the fall from one part of the district to another. If an old watercourse, ditch, or channel is being widened, deepened, or straightened, it shall be accurately cross-sectioned so as

to compute the number of cubic yards saved by the use of such old channel. A drainage map of the district shall then be completed, showing the location of the ditch or ditches and other improvements and the boundary, as closely as may be determined by the records, of the lands owned by each individual landowner within the district. The location of any railroads or public highways and the boundary of any incorporated towns or villages within the district shall be shown on the map. There shall also be prepared to accompany this map a profile of each levee, drain, or watercourse, showing the surface of the ground, the bottom or grade of the proposed improvement, and the number of cubic yards of excavation or fill in each mile or fraction thereof, and the total yards in the proposed improvement and the estimated cost thereof, and plans and specifications, and the cost of any other work required to be done.

The board of viewers shall consider the need and feasibility of the construction of water retardant structures which shall control the flow of water in the proposed district. If it recommends the construction of water retardant and control structures, the specifications, location and estimate of cost of such shall be included in its report. The board of viewers shall set forth:

(1) The determination of the right-of-way and easement of the canal and the areas needed for water retardant structures and the storage of water.

(2) Upon whose lands such are located.

(3) The area of land necessary to be acquired from each landowner.

The map accompanying the report shall show thereon the location of:

(1) The right-of-way or easement.

(2) The location of water retardant structures; and

(3) The location of water storage areas.

The board of viewers may, in its discretion, agree with the Soil Conservation Service of the Department of Agriculture or any agency of the government of the United States or of the State of North Carolina whereby such agency will furnish all or a part of the service necessary to obtain the information set forth in the preceding paragraph and in G. S. 156-68.

The board of viewers may accept such information as furnished by such agencies and include such information in their final report to the clerk.

The board of viewers and engineers of the district may use control or semi-control, mosaic aerial photographs or other sources and stereoscopic or other methods, generally used and deemed acceptable by civil and drainage engineers for the purpose of obtaining the information required in this section and in lieu of a detailed ground survey. In the event a detailed ground survey is not made, only those ground markings need be made as the board of viewers deem necessary. The location of the proposed canals must be shown on the ground prior to actual construction. (1909, c. 442, s. 10; C. S., s. 5327; 1959, c. 597, s. 1; 1961, c. 614, ss. 5, 9.)

Editor's Note.—The 1959 amendment added all of this section beginning with the second paragraph except the present last paragraph.

The 1961 amendment substituted the word "district" for the word "canals" at the end of the first sentence of the second paragraph. It also added the last paragraph.

Applied in In re Ahoskie Creek, 257 N. C. 337, 125 S. E. (2d) 908 (1962).

§ 156-70. Assessment of damages.

Applied in In re Ahoskie Creek, 257 N. C. 337, 125 S. E. (2d) 908 (1962).

§ 156-70.1. When title deemed acquired for purpose of easements or rights-of-way; notice to landowner; claim for compensation; appeal.—The district shall be deemed to have acquired title for the purpose of easements or rights-of-way to those areas of land identified in the final report

of the board of viewers and as shown on the map accompanying said report, at the time said final report is confirmed by the clerk of the superior court.

The board of viewers shall cause notice as to the area or areas of land involved, to be given to each landowner so affected, which notice shall be in writing and mailed to the last known address of the landowner at least seven (7) days prior to the hearing on the final report as provided by G. S. 156-73.

If the landowner desires compensation for the land areas so acquired by the district, claim for the value of the same shall be submitted to the board of viewers on or before the time of the adjudication upon the final report as provided for by G. S. 156-74.

If the board of viewers shall approve the claim, the amount so approved shall be added to the total cost of the district as estimated in said final report and this shall be done by amendment to the final report submitted to the clerk of the superior court on or before the adjudication provided for in G. S. 156-74.

If the board of viewers shall not approve said claim, the clerk of the superior court shall consider the claim and determine what in his opinion is a fair value and the amount so determined shall be shown in the said final report as amended and confirmed by said adjudication. If landowner does not accept the value fixed by the clerk of the superior court, appeal may be had upon the question of value, to the superior court and such appeal shall follow the procedure provided in G. S. 156-75. (1959, c. 597, s. 2; c. 1085.)

Editor's Note.—The second 1959 act substituted "seven (7) days" for "fifteen (15) days" in the second paragraph.

§ **156-71. Classification of lands and benefits.**—It shall be the further duty of the engineer and viewers to personally examine the land in the district and classify it with reference to the benefit it will receive from the construction of the levee, ditch, drain, or watercourse or other improvement. In the case of drainage, the degree of wetness on the land, its proximity to the ditch or a natural outlet, and the fertility of the soil shall be considered in determining the amount of benefit it will receive by the construction of the ditch. The land benefited shall be separated in five classes. The land receiving the highest benefit shall be marked "Class A"; that receiving the next highest benefit, "Class B"; that receiving the next highest benefit, "Class C"; that receiving the next highest benefit, "Class D," and that receiving the smallest benefit, "Class E." The holdings of any one landowner need not be all in one class, but the number of acres in each class shall be ascertained, though its boundary need not be marked on the ground or shown on the map. The total number of acres owned by one person in each class and the total number of acres benefited shall be determined. The total number of acres of each class in the entire district shall be obtained and presented in tabulated form. The scale of assessment upon the several classes of land returned by the engineer and viewers shall be in the ratio of five, four, three, two, and one; that is to say, as often as five mills per acre is assessed against the land in "Class A," four mills per acre shall be assessed against the land in "Class B," three mills per acre in "Class C," two mills per acre in "Class D," and one mill per acre in "Class E." This shall form the basis of the assessment of benefits to the lands for drainage purposes. In any district lands may be included which are not benefited for the agriculture or crop production, or slightly so, but which will receive benefit by improvement in health conditions, and as to such lands the engineer and viewers may assess each tract of land without regard to the ratio and at such a sum per acre as will fairly represent the benefit of such lands. Villages or towns or parts thereof and small parcels of land located outside thereof and used primarily for residence or other specific purposes, and which require drainage, may also be included in any drainage district which by reason of their improved conditions and the limited area in each parcel under individual ownership, it is impracticable to fairly assess the benefits to each separate parcel of

land by the ratio herein provided, and as to such parcels of land the engineer and viewers may assess each parcel of land without regard to the ratio and at a higher rate per acre respectively by reason of the greater benefits. If the streets or other property owned by any incorporated town or village are likewise benefited by such drainage works, the corporation may be assessed in proportion to such benefits, which assessment shall constitute a liability against the corporation and may be enforced as provided by law.

The board of viewers may determine that some areas of the district will receive more benefits than other areas and if such is determined, the varying benefits shall be reflected in the manner of classification of benefits to each area and the tracts of land therein. (1909, c. 442, s. 12; C. S., s. 5329; 1923, c. 217, s. 1; 1961, c. 614, s. 7.)

Editor's Note.—

The 1961 amendment added the second paragraph.

Applied in In re Ahoskie Creek, 257 N. C. 337, 125 S. E. (2d) 908 (1962).

Stated in In re Albemarle Drainage Dist., Beaufort County No. 5, 255 N. C. 338, 121 S. E. (2d) 599 (1961).

§ 156-73. Final report filed; notice of hearing.—When the final report is completed and filed it shall be examined by the court, and if it is found to be in due form and in accordance with the law it shall be accepted, and if not in due form it may be referred back to the engineer and viewers, with instructions to secure further information, to be reported at a subsequent date to be fixed by the court. When the report is fully completed and accepted by the court a date not less than twenty days thereafter shall be fixed by the court for the final hearing upon the report, and notice thereof shall be given by publication in a newspaper of general circulation in the county and by posting a written or printed notice on the door of the courthouse and at five conspicuous places throughout the district, such publication to be made once a week for at least three consecutive weeks before the final hearing. During this time a copy of the report shall be on file in the office of the clerk of the superior court, and shall be open to the inspection of any landowner or other persons interested within the district. (1909, c. 442, s. 15; C. S., s. 5331; 1959, c. 807, ss. 1, 2; 1963, c. 767, s. 2.)

Editor's Note. — The 1959 amendment substituted "ten" for "twenty" and "one week" for "two weeks" in the second sentence.

The 1963 amendment substituted "twenty" for "ten" and "once a week for at least three consecutive weeks" for "for at least one week" in the second sentence.

§ 156-74. Adjudication upon final report.—At the date set for hearing any landowner may appear in person or by counsel and file his objection in writing to the report of the viewers; and it shall be the duty of the court to carefully review the report of the viewers and the objections filed thereto, and make such changes as are necessary to render substantial and equal justice to all the landowners in the district. If, in the opinion of the court, the cost of construction, together with the amount of damages assessed, is not greater than the benefits that will accrue to the land affected, the court shall confirm the report of the viewers. If, however, the court finds that the cost of construction, together with the damages assessed, is greater than the resulting benefit that will accrue to the lands affected, the court shall dismiss the proceedings at the cost of the petitioners, and the sureties upon the bond so filed by them shall be liable for such costs. Provided, that the Department of Water Resources may remit and release to the petitioners the costs expended by the board on account of the engineer and his assistants. The court may from time to time collect from the petitioners such amounts as may be necessary to pay costs accruing, other than costs of the engineer and his assistants, such amounts to be repaid from the special tax hereby authorized.

The court shall, at the time of consideration of said report, determine whether:

(1) The petitioners constitute a majority of the resident landowners, whose lands are adjudged to be benefited by the proposed construction work as shown in the final report of the board of viewers and finally approved by the court; or

(2) The petitioners own three fifths of the land area which is adjudged to be benefited by the proposed construction work as shown in the final report of the board of viewers and finally approved by the court.

If the petitioners do not constitute either a majority of the resident landowners or own three fifths of the land as set out in subdivisions (1) or (2) above, then the proceedings shall be dismissed. (1909, c. 442, s. 16; 1915, c. 238, s. 2; 1917, c. 152, s. 16; C. S., s. 5332; 1925, c. 122, s. 4; 1959, c. 1312, s. 1; 1961, c. 1198.)

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

The 1961 amendment substituted "Department of Water Resources" for "Board of Conservation and Development" in the first paragraph.

§ 156-75. Appeal from final hearing.

Cited in In re Ahoskie Creek, 257 N. C. 337, 125 S. E. (2d) 908 (1962).

§ **156-76. Compensation of board of viewers.**—The compensation of the engineer, including his necessary assistants, rodmen, and laborers, and also the compensation of the viewers, shall be fixed by the clerk. In fixing such compensation, particularly of the drainage engineer, the clerk shall confer fully with the Department of Water Resources and with the petitioners. The compensation to be paid the two members of the board of viewers, other than the engineer, shall be in such amount per day as may be fixed by the clerk of the superior court for the time actually employed in the discharge of their duties, and in addition any actual and necessary expenses of travel and subsistence while in the actual discharge of their duties, an itemized report of which shall be submitted and verified. (1909, c. 442, s. 36; 1917, c. 152, ss. 1, 2; C. S., s. 5334; 1925, c. 122, s. 4; 1959, c. 288; 1961, c. 1198.)

Editor's Note.—The 1959 amendment deleted the words "shall not exceed four dollars per day" and inserted in lieu thereof the words "shall be in such amount per day as may be fixed by the clerk of the superior court."

The 1961 amendment substituted "Department of Water Resources" for "Board of Conservation and Development."

§ **156-78.1. Municipalities.**—(a) Any municipality may participate in drainage district works or projects upon mutually agreeable terms relating to such matters as the construction, financing, maintenance and operation thereof.

(b) Any municipality may contribute funds toward the construction, maintenance and operation of drainage district works or projects, to the extent that such works or projects:

(1) Provide a source of municipal water supply for the municipality, or protect an existing source of such supply, enhance its quality or increase its dependable capacity or quantity, or implement or facilitate the disposal of sewage of the municipality; or

(2) Protect against or alleviate the effects of floodwater or sediment damages affecting, or provide drainage benefits for property owned by the municipality or its inhabitants.

(c) Municipal expenditures for the aforesaid purposes are declared to be for necessary expenses. Municipalities may enter continuing contracts, some portion or all of which may be performed in an ensuing year, agreeing to make periodic payments in ensuing fiscal years to drainage districts in consideration of benefits set forth in subsection (b) (2) of this section, but no such contract may

be entered into unless sufficient funds have been appropriated to meet any amount to be paid under the contract in the fiscal year in which the contract is made. The municipal governing body shall, in the budget ordinance of each ensuing fiscal year during which any such contract is in effect, appropriate sufficient funds to meet the amount to be paid under the contract in such ensuing fiscal year. The statement required by G. S. 160-411.1 to be printed, written or typewritten on all contracts, agreements, or requisitions requiring the payment of moneys shall be placed on such a continuing contract only if sufficient funds have been appropriated to meet the amount to be paid under the contract in the fiscal year in which the contract is made.

(d) The provisions of this section are permissive. If a municipality does not participate in accordance with the provisions of this section, then the other provisions of subchapter III shall apply and be followed. (1961, c. 614, s. 10.)

Article 6.

Drainage Commissioners.

§ 156-79. Election and organization under original act.—After the drainage district has been declared established, as aforesaid, and the survey and plan therefor approved, the court shall appoint three persons, who shall be designated as the board of drainage commissioners. Such drainage commissioners shall first be elected by the owners of land within the drainage or levee district, or by a majority of same, in such manner as the court shall prescribe. The court shall appoint those receiving a majority of the votes. If any one or more of such proposed commissioners shall not receive the vote of a majority of such landowners the court shall appoint all or the remainder from among those voted for in the election. Any vacancy thereafter occurring shall be filled by the clerk of the superior court. Such three drainage commissioners, when so appointed, shall be immediately created a body corporate under the name and style of "The Board of Drainage Commissioners of ..... District," with the right to hold property and convey the same, to sue and be sued, and shall possess such other powers as usually pertain to corporations. They shall organize by electing from among their number a chairman and a vice-chairman. They shall also elect a secretary, either within or without their body. Such board of drainage commissioners shall adopt a seal, which they may alter at pleasure. The board of drainage commissioners shall have and possess such powers as are herein granted. (1909, c. 442, s. 19; 1917, c. 152, s. 17; C. S., s. 5337; 1947, c. 273; 1963, c. 767, s. 3.)

Local Modification.—Columbus (Chadbourn Drainage District): 1953, c. 1020.

Editor's Note.—

The 1963 amendment deleted the former ninth sentence, which read "The treasurer of the county in which the proceeding was instituted shall be ex officio treasurer of such drainage commissioners."

§ 156-81. Election and organization under amended act.

7. Compensation.—The chairman of the board of drainage commissioners shall receive compensation and allowances as fixed by the clerk of the superior court. In fixing such compensation and allowances, the clerk shall give due consideration to the duties and responsibilities imposed upon the chairman of the board. The other members of the board shall receive a per diem not to exceed twelve dollars ($12.00) a day, while engaged in attendance upon meetings of the board, or in the discharge of duties imposed by the board. The secretary of the board shall receive such compensation and expense allowances as may be determined by the board.

The chairman and members of the board of drainage commissioners shall also receive their actual travel and subsistence expenses while engaged in attendance upon meetings of the board, or in the discharge of duties imposed by the board.

The compensation and expense allowances as herein set out shall be paid from the assessments made annually for the purpose of maintaining the canals of the drainage district, or from any other funds of the district.

(1957, c. 912, s. 1.)

Editor's Note.—The 1957 amendment substituted "twelve dollars ($12.00)" for "five dollars ($5.00)" in the first paragraph of subsection 7. As only this subsection was changed the rest of the section is not set out.

§ 156-81.1. Treasurer.—The clerk of the superior court for the county where the district was organized, shall appoint a treasurer for the drainage district for a term not to exceed twelve (12) months. The treasurer so appointed may be a member of the board of commissioners of the district or some other person deemed competent, and shall furnish bond as may be required by the said clerk of the superior court. The treasurer shall continue in office until a successor has been appointed and qualified.

All references in subchapter III of chapter 156 of the General Statutes of North Carolina, to "treasurer" or "county treasurer" or "county auditor" are hereby amended to refer exclusively to the treasurer appointed as hereinbefore provided. (1963, c. 767, s. 4.)

§ 156-82.1. Duties and powers of the board of drainage commissioners.—(a) The board of drainage commissioners shall proceed with the levying of assessments, issuance of bonds and construction of canals, water retardant structures and other improvements and acquisition of equipment as approved by the court in the adjudication upon the final report of the board of viewers, either in the creation of the district or in subsequent proceedings authorized by article 7B.

(b) The commissioners shall maintain the canals, water retardant structures, and all other improvements and equipment of the district.

(c) The commissioners, with the approval of the clerk of the superior court, may use surplus funds in such manner as they deem best for (i) the maintenance of the improvements, (ii) construction or enlargement of canals and water retardant structures, or other improvements or equipment, (iii) replacement or acquisition of equipment or structures, and (iv) for payment of any or all operating expenses including salaries, fees and costs of court.

The term "surplus funds" is defined to mean any funds remaining after the payment of those items set forth specifically in the certificate of assessment, as well as funds provided in said certificate for maintenance and contingencies, and also, shall include maintenance and any other funds which the said commissioners may have on hand and which are not necessary for the payment of the bonds and interest thereon which have been issued by the said district.

(d) The board of commissioners may agree, or contract, with any agency of the government of the United States or of North Carolina for such engineering or other services as may be provided by such agency.

(e) The board of commissioners may, in its discretion, release areas taken for rights-of-way if it determines, after the construction of the canals, that such are not needed for the purpose of the district. The release must be approved by the clerk of the superior court and such release shall be filed in the proceedings by virtue of which the district was created.

(f) The board of drainage commissioners shall have all the duties and powers as set forth and imposed upon them by the various sections of this subchapter and all others which are necessary to promote the purposes of the district.

All improvements constructed and acquired under the provisions of this subchapter shall be under the control and supervision of the board of drainage commissioners. It shall be their duty to keep all improvements in good repair. (1961, c. 614, s. 2.)

Article 7.

Construction of Improvement.

§ 156-83. Superintendent of construction.—The board of drainage commissioners shall appoint a competent drainage engineer of good repute as superintendent of construction. Such superintendent of construction shall furnish a copy of his monthly and final estimates to the Department of Water Resources, in addition to other copies herein provided which shall be filed and preserved. In the event of the death, resignation, or removal of the superintendent of construction, his successor shall be appointed in the same manner.

The board of drainage commissioners may, in its discretion, agree with the Soil Conservation Service of the Department of Agriculture or any agency of the government of the United States or of North Carolina whereby such agency may furnish the service required of the superintendent of construction. If this is done by the board, any reference in this chapter to the superintendent of construction and/or his duties shall include or be exercised by the said agency subject to the approval of the board of commissioners. (1909, c. 442, s. 20; C. S., s. 5340; 1923, c. 217, s. 3; 1925, c. 122, s. 5; 1959, c. 597, s. 3; 1961, c. 1198; 1963, c. 767, s. 5.)

Local Modification.—Hyde: 1957, c. 714.

Editor's Note.—The 1959 amendment added the second paragraph.

The 1961 amendment substituted "Department of Water Resources" for "Board of Conservation and Development" in the first paragraph.

The 1963 amendment deleted at the end of the first sentence the words "by and with the approval and recommendation of the Department of Water Resources."

§ 156-84. Letting contracts.—The board of drainage commissioners shall cause notice to be given of the letting of the contract. The notice shall be posted at the courthouse door in the county wherein the district was organized. Notice shall be posted no less than fifteen (15) days prior to the opening of the bids and shall be published at least once a week for two (2) consecutive weeks immediately prior to the opening of the bids, in some newspaper published in the county wherein such improvement is located, if such there be, and such additional publication elsewhere as they may deem expedient, of the time and place of letting the work of construction of such improvement, and in such notice they shall specify the approximate amount of work to be done and the time fixed for the completion thereof; and on the date appointed for the letting they, together with the superintendent of construction, shall convene and let to the lowest responsible bidder, either as a whole or in sections, as they may deem most advantageous for the district, the proposed work. No bid shall be entertained that exceeds the estimated cost, except for good and satisfactory reasons it shall be shown that the original estimate was erroneous. They shall have the right to reject all bids and advertise again the work, if in their judgment the interest of the district will be subserved by doing so. The successful bidder shall be required to enter into a contract with the board of drainage commissioners and to execute a bond for the faithful performance of such contract, with sufficient sureties, in favor of the board of drainage commissioners for the use and benefit of the levee or drainage district, in an amount equal to no less than twenty-five nor more than one hundred per centum of the estimated cost of the work awarded to him. In canvassing bids and letting the contract, the superintendent of construction shall act only in an advisory capacity to the board of drainage commissioners. The contract shall be based on the plans and specifications submitted by the viewers in their final report as confirmed by the court, the original of which shall remain on file in the office of the clerk of the superior court and shall be open to the inspection of all prospective bidders. All bids shall be sealed and shall not be opened except under the authority of the board of drainage commissioners and on the day theretofore appointed for opening the bids. The

drainage commissioners shall have power to correct errors and modify the details of the report of the engineer and viewers if, in their judgment, they can increase the efficiency of the drainage plan and afford better drainage to the lands in the district without increasing the estimated cost submitted by the engineer and viewers and confirmed by the court. (1909, c. 442, s. 21; 1911, c. 67, s. 4; C. S., s. 5341; 1959, c. 806; 1963, c. 767, s. 6.)

Editor's Note.—The 1959 amendment substituted "one week" for "two consecutive weeks" in the former first sentence.

The 1963 amendment added the first and second sentences and rewrote the portion of the third sentence relating to the time of giving notice. It also substituted "no less than twenty-five nor more than one hundred" for "twenty-five" in the sixth sentence.

§ **156-88. Drainage across public or private ways.**—Where any public ditch, drain or watercourse established under the provisions of this subchapter crosses or, in the opinion of the board of viewers, should cross a public highway under the supervision of the State Highway Commission the actual cost of constructing the same across the highway shall be paid for from the funds of the drainage district, and it shall be the duty of the Commission, upon notice from the court, to show cause why it should not be required to repair or remove any old bridge and/or build any new bridge to provide the minimum drainage space determined by the court; whereupon the court shall hear all evidence pertaining thereto and shall determine whether the Commission shall be required to do such work, and whether at its own expense or whether the cost thereof should be prorated between the Commission and the drainage district. Either party shall have the right of appeal from the clerk to the superior court and thence to the Supreme Court, and should the court be of the opinion that the cost should be prorated then the percentage apportioned to each shall be determined by a jury.

Whenever the Commission is required to repair or remove any old bridge and/or build any new bridge as hereinbefore provided, the same may be done in such manner and according to such specifications as it deems best, and no assessment shall be charged the Commission for any benefits to the highway affected by the drain under the same, and such bridge shall thereafter be maintained by and at the expense of the Commission.

Where any public ditch, drain, or watercourse established under the provisions of this subchapter crosses a public highway or road, not under the supervision of the State Highway Commission, the actual cost of constructing the same across the highway or removing old bridges or building new ones shall be paid for from the funds of the drainage district. Whenever any highway within the levee or drainage district shall be beneficially affected by the construction of any improvement or improvements in such district it shall be the duty of the viewers appointed to classify the land, to give in their report the amount of benefit to such highway, and notice shall be given by the clerk of the superior court to the commissioners of the county where the road is located, of the amount of such assessment, and the county commissioners shall have the right to appear before the court and file objections, the same as any landowner. When it shall become necessary for the drainage commissioners to repair any bridge or construct a new bridge across a public highway or road not under the supervision of the State Highway Commission, by reason of enlarging any watercourse, or of excavating any canal intersecting such highway, such bridge shall thereafter be maintained by and at the expense of the official board or authority which by law is required to maintain such highway so intersected.

Where any public canal established under the provisions of the general drainage law shall intersect any private road or cartway the actual cost of constructing a bridge across such canal at such intersection shall be paid for from the funds of the drainage district and constructed under the supervision of the board of drainage commissioners, but the bridge shall thereafter be maintained

by and at the expense of the owners of the land exercising the use and control of the private road; provided, if the private road shall be converted into a public highway the maintenance of the bridge shall devolve upon the State Highway Commission or such other authority as by law shall be required to maintain public highways and bridges. (1909, c. 442, s. 25; 1911, c. 67, s. 6; 1917, c. 152, s. 6; C. S., s. 5345; 1947, c. 1022; 1953, c. 675, s. 26; 1957, c. 65, s. 11.)

Editor's Note.—

The 1953 amendment substituted "or" for "of" immediately before the word "authority" in next to last line of the third paragraph.

The 1957 amendment substituted "State Highway Commission" for "State Highway and Public Works Commission" in the first, third and fourth paragraphs.

§ 156-92. Control and repairs by drainage commissioners.

Editor's Note.—

The case of In re Perquimans County Drainage District No. Four, 254 N. C. 115, 118 S. E. (2d) 431 (1961), is in accord with the first three sentences of the Editor's Note in the Recompiled Volume. However, this case was decided prior to the repeal of §§ 156-118 to 156-120. For present provisions as to improvement, renovation, etc., of canals and structures, see article 7B of this chapter.

Assessments Authorized on Properties Benefited by Repairs. — It is the duty of the commissioners to keep the drains and works of the districts in good repair. For this purpose they are authorized to levy assessments on the properties within the district benefited by the repairs. In re Albemarle Drainage Dist., Beaufort County No. 5, 255 N. C. 338, 121 S. E. (2d) 599 (1961).

Article 7A.

Maintenance.

§ 156-93.1. Maintenance assessments and contracts; engineering assistance, construction equipment, etc.; joint or consolidated maintenance operations; water retardant structures; borrowing in anticipation of revenue.

—(1) The board of drainage commissioners may annually levy maintenance assessments in the same ratio as the existing classification of the lands within the district. The amount of these assessments shall be determined by the board of drainage commissioners and must be approved by the clerk of the superior court prior to their annual levy. The proceeds of these assessments shall be used for the purpose of maintaining canals of the drainage district in an efficient operating condition and for the necessary operating expenses of the district as approved by the clerk of the superior court.

The board of drainage commissioners shall have the authority to employ engineering assistance, construction equipment, superintendents and operators for the equipment necessary for the efficient maintenance of the canals, or the maintenance may be done by private contract made after due advertisement as required for the original construction work.

(6) The provisions for maintenance as set forth in this article and elsewhere in this subchapter III shall include water retardant structures and the operation of such.

(7) The board of commissioners may borrow money in anticipation of revenue from maintenance assessments, as hereinbefore provided for, from which assessments the loan shall be repaid. The amount which the commissioners may borrow shall not be limited to the revenues anticipated for any one year. The terms and provisions of such loan shall be approved by the clerk of the superior court which approval shall be requested in the form of a petition and order in the proceeding by virtue of which the district was organized. The proceeds of said loan shall be used only for purposes set forth in article 7A of chapter 156. (1949, c. 1216; 1959, c. 597, s. 4; 1961, c. 614, s. 8.)

Local Modification.—Beaufort: 1963, c. 142.

Editor's Note.—The 1959 amendment added subsections (6) and (7).

The 1961 amendment rewrote the second sentence in subsection (1).

Only the subsections mentioned are set out.

Quoted in In re Perquimans County Drainage District No. Four, 254 N. C. 155, 118 S. E. (2d) 431 (1961).

Article 7B.

Improvement, Renovation, Enlargement and Extension of Canals, Structures and Boundaries.

§ 156-93.2. Proceedings for improvement, renovation and extension of canals, structures and equipment.—The board of commissioners may construct, renovate, improve, enlarge and extend the drainage systems and water retardant structures and any equipment of the district, by complying with the following provisions:

(1) The commissioners shall file with the clerk of the superior court in the county in which the district was organized, a petition which sets forth the need for the improvements requested and a general description of the proposed improvements.

(2) Upon the filing of the petition, the clerk shall then appoint a board of viewers with the same composition and qualifications as is required by G. S. 156-59. He shall direct the board of viewers to consider the proposals of the board of commissioners and report to him (i) whether or not the improvement proposed will benefit the lands sought to be benefited and (ii) whether or not the proposed improvement is practicable.

The board of viewers shall make their report to the clerk within thirty days after their appointment unless the time shall be extended by the court upon the showing of a meritorious cause for the extension.

(3) a. If the board of viewers shall report (i) that none of the improvement proposed will benefit the lands sought to be benefited, or (ii) that it is not practicable, the petition of the board of commissioners shall be dismissed and shall not be submitted again within six months thereafter.

b. If the board of viewers shall report (i) that part or all the improvement proposed will benefit the lands sought to be benefited and (ii) the proposed improvement is practicable, then the clerk shall fix a time and place for a hearing upon said report. The said hearing shall be no less than twenty, nor more than thirty, days after the filing of said report.

(4) Notice of said hearing shall be given as follows:

a. Posting and publication:

1. Posting at the courthouse door of the county in which the proceeding is pending;
2. Posting at five conspicuous places within the district;
3. The notice shall be posted at least twenty days prior to said hearing;
4. Publication in a newspaper with general circulation within the area once a week for three successive weeks.

b. Contents:

1. The notice shall state the time and place for the hearing;
2. Describe in general terms the improvements proposed;
3. That the court will consider and adjudicate the report of the board of viewers.

(5) At the date appointed for the hearing the clerk shall hear and determine any objections that may be offered to the said report. The clerk may make such modifications and changes which tend to increase the benefits of the proposed work or improvement.

(6) a. If the clerk shall adjudicate that (i) none of the improvements proposed will benefit any of the lands sought to be benefited or (ii) that none of the improvements are practicable, he shall dismiss the proceedings and the petition shall not be submitted again within six months thereafter.

b. If the clerk shall approve the said report, he shall then direct the board of viewers to prepare a further and detailed report which shall include the following:

1. Specific plans and profiles together with estimates of the cost of the work recommended by the said board of viewers and an estimate of all other costs including those incurred by the board of viewers;
2. If directed by the clerk, a new property map of the district which shall show thereon the general location of each tract of land which will be benefited by the proposed work;
3. A statement showing the classification of benefits to be received by the several tracts of lands. This classification shall be determined and shown in the same manner as is provided for in G. S. 156-71. The board of viewers may adopt the original classification. Only those lands to be benefited by the proposed work shall be classified for assessment.

The board of viewers shall have, insofar as applicable, the same powers and duties as relate to the final report as are required and provided in article 5 by G. S. 156-69, 156-70, 156-70.1 and 156-71.

The board of viewers shall make their report to the clerk within sixty days after their appointment. The clerk may extend this time upon the showing of meritorious cause for the extension.

The expense of the board of viewers, their assistants, and all costs incurred by them shall be paid from any surplus funds of the district, as defined in this subchapter, or if such are not sufficient, by the same means of financing as are available for such purposes when the district is originally organized. The estimate of the expenditures shall be shown in its report and all amounts of money expended shall be reimbursed when funds are available.

(7) Upon the filing of the said report, the clerk shall fix a time and a place for a hearing thereupon.

(8) The notice of the hearing upon said report shall be given in the same manner as required for the notice of the proposed work as required by the preceding subdivision (4) which relates to the preliminary hearing.

Also, a notice of said hearing shall be mailed at least ten days prior to the hearing, to those landowners as their names appear upon the statement of classification of benefits filed with the report of the board of viewers and whose names and addresses are shown on the tax scrolls of the county wherein their land is situated. The attorneys for, or commissioners of, the district shall use due diligence to determine the said names and addresses from the tax scrolls.

The filing with the clerk of the superior court of a certificate by the attorney for, or the commissioners of, the district, that due diligence has been used to obtain the names and addresses from the tax scrolls and that notice has been mailed to those persons at the address shown, shall be sufficient showing that this provision has been complied with.

The certificate shall state the names, addresses and dates to whom such notice was mailed.

(9) At the date set for the hearing any landowner may appear in person, or by counsel, and file his objections in writing to the report of the board of viewers. It shall be the duty of the clerk to carefully review the report of the board of viewers and the objections filed thereto and make such changes as are necessary to render substantial and equal justice to all landowners in the district.

If the clerk shall adjudicate that the benefits which will accrue to the lands affected are greater than the cost of the improvements, the report of the board of viewers shall be confirmed. The clerk shall then direct the commissioners of the district to proceed with the improvements as approved.

If, however, the clerk finds that the cost of the improvements is greater than the resulting benefits that will accrue to the lands affected, the clerk shall dismiss the proceedings.

(10) Any landowner who is aggrieved may, within ten days, after the confirmation of the report of the board of viewers, appeal to the superior court in term time or in chambers. The appeal shall be heard only upon exceptions theretofore filed in writing, by the complaining party. All of the terms, provisions and procedures of G. S. 156-75 shall apply to the appeal. (1961, c. 614, s. 1.)

Purpose of Article. — The legislature, when it enacted subchapter III authorizing the establishment of drainage districts, made no provision for an alteration and enlargement of boundaries subsequent to the date of creation for the simple reason that the boundaries as finally determined had to include all lands benefited by the improvement, and the lands so benefited were required to be assessed for the benefits accruing. Hence no assessment could be levied either for original construction or for cost of maintenance on lands beyond the boundaries. In re Albemarle Drainage Dist., Beaufort County No. 5, 255 N. C. 338, 121 S. E. (2d) 599 (1961).

The 1961 legislature, recognizing that lands not originally expected to receive benefit from works to be performed by a drainage district might, by changing conditions and the modification or enlargement and maintenance of the drains, receive benefits from work subsequently proposed to be done, made provision for the enlargement of boundaries of drainage districts. In re Albemarle Drainage Dist., Beaufort County No. 5, 255 N. C. 338, 121 S. E. (2d) 599 (1961).

§ 156-93.3. Extension of boundaries.—The boundaries of a drainage district may be extended upon compliance with the requirements and procedures as follows:

(1) The request for extension shall be made by the board of commissioners of the district, in the form of a petition in the name of the drainage district, to the clerk of the superior court of the county wherein the district was originally organized. The proceeding may be ex parte or adversary.

(2) The area proposed to be included within the boundaries of the district must be either:

a. Located upstream and adjacent to the existing boundary of the district and must have as its only source of drainage either:

1. The canals of the district; or
2. Natural or artificial drain ways which empty into or are benefited by the canals of the district; and
3. Must be within the watershed of the existing district; or

b. Adjacent to the existing boundary of the district and have a common outfall with the existing district.

(3) a. In the event the area meets the requirements of (2) a, it shall only be necessary for the petition to be filed by the board of commissioners of the district.

b. In the event the area meets the requirement of (2) b of this section, the owners of fifty per cent (50%) or more of the land area which it is proposed to include or forty per cent (40%) or more of the resident landowners who will be benefited within such area, must join with and be petitioners with the commissioners of the existing district, asking for the extension of boundaries and inclusion of land within the existing district.

(4) Upon filing of the petition for extension of the boundaries, the clerk of the superior court shall appoint a board of viewers with the same composition and qualifications as is required by G. S. 156-59. The board of viewers shall examine the area proposed to be included within the boundaries of the district to determine whether or not, in their opinion, it is feasible and equitable to include said area within the boundaries of the district, and report their finding to the court. The report must be made within thirty days after the appointment of said board of viewers. The time for filing said report may be extended by the clerk upon a showing of a meritorious cause for the extension.

(5) If the board of viewers shall report that the proposed extension of boundary is not feasible or equitable, the petition shall be dismissed and shall not be submitted again until after six months from date of dismissal.

(6) a. If the board of viewers shall report that the proposed extension of boundary is feasible and equitable, then the clerk of the superior court shall order the board of viewers to make a further and detailed report which shall include a map of the area that is proposed to be annexed which shall show:

1. Boundaries of the existing district;
2. Boundaries of the proposed extension;
3. A general location of each individual tract of land which will be benefited.

b. In the event no additional work is proposed, the board of viewers shall report the following:

1. The allocation of benefits derived from the existing canals, structures or other improvements, between the existing district and the area to be included within the boundaries of the existing district, which shall be a percentage figure and shall be the major factor for the determination of the requirements set forth in the succeeding paragraphs 2 and 3;
2. The amount of money, if any, which the owners of the land to be included within the district should pay for the use of the canals, structures or other improvements of the district;
3. The per cent of the cost of maintenance and operating expenses which the owners of the land to be included, should pay;
4. Classification of the additional lands as to benefits derived from the existing canals, structures or other improvements of the district which shall be in accordance with the provisions of G. S. 156-71. The area of the existing district shall not be reclassified, unless directed by the clerk of the superior court;
5. The names and addresses of the landowners within the areas proposed to be included insofar as may be determined from the tax records of the county;
6. Such other information as may be appropriate or as may be directed by the clerk of the superior court.

c. In the event additional work is proposed, the report of the board of viewers shall also contain the information required in G. S. 156-93.2, as it applies to the final report of the board of viewers.

(7) The board of viewers shall file their detailed or final report within sixty (60) days after their appointment. The time for filing of said report may be extended by the clerk upon a showing of meritorious cause for the extension.

(8) Upon the filing of said report those landowners in the area to be included who are not parties to the proceedings and who do not desire to sign the petition, shall be made parties defendant. Summons shall be served upon the defendants in the manner required for special proceedings. There shall be attached to and served with the summons, in lieu of a copy of the petition or final report, a statement which shall set forth (i) the purpose of the proceedings and (ii) that the report of the board of viewers is on file in the office of the clerk of the superior court and may be examined by persons interested.

(9) The attorney for, or the commissioners of, the district shall use due diligence to give notice to every landowner within the area proposed to be included, who has not signed the petition asking for such extension of boundaries and/or the proposed improvements.

The filing of a certificate by the attorney for, or the commissioners of, the district that due diligence has been used to notify each of said defendant landowners shown by the report of the board of viewers, either by personal service or by publication, shall be sufficient showing of compliance with this provision. The certificate shall contain the names of such landowners served personally, the date of service and the names of those served by publication and the date of service by publication.

(10) Upon filing of said certificate the clerk shall fix a time and place for a hearing upon said report, which date shall be no less than twenty days after filing of said certificate.

(11) Notice of said hearing shall be given as follows:

a. Posting and publication:

1. Posting at the courthouse door of the county in which the proceeding is pending;
2. Posting at five conspicuous places in the district and in the area to be included;
3. The notice shall be posted at least twenty days prior to the said hearing;
4. Publication in a newspaper with general circulation within the area once a week for three successive weeks;
5. Mailing a copy of the notice to those persons for whom an address is shown in the certificate filed by the attorney for, or commissioners of, the district.

b. Contents:

1. The notice shall state the time and place for the hearing;
2. Describe in general terms the area proposed to be included and work proposed, if any;
3. That the court will consider and adjudicate the report of the board of viewers.

(12) At the date set for hearing any landowner may appear in person or by counsel and file his objection in writing to the report of the board of viewers. It shall be the duty of the clerk to carefully review the report of the board of viewers and the objections filed thereto and make such changes as are necessary to render substantial and equal justice to all of the landowners and the existing district.

(13) The clerk shall, after making adjustments in the report of the board of viewers, if any, determine:

a. If the area(s) of land sought to be included, or any part thereof, is, or will be, benefited by the canals, structures or other improvements of the district.

b. If such area(s) should equitably be included within the boundary of the district because of the benefits received or to be received from the district.

c. If the requirements of the preceding subdivision (3) b, if applicable, are met.

If the clerk shall determine that all of the three preceding requirements are met, he shall direct that the area(s) of land to be included within the boundaries of the district, in accordance with the provisions of the report of the board of viewers, as approved.

(14) If the clerk shall determine either:

a. That no part of the area proposed to be included is or will be benefited by the canals, structures or other improvements of the district and equitably should not be included within the boundaries of the district; or

b. That the requirements of the preceding subdivision (3) a or b, whichever is applicable, have not been complied with; he shall dismiss the proceeding.

(15) Any landowner who is aggrieved may, within ten days, after the confirmation of the report of the board of viewers appeal to the superior court in term time or in chambers. The appeal shall be heard only upon those exceptions theretofore filed in writing by the complaining party. All of the terms, provisions and procedures of G. S. 156-75 shall apply to the appeals.

(16) The duties and powers of the board of commissioners as to those lands included within the district by the current proceedings shall be the same as to those in the original proceeding. (1961, c. 614, s. 1.)

§ 156-93.4. Coordination of proceedings under G. S. 156-93.2 and 156-93.3.—In the event a proceeding shall be instituted as provided for in G. S. 156-93.2 and shall also include the extension of boundaries, as provided for in G. S. 156-93.3, the provisions of G. S. 156-93.2 and 156-93.3 shall be coordinated and if there shall be any conflict as to procedure, that provided for in G. S. 156-93.3 shall be followed. (1961, c. 614, s. 1.)

§ 156-93.5. Assessments and bonds for improvement, renovation, enlargement and extension.—The board of drainage commissioners shall, for the purposes set forth in this article, levy the necessary assessments and may issue bonds or other debentures for the purpose of providing funds for the construction or acquisition of any of the improvements or works authorized by this article. The time and manner of levying assessments and the issuance of bonds or other debentures and the terms thereof shall be the same as provided for in article 8 of subchapter III. (1961, c. 614, s. 1.)

§ 156-93.6. Rights of way and easements for existing districts.—All drainage districts heretofore created shall be deemed to own an easement or right of way in and to those lands upon which there are existing canals and spoil banks.

Whenever the proposed repairs, maintenance or other improvement make it necessary for the drainage district to acquire additional land for easements or right of way, the procedure to secure the same shall be in accordance with G. S. 156-70.1. (1961, c. 614, s. 1.)

§ 156-93.7. Existing districts may act together to extend boundaries within watershed.—If there should be more than one drainage district in a drain-

age basin, or watershed, the board of drainage commissioners of the several districts may join with the owners of land within the drainage basin and which are not included in a drainage district, in a petition to the court, asking for the creation of a drainage district that will include the entire drainage basin, or watershed. In the event this method should be followed, the requirements hereinafter set forth shall be complied with:

(1) The board of drainage commissioners of the several districts shall act for the several landowners within each district, and by their doing so it shall not be necessary for the several landowners within the districts to sign the petition.

(2) The proceedings shall be the same as provided in G. S. 156-93.2 and 156-93.3.

(3) The board of drainage commissioners and the individual landowners within each district may appear and be heard at any hearing before the court, with the same rights as those landowners in the drainage basin who are not within the boundaries of a drainage district.

(4) The requirements of subdivisions (2) and (3) of G. S. 156-93.3 shall be applicable.

(5) The board of viewers shall, in their final report, include the following:

a. Allocation of the percent of cost of construction, maintenance, operating and all other cost and expenses between the several existing districts and the areas not in an existing district;

b. Classify the benefits in the areas not included within existing districts in accordance with G. S. 156-71.

(6) The board of drainage commissioners of the existing districts shall be responsible for the levy and collection of costs allocated to the several districts.

(7) The board of drainage commissioners of the comprehensive district shall be responsible for the levying and collection of all costs and expenses allocated to the area not within an existing district.

(8) The provisions for the levying of assessments and the issuance of bonds or other debentures, shall be the same for the existing districts and the comprehensive district, as is provided in G. S. 156-93.5. (1961, c. 614, s. 1.)

Article 8.

Assessments and Bond Issue.

§ 156-96. Failure to pay deemed consent to bond issue.—Every person owning land in the district who shall fail to pay to the treasurer the full amount for which his land is liable, as aforesaid, within the time above specified, shall be deemed as consenting to the issuance of drainage bonds, and in consideration of the right to pay his proportion in installments, he hereby waives his right of defense to the payment of any assessments which may be levied for the payment of bonds, because of any irregularity, illegality, or defect in the proceedings prior to this time, except in case of an appeal, as hereinbefore provided, which is not affected by this waiver. The term "person" as used in this subchapter includes any firm, company, or corporation. (1909, c. 442, s. 33; 1911, c. 67, s. 10; C. S., s. 5353; 1963, c. 767, s. 4.)

Editor's Note. — The 1963 amendment deleted "county" before "treasurer" near the beginning of the section.

§ 156-97. Bonds issued.—At the expiration of fifteen days after publication of notice of bond issue the board of drainage commissioners may issue bonds of the drainage district for an amount equal to the total cost of the improvement, less such amounts as shall have been paid in in cash to the treasurer.

Bonds issued by the board of drainage commissioners shall comply with the following provisions:

(1) The bonds shall be serial bonds;

(2) The denomination of the bonds shall be not less than one hundred dollars ($100.00) nor more than one thousand dollars ($1,000.00);

(3) The interest upon said bonds shall not be more than six per cent per annum, from the date of issue and payable semiannually;

(4) The first annual installment of principal shall fall due not less than three years nor more than six years after the date of the bonds;

(5) Each annual installment of principal shall be not less than two per cent nor more than ten per cent of the total bonds authorized;

(6) If the total amount of bonds to be issued does not exceed ten per cent of the total amount of the assessment, the board of commissioners may, in their discretion, not issue any bonds and in lieu thereof issue assessment anticipation bonds which shall mature over a period of not less than four nor more than ten years and shall be payable in equal annual installments. The interest rate on said assessment anticipation bonds shall not be more than six per centum per annum;

(7) The board of commissioners may issue bond anticipation note or notes to be redeemed and paid upon the sale and delivery of bonds herein provided for. If such bond anticipation note or notes are issued, at the discretion of the commissioners, such may be done after the bonds have been sold and prior to the printing and delivery of said bonds and must be paid from the proceeds of said bonds when delivered. (1909, c. 442, s. 34; 1911, c. 67, s. 11; 1917, c. 152, s. 12; C. S., s. 5354; 1923, c. 217, s. 5; 1955, c. 1340; 1957, c. 1410, s. 1; 1961, c. 601, s. 1; 1963, c. 767, s. 4.)

Editor's Note.—The 1961 amendment rewrote all of this section, as amended in 1955 and 1957, except the first sentence.

The 1963 amendment deleted the word "county" preceding "treasurer" at the end of the first sentence.

Cited in In re Albemarle Drainage Dist., Beaufort County No. 5, 255 N. C. 338, 121 S. E. (2d) 599 (1961).

§ 156-97.1. Issuance of assessment anticipation notes.—In lieu of the bonds provided for in G. S. 156-97, the board of drainage commissioners may issue assessment anticipation notes of the district for an amount not to exceed the assessment levied by the commissioners and approved by the clerk of the superior court, less such amounts as shall have been paid in in cash to the treasurer. It shall be optional with the board of drainage commissioners in issuing assessment anticipation notes to issue serial notes in any denominations bearing not more than six per cent (6%) interest from the date of issue, payable semiannually. The first annual installment of principal shall be due not less than one year nor more than two years after date thereof, and each annual installment of principal shall not be less than two per cent (2%) nor more than twenty-five per cent (25%) of the total amount of notes authorized and issued.

Such assessment anticipation notes, when issued, shall have the same force and effect of bonds issued under the provisions of this article and shall be collectible in the same manner.

The commissioners may issue either serial notes or an amortized note. (1957, c. 912, s. 2; 1961, c. 601, s. 3; 1963, c. 767, ss. 4, 7.)

Editor's Note. — The 1961 amendment substituted "two per cent (2%)" for "ten per cent (10%)" in the next to last line of the first paragraph.

The 1963 amendment deleted the word "county" preceding "treasurer" at the end of the first sentence and added the third paragraph.

§ 156-98. Form of bonds and notes; excess assessment.—All bonds and notes authorized and issued shall be signed by the chairman and secretary of the board of drainage commissioners and the corporate seal of the district affixed thereto, and the interest coupons shall be authenticated by the facsimile signature of the secretary, and both the principal and interest coupons shall be payable at some bank or trust company to be designated by the board of drainage commissioners and incorporated in the body of the bond. The form of the bond shall be authorized by the board of drainage commissioners or by the board and the purchaser of the bonds jointly, at the option of the board.

All bonds of reclamation districts shall have that fact noted upon the face of the bond, either by stamping or printing the same thereon. All bonds of improvement districts shall also have that fact noted upon their face.

For the purpose of meeting any possible deficit in the collection of annual drainage assessments or any deficit arising out of unforeseen contingencies there shall be levied, assessed and collected during each year when either the interest or principal or both interest and principal on the outstanding bonds shall be due, an assessment as will yield ten per cent more than the total of interest and principal due in such years; that is to say, for every one hundred dollars of principal and interest, or either, due in any one year, there shall be levied, assessed and collected a sufficient drainage assessment to yield one hundred and ten dollars for such year. When this excess of drainage tax so levied, assessed and collected shall accumulate so that the aggregate surplus in the hands of the treasurer of the district shall amount to more than fifteen per cent of the total principal of the bonds of the district outstanding and unpaid, then such surplus above fifteen per cent thereof may be available for expenditure by the board of drainage commissioners in the maintenance and upkeep of the drainage work in such district in the manner provided by law: After all the drainage assessments have been collected except the last assessment, if the surplus which has accumulated amounts to more than five per cent of the total issue of bonds of the district, then and in such event the board of drainage commissioners may in their discretion apply such excess above five per cent toward the reduction of the total amount embraced in the last assessment, reducing the same pro rata as to each tract of land embraced in the district, and having regard to the classification, to the end that such reduction shall be fairly and justly made. As to such surplus as shall accumulate in the hands of the treasurer of the district over and above all obligations of the district which may be due, the treasurer is hereby directed to deposit same in some solvent bank or banks at the highest rate of interest obtainable therefor, and the said treasurer shall be authorized, if he deems it necessary, to demand satisfactory security for such deposits; but the said treasurer shall reserve the right to demand a repayment at any time upon giving not exceeding thirty days' notice thereof. Whereas the proceeds of the first drainage assessment may not be collected and in the hands of the treasurer of the district prior to the maturity of the first and second semi-annual installments of interest upon the issue of bonds, the treasurer of the district is hereby directed to pay the interest coupons first maturing and also the interest coupons next maturing, if necessary, out of funds in his hands for the purpose of maintaining the improvement for the period of three years after the completion of the work or construction. As a surplus fund with the treasurer arising out of the annual additional assessment of ten per centum shall accumulate in any one year in excess of fifteen per centum of the total principal of the bonds of the district outstanding and unpaid, as herein provided, the treasurer shall transfer in each of such years such surplus fund to the fund for maintaining the improvement after completion, as a reimbursement of the fund formerly withdrawn therefrom for the payment of the first and second installments of interest coupons until such reimbursement shall be fully made. The treasurer shall thereafter keep separate accounts of the proceeds of such additional ten per cent assessment remaining each year after the payment of all maturing obligations, and also a separate account of the funds pro-

vided for maintaining the improvement for the period of three years after completion of improvement and all payments therefrom and reimbursements thereto. (1917, c. 152, s. 13; C. S., s. 5355; 1923, c. 217, s. 6; 1927, c. 98, s. 5; 1961, c. 601, s. 2.)

Editor's Note. —
The 1961 amendment inserted the words "and notes" near the beginning of the section.

Quoted in In re Perquimans County Drainage District No. Four, 254 N. C. 155, 118 S. E. (2d) 431 (1961).

§ 156-99. Application of funds; holder's remedy. — The commissioners of the district may sell the bonds or notes of the district for not less than par and devote the proceeds to the payment of the work as it progresses and to the payment of the other expenses of the district provided for in this subchapter. The proceeds from the sale of the said bonds or notes shall be for the exclusive use of the levee or drainage district specified therein. A copy of said bonds or notes shall be recorded in the drainage record. If serial bonds or notes are issued it shall only be necessary to record the first numbered bond or note, with a statement showing the serial numbers, the amount and the due dates of principal and interest.

There shall be set out specifically in the drainage record of said proceeding, a description of the lands embraced in the district for which the tax or assessment has not been paid in full, and which is subject to the lien of the said obligations. A reference to the tract number on the map of the district as recorded in the drainage proceedings or in the office of the register of deeds is sufficient description.

If any installment of principal or interest represented by the bonds and notes, shall not be paid at the time and in the manner when the same shall become due and payable, and such default shall continue for a period of six (6) months, the holders of such bonds or notes upon which default has been made may have a right of action against the drainage district or the board of drainage commissioners of the district, its officers, including the tax collector and treasurer, directing the levying of a tax or special assessment as herein provided, and the collection of same, in such sum as may be necessary to meet any unpaid installments of principal and interest and costs of action; and such other remedies are hereby vested in the holders of such bonds or notes in default, as may be authorized by law and the right of action is hereby vested in the holders of such bonds or notes upon which default has been made, authorizing them to institute suit against any officer on his official bond for failure to perform any duty imposed by the provisions of this subchapter.

The official bond for the tax collector and treasurer shall be liable for the faithful performance of the duties herein assigned them. Such bond may be increased by the board of county commissioners. (1909, c. 442, s. 34; 1911, c. 67, s. 11; c. 205; C. S., s. 5356; 1923, c. 217, s. 7; 1963, c. 767, s. 8.)

Editor's Note.—
The 1963 amendment rewrote this section.

§ 156-100.1. Sale of assessment anticipation notes.—Should assessment anticipation notes be issued by a drainage district under the provisions of G. S. 156-97.1, the board of drainage commissioners may accept any private bid for said assessment anticipation notes at not less than their par value, with accrued interest thereon without the necessity of advertising the sale thereof as is provided for in the sale of bonds under the provisions of G. S. 156-100. (1957, c. 912, s. 3.)

§ 156-100.2. Payment of assessments which become liens after original bond issue. — Payment of assessments not included in the original bond or note issue shall be financed in the following manner:

(1) In the event of appeal from the order of the clerk of superior court approving the final report of the board of viewers, the assessment approved by the appellate court shall be due and payable thirty (30) days from the entry of the final order in said appeal.

(2) In the event land should be included within the district for any other reason, the assessment thereon shall be due and payable thirty (30) days after the date of the agreement or court order by which said land is included.

(3) In the event the assessments referred to in the preceding subdivisions one (1) and two (2) are not paid at the expiration of the said thirty-day period, then the commissioners may provide for installment payments of said assessment upon such terms as may be approved by the clerk of the superior court who has jurisdiction of the said drainage proceeding.

The commissioners of the district may issue bonds or notes for an amount equal to the total of the installment payments, upon terms as approved by the clerk of the superior court. The lien of the assessment, the rights of the bond or note holder, and all other liabilities and rights shall be the same as prescribed in this subchapter III for other bonds and notes of the district. (1963, c. 767, s. 9.)

§ 156-100.3. Sinking fund.—The commissioners of the drainage district may establish a sinking fund to be used to pay bonds and notes issued by the district. The terms and conditions by which the said sinking fund is established shall be approved by the clerk of the superior court who has jurisdiction of said district. (1963, c. 767, s. 10.)

§ 156-109. Receipt books where lands in two or more counties.— Where any drainage district which has been established contains lands located in a county or counties other than the county in which the district was established, the clerk of the superior court of the county in which the district was established shall have prepared annually during the month of August a form of tax bills or receipts, with appropriate stubs attached, covering all the lands in the drainage district located in such other county or counties, and in the form herein provided for the county in which the district has been established, and have the same substantially bound in book form. He shall also fill in the blanks of such tax receipts ready for the signature of the collector. On a page in such bound book after the tax bills or receipts there shall be appended an order directed to the sheriff or tax collector in the county in which such lands are located, which shall be in substantially the following form: State of North Carolina—County of ..... The Sheriff or Tax Collector of ..... County: This is to certify that the foregoing tax bills or blank receipts embrace the drainage assessments made on certain lands in the county of ....., which are located in and are a part of (here insert the name of the drainage district), which district was established in the county of ..... These assessments are due on the first Monday of September, 19.., and must be paid and collected within the time required by law. You will make monthly settlements of your collections with the treasurer of ..... County, being the county in which the district was established, and in all other respects you will discharge your duties as sheriff or tax collector as required by law. In witness whereof, I have hereunto set my hand and official seal, this ..... day of ....., 19.....

....., Clerk Superior Court ..... County.

Thereupon such drainage assessments in such county shall have the force and effect of a judgment upon the lands so assessed, as in the case of State and county taxes, and shall in all other respects be as valid assessments as those levied upon lands in the county in which the district was established. The auditor for drainage districts herein authorized shall also examine the records and accounts of the sheriff of such county. In the establishment and administration of the drainage districts the clerk of the superior court, the treasurer, and the chairman of the board of drainage commissioners shall have jurisdiction over the lands and the collection of drainage assessments in the county or counties other than the county in which the district was established to the same extent as in the county where such district was established: Provided, that in those counties which do not have a county treasurer, then the auditor provided for in this subchapter shall perform the duties required by this section for the county treasurer. (1917, c. 152, s. 11; C. S., s. 5365; 1963, c. 767, s. 4.)

Editor's Note.—Section 156-81.1, as enacted by Session Laws 1963, c. 767, s. 4, provides that all references in subchapter III of this chapter to "treasurer," "county treasurer" or "county auditor" are amended to refer exclusively to the treasurer appointed as provided in that section. Pursuant to § 156-81.1, the word "county" has been deleted preceding the word "treasurer" near the beginning of the third sentence of the last paragraph of this section. However, there was no practicable method of changing the proviso at the end of this section to give effect to § 156-81.1.

§ 156-111. Sheriff to make monthly settlements; penalty.—The sheriff or tax collector shall be required to make settlements with the treasurer on the first day of each month of all collections of drainage assessments for the preceding month, and to pay over to the treasurer the money so collected, for which the treasurer shall execute an appropriate receipt, to the end that the treasurer may have funds in hand to meet the payments of the interest and principal due upon the outstanding bonds as they mature. If any sheriff or tax collector shall fail to comply with the law for the collection of drainage assessments, or in making payments thereof to the treasurer as provided by law, he shall be guilty of a misdemeanor and, upon conviction, shall be subject to fine and imprisonment, in the discretion of the court, and he shall likewise be liable in a civil action for all damages which may accrue either to the board of drainage commissioners or to the holder of the bonds, to either or both of whom a right of action is given. (1911, c. 67, s. 12; 1917, c. 152, s. 9; C. S., s. 5367; 1963, c. 767, s. 4.)

Editor's Note. — The 1963 amendment deleted the word "county" preceding the word "treasurer" where it first appears in this section.

§ 156-112. Duty of treasurer to make payment; penalty.—It shall be the duty of the treasurer, and without any previous order from the board of drainage commissioners, to provide and pay the installments of interest at the time and place as evidenced by the coupons attached to the bonds, and also to pay the annual installments of the principal due on the bonds at the time and place as evidenced by the bonds. The treasurer shall be guilty of a misdemeanor and subject, upon conviction, to fine and imprisonment, in the discretion of the court, if he shall willfully fail to make prompt payments of the interest and principal of the bonds, and he shall likewise be liable in a civil action for all damages which may accrue either to the board of drainage commissioners or to the holder of such bonds, to either or both of whom a right of action is hereby given. (1911, c. 67, s. 12; C. S., s. 5368; 1963, c. 767, s. 4.)

Editor's Note. — The 1963 amendment deleted the word "county" preceding the word "treasurer" at two places in this section.

§ 156-113. Fees for collection and disbursement.—The fee allowed the sheriff or tax collector for collecting the drainage tax as hereinbefore pre-

scribed shall be two per cent of the amount collected, and the fee allowed the treasurer for disbursing the revenue obtained from the sale of drainage bonds shall be one per cent of the amount disbursed: Provided, that no fee shall be allowed the sheriff or tax collector or treasurer for collecting or receiving the revenue obtained from the sale of the bonds hereinbefore provided for, nor for disbursing the revenue raised or paying off such bonds; provided, that where the sheriff, tax collector or treasurer is on a salary basis, the fees herein set out shall not be charged. (1911, c. 67, s. 13; C. S., s. 5369; 1925, c. 271, s. 1; 1957, c. 562; 1963, c. 767, s. 4.)

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

The 1963 amendment deleted the word "county" before the word "treasurer" in the first proviso.

§ 156-116. Modification of assessments.

2. Upon Sale of Land for Assessments.—If any person, or any number of persons, claiming to have title to any tract or tracts of land subject to assessment or drainage tax shall fail to pay any annual assessment levied against such lands, and the sheriff or tax collector shall be compelled to sell such lands under the law for the purpose of making such collection, the net proceeds of such sale shall be paid to the treasurer, to be held by him and disbursed for the purpose of paying the current assessment and future annual assessments so far as the proceeds may be sufficient. When the fund in the custody of the treasurer shall be exhausted in the payment of annual assessments against such lands, or there shall not be a sufficient sum to pay the next annual assessment, the treasurer shall immediately give written notice to that effect to the chairman of the board of drainage commissioners of the district, and also to the clerk of the superior court, whereupon the board of drainage commissioners shall institute an investigation of such tract or tracts of land to determine the market value, and if they shall find that the market value is not equal to all the future annual assessments to cover its share of installments of principal and interest on the outstanding bonds, they shall proceed, with the approval of the clerk of the superior court, to make new reassessment rolls on all the remaining lands in the district and increase the sum in sufficient sums to equal the deficit thereby created and such new assessment rolls shall constitute the future assessment rolls until changed according to law, and shall be certified to the tax collector as herein provided in lieu of the former assessment rolls. However, the tract or tracts of land which have been so sold by the tax collector shall continue on the assessment roll in the name of the new owner, but reassessed upon the new basis, and the drainage tax collected at the same time and in the same manner as other lands as long as such lands may have sufficient market value out of which to collect the annual drainage tax, and when such lands shall cease to have such value, or shall be abandoned by the person claiming title thereto, the drainage commissioners may omit the same from the assessment roll with the approval of the clerk of the superior court, but such lands may in the same manner at any time in the future be restored to the assessment rolls.

3. Surplus Funds.—If the funds in the hands of the treasurer at any time, arising under this section or in any other manner, shall be greater than is necessary to pay the annual installments of principal and interest, or the annual cost of maintenance of the drainage works, or both, such surplus shall be held by the treasurer for future disbursement for other purposes as herein provided or subject to the order of the board of drainage commissioners.

(1963, c. 767, s. 4.)

Editor's Note. — The 1963 amendment deleted the word "county" preceding "treasurer" in the first and second sentences of subsection 2 and at two places in subsection 3. As the rest of the section was not changed only subsections 2 and 3 are set out.

The disposition of funds of a drainage

district is a matter of statutory regulation in North Carolina. In re Perquimans County Drainage District No. Four, 254 N. C. 155, 118 S. E. (2d) 431 (1961).

§§ **156-118 to 156-120:** Repealed by Session Laws 1961, c. 614, s. 11.

§ **156-123. Proceedings as for original bond issue.**

Cross Reference.—See Editor's Note under § 156-92.

§ **156-124.1:** Repealed by Session Laws 1961, c. 614, s. 11.

Article 10.

Report of Officers.

§ **156-131. Annual report.**—At the end of each fiscal year the board of commissioners of all drainage districts in the State of North Carolina shall file with the clerk of the superior court in the county where the district is organized a verified itemized statement of receipts and expenditures of all funds belonging to the district during the fiscal year just closed. (1917, c. 72, s. 2; C. S., s. 5375; 1957, c. 1410, s. 2.)

Editor's Note. — The 1957 amendment deleted the former requirement for posting and publishing the report.

§ **156-132. Penalty for failure.**—Any board of commissioners of any drainage district in the State, and each of the members thereof, which shall fail or refuse to file the statements or accounts, as provided in §§ 156-130 and 156-131, shall be deemed guilty of a misdemeanor and upon conviction shall be punished in the discretion of the court. (1917, c. 72, s. 3; C. S., s. 5376; 1957, c. 1410, s. 3.)

Editor's Note. — The 1957 amendment deleted the words relating to publishing and posting.

§ **156-133. Auditor appointed; duties; compensation.**—The clerk of the superior court for the county where the district was organized, shall annually appoint an intelligent and competent person of sufficient experience, as auditor for each drainage district which levies current assessments or which has accumulated funds. The same person may be auditor of more than one drainage district. The auditor shall annually report to the court as to financial affairs of the drainage district. The auditor may prepare all financial reports required by the drainage law to be made to the court by the commissioners of the drainage district. The compensation of the auditor shall be fixed by the said clerk of the superior court, and shall be paid out of the general, or operating, fund of the district. (1917, c. 152, s. 10; 1919, c. 208, s. 3; C. S., s. 5377; 1959, c. 420; 1963, c. 767, s. 11.)

Editor's Note.—The 1959 amendment changed the maximum compensation from fifty to two hundred dollars annually.

The 1963 amendment rewrote this section.

§ **156-134. Duties of the auditor.**—The auditor for the drainage district will be required to examine the assessment roll and the records and accounts of the sheriff or tax collector as to the assessment roll which went into his hands on the previous first Monday in September and for all previous years as to which the records and accounts of the sheriff or tax collector have not been audited.

The auditor shall for each of such years make a report as to each drainage district, showing the total amount of drainage assessments due for each year, the amount collected by the sheriff up to the fifteenth day of May of the following year, the names of the owners of land, and a brief description of the lands on

which the drainage assessments have not been paid, and the total amount of unpaid drainage assessments, with any further data or information which the auditor may regard as pertinent.

If the lands in the district lie in other counties, the auditor for the county in which the district was established shall also examine the records of the sheriff or tax collector for such other counties.

The auditor shall also examine the books of the treasurer for similar years, and he shall report the amount of drainage assessments paid to the treasurer by the sheriff or tax collector for each year, and the amounts paid out by the treasurer during such years, and for what purposes paid. It shall be the duty of the sheriff and treasurer to permit the auditor to examine their official books and records and to furnish all necessary information, and to assist the auditor in the discharge of his duties.

The auditor shall make a report to the board of county commissioners on or before the first Monday in July following his appointment, and he shall deliver a duplicate of such report to the chairman of the board of drainage commissioners of each drainage district established in the county.

If the sheriff has not collected all of the drainage assessments, or has not paid over all collections to the treasurer, or if the treasurer has not made disbursements of the drainage funds as required by law, or has not in his hands the funds not so disbursed by him, it shall be the duty of the auditor to so report, and to prepare two certified copies of his report, one of which shall be delivered to the judge holding a term of superior court in the county following the first Monday in July, and a copy to the solicitor of the judicial district in which the county is located, and it shall be the duty of such solicitor to examine carefully such report and to institute such action, civil or criminal, against the sheriff or tax collector or the treasurer, as the facts contained in the report may justify, or as may be required by law. (1917, c. 152, s. 10; C. S., s. 5378; 1963, c. 767, s. 4.)

Editor's Note. — The 1963 amendment deleted the words "of the county" following the word "treasurer" near the beginning of the fourth paragraph and the word "county" preceding the word "treasurer" where it first appears in the last paragraph.

Article 11.

General Provisions.

§ 156-135.1. Investment of surplus funds.

Cited in In re Perquimans County Drainage District No. Four, 254 N. C. 155, 118 S. E. (2d) 431 (1961).

§ 156-138.1. Acquisition and disposition of lands; lease to or from federal or State government or agency thereof.—The district may acquire such lands as may be necessary or convenient to enable it to accomplish the purposes for which the district was established. If the lands cannot be acquired by agreement as to the purchase price, then and in such event, the power of eminent domain is hereby conferred and the same may be condemned by the procedure set out in G. S. 156-67 and article 2, chapter 40 of the General Statutes. The land so acquired may be used in such manner and for such purposes as the commissioners of the district may deem best. If, in the opinion of the drainage commission of the district such lands should be sold, leased or rented, the board may do so, subject to the approval of the clerk of the superior court.

The commissioners of the district are hereby authorized and empowered, in their discretion, to convey or lease to the State or federal governments, or any of their agencies, with or without consideration, any properties, real or personal, be-

longing to said district, if in their opinion such is necessary to enable the district to receive State or federal funds available to it. The terms of such conveyance or lease shall be subject to the approval of the clerk of the superior court of the county in which the district was established.

The commissioners of the district are authorized and empowered to lease from the State or federal governments such real or personal property as may be needed by the district to enable it to efficiently operate and maintain the district for the purposes for which it was established. The terms of such lease shall be subject to the approval of the clerk of the superior court of the county in which the district was established. (1957, c. 539.)

§ 156-138.2. Meaning of "majority of resident landowners" and "owners of three fifths of land area."—Wherever in this subchapter reference is made to a "majority of resident landowners" or "owners of three fifths of the land area," such reference shall be deemed to refer only to lands alleged in a petition or adjudged by the court to be benefited by the proposed construction work. (1959, c. 1312, s. 2.)

§ 156-138.3. Notice.—Unless specifically required by the provisions of this subchapter, it is not necessary to give notice to any landowner of a motion made to, or order rendered by the clerk of the superior court or the judge of the superior court relating to the affairs of the district, financial or otherwise, except when an assessment is proposed to be made upon his land and then such notice shall be given as is required by the provisions of this subchapter. This provision for notice of assessment shall not apply to assessments for annual maintenance expenses, which are provided for in this subchapter, and specifically in article 7A and G. S. 156-92. (1961, c. 614, s. 3.)

Chapter 157.

Housing Authorities and Projects.

Article 1.

Housing Authorities Law.

Article 1.

Housing Authorities Law.

§ 157-1. Title of article.

Slum Clearance Held Public Purpose.—See In re Housing Authority, 233 N. C. 649, 65 S. E. (2d) 761 (1951).

Article Relates to Health and Sanitation.—This article, authorizing the creation of municipal housing authorities, is a statute relating to health and sanitation. State v. Alverson, 254 N. C. 204, 118 S. E. (2d) 408 (1961).

Applied in Housing Authority of Wilson v. Wooten, 257 N. C. 358, 126 S. E. (2d) 101 (1962).

Cited in In re Housing Authority, 235 N. C. 463, 70 S. E. (2d) 500 (1952); State v. Lenoir, 249 N. C. 96, 105 S. E. (2d) 411 (1958).

§ 157-2. Finding and declaration of necessity.

Legislative Purpose.—The legislature authorized the creation of housing authorities as a means of protecting low-income citizens from unsafe or unsanitary conditions in urban or rural areas. Powell v. Eastern Carolina Regional Housing Authority, 251 N. C. 812, 112 S. E (2d) 386 (1960).

Stated in State v. Alverson, 254 N. C. 204, 118 S. E. (2d) 408 (1961).

§ 157-3. Definitions.

(2) "City" shall mean any city or town having a population of more than five hundred (500) inhabitants according to the last federal census or any revision or amendment thereto.

(1959, cc. 321, 641, 1281; 1961, c. 200, s. 1.)

Editor's Note.—

The 1959 and 1961 amendments rewrote subsection (2). As only subsection (2) was affected by the amendments the rest of the section is not set out.

Quoted in In re Housing Authority, 233 N. C. 649, 65 S. E. (2d) 761 (1951).

§ 157-4. Notice, hearing and creation of authority; cancellation of certificate of incorporation.—Any twenty-five residents of a city and of the area within ten miles from the territorial boundaries thereof may file a petition with the city clerk setting forth that there is a need for an authority to function in the city and said surrounding area. Upon the filing of such a petition the city clerk shall give notice of the time, place and purposes of a public hearing at which the council will determine the need for an authority in the city and said surrounding area. Such notice shall be given at the city's expense by publishing a notice, at least ten days preceding the day on which the hearing is to be held, in a newspaper having a general circulation in the city and said surrounding area, or, if there be no such newspaper, by posting such notice in at least three public places within the city, at least ten days preceding the day on which the hearing is to be held.

Upon the date fixed for said hearing held upon notice as provided herein, an opportunity to be heard shall be granted to all residents and taxpayers of the city and said surrounding area and to all other interested persons. After such a hearing, the council shall determine:

(1) Whether insanitary or unsafe inhabited dwelling accommodations exist in the city and said surrounding area, and/or

(2) Whether there is a lack of safe or sanitary dwelling accommodations in the city and said surrounding area available for all the inhabitants thereof.

In determining whether dwelling accommodations are unsafe or insanitary, the council shall take into consideration the following: the physical condition and age of the buildings; the degree of overcrowding; the percentage of land coverage; the light and air available to the inhabitants of such dwelling accommodations; the size and arrangement of the rooms; the sanitary facilities; and the extent to which conditions exist in such buildings which endanger life or property by fire or other causes.

If it shall determine that either or both of the above enumerated conditions exist, the council shall adopt a resolution so finding (which need not go into any detail other than the mere finding) and shall cause notice of such determination to be given to the mayor who shall thereupon appoint, as hereinafter provided, five commissioners to act as an authority. Said commission shall be a public body and a body corporate and politic upon the completion of the taking of the following proceedings:

The commissioners shall present to the Secretary of State an application signed by them, which shall set forth (without any detail other than the mere recital):

(1) That a notice has been given and public hearing has been held as aforesaid, that the council made the aforesaid determination after such hearing, and that the mayor has appointed them as commissioners;

(2) The name and official residence of each of the commissioners, together with a certified copy of the appointment evidencing their right to office, the date and place of induction into and taking oath of office, and that they desire the housing authority to become a public body and a body corporate and politic under this article;

(3) The term of office of each of the commissioners;
(4) The name which is proposed for the corporation; and
(5) The location of the principal office of the proposed corporation.

The application shall be subscribed and sworn to by each of said commissioners before an officer authorized by the laws of the State to take and certify oaths, who shall certify upon the application that he personally knows the commissioners and knows them to be the officers as asserted in the application, and that each subscribed and swore thereto in the officer's presence. The Secretary of State shall examine the application and if he finds that the name proposed for the corporation is not identical with that of a person or of any other corporation of this State or so nearly similar as to lead to confusion and uncertainty he shall receive and file it and shall record it in an appropriate book of record in his office.

When the application has been made, filed and recorded, as herein provided, the authority shall constitute a public body and a body corporate and politic under the name proposed in the application; the Secretary of State shall make and issue to the said commissioners a certificate of incorporation pursuant to this article, under the seal of the State, and shall record the same with the application.

If the council, after a hearing as aforesaid, shall determine that neither of the above enumerated conditions exist, it shall adopt a resolution denying the petition. After three months shall have expired from the date of the denial of any such petitions, subsequent petitions may be filed as aforesaid and new hearings and determinations made thereon.

In any suit, action or proceeding involving the validity or enforcement of or relating to any contract of the authority, the authority shall be conclusively deemed to have been established in accordance with the provisions of this article upon proof of the issuance of the aforesaid certificate by the Secretary of State. A copy of such certificate, duly certified by the Secretary of State, shall be admissible in evidence in any such suit, action or proceeding, and shall be conclusive proof of the filing and contents thereof.

The Secretary of State is authorized and empowered to revoke or to cancel a certificate of incorporation previously issued to an authority or housing authority upon filing in his office a petition and resolution of the council and a petition and resolution of the authority and its members requesting such revocation or cancellation and when the Secretary of State is satisfied that no indebtedness has been incurred or property acquired by said housing authority. (1935, c. 456, s. 4; 1943, c. 636, s. 7; 1961, c. 987.)

Editor's note.—
The 1961 amendment added the last paragraph.

§ 157-5. Appointment, qualifications and tenure of commissioners.

Local Modification.—City of Wilson: 1953, c. 664.

§ 157-9. Powers of authority.

Authorities created pursuant to §§ 157-2, 157-4, 157-33, and 157-35 are public bodies exercising public powers. Hence, they are sometimes called municipal corporations. Powell v. Eastern Carolina Regional Housing Authority, 251 N. C. 812, 112 S. E. (2d) 386 (1960).

§ 157-11. Eminent domain.

Adoption of Proper Resolution Prerequisite to Exercise of Eminent Domain.—See In re Housing Authority, 233 N. C. 649, 65 S. E. (2d) 761 (1951).

Discretion of Authority in Selection of Site.—See note to § 157-50.

§ 157-26. Tax exemptions. — The authority shall be exempt from the payment of any taxes or fees to the State or any subdivision thereof, or to any

officer or employee of the State or any subdivision thereof. The property of an authority shall be exempt from all local and municipal taxes and for the purposes of such tax exemption, it is hereby declared as a matter of legislative determination that an authority is and shall be deemed to be a municipal corporation. Bonds, notes, debentures and other evidences of indebtedness of an authority heretofore or hereafter issued are declared to be issued for a public purpose and to be public instrumentalities and, together with the interest thereon, shall be exempt from taxes. (1935, c. 456, s. 26; 1953, c. 907.)

Editor's Note.—The 1953 amendment rewrote the third sentence.

For brief comment on the 1953 amendment, see 31 N. C. Law Rev. 442.

§ 157-28. Restriction on right of eminent domain; right of appeal preserved; investigation by Utilities Commission.

Cited in In re Housing Authority, 233 N. C. 649, 65 S. E. (2d) 761 (1951).

§ 157-39.1. Area of operation of city, county and regional housing authorities.—The boundaries or area of operation of a housing authority created for a city shall include said city and the area within ten miles from the territorial boundaries of said city, but in no event shall it include the whole or a part of any other city, except as otherwise provided herein. The area of operation or boundaries of a housing authority created for a county shall include all of the county for which it is created and the area of operation or boundaries of a regional housing authority shall include (except as otherwise provided elsewhere in this article) all of the counties for which such regional housing authority is created and established: Provided, that a county or regional housing authority shall not undertake any housing project or projects within the boundaries of any city unless a resolution shall have been adopted by the governing body of such city (and also by any housing authority which shall have been theretofore established and authorized to exercise its powers in such city) declaring that there is a need for the county or regional housing authority to exercise its power within such city: Provided, that the jurisdiction of any rural housing authority to which the Secretary of State has heretofore issued a certificate of incorporation shall extend to within a distance of one mile of the town or city limits of any town or city having a population in excess of five hundred, located in any county now or hereafter constituting a part of the territory of such rural housing authority: Provided, further, that this provision shall not affect the jurisdiction of any city housing authority to which the Secretary of State has heretofore issued a certificate of incorporation. (1943, c. 636, s. 5; 1961, c. 200, s. 2.)

Editor's Note.—The 1961 amendment substituted "five hundred" for "five thousand" in line eighteen.

§ 157-39.5. Consolidated housing authority.—If the governing body of each of two or more municipalities (with a population of less than five hundred, but having an aggregate population of more than five thousand) by resolution declares that there is a need for one housing authority for all of such municipalities to exercise in such municipalities the powers and other functions prescribed for a housing authority, a public body corporate and politic to be known as a consolidated housing authority (with such corporate name as it selects) shall thereupon exist for all of such municipalities and exercise its powers and other functions within its area of operation (as herein defined), including the power to undertake projects therein; and thereupon any housing authority created for any of such municipalities shall cease to exist except for the purpose of winding up its affairs and executing a deed of its real property to the consolidated housing authority: Provided, that the creation of a consolidated housing authority and the finding of need therefor shall be subject to the same provisions and limitations

of this Housing Authorities Law as are applicable to the creation of a regional housing authority and that all of the provisions of this Housing Authorities Law applicable to regional housing authorities and the commissioners thereof shall be applicable to consolidated housing authorities and the commissioners thereof: Provided, further, that the area of operation or boundaries of a consolidated housing authority shall include all of the territory within the boundaries of each municipality joining in the creation of such authority together with the territory within ten miles of the boundaries of each such municipality, except that such area of operation may be changed to include or exclude any municipality or municipalities (with its aforesaid surrounding territory) in the same manner and under the same provisions as provided in this article for changing the area of operation of a regional housing authority by including or excluding a contiguous county or counties: Provided, further, that for all such purposes the term "board of county commissioners" shall be construed as meaning "governing body" except in § 157-36, where it shall be construed as meaning "mayor" or other executive head of the municipality, the term "county" shall be construed as meaning "municipality", the term "clerk" shall be construed as meaning "clerk of the municipality or officer with similar duties," the term "region" shall be construed as meaning "area of operation of the consolidated housing authority" and the terms "county housing authority" and "regional housing authority" shall be construed as meaning "housing authority of the city" and "consolidated housing authority," respectively, unless a different meaning clearly appears from the context.

The governing body of any such municipality for which a housing authority has not been created may adopt the above resolution if it first determines that there is a need for a housing authority to function in said municipality, which determination shall be made in the same manner and subject to the same conditions as the determination required by § 157-4 for the creation of a housing authority for a city: Provided, that after notice given by the clerk (or officer with similar duties) of the municipality, the governing body of the municipality may, without a petition therefor, hold a hearing to determine the need for a housing authority to function therein.

Except as otherwise provided herein, a consolidated housing authority and the commissioners thereof shall, within the area of operation of such consolidated housing authority, have the same functions, rights, powers, duties, privileges, immunities and limitations as those provided for housing authorities created for cities, counties, or groups of counties and the commissioners of such housing authorities, in the same manner as though all the provisions of law applicable to housing authorities created for cities, counties, or groups of counties were applicable to consolidated housing authorities. (1943, c. 636, s. 5; 1961, c. 200, s. 3.)

Editor's Note. — The 1961 amendment substituted "five hundred" for "five thousand" in line two.

Article 2.

Municipal Co-operation and Aid.

§ 157-40. Finding and declaration of necessity.

The housing authority of the city of Charlotte, acting in co-operation with the city of Charlotte, is subject to the provisions set forth in this section and subsequent sections in the Housing Authorities Law In re Housing Authority, 233 N. C. 649, 65 S. E. (2d) 761 (1951).

§ 157-41. Definitions.

(2) "City" shall mean any city or town of the State having a population of more than five hundred (500) inhabitants according to the last federal census or any revision or amendment thereto.

(1961, c. 200, s. 4.)

Editor's Note. — The 1961 amendment rewrote subsection (2). As only subsection (2) was affected by the amendment the rest of the section is not set out.

Quoted in In re Housing Authority, 233 N. C. 649, 65 S. E. (2d) 761 (1951).

§ 157-45. Restrictions on exercise of right of eminent domain; duties of Utilities Commission; investigation of projects.

Cited in In re Housing Authority, 233 N. C. 649, 65 S. E. (2d) 761 (1951).

ARTICLE 3.

Eminent Domain.

§ 157-48. Finding and declaration of necessity.

Cited in In re Housing Authority, 233 N. C. 649, 65 S. E. (2d) 761 (1951).

§ 157-50. Eminent domain for housing projects.

Discretion of Housing Authority in Selection of Site.—In determining what property is necessary for a public housing site, a broad discretion is vested by statute in housing authority commissioners, to whom the power of eminent domain is delegated. In re Housing Authority, 235 N. C. 463, 70 S. E. (2d) 500 (1952); Housing Authority of Wilson v. Wooten, 257 N. C. 358, 126 S. E. (2d) 101 (1962).

In the selection of a location for a housing project as authorized under the Housing Authorities Law, the project may be built either in a slum area which has been cleared, or upon other suitable site. The housing authority is given wide discretion in the selection and location of a site for such project. In re Housing Authority, 233 N. C. 649, 65 S. E. (2d) 761 (1951).

So extensive is this discretionary power of housing commissioners that ordinarily the selection of a project site may become an issuable question, determinable by the court, on nothing short of allegations charging arbitrary or capricious conduct amounting to abuse of discretion. However, allegations charging malice, fraud, or bad faith in the selection of a housing project site are not essential to confer the right of judicial review. It suffices to allege and show abuse of discretion. In re Housing Authority, 235 N. C. 463, 70 S. E. (2d) 500 (1952).

The fact that a few isolated properties in an area may be taken and dismantled which are above the standard of slum properties, or that some few desirable homes will be taken, will not affect the public character of the condemnation proceeding. In re Housing Authority, 233 N. C. 649, 65 S. E. (2d) 761 (1951).

Testimony tending to show that other sites were available and suitable for the housing project is relevant and admissible as bearing directly on the question of whether the housing commissioners acted arbitrarily or capriciously in attempting to appropriate the proposed site. In re Housing Authority, 235 N. C. 463, 70 S. E. (2d) 500 (1952).

Evidence Showing Arbitrary and Capricious Action in Selecting Site.—See In re Housing Authority, 235 N. C. 463, 70 S. E. (2d) 500 (1952).

§ 157-51. Certificate of convenience and necessity required; right of appeal; investigation of projects.

The public need for a public project in a particular community must be made to appear and a certificate of public convenience and necessity must be obtained before the petitioner may proceed to condemn property for such a project. However, it was not the legislative intent to require a petitioner to select and describe in detail the land it might need for the construction of a proposed project before it ascertained whether or not it would be permitted to proceed with the project. In re Housing Authority, 233 N. C. 649, 65 S. E. (2d) 761 (1951).

The North Carolina Utilities Commission has only one question to consider and determine in connection with an application of a housing authority for a certificate of public convenience and necessity, and that is whether the area within the jurisdiction of the particular housing authority is eligible for the construction of the low-rent dwellings proposed, within the purview of the Housing Authorities Law. In re Housing Authority, 233 N. C. 649, 65 S. E. (2d) 761 (1951).

The statute does not provide for the North Carolina Utilities Commission to select or approve the selection of the site for a housing project. On the contrary, the selection of a site for such project is vested in the housing authority. In re Housing Authority, 233 N. C. 649, 65 S. E. (2d) 761 (1951).

Description of Property and Notice to Owners Not Necessary.—The application of a housing authority for a certificate of public convenience and necessity need not contain a description of the property upon which the project is to be located, nor is notice to the owners of such property of the filing of an application for such certificate required. In re Housing Authority, 233 N. C. 649, 65 S. E. (2d) 761 (1951).

Certificate Does Not Confer Any Interest in Property.—The issuance of a certificate of public convenience and necessity for the construction of low-rent dwellings does not give a local housing authority any right, title or interest in real estate, even though the property may be described in the petition for the certificate of public convenience and necessity. In re Housing Authority, 233 N. C. 649, 65 S. E. (2d) 761 (1951).

Article 4.

National Defense Housing Projects.

§ 157-60. Powers conferred by article supplemental.

Cited in In re Housing Authority, 235 N. C. 463, 70 S. E. (2d) 500 (1952).

Chapter 158.

Local Development.

Article 1.

Local Development Act of 1925.

Sec.

Article 2.

Economic Development Commissions.

Article 3.

Tax Elections for Industrial Development Purposes.

ARTICLE 1.

Local Development Act of 1925.

§ 158-1. Purposes of chapter; expenditures and levy of taxes authorized; elections and levies validated.—The mayor and board of aldermen, or other governing body of any city, or the governing body of any incorporated town, or the county commissioners of any county, may annually set apart and appropriate from the funds derived annually from the general taxes levied and collected in such city, incorporated town, or county, an amount not less than one-one hundredth of one per cent, nor more than one-tenth of one per cent, upon the assessed valuation of all real and personal property taxable in such city, incorporated town, or county, which funds shall be used and expended under the direction and control of the mayor and board of aldermen, or other governing body of such city, or the governing body of any incorporated town, or the county commissioners of any county, under such rules and regulations or through such agencies as they shall prescribe, for the purpose of aiding and encouraging the location of manufacturing enterprises, making industrial surveys and locating industrial and commercial plants in or near such city, or incorporated town or in such county; encouraging the building of railroads thereto, and for such other purposes as will, in the discretion of the mayor and board of aldermen, or other governing body of any city, or the governing body of any incorporated town, or the county commissioners of any county, increase the population, taxable property, agricultural industries and business prospects of any city, incorporated town, or any county.

Notwithstanding any constitutional limitations or limits provided by any general or special law, taxes within the limits set out above may be levied by the governing body of a county or municipality for the purpose of carrying out the provisions of this chapter, and the special permission of the legislature is hereby given for the levying of such taxes, subject to the requirements of G. S. 158-2 and 158-3. Provided, that any elections heretofore held by any county or municipality resulting in the adoption of this chapter are hereby ratified and validated, and in such counties and municipalities special levies within the limits set in this section heretofore or hereafter made are hereby ratified and validated. (1925, c. 33, s. 1; 1953, c. 1048, s. 1; 1961, c. 294.)

Editor's Note.—The 1953 amendment substituted "one-one hundredth" for "one-fortieth" in lines five and six.

The 1961 amendment added the second paragraph.

By virtue of Session Laws 1961, c. 722, s. 1, designating §§ 158-1 through 158-7 as Article 1, the word "chapter" as used in said sections should be interpreted to refer to "article" rather than "chapter."

Opinion Evidence.—Whether a particular disbursement falls within the compass of this section is not a proper subject for opinion evidence. Horner v. Chamber of Commerce, 235 N. C. 77, 68 S. E. (2d) 660 (1952).

Evidence held to show that tax moneys in controversy were not used or expended under the direction and control of the city council through the agency of the chamber of commerce for the purposes specified in this section, but, on the contrary, were used or expended by the chamber of commerce at its own untrammeled discretion for its own ordinary activities. Horner v. Chamber of Commerce, 235 N. C. 77, 68 S. E. (2d) 660 (1952).

§ 158-2. Ratification or petition of voters required; exception as to appropriations from nontax sources. — No city, incorporated town, or county, shall raise or appropriate money from tax sources under this chapter un-

less and until this chapter shall have been approved by a majority of those voting in such city, incorporated town, or county, at an election as provided in this chapter; or by a petition of the registered voters in any town of less than three thousand inhabitants, as provided in this chapter. Provided, that money may be appropriated from nontax sources without the election or petition hereinabove required. (1925, c. 33, s. 2; 1959, c. 369; 1963, c. 1229, s. 1.)

Editor's Note.—The 1959 amendment substituted the words "those voting in" for the words "the qualified voters of" in the first sentence.

The 1963 amendment inserted "from tax sources" near the beginning of the section and added the proviso at the end.

Section 1½ of the 1963 amendatory act provides that it shall not apply to Brunswick, Forsyth, Guilford, Lenoir, New Hanover and Pender counties.

Cited in Dennis v. Raleigh, 253 N. C. 400, 116 S. E. (2d) 923 (1960).

§ 158-3. Election to adopt chapter.

Cited in Horner v. Chamber of Commerce, 235 N. C. 77, 68 S. E. (2d) 660 (1952).

§ 158-7. Disposition of surplus revenues.—At the close of each fiscal year all surplus revenues and unencumbered balances in any fund created under this chapter shall be carried over into the ensuing fiscal year for the same purposes. (1953, c. 1048, s. 2.)

Article 2.

Economic Development Commissions.

§ 158-8. Creation of municipal county or regional commissions authorized; composition; joining or withdrawing from regional commissions.—The governing body of any municipality or the board of county commissioners of any county may by resolution create an economic development commission for said municipality or county. The governing bodies of any two or more municipalities and/or counties may by joint resolution, adopted by separate vote of each governing body concerned, create a regional economic development commission. A municipal or county economic development commission shall consist of from three to nine members, named for terms and compensation (if any) fixed by its respective governing body. The membership, compensation (if any), and terms of a regional economic development commission, and the formula for its financial support, shall be fixed by the joint resolution creating the commission. Additional governmental units may join a regional commission with the consent of all existing members. Any governmental unit may withdraw from a regional commission on two years' notice to the other members. The resolution creating a municipal, county, or regional economic development commission may be modified, amended, or repealed in the same manner as it was originally adopted. (1961, c. 722, s. 2.)

§ 158-9. Organization of commission; rules and regulations; committees; meetings.—Upon its appointment, the economic development commission shall promptly meet and elect from among its members a chairman and such other officers as it may choose, for such terms as it shall prescribe in its rules and regulations. The commission 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 such committees as the work of the commission may require. The commission shall meet regularly, at least once every three months, at places and dates specified in the rules. Special meetings may be called as specified in the rules. (1961, c. 722, s. 2.)

§ 158-10. Staff and personnel; contracts for services.—Within the limits of appropriated funds, the commission may hire and fix the compensation of any personnel necessary to its operations, contract with consultants for such

services as it may require, and contract with the State of North Carolina or the federal government, or any agency or department thereof, for such services as may be provided by such agencies; and it is hereby empowered to carry out the provisions of such contracts as it may enter. (1961, c. 722, s. 2.)

§ 158-11. Office and equipment. — Within the limits of appropriated funds, the commission may lease, rent, or purchase, or otherwise obtain suitable quarters and office space for its staff, and may lease, rent, or purchase necessary furniture, fixtures, and other equipment. (1961, c. 722, s. 2.)

§ 158-12. Fiscal affairs generally; appropriations and expenditures.—The commission may accept, receive, and disburse in furtherance of its functions any funds, grants, and services made available by the federal government and its agencies, the State government and its agencies, any municipalities or counties, and by private and civic sources.

Each municipality or county shall have authority to appropriate funds to any local or regional economic development commission which it may have created, out of surplus funds or funds derived from nontax sources. In addition, it may appropriate any funds to such commission which shall be derived from taxes levied pursuant to article 1 of this chapter or pursuant to any general, special or local act granting authority for an industrial development or economic development tax. Such expenditures shall constitute a special purpose in addition to any allowed by the Constitution.

All expenditures by any economic development commission shall be made pursuant to a budget submitted to and approved by the appropriate governing body or bodies of the local governmental unit or units concerned. Each such commission shall annually provide the appropriate governing body or bodies with an audit of its receipts and expenditures, made by a certified public accountant, or it shall at the direction of the governing body make its records available to the unit's regular auditing accountant for such audit. The governing body or bodies concerned may impose such additional requirements governing the commission's fiscal affairs as they may deem necessary. (1961, c. 722, s. 2.)

§ 158-13. Powers and duties.—Any economic development commission created pursuant to this article shall:

(1) Receive from any municipal, county, joint, or regional planning board or commission with jurisdiction within its area an economic development program for part or all of the area;

(2) Formulate projects for carrying out such economic development program, through attraction of new industries, encouragement of existing industries, encouragement of agricultural development, encouragement of new business and industrial ventures by local as well as foreign capital, and other activities of a similar nature;

(3) Conduct industrial surveys as needed, advertise in periodicals or other communications media, furnish advice and assistance to business and industrial prospects which may locate in its area, furnish advice and assistance to existing businesses and industries, furnish advice and assistance to persons seeking to establish new businesses or industries, and engage in related activities;

(4) Encourage the formation of private business development corporations or associations which may carry out such projects as securing and preparing sites for industrial development, constructing industrial buildings, or rendering financial or managerial assistance to businesses and industries; furnish advice and assistance to such corporations or associations;

(5) Carry on such other activities as may be necessary in the proper exercise of the functions described herein. (1961, c. 722, s. 2.)

§ 158-14. Regional planning and economic development commissions authorized.—Any municipalities and/or counties desiring to exercise the powers granted by this article may, at their option, create a regional planning and economic development commission, which shall have and exercise all of the powers and duties granted to a regional economic development commission under this article and in addition the powers and duties granted to a regional planning commission under article 22 of chapter 153. In the event that such a combined commission is created, it shall keep separate books of accounts for appropriations and expenditures made pursuant to this article and for appropriations and expenditures made pursuant to article 22 of chapter 153. The financial limitations set forth in each such article shall govern expenditures made pursuant to such article. (1961, c. 722, s. 2.)

§ 158-15. Powers granted herein supplementary. — The powers granted to counties and municipalities by this article shall be deemed supplementary to any powers heretofore or hereafter granted by any general or local act for the same or similar purposes, and in any case where the provisions of this article conflict with or are different from the provisions of any other act, the board of county commissioners or the municipal governing board may in its discretion proceed in accordance with the provisions of this article or, as an alternative method, in accordance with the provisions of such other act. (1961, c. 722, s. 2.)

Editor's Note.—Session Laws 1961, c. 722, s. 5, provided that all laws and clauses of laws in conflict herewith, except as indicated in this section and G. S. 153-283 are repealed to the extent of such conflict.

Article 3.

Tax Elections for Industrial Development Purposes.

§ 158-16. Board of commissioners may call tax election; rate and purposes of tax.—The board of county commissioners in any county is authorized and empowered to call a special election to determine whether it be the will of the qualified voters of said county that they levy and cause to be collected annually, at the same time and in the same manner as the general county taxes are levied and collected, a special tax at a rate not to exceed five cents (5¢) on each one hundred dollars ($100.00) valuation of property in said county, to be known as an "industrial development tax," the funds therefrom, if the levy be authorized by the voters of said county, to be used for the purpose of attracting new and diversified industries to said county, and for the encouragement of new business and industrial ventures by local as well as foreign capital, and for the purpose of aiding and encouraging the location of manufacuring enterprises, making industrial surveys and locating industrial plants in said county, and for the purpose of encouraging agricultural development in said county. (1959, c. 212, s. 1.)

Local Modification.—Mitchell: 1963, c. 157.

§ 158-17. Registration of voters; election under supervision of county board of elections.—There shall be no new registration of voters for such an election. The registration books shall be open for registration of new voters in said county and registration of any and all legal residents of said county, who are or could legally be enfranchised as qualified voters for regular general elections, shall be carried out in accordance with the general election laws of the State of North Carolina as provided for local elections. Notice of such registration of new voters shall be published in a newspaper circulated in said county, once, not less than thirty (30) days before and not more than forty (40) days before, the close of the registration books, stating the hours and days for registration. The special election, if called, shall be under the control and supervision of the county board of elections. (1959, c. 212, s. 1.)

§ 158-18. Form of ballot; when ballots supplied; designation of ballot box.—The form of the question shall be substantially the words "For Industrial Development Tax," and "Against Industrial Development Tax," which alternates shall appear separated from each other on one ballot containing opposite, and to the left of each alternate, squares of appropriate size in one of which squares the voters may make a mark "X" to designate the voter's choice for or against such tax. Such ballot shall be printed on white paper and each polling place shall be supplied with a sufficient number of ballots not later than the day before the election. At such special election the election board shall cause to be placed at each voting precinct in said county a ballot box marked "Industrial Development Tax Election." (1959, c. 212, s. 1.)

§ 158-19. Counting of ballots; canvassing, certifying and announcing results of elections. — The duly appointed judges and other election officials who are named and fixed by the county board of elections shall count the ballots so cast in such election and the results of the election shall be officially canvassed, certified and announced by the proper officials of the board of elections, according to the manner of canvassing, certifying and announcing the elections held under the general election laws of the State. Except as herein otherwise provided, the registration and election herein provided for shall be conducted in accordance with the general election laws of the State as provided for local elections. (1959, c. 212, s. 1.)

§ 158-20. Authorized tax rate. — If a majority of those voting in such election favor the levying of such a tax, the board of commissioners of said county are authorized to levy a special tax at a rate not to exceed five cents (5¢) on each one hundred dollars ($100.00) of assessed value of real and personal property taxable in said county, and the General Assembly does hereby give its special approval for the levy of such special tax. (1959, c. 212, s. 1.)

Local Modification.—Harnett: 1961, c. 560; Mitchell: 1963, cc. 157, 506; Person: 1961, c. 701; Tyrrell: 1961, c. 228.

§ 158-21. Creation of industrial development commission; membership and terms of office; vacancies; meetings; selection of officers; bylaws and procedural rules and policies; authority of treasurer and required bond; subsidy or investment in business or industry forbidden.— If the majority of the qualified voters voting in such election favor the levying of such a tax, then and in that event, the county commissioners may create a commission to be known as the "Industrial Development Commission" for said county. Such commission shall be composed of nine members. The terms of office of the members of the commission shall be three years, with the exception of the first two years' existence of the commission, in which three shall be appointed to serve for a period of one year, three for a period of two years, and three for a period of three years; thereafter, all members shall be appointed for three years, and shall serve until their successors have been appointed and qualified. All appointments for unexpired terms resulting from resignation, death or other causes, shall be made by the county board of commissioners. The commission shall hold its first meeting within thirty (30) days after its appointment as provided for in this article, and the beginning date of all terms of office of the commissioners shall be the date on which the commission holds its first meeting. After the members of the commission shall have been appointed and at the time of the holding of the first meeting, they shall, by a majority vote, name and select from their membership their own chairman, vice-chairman, secretary and treasurer, and shall draw up and ratify their own bylaws and procedural rules and policies. The commission member who shall be named treasurer shall have supervision of all funds administered by the commission in any way whatsoever; shall sign and counter-

sign all checks, drafts, bills of exchange, or any and all other negotiable instruments which shall properly be issued under his supervision; and shall furnish such surety bond as shall be designated by the board of county commissioners. No money, property or funds of the commission herein created shall be used directly or indirectly as a subsidy or investment in capital assets in any business, industry or business venture. (1959, c. 212, s. 1.)

§ 158-22. Bureau set up under supervision and control of industrial development commission; furnishing county commissioners with proposed budget.—Under the supervision and jurisdiction of the industrial development commission for said county there shall be set up a bureau, the purpose of which shall be as set forth in G. S. 158-16. The commission shall have charge of the activities of this bureau, full supervision of its operations, and full responsibility for its actions. The commission shall employ personnel for the bureau, supervise its purchases and expense accounts, and administer all the tax funds which shall be turned over to the commission by county authorities from the industrial development tax and any and all other funds which may come into its hands. The commission shall be empowered to lease, rent or purchase, or otherwise obtain suitable quarters and office space for an industrial development bureau, to lease, rent, or purchase necessary furniture, fixtures, and other equipment, to purchase advertising space in periodicals which may be selected for that purpose, and to otherwise engage in any and all activities which shall, in its discretion, promote the business and industrial development and general economic welfare of said county; and it shall have full power to exercise any and all other proper authority in connection with its duties and not expressly mentioned herein. Provided, that said commission shall provide the board of county commissioners thirty (30) days prior to July 1 a proposed budget for the fiscal year commencing on July 1 and shall provide the board of county commissioners an audit by a certified public accountant within sixty (60) days after the expiration of the fiscal year ending on June 30. (1959, c. 212, s. 1.)

§ 158-23. Board of county commissioners may function and carry out duties of industrial development commission. — Nothing herein shall prevent the board of county commissioners itself from functioning and carrying out the duties of the industrial development commission as provided for herein. (1959, c. 212, s. 1.)

§ 158-24. Counties to which article applies. — The provisions of this article shall apply only to the following counties: Alexander, Burke, Caswell, Chowan, Edgecombe, Franklin, Harnett, Haywood, Mitchell, Onslow, Perquimans, Person, Polk, Rutherford, Tyrrell, Vance and Warren. (1959, c. 212, s. 2; 1961, cc. 208, 228, 339, 560, 683, 701, 1011, 1058; 1963, c. 157, s. 2; cc. 443, 504, 506, 613, 1101.)

Editor's Note.—Chapters 208 and 339 of the 1961 Session Laws added Caswell to the list of counties. Chapters 228, 560, 683, 701, 1011 and 1058 added Tyrrell, Harnett, Alexander, Person, Burke and Chowan, respectively.

The first and fourth 1963 amendments added Mitchell to the list of counties. The second, third and fifth 1963 amendments added Haywood, Onslow and Warren respectively and the sixth 1963 amendment inserted Perquimans.

Chapter 159.

Local Government Acts.

Article 1.

Local Government Commission and Director of Local Government.

§ 159-3. Creation of Local Government Commission.—There is hereby created a commission to be known as the Local Government Commission, consisting of nine members of whom the State Auditor and the State Treasurer and the Secretary of State and the Commissioner of Revenue shall be members ex officio and of whom five members shall be appointed by the Governor to hold office during his pleasure. One of such appointees shall have had experience as the chief executive officer or a member of the governing body of a city or town and one thereof shall have had experience as a member of the governing body of a county at the time of their appointment. The members of the Commission, both ex officio members and appointed members, shall be required to give such bond, if any, as the Governor may require. The State Treasurer shall be ex officio Director of Local Government and shall also be the treasurer and chairman of the Commission. The Board shall elect a vice-chairman from its members who shall hold office at the will of the Commission. The appointed members of the Commission shall be entitled to ten dollars for each day actually spent in the service of the Commission, but shall receive no salary or other compensation, and all members shall be entitled to their necessary traveling and other expenses. The Director shall appoint some competent person as secretary of the Commission and assistant to the Director and may appoint a deputy secretary and such other assistants as may be necessary, who shall be responsible to the Director. The salaries of the secretary of the Commission and the deputy secretary shall be set by the Governor subject to the approval of the Advisory Budget Commission. The deputy secretary shall have and exercise each and every power of whatsoever nature and kind as the secretary of the Commission himself may exercise, and all actions taken by the deputy secretary and the signing by him of any and all documents and papers provided for in this article shall be effective the same as though the secretary of the Commission himself had taken such action or signed such documents and papers. The Commission shall have power to adopt such rules and regulations as may be necessary for carrying out its duties under this article. The Commission shall hold quarterly regular meetings in the city of Raleigh at such place and times as may be designated by the Commission, and may hold special meetings at any time upon notice to each member personally given or sent by mail or telegraph not later than the fifth day before the meeting, which notice need not state the purpose of the meeting. It shall have the right to call upon the Attorney General or any assistant thereof for legal advice in relation to its powers and duties. The functions of the Local Government Commission and of the Director of Local Government shall be maintained and operated as a separate and distinct division of the department of the State treasury. (1931, c. 60, s. 7; c. 296, s. 8; 1933, c. 31, s. 1; 1957, c. 541, s. 18; 1963, c. 1130.)

Editor's Note.—

Prior to the 1957 amendment the salary of the secretary to the Commission was fixed by the Director subject to the approval of the Governor.

The 1963 amendment changed the sev-

enth and eighth sentences so as to provide for the appointment and salary of a deputy secretary and inserted the ninth sentence.

§ 159-5. Executive committee may act for Commission; bond for expenses for attending special meetings.—All action herein required or permitted to be taken by the Commission may be taken by the executive committee and shall be regarded as action by the Commission unless otherwise herein expressly provided, but the committee shall not overrule or reverse any action of the Commission as a whole. The Commission shall not be required to meet as a whole except at the times fixed for quarterly sessions, and may demand that any application for a special meeting be accompanied by a bond or other security for the costs and expenses of such special meeting to be given by the unit or person at whose request the special meeting is called. (1931, c. 60, s. 9; 1953, c. 675, s. 27.)

Editor's Note.—The 1953 amendment deleted "may" formerly appearing before the words "be accompanied" in line seven of this section.

§ 159-7. Application to Commission for issuance of bonds or notes.

Validation of Proceedings Not Complying with Section. — See Session Laws 1959, c. 318.

§ 159-7.1. Objections to any proposed bonds by a citizen or taxpayer.—In the event the question of issuance of any proposed bonds of a unit is required by law or the Constitution to be submitted to the voters at an election, the board authorized by law to issue the same shall, at least ten days before filing the application with the Commission as required in § 159-7 of this article, cause notice to be given by publication once in each of two successive weeks of its intention to file such application. Except as herein otherwise provided, publication of such notice shall be governed by the provisions relating to publications in the law pursuant to which the bonds are authorized to be issued. Such notice shall state (1) the intention of said board to file the application, (2) briefly, and in general terms only, the purpose or purposes of the proposed bonds and the maximum amount of bonds for each such purpose, (3) the date of its first publication, and (4) that any citizen or taxpayer objecting to the issuance of any or all of said bonds may, within ten days from and after such first publication, file a statement of his objections as hereinafter provided, and said notice shall otherwise be in such form as the Commission may prescribe.

Any citizen or taxpayer of the unit for which such bonds are proposed who objects to the issuance of any or all of said bonds may, within ten days from the first publication of such notice, file a statement with the Commission and shall file a copy thereof with the board giving such notice. Such statement shall be in writing, shall set forth each objection to issuance of said bonds, shall have attached thereto a copy of the notice given and shall be verified by the citizen or taxpayer filing the same and shall contain his address. The statement may also contain the names and addresses of other citizens or taxpayers of the unit concurring therein. The Commission shall consider such statement with the application, shall determine whether or not a public hearing shall be held as provided in § 159-9 of this article, and shall thereupon advise the objector and the board filing the application of such determination. Failure to comply with any provision of this section shall in no way affect the validity of any bonds of a unit. (1953, c. 1121.)

Editor's Note.—The act inserting this section became effective June 1, 1953.

§ 159-13. Sale of bonds and notes.

Cross Reference.—As to sale of North Carolina Turnpike Authority revenue bonds, see § 136-89.66.

§ 159-28. Funds of unit on deposit must be secured by corporate surety bonds.—It shall be the duty of each officer having charge or custody of funds of a unit, of whatever kind or nature or for whatever purpose the same have been raised or shall be held, to keep them safely and to deposit the same in the depository or depositories designated in the manner provided by law; but before making such deposit, if the amount then on deposit shall exceed the amount insured by the Federal Deposit Insurance Corporation, he shall require of said depository or depositories that the excess of such deposit over and above the amount so insured shall be secured by a surety bond or bonds, issued by a surety company or companies authorized to transact business in the State of North Carolina, the form of such surety bonds to be approved by the Commission in an amount sufficient to protect such excess deposits; but the Commission may, at any time, in its discretion, require an additional bond: Provided, however, that in lieu of a surety bond both as to all or any part of such excess deposits it shall be lawful to secure the same by lodging with the proper custodian hereinafter provided for such securities as are by this article made eligible for investment of sinking funds of local units, such securities to be selected under the terms and conditions of investments of such sinking funds, including approval of certain classes of securities by the Commission. Any bank or trust company furnishing United States government bonds, North Carolina State bonds, county or municipal bonds, as security for such excess deposits, shall deposit said bonds with another bank which has been approved by the Commission as a depository bank for such purposes, the State Treasurer, or the federal reserve bank, and said bonds when so deposited shall be held for the benefit of the unit and subject to the order of the governing body or board of such unit, and subject to the inspection at any time by a representative of the governing body or board of such unit and by a representative of the Commission. Each such officer having charge or custody of the funds of a unit and the surety or sureties on his official bond, after a deposit of said funds has been secured by him in the manner hereinabove required, shall not be liable for any losses sustained by the unit by reason of the default or the insolvency of the said depository or depositories. No security shall be required for the protection of funds of a unit remitted to and received by any bank or trust company within or without the State of North Carolina for the sole and exclusive purpose of paying the maturing principal of or interest on bonds or notes of the unit, when such bank or trust company is the agreed place of payment of such principal or interest and when such funds are remitted within sixty days prior to the maturity of such principal or interest. (1931, c. 60, s. 32; 1931, c. 296, s. 7; 1935, c. 375, s. 1; 1939, c. 129, s. 1; 1953, c. 675, s. 28.)

Editor's Note.—The 1953 amendment inserted "have" in lieu of "has" formerly appearing in line three of this section.

§ 159-42. Law applicable to all counties, cities and towns.—The provisions of this article shall apply to every unit having the power to levy taxes ad valorem, regardless of any provisions to the contrary in any general, special or local act enacted before the adjournment of the regular session of the General Assembly in 1961. (1931, c. 60, s. 74; 1935, c. 356, s. 3; 1941, c. 191; 1947, c. 992; 1949, c. 925; 1955, c. 1276; 1961, c. 1106.)

Editor's Note. — The 1955 amendment substituted "1955" at the end of this section for "1949." It also changed the caption by substituting "counties, cities and towns" for "units having power to levy taxes ad valorem."

The 1961 amendment substituted "1961" for "1955" at the end of the section.

§ 159-49.1. Investment of unused proceeds of sale of bonds by counties, cities and towns in designated securities.

Cited in Rider v. Lenoir County, 236 N. C. 620, 73 S. E. (2d) 913 (1952).

Chapter 160.

Municipal Corporations.

SUBCHAPTER I. REGULATIONS INDEPENDENT OF ACT OF 1917.

Article 1.

General Powers.

Sec.

Article 2.

Municipal Officers.

Article 3.

Elections Regulated.

Article 6.

Sale of Municipal Property.

Article 8.

Public Libraries.

Article 9.

Local Improvements.

Article 13.

Market Houses.

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Article 14.

Zoning Regulations.

Article 14A.

Preservation of Open Spaces and Areas.

Article 15B.

Joint Water Supply Facilities.

Article 15C.

Rescue Squads.

SUBCHAPTER II. MUNICIPAL CORPORATION ACT OF 1917.

Article 18.

Powers of Municipal Corporations.

SUBCHAPTER I. REGULATIONS INDEPENDENT OF ACT OF 1917.

Article 1.

General Powers.

§ 160-1. Body politic.

Editor's Note.—For case law survey on municipal corporations, see 41 N. C. Law Rev. 494.

Powers.—

In accord with 2nd paragraph in original. See Starbuck v. Havelock, 252 N. C. 176, 113 S. E. (2d) 278 (1960).

A municipal corporation is a creature of the General Assembly and has no inherent power but can exercise such powers as are expressly conferred by the General Assembly or such as are necessarily implied by those expressly given. State v. McGraw, 249 N. C. 205, 105 S. E. (2d) 659 (1958).

Same—Outlay of Tax Revenues.—

In accord with original. See Wilson v. High Point, 238 N. C. 14, 76 S. E. (2d) 546 (1953).

Quoted in Dennis v. Raleigh, 253 N. C. 400, 116 S. E. (2d) 923 (1960).

Cited in Duke Power Co. v. Blue Ridge Electric Membership Corp., 253 N. C. 596, 117 S. E. (2d) 812 (1961).

§ 160-2. Corporate powers.

1.

Stated in Cannon v. Wilmington, 242 N. C. 711, 89 S. E. (2d) 595 (1955).

3. To purchase and hold land, within or without its limits, for cemetery purposes and to prohibit burial of persons at any other place in town and to regulate the manner of burial in municipal cemeteries. All municipal corporations purchasing real property at any trustee's, mortgagee's, or commissioner's sale or execution or tax sale shall be entitled to a conveyance therefor from the trustee, mortgagee or other person or officer conducting such sale, and deeds to such municipal corporations or their assigns shall have the same force and effect as con-

veyances to private purchasers. The provisions of this subsection shall apply to such sales and conveyances as may have been heretofore made by the persons and officers herein mentioned.

Editor's Note.—
The 1959 amendment rewrote the first sentence of subsection 3, as changed by the 1955 amendment.

Ordinance Not Authorized. — This subsection does not impliedly authorize a town to enact an ordinance reserving to the town the exclusive right to set memorial markers in cemeteries and requiring the payment of a special charge for setting such markers not purchased from the town. Grave constitutional questions would be raised by any statute giving a town such authority. State v. McGraw, 249 N. C. 205, 105 S. E. (2d) 659 (1958).

5.

Local Modification. — City of Rocky Mount: 1955, c. 499, s. 4; city of Statesville: 1955, c. 593.

6.

The sovereign right to franchise implies the power to control for public benefit, including among other things, the right to fix reasonable rates and to specify where the franchise may or may not be exercised so as to afford adequate service to the public. Duke Power Co. v. Blue Ridge Electric Membership Corp., 253 N. C. 596 117 S. E. (2d) 812 (1961).

Every town has the power to grant franchises to public utilities under this subsection; that is, the right to engage within the corporate boundaries in business of a public nature. Duke Power Co. v. Blue Ridge Electric Membership Corp. 253 N. C. 596. 117 S. E. (2d) 812 (1961).

In Granting Franchise Municipality Exercises Governmental Function. — In the granting of a franchise to a public utility to operate a system for furnishing gas for cooking and heating to residents of the municipality, the municipality exercises a governmental function, and may not be held liable in tort to a person injured by a gas explosion, even if it be conceded that the city was negligent in continuing the franchise after the pipe lines and equipment of the licensee had become defective. Denning v. Goldsboro Gas Co., 246 N. C. 541, 98 S. E. (2d) 910 (1957).

Additional Tax Not Authorized.—Construing this subsection, in pari materia with § 105-120 (f), it becomes clear that no authorization of additional tax was intended by this subsection. State v. Wilson, 252 N. C. 640, 114 S. E. (2d) 786 (1960).

Cited in Wishart v. Lumberton, 254 N. C. 94, 118 S. E. (2d) 35 (1961).

11. To apportion between existing municipal voting units, wards, precincts, or districts, newly annexed areas not so apportioned in the act of annexation. This apportionment shall be effective as of the date of annexation of the territory. Apportionments heretofore made are hereby ratified and confirmed. (Code, ss. 704, 3117; 1901, c. 283; 1905, c. 526; Rev., s. 2916; 1907, c. 978; P. L. 1917, c. 223; C. S., s. 2623; Ex. Sess. 1921, c. 58; 1927, c. 14; 1933, c. 69; 1949, c. 938; 1955, c. 77; 1959, c. 391; 1961, c. 308.)

Editor's Note. — The 1961 amendment added subsection 11.

Only Part of Section Set Out.—Only the subsections changed or added by the amendments are set out.

§ 160-4.1. Estimate of municipal population authorizing participation in State collected funds.—Whenever a municipality of the State of North Carolina is not included in the last federal decennial census by reason of its being unincorporated at the time said census was taken and certified, said municipality becoming incorporated after such census shall be entitled to participate in all State collected funds allocated to the local units of government of the State by filing with the department or agencies of the State government charged with the responsibility of distributing such funds an estimate of the population of such municipality. Such estimate shall be approved by the governing body of the municipality and by the county board of commissioners of the county wherein such municipality is located. And when so approved the estimate of the popula-

tion shall be the official census of said municipality until the next federal decennial census is released. All departments or agencies of the State government charged with the responsibility of distributing such funds are hereby authorized and directed to accept such estimate of population in distributing and allocating such funds. (1953, c. 79)

Cross Reference.—As to allocation of funds to municipalities, see § 136-41.2.

Article 2.

Municipal Officers.

Part 2. Mayor.

§ 160-13. Mayor's jurisdiction as a court.

Local Modification. — City of Concord: 1955, c. 687.

Stated in State v. Doughtie, 238 N. C. 228, 77 S. E. (2d) 642 (1953).

Part 3. Constable and Policemen.

§ 160-20.1. Certain policemen authorized to issue warrants. — Officers of the police department of any municipality, who are or may be designated as "desk officers" by the chief of police, are hereby authorized to issue warrants in criminal matters in the same manner, to the same extent, and under the same rules of law as are applicable to the issuance of such warrants by justices of the peace on June 30, 1963; provided, that no warrant so issued may be served by the issuing officer. Providing the provisions of this section shall not apply to any municipality having a population of less than four thousand (4,000) based upon the most recent federal decennial census. (1963, c. 1261, s. 1.)

Local Modification.—Washington: 1963, c. 1261, s. 1.5.

Part 4. Planning Boards.

§ 160-22. Creation and duties. — Every city and town in the State is authorized to create a board to be known as the Planning Board, whose duty it shall be to make careful study of the resources, possibilities and needs of the city or town, particularly with respect to the conditions which may be injurious to the public welfare or otherwise injurious, and to make plans for the development of the municipality. The governing body of such city or town desiring to establish such local planning board shall appoint not less than three nor more than nine on said board. The governing body of any city or town is hereby authorized to enter into any agreements with any other city, town or county for the establishment of a joint planning board.

Any planning board established under the authority of this section by any one county, city, or town or any joint planning board or agency established by agreement, pursuant to this section, between two or more city or county governing bodies may, with the concurrence of the governing body or bodies to which it is responsible, (a) enter into and carry out contracts with the State or federal government or any agencies thereof under which said government or agencies grant financial or other assistance to said planning board, (b) accept such assistance or funds as may be granted by the federal government with or without such a contract, (c) agree to and comply with any reasonable conditions which are imposed upon such grants, (d) make expenditures from any funds so granted. The appropriate city and county governing bodies are hereby authorized to concur in such contracts or to enter into them as co-makers. Any planning agency established pursuant to general or special act of the North Carolina General Assembly which has been granted extraterritorial planning jurisdiction, or a joint planning agency of two or more political subdivisions that have been granted

joint planning jurisdiction or a county-wide planning agency shall be deemed a regional or metropolitan planning agency for the purpose of accepting such assistance or funds as may be granted by the federal government.

Any planning board or agency established by special act of the General Assembly shall have the same power and authority as granted in the preceding paragraph to planning boards and agencies established pursuant to the general law.

Any planning board established under the authority of this section, or pursuant to a special act of the General Assembly, may, with the concurrence of the governing body or bodies to which it is responsible,

(1) Enter into and carry out contracts with any other city, county, or joint planning board or boards under which it agrees to furnish technical planning assistance to such other planning board or boards; or

(2) Enter into and carry out contracts with any other city, county, or joint planning board or boards under which it agrees to pay such other planning board or boards for technical planning assistance to be furnished by the staff of such other board or boards.

The appropriate city and county governing bodies are hereby authorized to concur in such contracts or to enter into them as co-makers.

Said governing bodies are authorized to make such appropriations as may be necessary to carry out any activities or contracts authorized by this section, and to levy annually taxes for the payment of the same as a special purpose, in addition to any allowed by the Constitution. (1919, c. 23, s. 1; C. S., s. 2643; 1945, c. 1040, s. 2; 1955, cc. 489, 1252; 1959, c. 327, s. 2; c. 390.)

Local Modification. — City of Wilson: 1961, c. 634; 1963, c. 151.

By virtue of Session Laws 1957, c. 1176, Buncombe should be stricken from the recompiled volume.

Editor's Note.—The first 1955 amendment substituted "nine" for "five" in the second sentence of the first paragraph, and the second 1955 amendment added the second and third paragraphs.

The first 1959 amendment inserted the words "State or" in line five of the second paragraph, and the second 1959 amendment added the last three paragraphs. Session Laws 1959, c. 659, provides that the amendments shall not apply to Lenoir County.

Part 5. General Qualification of Officers.

§ 160-25. Must be voters in town or city.

Local Modification.—Town of Bakersville: 1957, c. 649; town of Burnsville: 1957, c. 161; town of Maxton: 1963, c. 279; town of Snow Hill: 1963, c. 347; town of Weldon: 1957, c. 1096.

ARTICLE 3.

Elections Regulated.

§ 160-29. Application of law and exceptions.—All elections held in any city or town shall be held under the following rules and regulations, except in the cities of Charlotte, Fayetteville and Greensboro, and in the towns in the counties of Bertie, Cabarrus, Caldwell, Catawba, Davidson, Edgecombe, Gaston, Nash, Pitt, Robeson, Stokes, Surry, Vance, Wayne and Wilson; provided that the elections held in the city of Newton and the towns of Castalia and Pilot Mountain shall be governed by the provisions of this article. (1901, c. 750, ss. 1, 21; 1903, cc. 184, 218, 626, 769, 777; Rev., s. 2944; 1907, c. 165; Ex. Sess. 1908, c. 63; 1909, c. 365; C. S., s. 2649; 1931, c. 369; 1933, c. 102; 1935, c. 215, s. 1; 1935, c. 353; 1953, c. 431; 1957, c. 242, s. 1; c. 446, s. 1; 1959, c. 53, s. 1; c. 174; c. 192.)

Editor's Note.—

The 1953 amendment added the provision as to the town of Pilot Mountain. The first 1957 amendment added the provision as to the town of Castalia. The second 1957 amendment, deleting Lenoir

from the list of counties, provided that all the provisions of this article shall be applicable to the cities and towns of the county.

The first 1959 amendment added the provision as to the city of Newton. The second 1959 amendment deleted Chowan from the list of counties. The third 1959 amendment deleted the town of Graham from the list of excepted places.

Cited in Reid v. Pilot Mountain Mayor & Board of Com'rs, 241 N. C. 551, 85 S. E. (2d) 872 (1955).

§ 160-30. When elections held.

Local Modification. — Mitchell, town of Spruce Pine: 1955, c. 761; city of Newton: 1959, c. 53, s. 2; town of Castalia: 1957, c. 242, s. 2.

§ 160-31. Polling places.

Local Modification.—By virtue of Session Laws 1959, c. 192, the reference to the "town of Graham" should be stricken from the Recompiled Volume.

§ 160-32. Registrars appointed.

Local Modification.—By virtue of Session Laws 1959, c. 192, the reference to the "town of Graham" should be stricken from the Recompiled Volume.

§ 160-34. Registration of voters.

Local Modification. — Town of North Wilkesboro: 1955, c. 765.

By virtue of Session Laws, 1959, c. 192, the reference to the "town of Graham" should be stricken from the Recompiled Volume.

§ 160-35. Notice of new registration.

Local Modification.—By virtue of Session Laws 1959, c. 192, the reference to the "town of Graham" should be stricken from the Recompiled Volume.

§ 160-41. Judges of election.

Local Modification.—By virtue of Session Laws 1959, c. 192, the reference to the "town of Graham" should be stricken from the Recompiled Volume.

§ 160-45. Who may vote.—All qualified electors, who shall have resided for thirty days immediately preceding an election within the limits of any voting precinct of a city or town, and not otherwise, shall have the right to vote in such precinct for mayor and other city or town officers. (1901, c. 750, s. 9; Rev., s. 2961; C. S., s. 2665; 1959, c. 886.)

Editor's Note. — The 1959 amendment substituted "thirty days" for "four months" in line two.

§ 160-48. Board of canvassers.

Cited in Overton v. Mayor & City Com'rs of Hendersonville, 253 N. C. 306, 116 S. E. (2d) 808 (1960).

§ 160-49. Meeting of board of canvassers.

Cited in Overton v. Mayor & City Com'rs of Hendersonville, 253 N. C. 306, 116 S. E. (2d) 808 (1960).

§ 160-51.1. Municipalities empowered to acquire voting machines. —Municipalities shall have the power to acquire or purchase voting machines for use in primaries and elections and to raise or appropriate money therefor. (1953, c. 1065, s. 3.)

Editor's Note. — Section 4 of the act from which this section is derived, which also amended § 160-387, provided that "the powers conferred * * * upon municipalities to authorize bonds pursuant to the Municipal Finance Act, 1921, for the purchase of voting machines, or to raise or appropriate money therefor, as provided in this act, shall be subject to the provisions and limitations of any general, special or local act relating to the use of voting machines enacted before adjournment of the regular session of the General Assembly in 1953."

Article 4.

Ordinances and Regulations.

§ 160-52. General power to make ordinances.

Sunday Ordinances.—

Neither the repeal of § 103-1 nor the provision of the repealing act with respect to the repeal of all laws and clauses of laws in conflict therewith has the effect of repealing the power granted to municipalities by this section to enact ordinances requiring the observance of Sunday. State v. McGee, 237 N. C. 633, 75 S. E. (2d) 783 (1953).

Cited in Davis v. Charlotte, 242 N C. 670, 89 S. E. (2d) 406 (1955).

§ 160-54. Repair of streets and bridges.

I. IN GENERAL.

Applied in Taylor v. Hertford, 253 N. C. 541, 117 S. E. (2d) 469 (1960); Whitley v. Durham, 256 N. C. 106, 122 S. E. (2d) 784 (1961).

IV. LIABILITY FOR DEFECTS OR OBSTRUCTIONS CAUSING INJURY.

This section imposes, etc.—

The governing authorities of a town or city have the duty imposed upon them by law of exercising ordinary care to maintain its streets and sidewalks in a condition reasonably safe for those who use them in a proper manner. Faw v. North Wilkesboro, 253 N. C. 406, 117 S. E. (2d) 14 (1960).

Liability arises only for a negligent breach of duty. Faw v. North Wilkesboro, 253 N. C. 406, 117 S. E. (2d) 14 (1960).

Plaintiff Must Prove Notice.—

In accord with original. See Faw v. North Wilkesboro, 253 N. C. 406, 117 S. E. (2d) 14 (1960).

City Cannot Plead Governmental Immunity.—

As an exception to the doctrine of governmental immunity, it has been uniformly held in this jurisdiction that municipalities may be held liable in tort for failure to maintain their streets in a reasonably safe condition, and they are now required by this section to do so. Clark v. Scheld, 253 N. C. 732, 117 S. E. (2d) 838 (1961).

Implied Notice.—

Actual notice of a defect is not required. Notice of a dangerous condition in a street or sidewalk will be imputed to the town or city, if its officers should have discovered it in the exercise of due care. Faw v. North Wilkesboro, 253 N. C. 406, 117 S. E. (2d) 14 (1960).

§ 160-55. Abatement of nuisances.

Compensation.—An owner of property is not entitled to compensation for property rightfully destroyed or damaged by a city in abating a nuisance; the reason for this is that the destruction or damage is for public safety or health and is not a taking of private property for public use without compensation or due process in the constitutional sense. Rhyne v. Mount Holly, 251 N. C. 521, 112 S. E. (2d) 40 (1960).

But a municipality is liable for impairing, removing or destroying property, ostensibly in the abatement of a nuisance, where the thing or condition in question is not a nuisance per se, under statute or in fact, or where the thing or condition has not been declared to be a nuisance. Rhyne v. Mount Holly, 251 N. C. 521, 112 S. E. (2d) 40 (1960).

Article 6.

Sale of Municipal Property.

§ 160-59. Public sale by governing body; private sale to other governmental units.—The governing body of any city or town shall have power at all times to sell at public outcry, after thirty days' notice, to the highest bidder, any property, real or personal, belonging to any such town, and apply the proceeds as they may think best: Provided, that when the governing body shall determine that it is in the public interest, municipally-owned personal property, which is surplus, unused or obsolete, may be sold upon sealed bids after one week's public notice, to the highest bidder. Sealed bid proposals shall be opened in public and recorded on the minutes of the governing body. The public notice

shall state the time and place for opening of proposals and shall reserve to the governing body the right to reject all bids.

Provided further, the governing body of any city or town may dispose of any municipally-owned personal property at private sale to any other governmental unit, or agency thereof, within the United States.

The powers granted herein are in addition to and not in substitution for existing powers granted by general laws or special acts to cities and towns. (1872-3, c. 112; Code, s. 3824; Rev., s. 2978; C. S., s. 2688; 1957, c. 697, s. 1; 1959, c. 862.)

Local Modification. — Craven: 1955, c. 1278; city of Rocky Mount: 1955, c. 499, s. 4; city of Statesville: 1955, c. 593; city of Wilmington: 1953, c. 321; town of Morganton: 1959, c. 1037; town of Murfreesboro: 1959, c. 1198; towns of Spencer and East Spencer in Rowan County: 1953, c. 378; town of Troy: 1955, c. 46.

Editor's Note.—The 1957 amendment added the proviso and the last two sentences of the first paragraph. Section 2 of the amendatory act provides: "The powers granted herein are in addition to and not in substitution for existing powers granted by general laws or special acts to cities and towns."

The 1959 amendment rewrote this section.

Public Notice of Actual Partition of Land Not Required. — This section requires public notice only in respect to the sale of property belonging to a municipality. It has no application to actual partition of land in which a municipality owns an interest. Actual partition between tenants in common involves no sale or disposal of land or any interest therein. Craven County v. First-Citizens Bank & Trust Co., 237 N. C. 502, 75 S. E. (2d) 620 (1953).

Sale of Swimming Pool to Avoid Operating on Integrated Basis.—Where a municipality sought to sell public swimming pools under the provisions of this section and other legislative authority, the contention that there was a denial of equal rights where the purpose of the closing or sale was to avoid the necessity of operating the facilities on a racially integrated basis was not sustained. If the swimming pools were disposed of through a bona fide public sale, and there was no evidence to the contrary in the instant case, there could be no unequal treatment and, therefore, no racial discrimination. Tonkins v. Greensboro, 162 F. Supp. 549 (1958).

Cited in Karpark Corp. v. Graham, 99 F Supp. 124 (1951).

§ 160-61.1. Certain counties and municipalities authorized to execute warranty deeds; relief from personal liability.

3. This section shall apply only to Wake County and the municipal corporations therein, Forsyth County and the municipal corporations therein, Rowan County and the municipal corporations therein, and to the following named counties and the municipal corporations therein, to-wit: Beaufort, Bertie, Bladen, Davidson, Edgecombe, Franklin, Gates, Halifax, Lenoir, Nash, New Hanover, Orange, Pender, Richmond, Union, Warren, Wayne, Wilson. (1945, c. 962; 1955, c. 935.)

Editor's Note. — The 1955 amendment inserted Warren in the list of counties appearing in subsection 3 of this section. As only subsection 3 was affected by the amendment, subsections 1 and 2 are not set out.

Article 7.

General Municipal Debts.

§ 160-62. Popular vote required, except for necessary expense.

Section Emphasizes Observance of Constitution.—The necessity of a rigid observance of Const., Art. VII, § 6, has been emphasized by this section. Horton v. Redevelopment Comm. of High Point, 259 N. C. 605, 131 S. E. (2d) 464 (1963).

"Necessary Expense."—The term "necessary expense" more especially refers to the ordinary and usual expenditures reasonably required to enable a county to properly perform its duties as part of the State government. Horton v. Redevelopment Comm. of High Point, 259 N. C. 605, 131 S. E. (2d) 464 (1963).

Necessary expenses involve and include the support of the aged and infirm, the

laying out and repair of public highways, the construction of bridges, the maintenance of the public peace, and administration of public justice—expenses to enable the county to carry on the work for which it was organized and given a portion of the State's sovereignty. Horton v. Redevelopment Comm. of High Point, 259 N. C. 605, 131 S. E. (2d) 464 (1963).

Where the purpose for which a proposed expense is to be incurred by a municipality is the maintenance of public peace or administration of justice, or partakes of a governmental nature, or purports to be an exercise by the municipality of a portion of the State's delegated sovereignty, the expense is a necessary expense within the Constitution, and may be incurred without a vote of the people. Horton v. Redevelopment Comm. of High Point, 259 N. C. 605, 131 S. E. (2d) 464 (1963).

Is Question for Court.—What are necessary expenses for a municipal corporation for which it may contract a debt, pledge its faith, or loan its credit and levy a tax without an approving vote of a majority of those who shall vote thereon in an election held for such purpose, is a question for the court. Horton v. Redevelopment Comm. of High Point, 259 N. C. 605, 131 S. E. (2d) 464 (1963).

Cited in Karpark Corp. v. Graham, 99 F. Supp. 124 (1951).

ARTICLE 8.

Public Libraries.

§ 160-65. Establishment of library.—The governing body of any county or municipality may, in its discretion, establish and support a free public library, using for such establishment and support any nontax revenues which may be available for such purposes. The word "support" as used in this article shall include, but is not limited to, purchase of land for library buildings, the purchase and renovation of buildings for library purposes, the construction of buildings for library purposes, purchase of library books, materials and equipment, compensation of library personnel, and all maintenance expenses for library property and equipment. Property taxes may be used for the support of public library services when the approval of the voters for the levy of a tax has been approved as provided in § 160-72 of this article or as may be provided in any special act. (1953, c. 721; 1963, c. 945.)

Editor's Note.—This article was completely rewritten by Session Laws 1953, c. 721. And by Session Laws 1953, c. 1102, s. 2, former §§ 160-68, 160-69, were rewritten and redesignated as §§ 125-27 and 125-28.

This article, effective July 1, 1963, was again rewritten by Session Laws 1963, c. 945.

§ 160-66. Library free.—The use of every library established under this article shall be forever free to the inhabitants of the county or municipality providing or contracting for library services, subject to such reasonable rules and regulations as may be adopted by the board of trustees of the library and approved by the governing body of the county or municipality. (1953, c. 721; 1963, c. 945.)

§ 160-67. Library trustees appointed.—For the government of each library established by a county or municipality there shall be a board of six trustees appointed by the governing body of the county or municipality, chosen from the citizens at large with reference to their fitness for such office. For the initial term, two members shall be appointed for terms of two (2) years, two members for terms of four (4) years, and two members for terms of six (6) years, and until their successors are appointed and qualified. Thereafter the terms of members shall be for six (6) years and until their successors are appointed and qualified, The governing body of the county or municipality may, in its discretion, designate one of its own members to serve ex officio as one of the six (6) members of the library board in addition to his other duties. Such governing body member shall serve on the library board for the duration of his term of office and shall have full rights, duties and responsibilities as a member of the board. All vacancies on the board shall be immediately reported by the trustees to the

governing body which shall fill each vacancy for the unexpired term. The governing body of the county or municipality may remove any trustee for incapacity, unfitness, misconduct, or for neglect of duty. Members of the board shall serve without compensation. (1953, c. 721; 1963, c. 945.)

Local Modification.—City of Concord: 1959, c. 528; city of High Point: 1961, c. 712.

Editor's Note.—By Session Laws 1953, c. 1102, s. 3, former §§ 160-68 and 160-69, as they appeared in Volume 3C of the General Statutes were rewritten and redesignated as §§ 125-27 and 125-28.

§ 160-68. Joint libraries.—(a) Two or more counties or municipalities, or a county or counties and a municipality or municipalities, may enter into an agreement for the joint performance and support of public library service for the benefit of the citizens of all the participating units. The joint library shall be established according to the terms of a resolution approved by the governing bodies of the participating units. The resolution shall provide for the composition of the board of trustees to govern the library and may contain any additional provisions concerning the operation and responsibility of the joint library on which all the participating units shall agree.

(b) The board of trustees of a joint library shall be composed of not less than six members and not more than twelve members. The resolution establishing the library shall specify the total number of trustees and the number of trustees to be appointed by the governing body of each participating county or municipality. The resolution shall also set forth the terms of office for the trustees, but no term of office shall be for less than two (2) years, nor for more than six (6) years. The governing body of each participating county or municipality shall make its appointments from the citizens at large with reference to their fitness for such office; provided, that such governing body may, in its discretion, designate as one of its members of the joint library board of trustees a member of the governing body to serve ex officio in addition to his other duties, and provided further, that such governing body may in its discretion, if it also supports a county or municipal library, designate one or more of its members of the joint library board of trustees from the membership of such county or municipal library board of trustees, such members to serve ex officio on the joint library board in addition to their other duties. Such governing body member, or county or municipal library board members, shall serve on the joint library board of trustees for the duration of his or their term of office on the governing body, or county or municipal library board, respectively. Any vacancy on the joint library board shall be filled for the unexpired term by the governing body of the county or municipality making the initial appointment. The governing body of any participating county or municipality shall have the power to remove any trustee appointed by it for incapacity, unfitness, misconduct, or neglect of duty. Members of the board shall serve without compensation.

(c) The resolution establishing the joint library shall contain a statement governing the distribution of property between the participating counties and municipalities in the event that any county or municipality should elect to withdraw from the agreement. Any county or municipality wishing to withdraw from participation in joint operation of a library shall give notice to the other participating counties and municipalities by December 31st prior to the beginning of the fiscal year in which it wishes to withdraw participation and support. From and after the expiration of the six months' period, such county or municipality shall be entitled to such proportion of the property of the joint library as may have been agreed upon in the resolution establishing the library. (1953, c. 721; 1963, c. 945.)

§ 160-69. Contracts with other libraries.—The governing body of any county or municipality, or the board of trustees of any county or municipal library board with the consent of its governing body, or the board of trustees of a joint library, or the governing board of any corporation or association providing

free public library service, may enter into a contract with and make annual appropriations to any county or municipality, county or municipal library, joint library, corporation or association providing free public library service, or other public or private agency providing library services for one or more public library services, including but not limited to the use of physical facilities and library equipment; the purchase, cataloguing and circulation of books, periodicals, recordings and other items and materials customarily acquired and circulated by the public libraries, the services of professionally qualified library personnel, and the provision of any special library service. (1953, c. 721; 1963, c. 945.)

Local Modification.—Rutherford: 1955, c. 799.

§ 160-70. Powers and duties of trustees.—(a) The board of trustees of a county or municipal library shall organize immediately after its appointment and shall elect one of its members as chairman. It may elect a secretary and a treasurer and such other officers as it may deem necessary, either from the membership of the board or from the employees of the library.

The board of trustees shall have the power

(1) To adopt such bylaws, rules and regulations for its own guidance and for the government of the library as may be necessary and in conformity with law;

(2) With the consent of the governing body of the county or municipality, to lease or purchase and occupy an appropriate building or buildings, or to erect an appropriate building or buildings upon lands acquired by gift, devise or purchase;

(3) To supervise and care for the physical facilities constructed, leased or set apart for library purposes;

(4) To appoint a chief librarian or director of library service, and, upon recommendation of such librarian or director, to appoint assistant librarians and other employees, and to remove such librarians or employees; provided, that no vacancies existing or occurring in the position of chief librarian or director in any such library shall be filled by the appointment or designation of any person who is not certified as a professional librarian by the North Carolina Library Certification Board under the provisions of G. S. 125-9 or G. S. 125-10;

(5) To fix the compensation of the chief librarian or director, and in consultation with such librarian or director to fix the compensation of the assistant librarians and other employees of the library; provided, (i) that all salaries and other compensation for library employees shall be in accordance with the provisions of any pay plan applying to all employees of the governmental unit and which has been approved by the county or municipal governing board, and, (ii) that all salaries and other compensation for library employees must be in accordance with appropriations for salaries and other compensation for library employees approved by the county or municipal governing body in the annual budget for such county or municipality;

(6) To prepare the annual budget for the library for submission to the governing body of the county or municipality;

(7) To extend the privileges and use of such library to nonresidents of the county or municipality, upon such terms and conditions as it may prescribe.

(b) Except as may be otherwise provided in this article, the board of trustees of a joint library shall have the same powers and privileges as the board of trustees of a county or municipal library. With the consent of the governing bodies of the participating units, the board of trustees of each joint library shall prepare a pay plan governing the compensation of all employees of the joint library.

(c) The board of trustees of every public library shall make an annual report to the governing body of the county or municipality, or counties and municipalities, providing financial support for such library, and shall forward a copy of such report to the North Carolina State Library. (1953, c. 721; 1953, c. 945.)

Cross Reference.—See note to § 160-67.

§ 160-71. Budget adoption and control.—(a) County or Muncipal Library.—The board of trustees of every county or municipal library shall prepare and recommend an annual budget to the governing body of the county or municipality. The budget for the library shall be adopted as part of the county or municipal budget. All monies received for such library shall be paid into the county treasury or the municipal treasury, shall be earmarked for the use of the library, and shall be paid out as other county or municipal funds are paid out; provided, that county or municipal library funds may, in the discretion of the governing board and notwithstanding the provisions of the County or Municipal Fiscal Control Acts, be paid out on warrants signed by the treasurer of the library board or trustees and countersigned by the county accountant or municipal accountant; provided, further, the countersigning officer shall countersign such warrants when they are within the funds earmarked for the library and within the amount of appropriations duly made by the governing body of the county or municipality. Whenever the treasurer of the library board shall sign warrants or otherwise handle monies of the library, he shall, before entering upon his duties, give bond to the county or municipality in an amount fixed by the governing body of such county or municipality, conditioned upon the faithful discharge of his official duties.

(b) Joint Libraries.—The amount each participating governmental unit shall contribute to the establishment and support of a joint library shall be determined annually by agreement between and among the participating counties and municipalities on the basis of a recommended budget submitted to such county and municipal governing bodies by the joint library board of trustees. The county and municipal governing bodies, meeting jointly wherever possible, shall determine their proportionate appropriations on the basis of the overall need for public library service in the area served by the library, the benefits to each participating unit arising from library service, and the funds available in each participating unit to support library service. Each participating county and municipality shall pay over its annual appropriation for joint library purposes to the treasurer of the joint library board of trustees, according to such schedule as may have been agreed upon with the library board. The joint library board of trustees shall adopt a final budget in accordance with the appropriations made to it by the participating counties and municipalities, and any other revenues available to such joint library. The treasurer of the board of trustees of the joint library, before entering upon his duties, shall give bond to the board of trustees in an amount fixed by the board of trustees and approved by the governing bodies of the participating governmental units, conditioned upon the faithful discharge of his duties. All funds, received by the joint library from any source shall be deposited by the treasurer to the account of the library, shall be earmarked for the use of the library, and shall be paid out on warrants signed by the librarian and countersigned by the treasurer. The treasurer shall countersign such warrants only when they are in accordance with the budget adopted by the board of trustees of the joint library and within the funds available to the library. In lieu of paying over all appropriations to the treasurer of the board of trustees of the joint library, the participating counties and municipalities may, in accordance with a resolution agreed to by each such county and municipality, contract for the financial administration of the library to be handled by a single participating county or municipality, in which case the procedures of the County or Municipal Fiscal Control Acts, whichever is applicable, shall apply. The board of trustees of each joint library shall arrange for an annual audit of its financial transactions and shall furnish

each participating county or municipality with a copy of such audit. (1953, c. 721; 1963, c. 945.)

§ 160-72. Special tax for library.—Subsequent to the establishment of a library by a county or municipality, the governing body of the county or municipality may upon its own motion and shall, upon a petition signed by voters of the county or municipality equal in number to at least fifteen per cent (15%) of the total number of votes cast for the office of Governor in the last preceding general election in such county or municipality, submit to the voters at a special election the question of whether a special tax shall be levied for the support of such library.

Such question shall be submitted to the voters either at the next general election for county officers in the case of a county, or at the next general election for municipal officers in the case of a municipality, or at a special election to be called by the governing body of the county or municipality for that purpose: Provided, that no special election shall be held within sixty (60) days of any general election for State, county or municipal officers. Such special election shall be conducted according to the laws governing general elections for county or municipal officers in such county or municipality.

The form of the question as stated on the ballot shall be in substantially the words: "For the levy of a special library tax of not more than ..... cents (.....¢)."; and "Against the levy of a special library tax of not more than ..... cents (.....¢)." Such affirmative and negative forms shall be printed upon one ballot, containing squares opposite the affirmative and the negative forms, in one of which squares the voter may make a mark (X). Provided, that the maximum tax levy to be submitted to the voters shall be determined by the governing body of such county or municipality, or in the petition requesting such election, which maximum shall in no event exceed fifteen cents (15¢) on the one hundred dollars ($100.00) valuation of property.

If a majority of the qualified voters in such election favor the levy of the tax, the governing body of the county or municipality shall levy and cause to be collected as other general taxes are collected, a special library tax within the limits approved by the voters in an amount which, when taken with nontax revenues, will be sufficient to meet annual appropriations for library purposes approved by the governing body of such county or municipality.

In any county or municipality in which a tax for library purposes has been voted under this section, or under any other general, public-local, private or special law, the governing body of such county or municipality may, on its own motion with the recommendation of the board of trustees of the library, and shall, upon a petition signed by voters of the county or municipality equal in number to at least fifteen per cent (15%) of the total number of votes cast for Governor in the last preceding general election in such county or municipality, submit to the voters of such county or municipality the question of an increase or decrease of such tax, within the limitations of this section. Such question shall be submitted to the voters in the manner provided by this section. (1953, c. 721; 1963, c. 945.)

Local Modification.—Polk: 1959, c. 435.

§ 160-73. Issuance of bonds.—Counties and municipalities are hereby authorized to issue bonds and notes, and to levy property taxes to meet payments of principal and interest on such bonds or notes, to purchase necessary land and to purchase or construct library buildings and equipment. Counties may issue such bonds or notes under the provisions of the County Finance Act and municipalities may issue such bonds or notes under the provisions of the Municipal Finance Act. (1953, c. 721; 1963, c. 945.)

§ 160-74. Power to take property by gift or devise.—With the consent of the governing body of the county or municipality, or the governing bodies of the governmental units participating in a joint library, expressed by an appropriate

resolution or ordinance, the library board of trustees may accept any gift, grant, devise, or bequest made or offered by any person for library purposes and may carry out the conditions of such donations. The county or municipality, or counties and municipalities participating in a joint library, shall have authority to acquire a site, levy a tax in accordance with and within the limitations set forth in this article, and pledge by ordinance or resolution compliance with all the terms and conditions of the gift, grant, devise, or bequest so accepted. (1953, c. 721; 1963, c. 945.)

§ 160-75. Title to property vested in the county or municipality.—Title to all property given, granted, or conveyed, donated, devised or bequeathed to, or otherwise acquired by any county or municipality for a library shall vest in and be held in the name of such county or municipality, and any conveyance, grant, donation, devise, bequest or gift to or in the name of any public library board shall be deemed to have been directly to such county or municipality; provided, that when such property is given, granted, or conveyed, donated, devised or bequeathed to, or otherwise acquired for the benefit of or in the name of a joint library, title to such property shall vest in and be held in the names of the participating counties or municipalities in the same proportion as set forth in the resolution establishing the library. (1953, c. 721; 1963, c. 945.)

§ 160-76. Ordinances for protection of library.—The governing body of any county or municipality establishing a public library shall have power to pass ordinances imposing penalties for any damage to or failure to return any book, plate, picture, engraving, map, magazine, pamphlet, newspaper, manuscript, film, recording, audio-visual equipment, or other specimen, work of literature, or object of art or of curiosity, or piece of equipment, belonging to such library. (1953, c. 721, 1963, c. 945.)

§ 160-77. Retention, removal, destruction, etc., of library items or equipment.—(a) Any person who shall

(1) Willfully or intentionally fail to return to a public library any library item or equipment belonging to such public library within fifteen (15) days after the librarian has mailed or delivered in person notice in writing that the time for which such library item or equipment may be kept under library regulations has expired, or

(2) Willfully or intentionally remove from the premises of the public library any library item of equipment without charging it out in accordance with the regulations of the library, or

(3) Willfully or wantonly damage, deface, mutilate, or otherwise destroy any library item or equipment, whether on the library premises or on loan, shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than fifty dollars ($50.00) or imprisonment for not more than thirty (30) days; provided, that the notice required by this section shall bear upon its face a copy of this section.

(b) For the purposes of this section, "library item or equipment" shall be defined to include any book, plate, picture, engraving, map, magazine, pamphlet, newspaper, manuscript, film, recording, or other specimen, work of literature, or object of art or of historical significance or of curosity owned by the library, or any audio-visual equipment or other equipment owned by the library. (1953, c. 721; 1963, c. 945.)

Article 9.

Local Improvements.

§ 160-78. Explanation of terms.

Applied in In re Resolutions, 243 N. C. 494, 91 S. E. (2d) 171 (1956).

Cited in Goldsboro v. Atlantic Coast Line R. Co., 241 N. C. 216, 85 S. E. (2d) 125 (1954); Broadway v. Asheboro, 250 N. C. 232, 108 S. E. (2d) 441 (1959).

§ 160-79. Application and effect.

Local Act Not Repealed. — This article did not affect chapter 397 of Private Laws of 1901, relating to the city of Goldsboro, and the power given to the city by that act for paving streets remained unimpaired. Goldsboro v. Atlantic Coast Line R. Co., 241 N. C. 216, 85 S. E. (2d) 125 (1954). See note to § 160-104.

§ 160-81. When petition required.

Cited in Goldsboro v. Atlantic Coast Line R. Co., 241 N. C. 216, 85 S. E. (2d) 125 (1954).

§ 160-82. What petition shall contain. — The petition for a local improvement shall be signed by at least a majority in number of the owners, who must represent at least a majority of all the lineal feet of frontage of the lands (a majority in interest of owners of undivided interests in any piece of property to be deemed and treated as one person for the purpose of the petition) abutting upon the street or streets or part of a street or streets proposed to be improved.

The petition shall cite this article and shall designate by a general description the local improvement to be undertaken and the street or streets or part thereof wherein the work is to be effected. The petition shall be lodged with the clerk of the municipality, who shall investigate the sufficiency thereof, submit the petition to the governing body, and certify the result of his investigation. The determination of the governing body upon the sufficiency of the petition shall be final and conclusive. (1915, c. 56, s. 5; C. S., s. 2707; 1955, c. 675; 1963, c. 1000, s. 1.)

Local Modification.—City of Reidsville: 1957, c. 793.

Editor's Note.—The 1955 amendment inserted two paragraphs relating to petitions by the State or its agencies. The 1963 amendment deleted the paragraphs inserted by the 1955 amendment.

Sufficiency of Complaint Alleging Invalidity of Petition.—In an action to have an assessment levied against plaintiff's property declared invalid, a complaint alleging that only one of the signatures of abutting property owners to the petition for improvements was valid, without alleging that the assessment was based on the petition, what other signatures appeared on the petition or facts supporting the conclusion that the other signatures were invalid, was insufficient to state a cause of action, and demurrer to complaint was properly sustained. Broadway v. Asheboro, 250 N. C. 232, 108 S. E. (2d) 441 (1959).

Cited in Goldsboro v. Atlantic Coast Line R. Co., 241 N. C. 216, 85 S. E. (2d) 125 (1954).

§ 160-82.1. State participation in local improvements.—(a) Intent and Scope of Section.—It is the intent of this section to encourage, and to provide for, State participation in the financing of street, water, and sewerage improvements made by cities and counties under special assessment programs in order that benefited State property will bear its fair share of the costs, and that street, water, and sewerage services may be extended in an orderly manner and with equitable sharing of costs by the different owners of benefited property. The procedure for State participation herein provided shall apply to local improvements initiated under the authority of this article and to those initiated under any general law or special act.

(b) Procedure.—

(1) The State may, when in the opinion of the Governor and the Council

of State any State-owned property would be benefited, either immediately or in the foreseeable future, by any street, water, or sewerage improvement, petition any city or county government to make such improvement and may pay its ratable part of the cost thereof from the Contingency and Emergency Fund of the State of North Carolina, or from any funds which may have been appropriated for that purpose, or from any appropriation to the Department of Administration which may not be required for other purposes.

(2) If any agency of the State of North Carolina shall own or occupy any State property, the governing body of such agency may, when in its opinion the making of any street, water, or sewerage improvement would benefit either immediately or in the foreseeable future, the property owned or occupied by such agency, and with the consent of the Governor and the Council of State, petition any city or county to make such improvement and may pay its ratable cost of such improvement out of any funds appropriated for that purpose or any funds in its hands which are not required for other purposes.

(3) When any city or county proposes to make any street, water, or sewerage improvement and to assess all or part of the cost thereof against locally benefited property, the governing board of any such city or county may request the Governor and the Council of State to authorize the signing of a petition for the improvement and the payment by the State of its ratable part of the cost of the proposed improvement for any property owned by the State or its agencies which will be benefited by the improvement, either immediately or in the foreseeable future. Provided, the Governor and the Council of State may authorize the Director of Administration to approve or disapprove requests from cities and counties and to make ratable payments as herein provided. Provided further, any city or county may appeal to the Governor and the Council of State upon the disapproval of any request by the Director of Administration. When payment is authorized, such payment may be made from the Contingency and Emergency Fund of the State of North Carolina, from any funds which may have been appropriated for that purpose, or from any appropriation to the Department of Administration which may not be required for other purposes. All such requests by city and county governing boards shall be filed with the Director of Administration for transmission to the Governor and the Council of State, and shall include a copy of the petition for the proposed improvement in all cases in which the making of the improvement requires a petition from the owners of benefited property. (1963, c. 1000, s. 2.)

§ 160-85. Assessments levied.

Local Modification.—City of Concord, as to subsection 1: 1957, c. 410.

Intervening Land between Property and Improvement.—See In re Resolutions, 243 N. C. 494, 91 S. E. (2d) 171 (1956).

Applied in Raleigh Cemetery Ass'n v. Raleigh, 235 N. C. 509, 70 S. E. (2d) 506 (1952).

§ 160-88. Hearing and confirmation; assessment lien.

Cited in Broadway v. Asheboro, 250 N. C. 232, 108 S. E. (2d) 441 (1959).

§ 160-89. Appeal to the superior court.

Writ of Certiorari. — An abutting property owner who failed to appeal from a final order of the board of aldermen affirming the assessment roll was not entitled to a writ of certiorari where application for the writ was filed more than eight months after his time for appeal had expired. Sanford v. Southern Oil Co., 244 N. C. 388, 93 S. E. (2d) 560 (1956).

Cited in Broadway v. Asheboro, 250 N. C. 232, 108 S. E. (2d) 441 (1959).

§ 160-93. Sale or foreclosure for unpaid assessments barred in ten years; no penalties.

Local Modification.—City of Greensboro: 1953, c. 988.

§ 160-94. Extension of time for payment of special assessments.

Local Modification.—Wake: 1963, c. 755.

§ 160-104. Improvements on streets abutting railroads.

Local Acts Not Repealed.—Chapter 222, Public Laws of 1931, from which this and the following section were codified, was intended to be merged into the framework of the Local Improvement Act of 1915, this article, and thus, under § 160-79, chapter 222 does not repeal the provisions of chapter 397, Private Laws of 1901, or chapter 215, Private Laws of 1925, relating to paving of streets in the city of Goldsboro, but the local acts will be construed as exceptions to the general statute. Goldsboro v. Atlantic Coast Line R. Co., 241 N. C. 216, 85 S. E. (2d) 125 (1954).

§ 160-105. Railroad rights of way and contracts as to streets unaffected.

Cross Reference.—See note to § 160-104.

ARTICLE 11.

Regulation of Buildings.

§ 160-115. Chief of fire department.

Cross Reference.—As to uniformed firemen enforcing motor vehicle laws and ordinances at fires, see § 20-114.1.

§ 160-118. Local inspector of buildings.

Local Modification. — Catawba: 1955, c. 656.

§ 160-122. County electrical inspectors.

Local Modification.—Caswell: 1963, c. 1205.

Editor's Note.—As to county plumbing inspectors for certain counties, see G. S. 153-9, subsection 47.

Cited in In re North Carolina Fire Ins. Rating Bureau, 245 N. C. 444, 96 S. E. (2d) 344 (1957).

§ 160-126. Building permits.—Before a building is begun the owner of the property shall apply to the inspector for a permit to build. This permit shall be given in writing and shall contain a provision that the building shall be constructed according to the requirements of the building law, a copy of which shall accompany the permit. No permit shall be issued unless the plans and specifications are identified by the name and address of the author thereof, and where the General Statutes of North Carolina require that plans for certain types of construction be prepared only by a registered architect or a registered engineer, no permit shall be issued unless such plans and specifications bear the North Carolina seal of a registered architect or of a registered engineer. As the building progresses the inspector shall make as many inspections as may be necessary to satisfy him that the building is being constructed according to the provisions of this law. As soon as the building is completed the owner shall notify the inspector, who shall proceed at once to inspect the said building and determine whether or not the flues and the building are properly constructed in accordance with the building law. If the building meets the requirements of the building law the inspector shall then issue to the owner of the building a certificate which shall state that he has complied with the requirements of the building law as to that particular building giving description and locality and street number if numbered. The inspector shall keep his record so that it will show readily by reference all such buildings as are approved. The inspector shall report to the Insurance Commis-

sioner every person neglecting to secure such permit and certificate, and also bring the matter before the mayor, recorder or municipal court for their attention and action. (1905, c. 506, s. 26; Rev., s. 2986; 1915, c. 192, s. 3; C. S., s. 2748; 1957, c. 817.)

Local Modification. — Town of Whiteville: 1959, c. 786.

Editor's Note. — The 1957 amendment inserted the third sentence.

§ 160-141. Electric wiring of houses.

Local Modification. — City of Roanoke Rapids: 1953, c. 348, s. 1.

Applied in Savage v. Kinston, 238 N. C. 551, 78 S. E. (2d) 318 (1953).

Quoted in Lutz Industries, Inc. v. Dixie Home Stores, 242 N. C. 332, 88 S. E. (2d) 333 (1955).

§ 160-146. Fees of inspector.

Local Modification. — City of Roanoke Rapids: 1953, c. 348, s. 2.

Article 12.

Recreation Systems and Playgrounds.

§ 160-155. Title.

Construction of Swimming Pool Is Public Purpose.—While the construction of a swimming pool as a part of a city's recreation system may not be financed as a necessary expense of government under our constitutional limitation, N. C. Const., art. VII, § 7, without a vote of the people, nevertheless, such a facility is a public purpose. Greensboro v. Smith, 239 N. C. 138, 79 S. E. (2d) 486 (1954).

Cited in Greensboro v. Smith, 241 N. C. 363, 85 S. E. (2d) 292 (1955).

§ 160-156. Declaration of State public policy.

Purpose and Effect of Section.—The declaration contained in this section only qualifies recreational facilities as a necessary expense in order that funds derived from ad valorem taxes may be expended on such facilities without the necessity of a vote of the people. It does not impose any obligation on governmental units to establish recreational facilities but is simply an enabling law. Tonkins v. Greensboro, 162 F. Supp. 549 (1958).

Cited in Glenn v. Raleigh, 246 N. C. 469, 98 S. E. (2d) 913 (1957).

§ 160-158. Powers.

Expenditures for parks and recreational facilities seem to fall within the class of water and sewer facilities described in §§ 160-239 and 160-255 when operated in a governmental capacity; that is, for direct benefit by the citizens of the municipality. Eakley v. Raleigh, 252 N. C. 683, 114 S. E. (2d) 777 (1960).

§ 160-161. Appointment of members to board.

Local Modification. — City of Wilson: 1961, c. 723; 1963, c. 151; town of Whiteville: 1957, c. 605.

§ 160-163. Petition for establishment of system and levy of tax; election.

Cited in Glenn v. Raleigh, 246 N. C. 469, 98 S. E. (2d) 913 (1957).

Article 12A.

Bird Sanctuaries.

§ 160-166.1. Municipalities authorized to create bird sanctuaries within their territorial limits.

Local Modification. — New Hanover: 1963, c. 1124.

§ 160-166.2. Penalty for violation.

Local Modification. — New Hanover: 1963, c. 1124.

Article 13.

Market Houses.

§ 160-167. Municipalities and counties authorized to act jointly; location of house, etc.—Any city, town, or county, separately, or any group or combination of such governmental units may jointly, establish, construct, own, maintain, and operate a market house or houses at such place or places as the governing body or bodies thereof may determine. For the purpose aforesaid, such city, town or county, or any group or combination thereof, may lease, purchase or otherwise acquire and hold, separately or jointly as tenants in common of equal interest, land necessary as a site for such market house or houses and build thereon such market house or houses, the cost thereof to be borne by the governmental units participating therein. The cost of any such building or buildings shall not be less than two thousand five hundred dollars ($2,500.00) nor more than five hundred thousand dollars ($500,000.00). In connection with and as a part of such market house or houses, the governing body of any governmental unit or any group of them acting jointly, may also provide, establish, maintain, and operate open-air market places, abattoirs, cold storage plants and canning plants for preserving and canning such fruits, vegetables, and other produce as may be left unsold from day to day or may be in excess of present marketing requirements, or which may be bought; and they are authorized to establish, maintain and operate places, scales and equipment for weighing, grinding and measuring corn, grain, fodder, vegetables, fruits, and other farm products. (1923, c. 158, s. 1; C. S., s. 2776(m); 1953, c. 901, s. 1.)

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

§ 160-168. Control and management; board of managers; regulations; leasing space; inspection; manager and other employees.—In the event any governmental unit shall separately establish a market house or houses under authority of this article, the control and management thereof shall be vested in the governing board of such unit. In the event any group of such governmental units shall jointly establish market house or houses under authority of this article, the control and management thereof shall be vested in a board of managers composed of two members each from the governing boards of the participating units who shall serve ex officio in such capacity and shall be named by the governing board of the participating units. The board of managers is authorized to make all necessary rules and regulations covering such construction, maintenance and operation. It may provide for the letting and leasing of stalls or space therein to persons, firms and corporations and fix the rental thereof. It may prescribe the time, place and manner of sale of fish, meats, fruits, vegetables, and other farm produce therein and provide for the inspection of all foodstuffs offered for sale, and for the condemnation of such as may be unfit for sale or consumption. The board of managers may employ a manager and such other employees as may be necessary to maintain and operate such market house or houses. (1923, c. 158, s. 2; C. S., s. 2776(n); 1953, c. 901, s. 2.)

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

§ 160-169: Repealed by Session Laws 1953, c. 901, s. 3.

Article 14.

Zoning Regulations.

§ 160-172. Grant of power.

Power Delegated. — By this article the General Assembly has delegated to "the legislative body" of cities and incorporated towns the power to adopt zoning regulations and, from time to time, to amend or repeal such regulations. In re Markham, 259 N. C. 566, 131 S. E. (2d) 329 (1963).

Validity of Statutes. — Statutes which have been passed authorizing the governing bodies of municipal corporations to enact zoning ordinances prescribing that in certain areas only designated types of buildings may be erected and used have been generally upheld by the courts as an exercise of the police power of the State. Vance S. Harrington & Co. v. Renner, 236 N. C. 321, 72 S. E. (2d) 838 (1952); Raleigh v. Morand, 247 N. C. 363, 100 S. E. (2d) 870 (1957).

Power to Zone Cannot Be Delegated.— In accord with original. See In re O'Neal, 243 N. C. 714, 92 S. E. (2d) 189 (1956).

Validity of Ordinances.—

As a general rule a zoning ordinance of a municipality is valid and enforceable if it emanates from ample grant of power by the legislature to the city or town, if it has a reasonable tendency to promote the public safety, health, morals, comfort, welfare and prosperity, and if its provisions are not arbitrary, unreasonable or confiscatory. Helms v. Charlotte, 255 N. C. 647, 122 S. E. (2d) 817 (1961).

It is not a prerequisite to the validity of a zoning ordinance that the zoning district lines should coincide with property lines. Helms v. Charlotte, 255 N. C. 647, 122 S. E. (2d) 817 (1961).

The mere fact that a zoning ordinance seriously depreciates the value of complainant's property is not enough, standing alone, to establish its invalidity. Helms v. Charlotte, 255 N. C. 647, 122 S. E. (2d) 817 (1961).

A municipal zoning ordinance is confiscatory and invalid in its application to a particular lot if it is practically impossible to use such lot for the purpose permitted by the ordinance so that the ordinance renders such property valueless for practical purposes. Helms v. Charlotte, 255 N. C. 647, 122 S. E. (2d) 817 (1961).

An ordinance which purports to prohibit the erection of a gin or mill in the town without the consent of neighboring property owners cannot be upheld under this article. Wilcher v. Sharpe, 236 N. C. 308, 72 S. E. (2d) 662 (1952), commented on in 31 N. C. Law Rev. 308.

Zoning Regulations May Be Amended and Changed.—In enacting a zoning ordinance, a municipality is engaged in legislating and not in contracting. As a consequence, a zoning ordinance fixing the boundaries of zones does not result in a contract between the municipality and property owners precluding the municipality from afterwards changing the boundaries if it deems a change to be desirable. Moreover, a zoning ordinance does not vest in a property owner the right that the restrictions imposed by it upon his property or the property of others shall remain unaltered. For these reasons, zoning regulations may be amended or changed when such action is authorized by the enabling statute and does not contravene constitutional limitations on the zoning power. Marren v. Gamble, 237 N. C. 680, 75 S. E. (2d) 880 (1953).

Zoning Beyond Corporate Limits Not Authorized.—The provisions of §§ 160-172 through 160-181.1 do not authorize zoning beyond municipal corporate limits. State v. Owen, 242 N. C. 525, 88 S. E. (2d) 832 (1955).

This section contains no provision for judicial review by certiorari or otherwise of the action of the "legislative body" of cities and towns with reference to the enactment, amendment or repeal of zoning regulations. In re Markham, 259 N. C. 566, 131 S. E. (2d) 329 (1963).

Cited in Chambers v. Zoning Board of Adjustment of Winston-Salem, 250 N. C. 194, 108 S. E. (2d) 211 (1959).

§ 160-173. Districts.—For any or all said puropses it may divide the municipality into districts of such number, shape and area as may be deemed best suited to carry out the purposes of this article; and within such districts it may regulate and restrict the erection, construction, reconstruction, alteration, repair or use of buildings, structures or land. All such regulations shall be uniform for each class or kind of building throughout each district, but the regulations in

one district may differ from those in other districts. (1923, c. 250, s. 2; C. S., s. 2776(s); 1931, c. 176, s. 1; 1933, c. 7; 1963, c. 1058, s. 1.)

Local Modification. — Mecklenburg and municipalities therein: 1959, c. 135; Robeson: 1963, c. 718; Union and municipalities therein: 1961, c. 4; city of Laurinburg: 1953, c. 1256; city of Statesville: 1957, c. 1212; city of Wilson: 1963, c. 663; town of Clinton: 1957, c. 304; town of Morehead City: 1957, c. 629; town of Wallace: 1957, c. 891.

Editor's Note.—

The 1963 amendment deleted the proviso, relating to regulation and redistricting of property at the corners of intersections, added by the 1931 amendment.

Section 4 of the 1963 amendatory act provides that the amendment to this section shall not apply to the counties of Ashe, Chatham, Cumberland, Davidson, Gaston, Iredell, Lee, Macon, Pender, Vance, Warren, Washington and Watauga.

Section 6 of the 1963 amendatory act provides that the act shall become effective on January 15, 1964 but shall not apply to any written application made prior to such date nor to litigation pending on such date.

Zoning District Lines Need Not Coincide with Property Lines.—It is not required under this section that zoning district lines coincide with property lines, regardless of the area involved. Penny v. Durham, 249 N. C. 596, 107 S. E. (2d) 72 (1959).

For cases discussing former proviso relating to regulation and redistricting of property at the corners of intersections, see Marren v. Gamble, 237 N. C. 680, 75 S. E. (2d) 880 (1953); Robbins v. Charlotte, 241 N. C. 197, 84 S. E. (2d) 814 (1954); Bryan v. Sanford, 244 N. C. 30, 92 S. E. (2d) 420 (1956); In re Markham, 259 N. C. 566, 131 S. E. (2d) 329 (1963).

Applied in Walker v. Elkin, 254 N. C. 85, 118 S. E. (2d) 1 (1961).

§ 160-174. Purposes in view.

Quoted in Walker v. Elkin, 254 N. C. 85, 118 S. E. (2d) 1 (1961).

§ 160-175. Method of procedure.

Local Modification. — Durham: 1955, c. 172.

Effect of Noncompliance with Section.— In accord with original. See Walker v. Elkin, 254 N. C. 85, 118 S. E. (2d) 1 (1961).

Ordinance Is Presumed Valid.—When it is shown that a zoning ordinance has been adopted by the governing board of a municipality, there is a presumption in favor of the validity of the ordinance and the burden is upon the complaining property owner to show its invalidity or inapplicability. Helms v. Charlotte, 255 N. C. 647, 122 S. E. (2d) 817 (1961).

Court Will Not Substitute Its Judgment for Legislative Body's.—When the most that can be said against a zoning ordinance is that whether it was unreasonable, arbitrary or unequal exercise of power is fairly debatable, the courts will not interfere. In such circumstances the settled rule seems to be that the court will not substitute its judgment for that of the legislative body charged with the primary duty and responsibility of determining whether its action is in the interest of the public health, safety, morals or general welfare. Helms v. Charlotte, 255 N. C. 647, 122 S. E. (2d) 817 (1961).

And Permit for Nonconforming Use Does Not Prevent Enforcement. — The fact that a municipal official issues a permit for a nonconforming use after the enactment of a zoning ordinance does not estop the municipality from enforcing the ordinance. Helms v. Charlotte, 255 N. C. 647, 122 S. E. (2d) 817 (1961).

Notice and an opportunity to be heard are prerequisite to the validity of a modification of municipal zoning regulations, but notice published in a newspaper of general circulation in the municipality and county advising that changes in the zoning of described property and proposed change in the zoning ordinance of the municipality would be discussed, and inviting all persons interested in the proposed changes to be present, is sufficient to sustain a finding that notice of both change in the zoning regulations and in zone lines had been given. Walker v. Elkin, 254 N. C. 85, 118 S. E. (2d) 1 (1961).

The fact that the complainants did not see a notice given by advertisement in a local newspaper cannot affect the validity of the ordinance when everything required by the statute was done before its adoption. It is a matter of almost daily occurrence that rights are affected and the sta-

tus of relationships is changed upon the giving of similar notice, but no one may successfully contend that acts predicated upon such notice are rendered invalid because persons affected did not see the notice in the newspaper. Helms v. Charlotte, 255 N. C. 647, 122 S. E. (2d) 817 (1961).

The notice required by this section is sufficient and meets the requirements of due process. Helms v. Charlotte, 255 N. C. 647, 122 S. E. (2d) 817 (1961).

A municipal planning and zoning commission has no legislative, judicial or quasi-judicial power, and the city council acts in the exercise of its legislative function in determining whether the commission's recommendations in regard to the enactment of zoning ordinances should be followed. In re Markham, 259 N. C. 566, 131 S. E. (2d) 329 (1963).

Applied in Marren v. Gamble, 237 N. C. 680, 75 S. E. (2d) 880 (1953).

§ 160-176. **Changes.**—Such regulations, restrictions and boundaries may from time to time be amended, supplemented, changed, modified or repealed. In case, however, of a protest against such change signed by the owners of twenty per cent or more either of the area of the lots included in such proposed change, or of those immediately adjacent thereto either in the rear thereof or on either side thereof, extending one hundred feet therefrom, or of those directly opposite thereto extending one hundred feet from the street frontage of such opposite lots, such amendment shall not become effective except by favorable vote of three-fourths of all the members of the legislative body of such municipality. The provisions of the previous section relative to public hearings and official notice shall apply equally to all changes or amendments. (1923, c. 250, s. 5; C. S., s. 2776(v); 1959, c. 434, s. 1.)

Editor's Note.—The 1959 amendment inserted the words "thereto either" immediately after the word "adjacent" in line five. It also inserted "or on either side thereof" after the word "thereof" in the same line. Section 2 of the amendatory act provides: "It is the purpose and intent of this act to extend the protest provision of G. S. 160-176 to the owners of twenty per cent or more of each of the areas of the lots on either side of and extending one hundred feet from any area included in proposed changes or amendments of municipal zoning ordinances."

"Directly Opposite." — Where a zoning ordinance, passed by a majority vote of the city council, rezoned applicant's property lying more than 150 feet from the street, but left the zoning regulations unchanged as to applicant's property abutting the street to a depth of 150 feet therefrom, and owners of more than 20 per cent of the footage on the opposite side of the street from applicant's property had protested the change, the property of those protesting did not lie "directly opposite" the property rezoned within the purview of this section, and therefore it was not required that the zoning ordinance be passed by three-fourths of the members of the city council. Penny v. Durham, 249 N. C. 596, 107 S. E. (2d) 72 (1959), defining the term "directly opposite."

Sufficient Notice.—Where change of a zoning regulation has been advertised for two successive weeks in a newspaper printed in the municipality, the statutory notice is sufficient. Helms v. Charlotte, 255 N. C. 647, 122 S. E. (2d) 817 (1961).

Applied in Walker v. Elkin, 254 N. C. 85, 118 S. E. (2d) 1 (1961).

§ 160-176.1. **Protest petition; form; requirements; time for filing.**—No protest against any change or amendment in a zoning ordinance or zoning map shall be valid or effective for the purposes of G. S. 160-176 unless it be in the form of a written petition actually bearing the signatures of the requisite number of property owners and stating that the signers do protest the proposed change or amendment, and unless it shall have been received by the municipal clerk in sufficient time to allow the municipality at least two normal work days, excluding Saturdays, Sundays, and legal holidays, prior to the date established for a public hearing on the proposed change or amendment to determine the sufficiency and accuracy of the petition. The governing body of any municipality may by ordinance require that all protest petitions be on a form prescribed and furnished by the municipality, and such form may prescribe any reasonable information deemed necessary to permit the municipality to determine the sufficiency and accuracy of the petition. (1963, c. 1058, s. 2.)

Editor's Note.—This section is made effective on January 15, 1964 but shall not apply to any written application made prior to such date nor to litigation pending on such date.

§ 160-177. Zoning commission.

A naval officer holds office under the United States government and therefore under the provision of Art. XIV, § 7, of the State Constitution, he could not hold the office of zoning commissioner, and was neither a de facto nor a de jure commissioner. Vance S. Harrington & Co. v. Renner, 236 N. C. 321, 72 S. E. (2d) 838 (1952).

A municipal planning and zoning commission has no legislative, judicial or quasi-judicial power, and the city council acts in the exercise of its legislative function in determining whether the commission's recommendations in regard to the enactment of zoning ordinances should be followed. In re Markham, 259 N. C. 566, 131 S. E. (2d) 329 (1963).

§ 160-178. Board of adjustment.—Such legislative body may provide for the appointment of a board of adjustment consisting of five members, each to be appointed for three years; provided, that such legislative body in the appointment of the original members of such board, or in the filling of vacancies caused by the expiration of the terms of the existing members of any such board, may make appointments of certain members for less than three years to the end that thereafter the terms of all members shall not expire at the same time. Such legislative body may, in its discretion, appoint not more than two alternate members to serve on such board in the absence, for any cause, of any regular member. Such alternate member or members shall be appointed for the same term or terms as regular members, and shall be appointed in the same manner as regular members and at the regular times for appointment; provided, however, that in the case of the first appointment of alternate members subsequent to March 18, 1947, the appointment shall be for a term which shall expire at the next time when the term of any regular member expires. Such alternate member, while attending any regular or special meeting of the board and serving in the absence of any regular member, shall have and exercise all the powers and duties of such regular member so absent. Such board of adjustment shall hear and decide appeals from and review any order, requirement, decision or determination made by an administrative official charged with the enforcement of any ordinance adopted pursuant to this article. It shall also hear and decide all matters referred to it or upon which it is required to pass under any such ordinance. The concurring vote of four members of the board shall be necessary to reverse any order, requirement, decision or determination of any such administrative official, or to decide in favor of the applicant any matter upon which it is required to pass under any such ordinance or to effect any variation in such ordinance. Every decision of such board shall, however, be subject to review by proceedings in the nature of certiorari. Such appeal may be taken by any person aggrieved or by an officer, department, board or bureau of the municipality. Such appeal shall be taken within such time as shall be prescribed by the board of adjustment by general rule, by filing with the officer from whom the appeal is taken and with the board of adjustment a notice of appeal, specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken. An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the board of adjustment, after the notice of appeal shall have been filed with him, that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property, in which case the proceedings shall not be stayed otherwise than by a restraining order, which may be granted by the board of adjustment or by a court of record on application, on notice to the officer from whom the appeal is taken and on due cause shown. The board of adjustment shall fix a reasonable time for the hearing of the appeal and give due notice thereof to the

parties, and decide the same within a reasonable time. Upon the hearing, any party may appear in person or by agent or by attorney. The board of adjustment may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from, and shall make such order, requirement, decision or determination as in its opinion ought to be made in the premises, and to that end shall have all the powers of the officer from whom the appeal is taken. Where there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of such ordinance, the board of adjustment shall have the power, in passing upon appeals, to vary or modify any of the regulations or provisions of such ordinance relating to the use, construction or alteration of buildings or structures or the use of land, so that the spirit of the ordinance shall be observed, public safety and welfare secured and substantial justice done.

The chairman of the board of adjustment is authorized in his official capacity to administer oaths to witnesses in any matter coming before the board. Any member of the board while temporarily acting as chairman shall have and may exercise like authority. (1923, c. 250, s. 7; C. S., s. 2776(x); 1929, c. 94, s. 1; 1947, c. 311; 1949, c. 979, ss. 1, 2; 1963, c. 1058, s. 3.)

Local Modification. — City of Wilson: 1961, c. 633; 1963, c. 151.

Editor's Note.—

The 1963 amendment, effective Jan. 15, 1964, added the last two sentences.

Section 6 of the 1963 amendatory act provides that the act shall become effective on January 15, 1964 but shall not apply to any written application made prior to such date nor to litigation pending on such date.

For article on power of zoning board of adjustment to grant variances from zoning ordinance, see 29 N. C. Law Rev. 245.

Nature of Power.—

The planning and zoning commission is separate and distinct from the board of adjustment appointed in accordance with this section. The board of adjustment is clothed, if not with judicial, at least with quasi-judicial power, it being its duty to investigate facts and from its investigation to draw conclusions as a basis of official action and to exercise discretion of a judicial nature. Even so, it is not a law-making body and may not disregard zoning regulations adopted by the legislative body, to wit, the city council. It can merely vary them to prevent injustice when the strict letter of the provisions would work unnecessary hardship. In re Markham, 259 N. C. 566, 131 S. E. (2d) 329 (1963).

Board's Findings May Not Be Based on Unsworn Statements.—Absent stipulations or waiver, a board of adjustment may not base critical findings of fact as to the existence or nonexistence of a nonconforming use on unsworn statements. Jarrell v. Board of Adjustment for High Point, 258 N. C. 476, 128 S. E. (2d) 879 (1963).

Where one asserts a legal right to a nonconforming use, whether he has such legal right depends upon factual findings, and in the determination of such factual findings unsworn statements may not be considered either competent or substantial. Jarrell v. Board of Adjustment for High Point, 258 N. C. 476, 128 S. E. (2d) 879 (1963).

Adequacy of Scope of Review.—While this section provides expressly for a review "by proceedings in the nature of certiorari," this is an "adequate procedure for judicial review" (within the meaning of § 143-307) only if the scope of review is equal to that under § 143-306 et seq. Jarrell v. Board of Adjustment for High Point, 258 N. C. 476, 128 S. E. (2d) 879 (1963).

Review of Questions of Fact.—

In accord with original. Jarrell v. Board of Adjustment for High Point, 258 N. C. 476, 128 S. E. (2d) 879 (1963).

Cited in Vance S. Harrington & Co. v. Renner, 236 N. C. 321, 72 S. E. (2d) 838 (1952).

§ 160-179. Remedies.

This section expressly authorizes the use of the injunctive power of the court to enjoin violations of zoning ordinances. Raleigh v. Morand, 247 N. C. 363, 100 S. E. (2d) 870 (1957); New Bern v. Walker, 255 N. C. 355, 121 S. E. (2d) 544 (1961).

This section confers jurisdiction, etc.—

This section enlarges the scope of the ordinary equity jurisdiction, and provides a statutory injunction to be applied to acts and conditions ordinarily considered as being beyond equity interference. New Bern

v. Walker, 255 N. C. 355, 121 S. E. (2d) 544 (1961).

Cited in North Carolina Board of Pharmacy v. Lane, 248 N. C. 134, 102 S. E. (2d) 832 (1958).

§ 160-181.1. Article applicable to buildings constructed by State and its subdivisions.

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

§ 160-181.2. Extraterritorial jurisdiction. — The legislative body of any municipality whose population at the time of the latest decennial census of the United States was one thousand two hundred fifty (1,250) or more, may exercise the powers granted in this article not only within its corporate limits but also within the territory extending for a distance of one mile beyond such limits in all directions; provided, that any ordinance intended to have application beyond the corporate limits of the municipality shall expressly so provide, and provided further that such ordinance be adopted in accordance with the provisions set forth herein. In the event of land lying outside a municipality and lying within a distance of one mile of more than one municipality, the jurisdiction of each such municipality shall terminate at a boundary line equidistant from the respective corporate limits of such municipalities. No extraterritorial regulations shall affect bona fide farms, but any use of such property for non-farm purposes shall be subject to such regulations.

As a prerequisite to the exercise of such powers, the membership of the zoning commission or planning board charged with the preparation of proposed regulations for the one-mile area outside of the corporate limits shall be increased to include additional members who shall represent such outside area. The number of additional members representing such outside area shall be equal in number to the members of the planning board or zoning commission, appointed by the governing body of the municipality. Such additional members shall be residents of the one-mile area outside the corporate limits and shall be appointed by the board of county commissioners of the county wherein the municipality is situated. Such members shall have equal rights, privileges, and duties with the other members of the zoning commission or planning board in all matters pertaining to the regulation of such area, both in preparation of the original regulations and in consideration of any proposed amendments to such regulations.

In the event that a municipal legislative body adopts zoning regulations for the area outside its corporate limits, it shall increase the membership of the board of adjustment by adding five additional members. Such members shall be residents of the one-mile area outside the corporate limits and shall be appointed by the board of county commissioners of the county wherein the municipality is situated. Such members shall have equal rights, privileges, and duties with the other members of the board of adjustment in all matters pertaining to the regulation of such area. The concurring vote of eight members of such enlarged board shall be necessary to reverse any order, requirement, decision, or determination of any administrative official charged with the enforcement of an ordinance.

In the event the board of county commissioners fails to make the appointments provided for in this section within ninety (90) days after receipt of a resolution from a municipal governing body requesting that such appointments be made, the municipal governing body may thereupon make such appointments.

Where the extraterritorial jurisdiction of a municipality extends into more than one county, the board of county commissioners of each county affected shall appoint the outside members of the zoning commission or planning board and of the board of adjustment, from among the residents of the area included in its county; such outside members shall function only with respect to the area included in the county in which they reside.

The additional members appointed to the zoning commission or planning board and the board of adjustment as provided for herein may be appointed to serve for

terms corresponding to the terms of present members or for such other terms as the governing body of the municipality may, by ordinance, determine.

Any municipal legislative body exercising the powers granted by this section may provide for the enforcement of its regulations for the outside area in the same manner as the regulations for the area inside the city are enforced; provided this section shall not apply to Caldwell, Cumberland, Davie, Franklin, Gaston, Iredell, Macon, Mitchell, Moore, Onslow, Orange, Pender, Person, Richmond, Tyrrell, Warren, Washington and Wayne counties. The requirement that a municipality shall have a population of twelve hundred and fifty (1250) or more shall not apply to Montgomery County, or to the town of Aurora in Beaufort County. (1959, c. 1204; 1961, c. 103; c. 548, ss. 1, 1¾; c. 1217; 1963, cc. 519, 889, 1076, 1105.)

Local Modification.—Vance (as to fourth paragraph): 1961, c. 548, s. 1½; town of Red Springs: 1963, c. 21.

Editor's Note.—The first 1961 amendment deleted "Vance" from the list of counties in the last paragraph.

The second 1961 amendment substituted "one thousand two hundred fifty (1,250)" for "two thousand five hundred (2,500)" in line three of the first paragraph. It also inserted paragraphs four and six, deleted Watauga from the list of counties in the last paragraph and struck out the former last sentence relating to Montgomery County. The third 1961 amendment added the present last sentence relating to such county.

The first 1963 amendment added at the end of the section the reference to the town of Aurora in Beaufort County.

The second 1963 amendment inserted "Caldwell" in the list of counties in the last paragraph, the third 1963 amendment deleted "Harnett" and the fourth 1963 amendment inserted "Richmond" in the list.

Determination of questions of fact by the board of adjustment will not be disturbed when its findings are supported by evidence and are made in good faith. Application of Hasting, 252 N. C. 327, 113 S. E. (2d) 433 (1960).

Article 14A.

Preservation of Open Spaces and Areas.

§ 160-181.3. Legislative intent. — It is the intent of the General Assembly in enacting this article to provide a means whereby any county or municipality may acquire, by purchase, gift, grant, bequest, devise, lease, or otherwise, and through the expenditure of public funds, the fee or any lesser interest or right in real property in order to preserve, through limitation of their future use, open spaces and areas for public use and enjoyment. (1963, c. 1129, s. 1.)

§ 160-181.4. Finding of necessity.—The General Assembly finds that the rapid growth and spread of urban development in the State is encroaching upon, or eliminating, many open areas and spaces of varied size and character, including many having significant scenic or esthetic values, which areas and spaces if preserved and maintained in their present open state would constitute important physicial, social, esthetic, or economic assets to existing and impending urban development. The General Assembly declares that it is necessary for sound and proper urban development and in the public interest of the people of this State for any county or municipality to expend or advance public funds for, or to accept by, purchase, gift, grant, bequest, devise, lease, or otherwise, of the fee or any lesser interest or right in real property so as to acquire, maintain, improve, protect, limit the future use of, or otherwise conserve open spaces and areas within their respective zoning jurisdictions.

The General Assembly declares that the acquisition of interests or rights in real property for the preservation of open spaces and areas constitutes a public purpose for which public funds may be expended or advanced. (1963, c. 1129, s. 2.)

§ 160-181.5. Counties or municipalities authorized to acquire and reconvey real property.—Any county or municipality in the State may ac-

quire by purchase, gift, grant, bequest, devise, lease, or otherwise, the fee or any lesser interest, development right, easement, covenant, or other contractual right of or to real property within its respective zoning jurisdiction, where it finds such acquisition necessary to achieve the purposes of this article. Any county or municipality may also acquire the fee to any such property for the purpose of conveying or leasing said property back to its original owner or other person under such covenants or other contractual arrangements as will limit the future use of the property in accordance with the purposes of this article; provided, that where such action is taken, the property may be conveyed back to its original owner but to no other person by private sale. (1963, c. 1129, s. 3.)

§ **160-181.6. Joint action by governing bodies.**—Any county or municipal governing body may enter into any agreement with any other county or municipal governing body or bodies for the purpose of jointly exercising the authority granted by this article. (1963, c. 1129, s. 4.)

§ **160-181.7. Powers of governing bodies.**—Any county or municipal governing body, in order to exercise the authority granted by this article, may:

(1) Enter into and carry out contracts with the State or federal government or any agencies thereof under which said government or agencies grant financial or other assistance to the county or municipality,

(2) Accept such assistance or funds as may be granted by the State or federal government with or without such a contract,

(3) Agree to and comply with any reasonable conditions which are imposed upon such grants,

(4) Make expenditures from any funds so granted. (1963, c. 1129, s. 5.)

§ **160-181.8. Appropriations and taxes authorized; special tax elections.**—For the purposes set forth in this article, any county or municipal governing body may appropriate any surplus or nontax funds, and in addition may make appropriations and levy annually taxes for the payment of the same as a special purpose, in addition to any allowed by the Constitution. Provided, that no tax shall be levied for the purposes of this article unless it shall have first been approved by the qualified voters of the county or municipality in a special election called by the governing body for such purpose. (1963, c. 1129, s. 6.)

§ **160-181.9. Definitions.** — For the purposes of this article an "open space" or "open area" is any space or area (i) characterized by great natural scenic beauty or (ii) whose existing openness, natural condition, or present state of use, if retained, would enhance the present or potential value of abutting or surrounding urban development, or would maintain or enhance the conservation of natural or scenic resources. (1963, c. 1129, s. 7.)

§ **160-181.10. Certain counties excepted from article.**—This article shall not apply to Alamance County, Columbus County, Craven County, Duplin County, Forsyth County, Gates County, Hoke County, Nash County, Pender County, Rockingham County and Warren County. (1963, c. 1129, s. 7½.)

Article 15.

Repair, Closing and Demolition of Unfit Dwellings.

§ 160-183. Definitions.

(a) "Municipality" shall mean any incorporated city or town. (1953, c. 675, s. 29; 1961, c. 398, s. 1.)

Local Modification. — Gaston: 1961, c. 398, s. 2a; town of Maysville, as to subsection (a): 1955, c. 309; town of Raeford, as to subsection (a): 1955, c. 723; town of Whiteville: 1959, c. 784.

Editor's Note.—

The 1961 amendment rewrote subsection (a) as amended in 1953. As only this subsection was affected by the amendments the rest of the section is not set out.

Section 2 of the 1961 amendatory act provides that it is the purpose and intent of the act to make the authority granted by this article applicable to all incorporated cities and towns in North Carolina.

Article 15A.

Liability for Negligent Operation of Motor Vehicles.

§ 160-191.1. Municipality empowered to waive governmental immunity.

Editor's Note.—For brief comment on this article, see 29 N. C. Law Rev. 421.

Immunity Not Waived without Purchase of Insurance.—In the operation of a chemical fogging machine on a street or highway for the purpose of destroying insects, a municipality acts in a governmental capacity in the interest of the public health, and it may not be held liable in tort for injuries resulting therefrom unless it waives its immunity by procuring liability insurance, even though the operation of the machine renders a street or highway hazardous to traffic, since the exception to governmental immunity in failing to keep its streets in a reasonably safe condition relates solely to the maintenance and repair of its streets. Clark v. Scheld, 253 N. C. 732, 117 S. E. (2d) 838 (1961).

Municipal Corporation Cannot Avoid Liability under This Article.—If a municipal corporation, having secured liability insurance, injured plaintiff by actionable negligence in the operation of its truck and fogging machine in exercising its legal right to destroy mosquitoes, it cannot completely avoid liability to him by reason of the provisions of this article. Moore v. Plymouth, 249 N. C. 423, 106 S. E. (2d) 695 (1959).

Article 15B.

Joint Water Supply Facilities.

§ 160-191.6. Acquisition and operation authorized.—Any two or more municipalities in the State of North Carolina are hereby authorized to acquire lands and water rights along any stream, to the extent deemed by them necessary or convenient, for the purpose of constructing a dam or dams to impound the waters of such stream in a reservoir or reservoirs, and to construct dams and water storage reservoirs, and to maintain, improve and operate the same, jointly, either within or without the corporate limits of such municipalities or either of them, and further to acquire, construct, improve, maintain and operate intakes, mains, and all other facilities and property, deemed by such municipalities to be necessary and convenient for the purpose of furnishing water from such reservoirs to such municipalities and the inhabitants thereof, and to appropriate money therefor. (1955, c. 1201, s. 1.)

Cross Reference. — As to water and sewer authorities, see § 162A-1 et seq.

§ 160-191.7. Contracts and agreements.—Such municipalities may enter into such contracts or agreements, with each other or with other parties, as the governing bodies thereof shall deem appropriate with reference to the joint acquisition, construction, improvement, maintenance and operation of such water

supply facilities, the apportionment of the cost thereof, and the division and withdrawal of water supplied or made available by such water supply facilities. (1955, c. 1201, s. 2.)

§ 160-191.8. Authority to issue bonds.—Any municipality determining to acquire, construct or improve any water supply facilities jointly with any other municipality or municipalities under the authority of this article is hereby granted the same authority to issue bonds for such acquisition, construction or improvement as is now given to any municipality under the General Laws of North Carolina. (1955, c. 1201, s. 3.)

§ 160-191.9. Article regarded as supplemental.—This article shall be deemed to provide an additional and alternative method for the doing of the things authorized hereby and shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of or as repealing any powers now existing under any other law, either general, special or local. (1955, c. 1201, s. 4.)

§ 160-191.10. Inconsistent laws inapplicable to article.—All general, special or local laws, or parts thereof, inconsistent herewith are hereby declared to be inapplicable to the provisions of this article. (1955, c. 1201, s. 5.)

Article 15C.

Rescue Squads.

§ 160-191.11. Cities and counties authorized to expend funds for rescue squads.—The governing body of any county or incorporated city or town is hereby authorized to expend, in its discretion, either singularly or jointly, such funds as may be reasonably necessary to purchase and maintain rescue equipment and to finance the operation of a rescue squad or team in order to furnish assistance, either within or outside the boundaries of such county or such city or town respectively, in case of accident or other casualty or when circumstances reasonably require the services of a rescue squad or team. (1959, c. 989.)

SUBCHAPTER II. MUNICIPAL CORPORATION ACT OF 1917.

Article 17.

Organization under the Subchapter.

§ 160-196. Number of persons and area included.—Any number of persons, not less than fifty, at least twenty-five of whom shall be freeholders or homesteaders, and twenty-five qualified voters living in the area proposed to be incorporated, which area shall have an assessed valuation of real property of at least twenty-five thousand dollars according to the last preceding assessment for taxes, and shall not be a part of nor within three miles of the area included in the limits of any city, town, or incorporated village already or hereafter existing, may be organized into a town upon compliance with the method herein set forth. (1917, c. 136, sub-ch. 2, s. 1; C. S., s. 2780; 1961, c. 269.)

Editor's Note. – The 1961 amendment inserted the words "nor within three miles of" in line six.

§ 160-198. Hearing of petition and order made.

2. Order Creating Corporation.—The Municipal Board of Control shall file its findings of fact at the close of such hearing, and if it shall appear that the allegations of the petition are true, and that all the requirements in this article have been substantially complied with, the Board shall enter an order creating such territory into a town, giving it the name proposed in the petition.

6. The incorporation of municipal corporations by the Municipal Board of Control, under article 17 of chapter 160 of the General Statutes of North Carolina, which have occurred prior to the enactment of this subsection are hereby in all respects validated, confirmed and declared to be in all respects municipal corporations, and all acts and things done by the duly elected officers of such municipal corporation in the performance of their official duties in accordance with the existing laws are hereby validated and confirmed. (1917, c. 136, sub-ch. 2, s. 3; C. S., s. 2782; 1949, c. 1083; 1953, c. 1032.)

Editor's Note.—

The 1953 amendment struck out the words "and that the organization of such city, town, or incorporated village will better subserve the interests of said persons and the public" formerly appearing immediately following the words "complied with" in the fourth line of subsection 2. It also added subsection 6. Only the two subsections affected by the amendment are set out.

Article 18.

Powers of Municipal Corporations.

Part 1. General Powers Enumerated.

§ 160-200. Corporate powers.

11. To open new streets, change, widen, extend, and close any street or alley that is now or may hereafter be opened, to purchase any land that may be necessary for the closing of such street or alley, and adopt such ordinances for the regulation and use of the streets, squares, and parks, and other public property belonging to the city, as it may deem best for the public welfare of the citizens of the city.

To adopt ordinances permitting the owners of property abutting on any public alley that is now or may hereafter be opened, to erect a loading and unloading platform or structure in such alleyway; provided, that such platform or structure, as determined by the governing body of the municipality, shall not unduly obstruct the use of the alleyway by the public. The governing body may, in its discretion, issue and revoke permits for the erection of such platform or structure and upon revocation, the obstruction shall be immediately removed from the alleyway by the owner thereof. The provisions of this paragraph shall not apply to alleyways located in areas zoned for residential purposes.

25. To create and administer a special fund for the relief of indigent and helpless members of the police and fire departments who have become superannuated, disabled, or injured in such service, and receive donations and bequests in aid of such fund and provide for its permanence and increase, and to prescribe and regulate the conditions under which, and the extent to which, the same shall be used for the purpose of such relief. Also, to insure policemen, firemen, or any class of city employees against death or disability, or both, during the term of their employment under forms of insurance known as group insurance; the amount of benefit on the life of any one person not to exceed the sum of five thousand dollars, and the premiums on such insurance to be payable out of the current funds of the municipality. If and when the Congress of the United States amends the Federal Social Security Act so as to extend its provisions to include municipal employees, each municipality is hereby authorized to take such action or to appropriate such funds as are necessary to enlist their employees therein.

Local Modification. — City of Greensboro: 1955, c. 360.

28. To condemn and remove any and all buildings, partially destroyed or otherwise, in the city limits, or cause them to be removed, at the expense of the owner or owners, when dangerous to life, health, or other property, under such just

rules and regulations as it may by ordinance establish; and likewise to suppress any and all other nuisances maintained in the city.

Local Modification. — Durham: 1959, c. 534; Morehead City: 1957, c. 716.

31. To provide for the regulation, diversion, and limitation of pedestrians and vehicular traffic upon public streets, highways, and sidewalks of the city and to regulate and limit vehicular parking on streets and highways in congested areas.

In the regulation and limitation of vehicular traffic and parking in cities and towns the governing bodies may, in their discretion, enact ordinances providing for a system of parking meters designated to promote traffic regulation and requiring a reasonable deposit (not in excess of five cents per hour) from those who park vehicles for stipulated periods of time in certain areas in which the congestion of vehicular traffic is such that public convenience and safety demand such regulation. The proceeds derived from the use of such parking meters shall be used exclusively for the purpose of making such regulation effective and for the expenses incurred by the city or town in the regulation and limitation of vehicular parking, and traffic relating to such parking, on the streets and highways of said cities and towns, or the proceeds derived from the use of such parking meters may be used to provide for the acquisition, construction, reconstruction, improvement, betterment, or extension and operation of off-street parking facilities as defined in § 160-414 (d), and may be pledged to amortize bonds or other evidence of debts issued for such purposes. Nothing contained in chapter two, section twenty-nine, of the Public Laws of one thousand nine hundred and twenty-one, or in section sixty-one of chapter four hundred and seven of the Public Laws of one thousand nine hundred and thirty-seven shall be construed as in any way affecting the validity of these parking meters or the fees required in the use thereof.

The governing authorities of all cities and towns of North Carolina shall have the power to own, establish, regulate, operate and control municipal parking lots for parking of motor vehicles within the corporate limits of cities and towns. Cities and towns are likewise hereby authorized, in their discretion, to make a charge for the use of such parking lots.

40. The governing body of any municipality or other political subdivision of the State may, in its discretion, establish and support a public art gallery, museum or art center, using for such establishment and support any nontax revenues which may be available for such purposes. Such municipality or other political subdivision may, in its discretion, also support or assist in supporting any art gallery, museum or art center which is located in its territorial area and which is owned or operated by any nonprofit corporation provided such art gallery, museum or art center is open to the public, and to such end the municipality or other political subdivision may enter into a contract or other arrangement with such nonprofit corporation. The word "support" as used in this subsection shall include, but is not limited to, purchase of land for art gallery, museum or art center buildings, purchase and erection of buildings for art gallery, museums or art centers, purchase of paintings and other artistic works, purchase of materials and equipment, compensation of art gallery, museum or art center personnel, and all maintenance expenses for necessary property and equipment.

The governing body of any municipality or other political subdivision of the State may, in its discretion, submit to the voters at a special election the question of whether a special tax shall be levied for the support of such art gallery, museum or art center. Such question shall be submitted to the voters either at the next general election for the officers of the municipality or other political subdivision of the State, or at a special election to be called by the governing body of the municipality or other political subdivision of the State for that purpose: Provided, that no special election shall be held within sixty (60) days of any general election for State, county or municipal officers. Such special election shall be

conducted according to the laws governing general elections for officers in such municipality or other political subdivision of the State. The form of the question as stated on the ballot shall be in substantially the words: "For the levy of a special public art gallery, museum or art center tax of not more than..... cents (¢)" and "Against the levy of a special public art gallery, museum or art center tax of not more than ..... cents (¢)." Such affirmative and negative forms shall be printed upon one ballot, containing squares opposite the affirmative and the negative forms, in one of which squares the voter may make a mark (X). Provided, that the maximum tax levy to be submitted to the voters shall be determined by the governing body of such municipality or other political subdivision of the State, which maximum shall in no event exceed ten cents (10¢) on the one hundred dollars ($100.00) valuation of property. If a majority of the qualified voters voting in such election favor the levy of the tax, the governing body of the municipality or other political subdivision of the State shall levy and cause to be collected as other general taxes are collected, a special public art gallery, museum or art center tax within the limits approved by the voters in an amount which, when taken with nontax revenues, will be sufficient to meet annual appropriations for public art gallery, museum or art center purposes approved by the governing body of such municipality or other political subdivision of the State.

41. To adopt by reference thereto in an ordinance any published technical code or any standards or regulations promulgated by any public agency. Upon such adoption, such technical code, standards, or regulations shall have the force of law within the jurisdiction of the municipality, subject to the provisions of G. S. 143-138 (e); provided, that any municipality adopting by reference any technical code, standards, or regulations under authority of this section shall maintain conveniently accessible for public inspection an official copy of the same.

42. To prohibit or to regulate itinerant merchants, peddlers, hawkers and solicitors. Such regulations may include, but shall not be limited to, requirements that an application be submitted, that a permit be issued, that an investigation be made, that such activities be reasonably limited as to time and area, that proper credentials and proof of financial stability be submitted, and that an adequate bond be posted to protect the public from fraud. (1917, c. 136, sub-ch. 5, s. 1; 1919, cc. 136, 237; C. S., s. 2787; Ex. Sess. 1920, c. 3, s. 10; 1921, c. 8, s. 3; Ex. Sess. 1921, c. 21; 1923, cc. 20, 102; 1925, c. 200; 1935, c. 279, s 1; 1939, c. 164; 1941, c. 153, ss. 1, 2; c. 272; 1943, c. 639, s. 1; 1945, c. 564, s. 2; 1947, c. 7; 1949, cc. 103, 352; c. 594, s. 2; 1953, c. 171; 1955, c. 1338; 1957, c. 1182; 1959, c. 95; 1961, c. 309; 1963, cc. 789, 790, 986.)

I. GENERAL CONSIDERATION.

Editor's Note. — The 1953 amendment inserted in the second paragraph of subsection 31 the provision as to off-street parking facilities. And the 1955 amendment added subsection 40. The 1957 amendment made subsection 28 applicable to partially destroyed buildings. The 1959 amendment substituted "five thousand" for "two thousand" in subsection 25.

The 1961 amendment inserted the second sentence in the first paragraph of subsection 40.

The first 1963 amendment added subsection 42, the second 1963 amendment added subsection 41 and the third 1963 amendment added the second paragraph to subsection 11.

Only those subsections changed by the amendments are set out.

For comment on the 1953 amendment, see 31 N. C. Law Rev. 426.

Ordinance within Power Granted Is Presumed Reasonable. — When an ordinance is within the grant of power to the municipality, the presumption is that it is reasonable. Gene's, Inc. v. Charlotte, 259 N. C. 118, 129 S. E. (2d) 889 (1963).

Quoted in Clark v. Scheld, 253 N. C. 732, 117 S. E. (2d) 838 (1961).

Stated in Hinshaw v. McIver, 244 N. C. 256, 93 S. E. (2d) 90 (1956).

Cited, as to subsection 36a, in Airlines Transp., Inc. v. Tobin, 198 F. (2d) 249 (1952); as to subsection 5, in Jamison v. Charlotte, 239 N. C. 423, 79 S. E. (2d) 797 (1954); Davis v. Charlotte, 242 N. C. 670, 89 S. E. (2d) 406 (1955); Rhyne v. Mount Holly, 251 N. C. 521, 112 S. E. (2d) 40 (1960).

II. STREETS AND PARKING.

Cross References.—As to power of municipality to use revenue from on-street parking meters to finance off-street parking facilities, see also § 160-499 and the annotations thereunder. As to notice required of closing of street, see annotation under § 153-9 (17).

The opening and closing of streets is a governmental function. Bessemer Improvement Co. v. Greensboro, 247 N. C. 549, 101 S. E. (2d) 336 (1958).

Regulation of Selling from Mobile Units on Streets. — In the exercise of express powers conferred upon municipal corporations by the General Assembly a municipal corporation has the implied power to adopt an ordinance providing for the reasonable regulation, but not for the prohibition, of the sale and offering for sale of merchandise upon its streets from mobile units. State v. Byrd, 259 N. C. 141, 130 S. E. (2d) 55 (1963).

Regulation of Traffic and Use of Streets. —Every municipal corporation has specific statutory authority to adopt such ordinances for the regulation and use of its streets as it deems best for the public welfare of its citizens and to provide for the regulation and diversion of vehicular traffic upon its streets. Gene's, Inc. v. Charlotte, 259 N. C. 118, 129 S. E. (2d) 889 (1963).

The installation and maintenance of traffic lights, etc.—

In the installation and maintenance of traffic light signals pursuant to authority of this section, a city exercises a discretionary governmental function solely for the benefit of the public, and may not be held liable for negligence of its officers and agents in respect thereto. Hamilton v. Hamlet, 238 N. C. 741, 78 S. E. (2d) 770 (1953).

A municipality may require a motorist who parks his vehicle in a parking meter zone to set the meter in operation by depositing a coin, provided that the deposit of the coin is the method selected by its governing body in the exercise of its discretion for the purpose of regulating parking in the interest of the public convenience and not as a revenue raising measure. State v. Scoggin, 236 N. C. 1, 72 S. E. (2d) 97 (1952).

The deposit of a coin by a motorist at the time of parking, to activate the parking meter, is not a fee or charge or toll for using the parking space. It is simply the method adopted by the governing authorities of the city for putting the meter in operation. The revenue derived therefrom is expressly set apart and dedicated to a particular use by the legislature in the act granting authority to municipalities to regulate parking in areas congested by motor traffic by the use of parking meters. Britt v. Wilmington, 236 N. C. 446, 73 S. E. (2d) 289 (1952).

But Revenue Derived Is in the Nature of a Tax.—The revenue derived from the on-street parking facilities is exacted in the performance of a governmental function. It must be set apart and used for a specific purpose. By whatever name called, it is in the nature of a tax. Britt v. Wilmington, 236 N. C. 446, 73 S. E. (2d) 289 (1952).

Validity of Parking Meter Ordinances. —Where a municipal ordinance prescribes one-hour and two-hour parking meter zones upon the deposit of a five-cent coin, the ordinance may permit by nonpenal provisions that a motorist may deposit a one-cent coin for a shorter length of time, provided the motorist may, by depositing additional pennies, not to exceed a total of five, remain in the parking space for the total length of time prescribed by the ordinance for such zone. State v. Scoggin, 236 N. C. 1, 72 S. E. (2d) 97 (1952).

Where a municipal ordinance prescribes that parking in a designated zone should be limited to one hour, a motorist cannot be convicted of overtime parking when he parks in such zone for less than the prescribed one hour period, and a provision of the ordinance that a motorist should be subject to criminal prosecution if he parks in the one hour zone for longer than twelve minutes upon the deposit of a one-cent coin, or twenty-four minutes upon the deposit of two one-cent coins for successive periods, is held unconstitutional as being discriminatory and as making the period of time dependent not upon public convenience but upon the amount of money deposited. State v. Scoggin, 236 N. C. 1, 72 S. E. (2d) 97 (1952).

Contract Binding City to Enact Parking Meter Ordinance.—A municipality may not bind itself to enact or enforce on-street and off-street parking regulations by penal ordinance for the period during which bonds issued to provide off-street parking facilities should be outstanding, since it may not contract away or bind itself in regard to its freedom to enact governmental regulations. Britt v. Wilmington, 236 N. C. 446, 73 S. E. (2d) 289 (1952).

In Graham v. Karpark Corp., 194 F. (2d) 616 (1952), it was held that a contract made with a parking meter manufacturer by city commissioners whereby they agreed

to enact ordinances requiring parking meters and to enforce these ordinances until the meters were paid for, did not constitute a bargaining away of governmental powers, but was valid and binding upon the commissioners' successors in office.

III. OPERATORS AND DRIVERS OF TAXICABS.

Subsection 35 imposed no requirement or obligation but merely conferred a power, to be exercised if the legislative body of a municipal corporation saw fit to do so, and it speaks only of "a policy of insurance or surety bond" and contains no reference to a deposit of cash or securities on like condition. Perrell v. Beaty Service Co., 248 N. C. 153, 102 S. E. (2d) 785 (1958).

Security Not Liable for Injury on Private Garage Premises.—Where a municipal ordinance passed pursuant to this subsection required taxicab operators to deposit insurance, surety bonds, or cash or securities, conditioned upon the payment of a final judgment in favor of any person injured by the operation of a cab over the municipal streets, the cash or securities deposited for the operation of cabs under a stipulated trade name, filed with the municipality under an agreement pursuant to the ordinance, did not cover a final judgment for injuries to a garage mechanic from the negligent operation of the cab while on private garage premises. Perrell v. Beaty Service Co., 248 N. C. 153, 102 S. E. (2d) 785 (1958).

As used in subsection 36a, the word "franchise" denotes a right or privilege conferred by law—a special privilege conferred by government on an individual, natural or corporate, which is not enjoyed by its citizens generally, of common right. Ordinarily the grant of a franchise when accepted and acted on creates a contract which is binding on the grantor and the grantee. Hence, the grant of a franchise contemplates, and usually embraces, express conditions and stipulations as to standards of service, and so forth, which the grantee or holder of the franchise must perform. Victory Cab Co. v. Charlotte, 234 N. C. 572, 68 S. E. (2d) 433 (1951).

The word "terms" as used in subsection 36a is referable to the covenants to be made and required in connection with the issuance of franchises, rather than to any monetary consideration to be charged therefor. Victory Cab Co. v. Charlotte, 234 N. C. 572, 68 S. E. (2d) 433 (1951).

The word "terms" as used in subdivision 36a is not referable to and does not authorize the assessment and collection of fees by a city or town in consideration for franchise privileges to be granted taxicab operators. Victory Cab Co. v. Charlotte, 234 N. C. 572, 68 S. E. (2d) 433 (1951).

Subsection 36a does not authorize a city to impose exactions on taxicabs beyond the limits fixed by § 20-97, subsections (a) and (b). Victory Cab Co. v. Charlotte, 234 N. C. 572, 68 S. E. (2d) 433 (1951)

IV. SUNDAY ORDINANCES.

Ordinances Constitutional. — Ordinances prohibiting certain activities on Sunday, enacted pursuant to this section, are not in contravention of art. I, § 26 of the State Constitution. State v. McGee, 237 N. C. 633, 75 S. E. (2d) 783 (1953).

Power to Enact Not Repealed by Repeal of § 103-1. — Neither the repeal of § 103-1, nor the provision in the repealing act with respect to the repeal of all laws and clauses of laws in conflict therewith, has the effect of repealing the power granted to municipalities by subsections 6, 7 and 10 of this section to enact ordinances requiring the observance of Sunday. State v. McGee, 237 N. C. 633, 75 S. E. (2d) 783 (1953).

V. POWERS AS TO PARTICULAR MATTERS.

A municipal corporation has a legal right to destroy mosquitoes detrimental to the health and comfort of its residents. Moore v. Plymouth, 249 N. C. 423, 106 S. E. (2d) 695 (1959).

Memorial Markers in Cemeteries.—Subsections 22 and 36 of this section do not impliedly authorize a town to enact an ordinance reserving to the town the exclusive right to set memorial markers in cemeteries and requiring the payment of a special charge for setting such markers not purchased from the town. Grave constitutional questions would be raised by any statute giving a town such authority. State v. McGraw, 249 N. C. 205, 105 S. E. (2d) 659 (1958).

Expenditures for parks and recreational facilities under subsection 12 seem to fall within the class of water and sewer facilities, described in §§ 160-239 and 160-255, when operated in a governmental capacity, that is, for direct benefit by the citizens of the municipality. Eakley v. Raleigh, 252 N. C. 683, 114 S. E. (2d) 777 (1960).

Abandonment of Public Park.—The authority conferred by subsection 12 does not give a municipality the power to abandon an established public park. Wishart v. Lumberton, 254 N. C. 94, 118 S. E. (2d) 35 (1961).

Peddling. — This section, which sets

forth express powers conferred on municipal corporations, contains no provision relating to the prohibition or regulation of the business or occupation of peddling. State v. Byrd, 259 N. C. 141, 130 S. E. (2d) 55 (1963).

No express power has been conferred by the General Assembly on municipal corporations to prohibit or to regulate the business or occupation of peddling otherwise than by imposing license taxes thereon. State v. Byrd, 259 N. C. 141, 130 S. E. (2d) 55 (1963), holding a municipality has implied power to regulate, but not prohibit, selling on streets from mobile units.

§ 160-203. Police power extended to outside territory.

Where a subdivision is laid out within one mile of a city, knowledge of the city's ordinances concerning water and sewer lines is presumed. Spaugh v. Winston-Salem, 234 N. C. 708, 68 S. E. (2d) 838 (1951).

Cited in Jackson v. Gastonia, 246 N. C. 404, 98 S. E. (2d) 444 (1957); Pee Dee Electric Membership Corp. v. Carolina Power & Light Co., 253 N. C. 610, 117 S. E. (2d) 764 (1961).

Part 2. Power to Acquire Property.

§ 160-204. Acquisition by purchase.—When in the opinion of the governing body of any city, or other board, commission, or department of the government of such city having and exercising or desiring to have and exercise the management and control of the streets, water, electric light, power, gas, sewerage or drainage systems, or other public utilities, fire departments and fire stations, parks, playgrounds, cemeteries, wharves, or markets, open-air or enclosed, which are or may by law be owned and operated or hereafter acquired by such city or by a separate association, corporation, or other organization on behalf and for the benefit of such city, any land, right of way, water right, privilege, or easement, either within or outside the city, shall be necessary for the purpose of opening, establishing, building, widening, extending, enlarging, maintaining, or operating any such streets, parks, playgrounds, cemetery, water, electric light, power, gas, sewerage or drainage systems, wharves, or other public utility so owned, operated, and maintained by or on behalf of any such city, such governing body, board, commission, or department of government of such city may purchase such land, right of way, water right, privilege, or easement from the owner or owners thereof and pay such compensation therefor as may be agreed upon. (1917, c. 136, sub-ch. 4, s. 1; 1919, c. 262; C. S., s. 2791; 1961, c. 982.)

Editor's Note.—Session Laws 1957, c. 128 made this Part applicable to the town of Elkin.

The 1961 amendment added the words "fire departments and fire stations" in the fifth line.

The opening and closing of streets is a governmental function. Bessemer Improvement Co. v. Greensboro, 247 N. C. 549, 101 S. E. (2d) 336 (1958).

This Section and § 160-205 Compared Historically with § 40-10. — See Mount Olive v. Cowan, 235 N. C. 259, 69 S. E. (2d) 525 (1952).

This Section and § 160-205 Not Limited by § 40-10.—The power granted to a municipality to condemn land for street and other purposes by this section and § 160-205 is not limited or restricted by § 40-10, prohibiting condemnation of dwelling houses and burial grounds. Mount Olive v. Cowan, 235 N. C. 259, 69 S. E. (2d) 525 (1952). See Raleigh v. Edwards, 235 N. C. 671, 71 S. E. (2d) 396 (1952).

By virtue of this section and § 160-205 the governing body of a municipality, for the purpose of erecting an elevated water storage tank as an addition to its water system, has the power, in the exercise of a sound discretion, to acquire by condemnation, if need be, dwelling house properties either within or outside the city, and this is so irrespective of the provisions of § 40-10 and the related statute, § 40-2 (2). Raleigh v. Edwards, 235 N. C. 671, 71 S. E. (2d) 396 (1952).

Acquisition of Easement by Payment of Permanent Damages. — Where plaintiff landowners demand permanent damages in their action against a municipality for trespass based upon the construction by the municipality of a storm sewer line over their lands, and defendant municipality prays for an easement for the purpose of maintaining such drainage system, under the verdict and judgment awarding permanent damages the municipality, upon payment of the damages awarded, acquires

a permanent easement to maintain its storm sewer line so long as it is kept in proper repair. McLean v. Mooresville, 237 N. C. 498, 75 S. E. (2d) 327 (1953).

Power of City to Construct Railroad Track Outside Corporate Limits. — See Austin v. Shaw, 235 N. C. 722, 71 S. E. (2d) 25 (1952).

Quoted in Davidson v. Stough, 258 N. C. 23, 127 S. E. (2d) 762 (1962); Guilford Realty & Ins. Co. v. Blythe Bros. Co., 260 N. C. 69, 131 S. E. (2d) 900 (1963).

Cited in Morganton v. Hutton & Bourbonnais Co., 251 N. C. 531, 112 S. E. (2d) 111 (1960).

§ 160-205. By condemnation.

Cross Reference.—See note to § 160-204.

Land Owned by Railroad Company.— A municipal corporation had power, under its charter and the general powers of eminent domain conferred upon it by statute, to condemn for necessary street purposes a strip of land owned by a railroad company when such property was not being used by the railroad company and was not necessary nor essential to the operation of its business. Goldsboro v. Atlantic Coast Line R. Co., 246 N. C. 101, 97 S. E. (2d) 486 (1957).

Applied in McLean v. Mooresville, 237 N. C. 498, 75 S. E. (2d) 327 (1953); Davidson v. Stough, 258 N. C. 23, 127 S. E. (2d) 762 (1962).

Cited in Morganton v. Hutton & Bourbonnais Co., 251 N. C. 531, 112 S. E. (2d) 111 (1960); Guilford Realty & Ins. Co. v. Blythe Bros. Co., 260 N. C. 69, 131 S. E. (2d) 900 (1963).

Part 3. Streets and Sidewalks.

§ 160-222. Power to make, improve and control.

The opening and closing of streets is a governmental function. Bessemer Improvement Co. v. Greensboro, 247 N. C. 549, 101 S. E. (2d) 336 (1958).

Diminution of Access from Change of Grade Is Damnum Absque Injuria.— When a city acts for public convenience under the authority granted it by the legislature and raises or lowers the grade of a street, any diminution of access by an abutting property owner is damnum absque injuria. The abutting property owner can neither prevent the change by injunction nor recover damages for the diminished value of his property, when the work is done in conformity with plans designated to promote public convenience. Thompson v. Seaboard Air Line R. Co., 248 N. C. 577, 104 S. E. (2d) 181 (1958).

Cited in Presley v. C. M. Allen & Co., 234 N. C. 181, 66 S. E. (2d) 789 (1951); Pee Dee Electric Membership Corp. v. Carolina Power & Light Co., 253 N. C. 610, 117 S. E. (2d) 764 (1961).

§ 160-225. Interference with Highway Commission.—Nothing in §§ 160-223 and 160-224 shall authorize the governing body of any city or town to interfere with the rights and privileges of the State Highway Commission when such city or town undertakes to exercise any of the privileges by such sections granted. (1925, c. 71, s. 3; 1957, c. 65, s. 11.)

Editor's Note. — The 1957 amendment substituted "State Highway Commission" for "State Highway and Public Works Commission."

Part 3A. Subdivisions.

§ 160-226. Municipal legislative body as platting authority.—The legislative body of any incorporated city or town is hereby authorized to enact an ordinance regulating the platting and recording of any subdivision of land as defined by this part lying within the municipality or within one mile in all directions of its corporate limits and not located in any other municipality. In the event of land lying outside a municipality and lying within a distance of one mile of more than one municipality, the jurisdiction of each such municipality shall terminate at a boundary line equidistant from the respective corporate limits of each such municipality. (1955, c. 1334, s. 1.)

Editor's Note.—Former §§ 160-226 and 160-227, derived from Public Laws 1929, c. 186, were repealed by the 1955 act which inserted this and the eight following sections.

Cited in Pee Dee Electric Membership Corp. v. Carolina Power & Light Co., 253 N. C. 610, 117 S. E. (2d) 764 (1961).

§ 160-226.1. Procedure for adopting subdivision ordinance.—Before the legislative body of any municipality shall adopt a subdivision control ordinance or any amendment thereto under the provisions of this part, the legislative body shall hold a public hearing on the proposed ordinance. A notice of such public hearing shall be given once a week for two successive calendar weeks in a newspaper published in such municipality, or if there be no newspaper published in the municipality, by posting such notice at four public places in the municipality, said notice to be published the first time, or posted, not less than fifteen days nor more than twenty-five days prior to the date fixed for said hearing. (1955, c. 1334, s. 1.)

§ 160-226.2. Procedure for filing plat.—If the legislative body of a municipality adopts an ordinance regulating the subdivision of land as authorized herein, no subdivision plat shall be filed or recorded until it shall have been submitted to and approved by said legislative body and such approval entered in writing on the plat by the city or town clerk provided a copy of such ordinance shall be filed with the register of deeds of the county or counties in which the municipality is situated. The register of deeds upon receipt of such ordinance shall not thereafter file or record a plat of a subdivision of land located within the territorial jurisdiction of such municipal legislative body as defined herein without the approval of such plat by said legislative body as required in this part. The owner of land shown on a subdivision plat submitted for recording, or his authorized agent, shall sign a statement on the plat stating whether or not any land shown thereon is within the territorial jurisdiction of any municipality as defined herein. No clerk of superior court shall order or direct the recording of a plat where such recording would be in conflict with this section. (1955, c. 1334, s. 1.)

Local Modification.—Harnett: 1963, c. 896, s. 2.

§ 160-226.3. Subdivision regulations.—Prior to exercising the powers granted to it by this part, the municipal legislative body shall by ordinance adopted pursuant to this part adopt regulations governing the subdivision of land within its platting jurisdiction as defined in § 160-226. Such ordinance shall require that at least a preliminary plan of every proposed subdivision shall be submitted for study recommendation and tentative approval to the legislative body or to a planning board created and appointed under the authority of §§ 160-22 to 160-24 of the General Statutes or other similar statutory authority.

Such ordinance may provide for the orderly development of the municipality and its environs; for the coordination of streets within proposed subdivisions with existing or planned streets or with other public facilities; for the dedication or reservations of rights of way or easements for street and utility purposes; and for the distribution of population and traffic which shall avoid congestion and overcrowding, and which shall create conditions essential to public health, safety, and general welfare.

Such ordinance may include requirements for the final plat to show sufficient data to determine readily and reproduce accurately on the ground the location, bearing, and length of every street and alley line, lot line, easement boundary line, and other property boundaries, including the radius and other data for curved property lines, to an appropriate accuracy and in conformance with good surveying practice.

Such ordinance may provide for the more orderly development of subdivisions within the corporate limits by requiring the construction of community service facilities in accordance with municipal policies and standards and, to assure compliance with such requirements, the ordinance may provide for the posting of bond

or such other method as shall offer guarantee of compliance. (1955, c. 1334, s. 1; 1961, c. 1168.)

Editor's Note.—The 1961 amendment added the last paragraph.

§ 160-226.4. Effect of plat approval on status of dedications.—The approval of a plat by the legislative body shall not be deemed to constitute or effect the acceptance by the municipality or public of the dedication of any street or other ground, public utility line, or other public facility shown upon the plat. (1955, c. 1334, s. 1.)

§ 160-226.5. Penalties for transferring lots in unapproved subdivisions.—If the legislative body of a municipality adopts an ordinance regulating the subdivision of land as authorized herein, any person who, being the owner or agent of the owner of any land located within the platting jurisdiction granted to the municipality by § 160-226, thereafter transfers or sells such land by reference to a plat showing a subdivision of such land before such plat has been approved by said legislative body and recorded in the office of the appropriate register of deeds, shall be guilty of a misdemeanor, and the description by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring shall not exempt the transaction from such penalties. Said municipality, through its city attorney or other official designated by its local legislative body, may enjoin such transfer or sale by action for injunction. (1955, c. 1334, s. 1.)

§ 160-226.6. Definitions.—For the purpose of this part, the following definition shall apply:

Subdivision.—A "subdivision" shall include all divisions of a tract or parcel of land into two or more lots, building sites, or other divisions for the purpose, whether immediate or future, of sale, or building development, and shall include all divisions of land involving the dedication of a new street or a change in existing streets; provided, however, that the following shall not be included within this definition nor be subject to the regulations authorized by this part: (1) The combination or recombination of portions of previously platted lots where the total number of lots is not increased and the resultant lots are equal to or exceed the standards of the municipality as shown in its subdivision regulations; (2) the division of land into parcels greater than five acres where no street right of way dedication is involved; (3) the public acquisition by purchase of strips of land for the widening or opening of streets; (4) the division of a tract in single ownership whose entire area is no greater than two acres into not more than three lots, where no street right of way dedication is involved and where the resultant lots are equal to or exceed the standards of the municipality, as shown in its subdivision regulations. (1955, c. 1334, s. 1.)

§ 160-227. Powers granted herein supplementary. — The powers granted to municipalities by this part shall be deemed supplementary to any powers heretofore or hereafter granted in their charters or by local statute for the same or a similar purpose, and in any case where the provisions of this part conflict with or are different from such provisions of any charter or local statute, the legislative body of the municipality may in its discretion proceed in accordance with the provisions of such charter or local statute, or, as an alternative method, in accordance with the provisions of this part. (1955, c. 1334, s. 1.)

§ 160-227.1. Counties exempt from part. — Alexander, Alleghany, Anson, Ashe, Bertie, Bladen, Brunswick, Buncombe, Cabarrus, Caldwell, Catawba, Cleveland, except the city of Shelby, Columbus, Cumberland, Dare, Davie, Duplin, Forsyth, Franklin, Granville, except the city of Oxford, Greene, Hoke, except for the town of Raeford, Jones, McDowell, Mecklenburg, except the town

of Davidson, Montgomery, Northampton, Onslow, Pender, Polk, Rockingham, Stokes, Surry, Warren, Watauga, Wayne, and Yadkin counties are hereby exempt from the provisions of this part. (1955, c. 1334, s. 2; 1957, cc. 718, 964; c. 1455, s. 8½; 1959, cc. 185, 502; c. 824, s. 2; cc. 834, 930; 1961, cc. 54, 180, 425, 539, 690, 857, 877, 899, 913, 942; 1963, cc. 57, 594, 740, 792; c. 896, s. 1.)

Local Modification. — Town of Elkin: 1957, c. 127; town of Mount Airy: 1963, c. 120.

Editor's Note. — The first 1957 amendment inserted after "Mecklenburg" in line five the words "except the town of Davidson." The second 1957 amendment deleted "Guilford" from the list of counties. And the third 1957 amendment inserted "Cumberland" in the list.

The first, third, fourth and fifth 1959 amendments deleted "Beaufort," "Scotland," "Transylvania" and "Rowan," respectively, from the list of counties. The second 1959 amendment inserted after "Cleveland" in line three, the words "except the city of Shelby."

The first 1961 amendment deleted "Macon" from the list of counties.

The second 1961 amendment inserted after "Hoke" in line five the words "except for the town of Raeford."

The third 1961 amendment inserted after "Person" the words "except the city of Roxboro (which shall have and exercise the powers herein granted only within its corporate limits)."

The fourth 1961 amendment inserted "except the city of Oxford" immediately following "Granville" in line four.

The fifth 1961 amendment deleted "Martin" from the list of counties.

The sixth to the tenth 1961 amendments deleted "Richmond," "Halifax," "Chowan," "New Hanover" and "Lenoir," respectively, from the list.

The first, second, third and fifth 1963 amendments deleted "Johnston," "Lee," "Durham" and "Harnett," respectively, from the list of counties.

The fourth 1963 amendment deleted a provision exempting Person County except for the city of Roxboro.

Part 5. Protection of Public Health.

§ 160-229. Ordinances for protection of health; contracts for medical treatment and hospitalization of poor.

Cross Reference. — As to authority of certain cities to provide medical care for sick and afflicted poor, see §§ 153-176.1 to 153-176.4.

Applied in Rex Hospital v. Wake County Board of Com'rs, 239 N. C. 312, 79 S. E. (2d) 892 (1954).

Cited in Board of Managers of James Walker Memorial Hospital v. Wilmington, 237 N. C. 179, 74 S. E. (2d) 749 (1953).

§ 160-234. Abate or remedy menaces to health.

Quoted in Rhyne v. Mount Holly, 251 N. C. 521, 112 S. E. (2d) 40 (1960).

Cited in Dare County v. Mater, 235 N. C. 179, 69 S. E. (2d) 244 (1952); Smith v. Winston-Salem, 247 N. C. 349, 100 S. E. (2d) 835 (1957).

Part 6. Fire Protection.

§ 160-235. Establish and maintain fire department.

The organization and operation of a fire department is a governmental, not a private or proprietary function. Great American Ins. Co. v. Johnson, 257 N. C. 367, 126 S. E. (2d) 92 (1962).

§ 160-236. **Establish fire limits.**—The governing body may establish and maintain fire limits in the city, in which it shall be unlawful to erect, alter, and repair wooden buildings or structures or additions thereto; it may also prohibit the removal of wooden buildings or structures of any kind into such limits, or from one place to another within the limits, and make such other regulations as may be deemed best for the prevention and extinguishment of fires.

Notwithstanding any other provision of law, the governing body of any municipality which has established primary fire limits which include the principal business portion of such municipality, is hereby authorized and may, in its discre-

tion, establish and define one or more separate areas within the municipality as secondary fire limits, in which alterations, repairs and additions to wooden buildings and structures located therein at the time such limits are established, may be permitted under rules and regulations governing buildings in such municipality. (1917, c. 136, sub-ch. 8, s. 2; C. S. s. 2802; 1961, c. 240.)

Editor's Note. — The 1961 amendment added the second paragraph.

§ 160-238. Fire protection for property outside city limits; injury to employee of fire department.

Applied in Thomasson v. Smith, 249 N. C. 84, 105 S. E. (2d) 416 (1958).

Part 7. Sewerage.

§ 160-239. Establish and maintain sewerage system.

Cross Reference.—

As to water and sewer authorities, see § 162A-1 et seq.

When Extensions May Be Made.—Municipalities have legislative permission to extend their sewer and water lines beyond corporate boundaries. Such extensions may be made either because necessary to the effective operation of the improvement within the city, or to provide services for a profit beyond the corporate limits. Eakley v. Raleigh, 252 N. C. 683, 114 S. E. (2d) 777 (1960).

Extension for Profit Requires Vote.—A municipality has the power to expend funds for the construction and operation of water and sewer facilities without a vote when such facilities are for the benefit of the citizens of the municipality, but extension of such facilities outside its corporate limits for the purpose of profit is a proprietary function requiring a vote of its citizens. Eakley v. Raleigh, 252 N. C. 683, 114 S. E. (2d) 777 (1960).

Applied in Thomasson v. Smith, 249 N. C. 84, 105 S. E. (2d) 416 (1958).

Quoted in Guilford Realty & Ins. Co. v. Blythe Bros. Co., 260 N. C. 69, 131 S. E. (2d) 900 (1963).

§ 160-240. Require connections to be made.

Section Does Not Apply to Property Located Outside City.—

In accord with original. See Smith v. Winston-Salem, 247 N. C. 349, 100 S. E. (2d) 835 (1957).

§ 160-241. Order for construction or extension of system; assessment of cost; payment of assessment.—When it is proposed by any municipality to provide, construct and establish a system of sewerage or waterworks, or to provide for the extension of any such system, an order or resolution of the governing body of such municipality at a regular or special meeting shall be made stating generally, or as nearly as may be, the nature of the proposed improvement. In such order or resolution such governing body may provide that the actual cost of the establishment and construction of such sewerage or waterworks system, or any extension thereof, shall be assessed upon the lots and parcels of land abutting directly on the lateral mains of such sewerage or waterworks system, or extension thereof, according to the extent of the respective frontage thereon, by an equal rate per foot of such frontage. Such governing body may provide in such order or resolution that the assessments to be levied in connection with such work may be paid in equal installments covering a period of not exceeding ten years. Such order or resolutions shall designate by a general description the improvement to be made, and the street or streets, or part or parts thereof, whereon the work is to be affected and the cost thereof to be assessed upon all abutting property and the terms and manner of payment. Such order or resolution after its passage shall be published in a newspaper published in such municipality, or if there be no such newspaper, such order or resolution shall be posted in three public places in such municipality for at least five days. (1923, c. 166, s. 2; C. S., s. 2806(a); 1955, c. 1177, s. 1.)

Local Modification. — City of High Point: 1963, c. 1103; city of Raleigh: 1961, c. 895; town of Chapel Hill: 1963, c. 385; town of Edenton: 1961, c. 369; town of Kure Beach: 1963, c. 972.

Editor's Note. — The 1955 amendment made this section applicable to waterworks systems, and substituted "ten years" for "five years" in line fourteen.

Cited in In re Annexation Ordinance, 255 N. C. 633, 122 S. E. (2d) 690 (1961).

§ 160-242. Ascertainment of cost; assessment. — Upon the completion of the construction and establishment of any such sewerage or waterworks system, or of any such extension, the governing body shall compute and ascertain the total cost thereof. The governing body shall thereupon make an assessment of such total cost, and for that purpose shall make out an assessment roll, in which must be entered the names of the persons assessed as far as can be ascertained, and the amount assessed against them respectively, with a brief description of the lots or parcels of land assessed. (1923, c. 166, s. 3; C. S., s. 2806(b); 1955, c. 1177, s. 2.)

Editor's Note. — The 1955 amendment inserted the words "or waterworks" in line two.

§ 160-249. Sewerage charges and penalties; no lien acquired; billing and collecting agent for sewerage service where municipalities do not also provide water service.—The governing body of any municipality, maintaining and operating a system of sewerage, including sewerage treatment works, if any, is hereby authorized to charge for sewerage service, to determine and fix a schedule of charges to be made for such service, to fix the time and manner in which such sewerage service charges shall be due and payable and to fix a penalty for the nonpayment of the same when due. In no cases shall the charges, rents or penalties be a lien upon the property served and in cases where the service is rendered to a tenant and the tenant removes from the premises, the municipality shall not charge against the owner thereof the service charges or penalties for said service: Provided, however, that for sewerage service supplied outside of the corporate limits of the city, the governing body, board or body having such sewerage system in charge may fix a different schedule of rates from that fixed for such service rendered within the corporate limits, with the same exemption from liability by city or town as is contained in § 160-255.

The governing body of any municipality which maintains and operates a system of sewerage but does not maintain and operate a water distribution system is hereby authorized to arrange with the owner or operator of any water distribution system supplying water to the owner, lessee or tenant of real property which is served by such sewerage system for such owner or operator to act as the billing and collecting agent of the municipality for any charges, rents or penalties imposed by the municipality for the services provided by such sewerage system, and any such owner or operator is hereby authorized to act as the billing and collecting agent of the municipality for such purpose. Any such owner or operator shall, if requested by the municipality, furnish to the municipality copies of such regular periodic meter reading and water consumption record and other pertinent data as the municipality may require to do its own billing and collecting. The municipality shall pay to such owner or operator the reasonable additional expenses incurred by such owner or operator in rendering such services to the municipality. (1933, c. 322, s. 1; 1941, c. 106; 1961, c. 1074.)

Local Modification.—Morehead City: 1955, c. 517; town of Rutherfordton: 1961, c. 785, s. 1½; town of Spindale: 1961, c. 785, s. 1.

Editor's Note.—The 1961 amendment added the second paragraph.

Applied in Smith v. Winston-Salem, 247 N. C. 349, 100 S. E. (2d) 835 (1957).

Part 8. Light, Water, Sewer and Gas Systems.

§ 160-255. Authority to acquire and maintain light, water, sewer and gas systems.—A municipality may own and maintain its own light, water, sewer and gas systems to furnish services to the municipality and its citizens, and to any person, firm or corporation desiring the same outside the corporate limits where the service can be made available by the municipality, but in no case shall a municipality be liable for damages to those outside the corporate limits for failure to furnish light, water, sewer or gas services. The governing body shall have power to acquire and hold rights-of-way, water rights, and other property, within and without the city limits. Assessment for waterworks construction or extension may be made as provided in part 7, article 18, of chapter 160 of the General Statutes of North Carolina. (1917, c. 136, sub-ch. 11, ss. 1, 2; C. S., s. 2807; 1929, c. 285, s. 1; 1955, c. 1177, s. 3; 1957, c. 799, s. 1.)

Cross References.—

As to joint water supply facilities by municipalities, see §§ 160-191.6 to 160-191.10. As to water and sewer authorities, see § 162A-1 et seq.

Editor's Note.—

The 1955 amendment added the last sentence.

The 1957 amendment rewrote the first sentence to make it also applicable to sewer and gas systems.

All municipalities have been given the right to extend water and sewer facilities beyond the corporate limits of the municipality. Upchurch v. Raleigh, 252 N. C. 676, 114 S. E. (2d) 772 (1960).

But the authority granted by this section is not unlimited. It authorizes a municipality to construct and operate utilities for the benefit of the public beyond its corporate boundaries within reasonable limitations. If the authority was not thus limited this section would contravene fundamental law. Public Service Co. v. Shelby, 252 N. C. 816, 115 S. E. (2d) 12 (1960).

City Not Required to Obtain Certificate of Public Convenience.—See annotations under § 62-101.

Municipality Owes Duty of Equal Service Only to Consumers within Its Limits.—When a municipality engages in supplying water to its inhabitants, it owes the duty of equal service in furnishing water only to consumers within its corporate limits. Fulghum v. Selma, 238 N. C. 100, 76 S. E. (2d) 368 (1953).

A municipality owes no duty to supply water to a resident for resale to others either within or without its limits. Fulghum v. Selma, 238 N. C. 100, 76 S. E. (2d) 368 (1953).

Extension of Sewer and Water Lines Beyond Corporate Limits.—Municipalities have legislative permission to extend their sewer and water lines beyond corporate boundaries. Such extensions may be made either because necessary to the effective operation of the improvement within the city or to provide services for a profit beyond the corporate limits. Bonds for the latter purpose may be issued only when the electorate has expressly so authorized. Eakley v. Raleigh, 252 N. C. 683, 114 S. E. (2d) 777 (1960).

Furnishing Water to Persons outside Corporate Limits.—A municipality which operates its own waterworks is under no duty in the first instance to furnish water to persons outside its limits. It has the discretionary power, however, to engage in this undertaking. When a municipality exercises this discretionary power, it does not assume the obligations of a public service corporation toward nonresident consumers. It retains the authority to specify the terms upon which nonresidents may obtain its water. In exerting this authority, it may, under § 160-256, "fix a different rate from that charged within the corporate limits." Fulghum v. Selma, 238 N. C. 100, 76 S. E. (2d) 368 (1953).

Construction and Operation of Transmission Lines beyond Corporate Limits.—This section authorizes a municipal corporation engaged in the production and distribution of electric power to extend this service to consumers outside its corporate limits. This would confer authority on a city to construct and operate transmission lines for the distribution of electric current for the benefit of the public beyond its corporate boundaries within reasonable limitation. Grimesland v. Washington, 234 N. C. 117, 66 S. E. (2d) 794 (1951).

This section does not confer the right to exclude competition in the territory served. Having the right to engage in this business gives no exclusive franchise, and if from lawful competition the town's business be curtailed, it would seem that no actionable wrong would result, nor would it be entitled to injunctive relief therefrom. Grimesland v. Washington, 234 N. C. 117, 66 S. E. (2d) 794 (1951).

Applied in Thomasson v. Smith, 249 N. C. 84, 105 S. E. (2d) 416 (1958); Honey Properties, Inc. v. Gastonia, 252 N. C. 567, 114 S. E. (2d) 344 (1960).

Cited in Candler v. Asheville, 247 N. C. 398, 101 S. E. (2d) 470 (1958); Morganton v. Hutton & Bourbonnais Co., 251 N. C. 531, 112 S. E. (2d) 111 (1960); In re Annexation Ordinance, 255 N. C. 633, 122 S. E. (2d) 690 (1961); Davidson v. Stough, 258 N. C. 23, 127 S. E. (2d) 762 (1962).

§ 160-256. Authority to fix and enforce rates.—The governing body, or such board or body which has the management and control of the light, water, sewer or gas systems in charge, may fix such uniform rents or rates for the services as will provide for the payment of the annual interest on existing bonded debt for such systems, for the payment of the annual installment necessary to be raised for the amortization of any debt, and the necessary allowance for repairs, maintenance and operation, and when the city shall own and maintain both waterworks and sewer systems, including sewage disposal plants, if any, the governing body shall have the right to operate such systems as a combined and consolidated system, and when so operated to include in the rates adopted for the water a sufficient amount to provide for the payment of annual interest and principal on any existing bonded debt for the sewage system, and the necessary allowance for repairs, maintenance and operation. The governing body shall fix the times when charges for light, water, sewer and gas services shall become due and payable, and in case such charges are not paid within ten (10) days after becoming due, the same may at any time thereafter be collected either by suit in the name of the city or by the collector of taxes for the city. Upon the failure of owner of property for which services are furnished to pay the charges when due, then the governing body or its agents or employees may cut off the service to such property; and when so cut off it shall be unlawful for any person, firm or corporation, other than the governing body or its agents, to turn on the services to such property: Provided, however, that for service supplied outside the corporate limits of the city, the governing body or body having such systems in charge, may fix a different rate from that charged within the corporate limits, with the same exemption from liability by the city or town as is contained in § 160-255: Provided further, that where the services may be cut off under the provisions of this section for the failure of the occupant of the premises to pay the charges due, and such occupant is not the owner of the premises, it shall not be lawful to require the payment of the delinquent bill before turning on the services at the instance of a new and different tenant or occupant of the premises. This proviso shall not apply in cases where the premises are occupied by two or more tenants serviced by the same light, water or gas meter, as the case may be. (1917, c. 136, sub-ch. 11, s. 3; C. S., s. 2808; 1929, c. 285, s. 2; 1933, cc. 140, 353; 1957, c. 799, s. 2.)

Editor's Note.—

The 1957 amendment made this section also applicable to sewer and gas systems.

This section contains ample standards to guide a municipality in exercising the delegation of authority to fix fair and just water rates. Candler v. Asheville, 247 N. C. 398, 101 S. E. (2d) 470 (1958).

Increase in Rates Charged for Water Supplied to Consumers outside Corporate Limits.—An amendment to an ordinance which substantially increases the rates charged for water supplied by a municipality for consumption outside its corporate limits cannot be held discriminatory in a legal sense when it applies alike to all nonresidents, and it is immaterial that a nonresident consumer deems such rates exorbitant or unreasonable. Fulghum v. Selma, 238 N. C. 100, 76 S. E. (2d) 368 (1953).

Part 9. Care of Cemeteries.

§ 160-258. Care fund established.

Setting of Memorial Markers. — This section and § 160-259 do not impliedly authorize a town to enact an ordinance reserving to the town the exclusive right to set memorial markers in cemeteries and requiring the payment of a special charge

for setting such markers not purchased from the town. Grave constitutional questions would be raised by any statute giving a town such authority. State v. McGraw, 249 N. C. 205, 105 S. E. (2d) 659 (1958).

§ 160-259. Application of fund.

Cross Reference.—See note to § 160-258.

Article 19.

Exercise of Powers by Governing Body.

Part 1. Municipal Meetings.

§ 160-269. Meetings regulated, and journal kept.

The requirement of this section that a full and accurate journal of the proceedings be kept is merely directory and not a condition precedent to the validity of a contract regularly entered into by the municipality. Graham v. Karpark Corp., 194 F. (2d) 616 (1952).

Part 2. Ordinances.

§ 160-272. **How ordinance pleaded and proved.**—In all judicial proceedings it shall be sufficient to plead any ordinance of any city by caption, or by number of the section thereof and the caption, and it shall not be necessary to plead the entire ordinance or section. All printed ordinances or codes or ordinances published in book form by authority of the governing body of any city or copies of such ordinances duly certified by the city or town clerk or mayor under the official seal of such city or town shall be admitted in evidence in all courts, and shall have the same force and effect as would the original ordinance. (1917, c. 136, sub-ch. 13, s. 14; C. S., s. 2825; 1959, c. 631.)

Editor's Note.—The 1959 amendment inserted in the second sentence the words "or copies of such ordinances duly certified by the city or town clerk or mayor under the official seal of such city or town."

Allegations Insufficient to Plead Ordinance Adopting National Electrical Code.—Allegations referring to "The National Electrical Code of 1951 * * * and also which has been adopted by the city of Lenoir" totally failed to plead any ordinance of the city of Lenoir making the National Electrical Code a part of its municipal law, and the words "and also which has been adopted by the city of Lenoir" should have been stricken on motion. Lutz Industries, Inc. v. Dixie Home Stores, 242 N. C. 332, 88 S. E. (2d) 333 (1955).

Cited in State v. Clyburn, 247 N. C. 455, 101 S. E. (2d) 295 (1958); Black v. Penland, 255 N. C. 691, 122 S. E. (2d) 504 (1961).

Part 3. Officers.

§§ **160-275, 160-276:** Repealed by Sessions Laws 1955, c. 698.

Part 4. Contracts Regulated.

§ 160-279. Certain contracts in writing and secured.

Local Modification.—City of Henderson: 1953, c. 731, s. 33.

Stated in Graham v. Karpark Corp., 194 F. (2d) 616 (1952).

§ **160-280:** Repealed by Session Laws 1963, c. 406, s. 1.

§ 160-281.1. **Validation of conveyances by cities, towns, school districts, etc.**—All conveyances and sales of real estate made prior to January 1, 1942, by the governing body of any city, town, school district, or school administrative unit by private sale without notice and public outcry shall be valid and cured of any such defects and any city, town, school district or school administrative unit affected hereby shall have six months from February 9, 1951,

to assert any claim it may have by reason of such defects or it will thereafter be forever barred: Provided further, that all release deeds and conveyances of real estate made prior to January 1, 1942, by the governing body of any city, town, school district or school administrative unit by private sale without notice and public outcry, which real estate was theretofore held in any manner for a particular purpose upon the happening of a future event, or upon a contingent future interest by way of shifting or springing use, shall be valid and cured of any such defects and shall operate to divest such governing bodies of all claim or interest in the real estate thereby conveyed; provided, however, any city, town, school district, school administrative unit and all persons or parties affected hereby shall have six months from May 12, 1959, to assert any claim or interest they may have in the premises conveyed or released by such deeds or be forever barred thereafter and, to the end that title to such premises may be forever settled, failure to commence action in the courts of this State on such claim or interest within the time limited herein may be pleaded in bar of all claims or interests asserted thereafter. (1951, c. 44; 1959, c. 487.)

Editor's Note.—The 1959 amendment added the provisos at the end of the section.

For discussion of the 1959 amendment, see 38 N. C. Law Rev. 165.

§ 160-281.2. Validation of agreements between telephone companies and municipalities.—Any franchise agreement or other arrangement heretofore made between any telephone company and any municipality in which the telephone company has agreed to furnish certain telephone service or facilities to the municipality is hereby in all respects validated during the life or term of such agreement or arrangement. (1959, c. 685, s. 1.)

Editor's Note.—Section 2 of the act inserting this section provides that "nothing herein shall be construed as repealing, modifying, altering, or amending subsection (f) of G. S. 105-120."

Section Unconstitutional.—Free or reduced telephone service to municipalities is a tax prohibited by law, and is discriminatory both as between towns which are similarly situated and as between those towns and individual rate payers living in towns or in the country. Hence, this section is unconstitutional (1) because it offends the due process provisions of both State and federal Constitutions, (2) because it is not a uniform tax, (3) because it interferes with vested rights, and (4) because it is an attempt to surrender the police power of the State. State v. Wilson, 252 N. C. 640, 114 S. E. (2d) 786 (1960).

Part 5. Control of Public Utilities, Institutions, and Charities.

§ 160-282. Power to establish and control public utilities, institutions, and charities.

Cross References. — As to joint water supply facilities by municipalities, see §§ 160-191.6 to 160-191.10. As to water and sewer authorities, see § 162A-1 et seq.

§ 160-283. How control exercised.

Cited in Greensboro v. Smith, 241 N. C. 363, 85 S. E. (2d) 292 (1955).

Article 21.

Adoption of New Plan of Government.

Part 2. Manner of Adoption.

§ 160-296. Petition filed.

Local Modification.—
Town of Tarboro: 1955, c. 60, s. 1.

§ 160-297. Form of petition.

Local Modification.—Town of Tarboro: 1955, c. 60, s. 2.

§ 160-298. Election held.

Local Modification.—Town of Tarboro: 1955, c. 60, s. 3.

§ 160-300. What the ballots shall contain.

Local Modification.—
1955, c. 60 s. 4.

§ 160-301. Form of ballots.

Local Modification.—Town of Tarboro: 1955, s. 60, s. 5.

Article 22.

Different Forms of Municipal Government.

Part 3. Plan "C." Commission Form of Government.

§ 160-332. General powers of board of commissioners.

Municipal Contracts. — To be valid, a contract by a municipality must be authorized by ordinance or resolution adopted by the board of commissioners. Graham v. Karpark Corp., 194 F. (2d) 616 (1952).

The mere failure of the clerk to properly record a resolution of the commissioners authorizing a contract would not authorize the municipality to repudiate it. Graham v. Karpark Corp., 194 F. (2d) 616 (1952).

Part 4. Plan "D." Mayor, City Council, and City Manager.

§ 160-338. How it becomes operative.

Local Modification.—Town of Tarboro: 1955, c. 60, s. 6.

§ 160-340. Number and election of city councils.

Local Modification. — City of Burlington: 1957, c. 973, s. 1; city of Fayetteville (subject to approval of voters): 1953, c. 318, s. 1; city of Gastonia (effective on approval by voters): 1953, c. 34, s. 1; 1957, c. 101, s. 1; town of Graham: 1957, c. 1167, s. 2; town of Selma: 1963, c. 606; town of Tarboro: 1955, c. 60, s. 7; town of Whiteville: 1953, c. 735, s. 1.

§ 160-341. Power and organization of city council.

Local Modification.—
Town of Graham: 1957, c. 1167, s. 3; town of Tarboro: 1955, c. 60, s. 8.

§ 160-343. Quorum and conduct of business.

Local Modification.—
Town of Tarboro: 1955, c. 60, s. 9.

§ 160-344. Vacancies in council.

Local Modification. — City of Gastonia (effective on approval of voters): 1957, c. 101, s. 2; town of Whiteville: 1959, cc. 789, 790.

§ 160-345. Election of mayor.

Local Modification. — City of Burlington: 1957, c. 973, s. 2; city of Fayetteville (subject to approval of voters): 1953, c. 318, s. 2; city of Gastonia (effective on approval by voters): 1953, c. 34, s. 2; city of Wilmington: 1953, c. 69; town of Graham: 1957, c. 1167, s. 4; town of Tarboro: 1955, c. 60, s. 10; town of Whiteville: 1953, c. 735, s. 2.

§ 160-346. Salaries of mayor and council.

Local Modification.—
City of Burlington: 1957, cc. 728, 1124: city of Fayetteville: 1955, c. 602 and 1959, c. 949; town of Tarboro: 1955, c. 60, s. 11.

§ 160-347. Election of treasurer; salary.

Local Modification.—
City of Washington: 1955, c. 323, s. 1; town of Tarboro: 1955 c. 60, s. 12.

§ 160-349. Power and duties of manager.

Liability of City for Malicious Prosecution by Manager.—Action of the city manager in instigating the arrest and prosecution of a municipal employee for embezzlement is done in the performance of a governmental function imposed upon the city manager by this section, and therefore the city may not be held liable in tort by such employee in an action for malicious prosecution. McDonald v Carper, 252 N. C. 29, 112 S. E. (2d) 741 (1960).

§ 160-350. Appointment and removal of officers.

Local Modification.—City of Washington: 1955, c. 323, s. 2.

ARTICLE 23.

Amendment and Repeal of Charter.

§ 160-353. "Home rule" or "local self-government."

Repeal of Charter by Election. — Sections 160-353 through 160-363, construed in pari materia, disclose that the General Assembly did not contemplate or intend that an act creating a municipal corporation should be subject to repeal by an election initiated by petition and held prior to or simultaneously with the first regular election to be held in such municipality, prescribed by the act for the choice of its first elected officers; such an election, while valid as to the election of municipal officers, was void in respect of the alleged repeal of the statutory charter. State v. Mustian, 243 N. C. 564, 91 S. E. (2d) 696 (1956).

When a municipal corporation derives its corporate existence from the General Assembly by direct special act of incorporation, the requirements of a prior general statute, under which an attempt is made to repeal such special act of the General Assembly, will be strictly construed. State v. Mustian, 243 N. C. 564, 91 S. E. (2d) 696 (1956).

SUBCHAPTER III. MUNICIPAL FINANCE ACT.

ARTICLE 27.

Temporary Loans.

§ 160-375. Money borrowed in anticipation of bond sales.—At any time after a bond ordinance has taken effect as provided in article 28 herein, a municipality may borrow money for the purposes for which the bonds are to be issued, in anticipation of the receipt of the proceeds of the sale of the bonds, and within the maximum authorized amount of the bond issue. Such loans shall be paid not later than five years after the time of taking effect of the ordinance authorizing the bonds upon which they are predicated. The governing body may, in its discretion, retire any such loans by means of current revenues, special assessments, or other funds, in lieu of retiring them by means of bonds: Provided, however, that the governing body, before the actual retirement of any such loan by any means other than the issuance of bonds, under the bond ordinance upon which such loan is predicated, shall amend or repeal such ordinance so as to reduce the authorized amount of the bond issue by the amount of the loan to be so retired. Such an amendatory or repealing ordinance shall take effect upon its passage and need not be published. (1917, c. 138, s. 13; 1919, c. 178, s. 3 (13); C. S., s. 2934; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1953, c. 693, s. 4.)

Editor's Note.—
The 1953 amendment substituted "five years" for "three years" in line six.

Article 28.

Permanent Financing.

§ 160-378. For what purpose bonds may be issued.—A municipality may issue its negotiable bonds for any one or more of the following purposes:

(1) For any purpose or purposes for which it may raise or appropriate money, except for current expenses.

(2) To fund or refund a debt of the municipality if such debt be payable at the time of the passage of the ordinance 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 "debt" as used in this subdivision (2) includes all valid or enforceable debts of a municipality, whether incurred for current expenses or for any purpose. It includes debts evidenced by bonds, bond anticipation notes, revenue anticipation notes, judgments and unpaid interest on said debts accrued to the date of the bonds issued. Bond anticipation notes evidencing debts incurred before July first, one thousand nine hundred thirty-three, may, at the option of the governing body, be retired either by means of funding bonds issued under this section or by means of bonds in anticipation of the sale of which the notes were issued. It also includes debts assumed by a municipality as well as debts created by a municipality. Furthermore, the said word "debt" as used in this section includes the principal of and accrued interest on funding bonds, refunding bonds, and other evidences of indebtedness heretofore or hereafter issued. The above enumeration of particular kinds of debt shall be construed as limiting the word "debt" as used in this section, the intention being that said word shall include debts of every kind and character. Bonds hereafter issued to fund or refund interest may, at the option of the governing body, be named or designated as certificates of indebtedness. No interest accruing after the year one thousand nine hundred and forty-six shall be funded or refunded.

(3) To pay any revenue bonds issued by the municipality pursuant to the Revenue Bond Act of 1938 to finance any undertaking or undertakings mentioned in clauses (i) and (ii) of subparagraph (2) of paragraph (a) of § 160-414 of said Revenue Bond Act, whether wholly within or partially within and partially without the municipality, if such revenue bonds are payable at the time of the passage of the ordinance or ordinances authorizing such negotiable bonds or be payable within one year thereafter or, although payable more than one year thereafter, are to be canceled prior to their maturity and simultaneously with the issuance of such negotiable bonds: Provided that the issuance of such negotiable bonds and the ordinance or ordinances authorizing the same shall be approved by the voters of the municipality at an election as provided in this subchapter. Such negotiable bonds may be disposed of by sale pursuant to the provisions of the Local Government Act or, upon request of the governing body of the municipality and with the consent of the holder of such revenue bonds, the Local Government Commission through the State Treasurer may exchange any such negotiable bonds for a like amount of such revenue bonds and make such adjustment of accrued interest as may be requested by said governing body, in which event the publication of notice as provided in § 159-13 of the Local Government Act shall not be required. (1917, c. 138, s. 16; 1919, c. 178, s. 3 (16); C. S., s. 2937; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1931, c. 60, s.

48; 1933, c. 259, s. 1; 1935, c. 302, s. 1; 1939, c. 231, s. 1; 1943, c. 13; 1945, c. 403; 1957, c. 856, s. 1.)

Local Modification.—Town of Columbus: 1959, c. 719, repealing 1949, c. 987; town of Lake Lure: 1953, c. 1057.

Editor's Note.—The 1957 amendment added subdivision (3).

§ **160-379. Ordinance for bond issue.**—(a) Ordinance Required.—All bonds of a municipality shall be authorized by an ordinance passed by the governing body.

(b) What Ordinance Must Show.—The ordinance shall state:

(1) In brief and general terms the purpose for which the bonds are to be issued, including, in the case of funding or refunding bonds a brief description of the indebtedness to be funded or refunded sufficient 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 shall be annually levied and collected: Provided, in lieu of the foregoing and in the case of funding or refunding bonds, such statement with respect to an annual tax may, in the discretion of the governing body, be altered or omitted;

(4) That a statement of the debt of the municipality has been filed with the clerk and is open to public inspection;

(5) One of the following provisions:

a. If the bonds are funding or refunding bonds or for local improvements of which at least one-fourth of the cost, exclusive of the cost of paving at street intersections, has been or is to be specially assessed, that the ordinance shall take effect upon its passage, and shall not be submitted to the voters; or

b. If the issuance of the bonds is required by the Constitution to be approved by the voters, or if the governing body, although not required to obtain the approval of the voters before issuing the bonds, deems it advisable to obtain such approval, that the ordinance shall take effect when approved by the voters of the municipality at an election as provided in this subchapter; or

c. In any other case, that the ordinance shall take effect thirty days after its first publication (or posting) unless in the meantime a petition for its submission to the voters is filed under this subchapter, and that in such event it shall take effect when approved by the voters of the municipality at an election as provided in this subchapter.

(6) In the case of bonds to pay any revenue bonds issued for one or more undertakings constituting two or more unrelated purposes under the provisions of this subchapter, a statement of such purposes and the proportion of the proceeds of such revenue bonds determined by the governing body to have been applied to each such purpose, which determination shall be conclusive, and bonds to pay each such proportion of the revenue bonds, as nearly as may be within a multiple of $1,000, shall be authorized by separate ordinances.

(c) When the Ordinance Takes Effect.—A bond ordinance shall take effect at the time and upon the conditions indicated therein. If the ordinance provides that it shall take effect upon its passage no vote of the people shall be necessary for the issuance of the bonds.

(d) Need Not Specify Location of Improvement.—In stating the purpose of a bond issue, a bond ordinance need not specify the location of any improvement or property, or the kind of pavement or other material to be used in the construction or reconstruction of streets, highways, sidewalks, curbs, or gutters, or

the kind of construction or reconstruction to be adopted for any building, for which the bonds are to be issued. A description in a bond ordinance of a property or improvement substantially in the language employed in § 160-382 of this subchapter to describe such a property or improvement, shall be a sufficiently definite statement of the purpose for which the bonds authorized by the ordinance are to be issued.

(e) Application of Other Laws.—No restriction, limitation or provision contained in any special, private or public-local law relating to the issuance of bonds, notes or other obligations of a municipality shall apply to bonds or notes issued under this subchapter for the purpose of refunding, funding or renewing indebtedness, and no vote of the people shall be required for the issuance of bonds or notes for said purpose, unless required by the Constitution of this State. The special, private and public-local laws here referred to include all such laws enacted prior to the expiration of the regular session of the General Assembly in the year one thousand nine hundred thirty-five. Nothing herein shall be construed, however, as prohibiting a municipality from issuing bonds or notes under any special, private or public-local law applicable to such municipality, it being intended that this subchapter shall be cumulative and additional authority for the issuance of bonds and notes. (1917, c. 138, s. 17; 1919, c. 178, s. 3 (17); 1919, c. 285, s. 2; C. S., s. 2938; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1931, c. 60, s. 49; 1933, c. 259, s. 1; 1935, c. 302, s. 1; 1949, c. 497, s. 3; 1957, c. 856, s. 2.)

Editor's Note.—

The 1957 amendment inserted subdivision (6) of subsection (b).

A statement that a tax sufficient to pay the principal and interest of the bonds shall be annually levied and collected may be omitted in the ordinance in the case of funding or refunding bonds in the discretion of the governing board of the town. Garner v. Newport, 246 N. C. 449, 98 S. E. (2d) 505 (1957).

Absence of Intent to Annex in Bond Ordinance and Ballots.—Where there is no irregularity in the authorization of municipal bonds for its water and sewer systems, and in the city's notice of intent to annex certain areas it is stated that it intended to use certain of the proceeds of the bonds for the construction of water and sewer lines in areas intended to be annexed, the fact that neither the bond ordinance nor the ballots used in the election at which the issuance of the bonds was approved disclosed such intent does not affect the validity of the bonds Upchurch v. Raleigh, 252 N. C. 676, 114 S. E. (2d) 772 (1960).

§ 160-382. Determining periods for bonds to run.

Cited in Austin v. Shaw, 235 N. C. 722, 71 S. E. (2d) 25 (1952).

§ 160-383. Sworn statement of indebtedness.

2. Limitations upon Passage of Ordinance.—The ordinance shall not be passed unless it appears from said statement that the said net debt does not exceed eight (8) per cent of said assessed valuation, unless the bonds to be issued under the ordinance are to be funding or refunding bonds, or are bonds for water, gas, electric light or power purposes, or two or more of said purposes or are bonds for sanitary sewers sewage disposal or sewage purification plants, the construction of which shall have been ordered by the State Stream Sanitation Committee, which Committee is hereby authorized to make such order, or by a court of competent jurisdiction or are bonds for erosion control purposes or are bonds for erecting jetties or other protective works to prevent encroachment by the ocean, sounds or other bodies of water.

(1955, c. 1045; 1959, c. 779, s. 10.)

Local Modification.—City of Charlotte: 1959, cc. 30, 871.

Editor's Note.—

The 1955 amendment inserted "or by the State Stream Sanitation Committee, which Board or Committee is hereby authorized to make such order," in the seventh line of subsection 2 of this section. The 1959 amendment deleted references to the State Board of Health in subsection 2. As subsections 1 and 3 were not affected by the amendment, they are not set out.

§ 160-387. Elections on bond issue.

2. When Election Held.—Whenever the taking effect of an ordinance authorizing the issuance of bonds is dependent upon the approval of the ordinances by the voters of a municipality, the governing body may submit the ordinance to the voters at an election to be held not more than six months after the passage of the ordinance. The governing body may call a special election for that purpose or may submit the ordinance to the voters at the regular municipal election next succeeding the passage of the ordinance, but no such special election shall be held within one month before or after a regular election. Several ordinances or other matters may be voted upon at the same election. The governing body shall not call a special election for the sole and exclusive purpose of submitting to the voters the proposition of approving or disapproving an ordinance for the issuance of bonds for the purchase of voting machines, but such ordinance may be submitted at any regular municipal election or at any special election at which another ordinance or another matter is to be voted upon.

(1953, c. 1065, s. 2.)

Cross Reference.—As to power of municipality to issue bonds for the purchase of voting machines, see note under § 160-51.1.

Editor's Note.—The 1953 amendment added the last sentence of subsection 2. As only this subsection was affected by the amendment the rest of the section is not set out.

This section intends that the result of an election as determined by the proper election officials shall stand until it shall be regularly contested and reversed by a tribunal having jurisdiction for that purpose. The court will not permit itself to be substituted for the proper election officials in the first instance for the purpose of canvassing the returns from the officers holding the election and declaring the result thereof. Garner v. Newport, 246 N. C. 449, 98 S. E. (2d) 505 (1957).

Necessary Allegations in Suit to Restrain Issuance of Bonds for Irregularities in Election.—In an action to restrain the issuance of bonds on the ground of irregularities in the bond election, a complaint which fails to allege that the officers appointed to hold the election had reported the results thereof to the governing body of the municipality and that the governing body had canvassed the returns and judicially determined the result, is demurrable. Garner v. Newport, 246 N. C. 449, 98 S. E. (2d) 505 (1957).

§ 160-389. Within what time bonds issued.—After a bond ordinance takes effect, bonds may be issued in conformity with its provisions at any time within five years after the ordinance takes effect, unless the ordinance shall have been repealed, which repeal is permitted (without the privilege of referendum upon the question of appeal), unless notes shall have been issued in anticipation of the receipts of the proceeds of the bonds and shall be outstanding: Provided, that the provisions of this paragraph shall apply to all bonds authorized by any bond ordinance taking effect on or after July 1st, 1952.

Notwithstanding the foregoing limitations of time which might otherwise prevent the issuance of bonds, bonds authorized by an ordinance which took effect prior to July 1st, 1952, and which have not been issued by July 1st, 1955, may be issued in accordance with all other provisions of law at any time prior to July 1st, 1957, unless such ordinance shall have been repealed, and any loans made under authority of § 160-375 of article 27 of this subchapter in anticipation of the receipt of the proceeds of the sale of such bonds, or any renewals thereof, may be paid on or at any time prior to but not later than June 30th 1957 notwithstanding the limitation of time for payment of such loans as contained in said section. (1917, c. 138, s. 24; 1919, c. 178, s. 3 (24); C. S., s. 2950; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1939, c. 231, s. 1; 1947, c. 510, s. 2; 1949, c. 190, s. 2; 1951, c. 439, s. 2, 1953, c. 693, s. 3; 1955, c. 704, s. 2.)

Editor's Note.—

The 1953 amendment inserted "five years" in lieu of "three years" in the third line of this section, rewrote the proviso to the first paragraph and made changes in the dates appearing in the second paragraph.

The 1955 amendment changed the last three dates in the second paragraph.

§ 160-390. Amount and nature of bonds determined.—The aggregate amount of bonds to be issued under a bond ordinance, the rate or rates of interest they shall bear, not exceeding six per centum per annum, payable semiannually or otherwise, and the times and place or places of payment of the principal and interest of the bonds, shall be fixed by resolution or resolutions of the governing body. Such bonds may be made subject to redemption prior to their respective maturities with or without premium as the governing body may provide in such resolution or resolutions, with the approval of the Local Government Commission. The bonds authorized by a bond ordinance, or by two or more bond ordinances if the bonds so authorized shall be consolidated into a single issue, may be issued either all at one time as a single issue or from time to time in series, and different provisions may be made for different series. (1917, c. 138, s. 25; 1919, c. 178, s. 3 (25); C. S., s. 2951; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1933, c. 259, s. 1; 1951, c. 440, s. 1; 1953, c. 1206, s. 3.)

Editor's Note.—

The 1953 amendment inserted the second sentence. By section 4 of the amendatory act any resolution adopted pursuant to § 160-390 and prior to April 30, 1953, may be amended so as to provide that any unissued balance of bonds authorized by a bond ordinance, or by two or more bond ordinances, may be made redeemable prior to their respective maturities as provided in the 1953 amendment to the section.

§ 160-391. Bonded debt payable in installments.—The bonds of each issue or of each series shall mature in annual installments, the first of which installments shall be made payable not more than three years after the date of the bonds of such issue or of such series, and the last within the period determined and declared pursuant to § 160-382 of this subchapter. If the bonds so authorized shall be issued at one time as a single issue, no such installment shall be more than two and one-half times as great in amount as the smallest prior installment of such issue. If the bonds so authorized shall be issued in series, the total amount outstanding after the issuance of any particular series shall mature so that the total amount of such bonds maturing in any fiscal year shall not be more than two and one-half times as great in amount as the smallest amount of such outstanding bonds which mature in any prior fiscal year, and the first installment of the bonds of any series subsequent to the first series may mature more than three years after the date of the bonds of the first series. This section shall not apply to funding or refunding bonds or bonds authorized to pay revenue bonds. (1917, c. 138, s. 26; 1919, c. 178, s. 3 (26); C. S., s. 2952; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1931, c. 60, s. 52; 1933, c. 259, s. 1; 1951, c. 440, s. 2; 1957, c. 856, s. 3.)

Editor's Note.—

The 1957 amendment added the words "or bonds authorized to pay revenue bonds" at the end of the section.

§ 160-398. Destruction of paid bonds and interest coupons. — All paid bonds and interest coupons of a municipality may, in the discretion of the governing body, be destroyed in accordance with one of the following methods:

Method 1. Before any such bonds and coupons are destroyed as hereinafter provided the treasurer of the municipality shall make a descriptive list of the same in a substantially bound book kept by him for the purpose of recording destruction of paid bonds and coupons. Said list shall include, with respect to bonds, (i) designation or purpose of issue, (ii) date of issue, (iii) bond numbers, (iv) denomination, (v) maturity date and (vi) total principal amount and, with respect to coupons, the designation or purpose of issue and date of bonds to which such coupons appertain, the maturity date of such coupons and, as to each such maturity date, the denomination, quantity and total amount of coupons. After such list has been made the paid bonds and coupons so described shall be destroyed, either by burning or by shredding, in the presence of the mayor, the treasurer of the municipality and the municipal attorney, each of whom shall cer-

tify under his hand in such book that he saw such bonds and coupons so destroyed. No paid bonds or coupons shall be so destroyed within one year from their respective maturity dates.

Method 2. The governing body may contract with any bank or trust company for the destruction, as hereinafter provided, of bonds and interest coupons which are paid and canceled. The contract shall substantially provide, among such other stipulations and provisions as may be agreed upon, that such bank or trust company shall furnish the municipality, periodically or from time to time, with a written certificate of destruction containing a description of bonds and coupons destroyed, including, with respect to bonds, (i) designation or purpose of issue, (ii) date of issue, (iii) bond numbers, (iv) denomination, (v) maturity date and (vi) total principal amount and, with respect to coupons, designation or purpose of issue and date of bonds to which such coupons appertain, the maturity date of such coupons and, as to each such maturity date, the denomination, quantity and total amount, and certifying that such paid and canceled bonds and coupons have been destroyed either by burning or by shredding. No paid and canceled bonds or coupons shall be destroyed within one (1) year after their respective maturities or, in the case of bonds paid prior to their maturities, within one (1) year from such payment. Each such certificate shall be filed by the treasurer of the municipality among the permanent records of his office.

The provisions of G. S. 121-5 and 132-3 shall not apply to the paid bonds and coupons referred to in this section. (1941, c. 203; 1961, c. 663, s. 2; 1963, c. 1172, s. 2.)

Editor's Note. — The 1961 amendment rewrote this section.

The 1963 amendment rewrote the paragraph headed "Method 2," which formerly required the contract to be with a bank or trust company acting as the paying agent of the municipality.

Article 29.

Restrictions upon the Exercise of Municipal Powers.

§ 160-399. In borrowing or expending moneys.

Cited in Henderson v New Bern, 241 N. C. 52, 84 S. E. (2d) 283 (1954); Greensboro v. Wall, 247 N. C. 516, 101 S. E. (2d) 413 (1958).

§ 160-402. Limitation of tax for general purposes.—For the purpose of raising revenue for defraying the expenses incident to the proper government of the municipality, the governing body shall have the power and it is hereby authorized to levy and collect an annual ad valorem tax on all taxable property in the municipality at a rate not exceeding one dollar and fifty cents ($1.50) on the one hundred dollar ($100.00) valuation of said property, notwithstanding any other law, general or special, heretofore or hereafter enacted, except a law hereafter enacted expressly repealing or amending this section.

Notwithstanding the limitation upon taxation contained in this section, the governing body of any municipality is hereby authorized in its discretion to levy annually on all taxable property within the municipality a special tax for the special purpose of meeting the expense of additional law-enforcement personnel and equipment which may be required in suppressing riots or insurrections or in handling any extraordinary breach of law and order which occurs or which threatens to occur within the jurisdiction of the municipality. The special approval of the General Assembly is hereby given to the issuance by municipalities of bonds and notes for the special purpose of meeting the expense of additional law-enforcement personnel and equipment which may be required in suppressing riots or insurrections or in handling any extraordinary breach of law and order which occurs or which threatens to occur within the jurisdiction of the municipality.

(1917, c. 138, s. 37; 1919, c. 178, s. 3 (37); C. S., s. 2963; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1947, c. 506; 1959, c. 1250, s. 3.)

Local Modification.—City of Hendersonville: 1959, c. 868; city of Winston-Salem: 1957, c. 1110; town of Bakersville: 1963, c. 817; town of Snow Hill: 1963, c. 508; town of Spruce Pine: 1963, c. 319.

Editor's Note.—

Session Laws 1953, c. 44, made this section applicable to the town of Bakersville in Mitchell County.

The 1959 amendment added the second paragraph.

SUBCHAPTER IV. FISCAL CONTROL.

Article 33

Fiscal Control.

§ 160-409. Title; definitions.—This article shall be known and may be cited as "The Municipal Fiscal Control Act."

In this article, unless the context otherwise requires, certain words and expressions have the following meaning:

(a) "Accountant" means the officer designated or appointed under the provisions of § 160-409.1.

(b) The "budget year" is the fiscal year for which a budget is being prepared.

(c) "Debt service" means the payment of principal and interest on bonds and notes as such principal or interest falls due, and the payments of moneys required to be paid into sinking funds.

(d) The "fiscal year" is the annual period for the compilation of fiscal operations, and begins on the first day of July and ends on the 30th day of June.

(e) "Fund" means a sum of money or other resources segregated for the purpose of carrying on specific activities or attaining certain objectives and constituting an independent fiscal and accounting entity. Each municipality shall maintain the following funds:

(1) General fund.

(2) Debt service fund.

(3) A fund for each special tax levied by the governing body.

(4) A fund for each utility; provided, that where a water system and a sanitary sewerage system are operated as a combined and consolidated system in the manner provided by law, one fund may be established to account for the revenues and expenditures of both.

(5) A bond fund to account for the application of the proceeds of the sale of bonds to the specific purpose for which such bonds were duly authorized.

(6) A fund for each subdivision to account for the collections of each special tax levied for a particular function or purpose of such subdivision.

(7) Such other funds as may be established by the governing body, separately stated.

(f) "Governing body" means the board or body in which the general legislative powers of a municipality are vested.

(g) "Municipality" means any city, town, or incorporated village in this State, now or hereafter incorporated.

(h) "Subdivision" means a school district, school taxing district, or other political corporation or subdivision wholly or partly within a municipality, the taxes for which are under the law levied by the governing body of the municipality.

(i) The "surplus" of a fund at the close of a fiscal year means the amount by which the cash balance exceeds the total of current liabilities, the encumbrances, and the taxes or other revenue collected in advance. Encumbrances are obligations in the form of purchase orders, contracts or salary commitments which are chargeable to an appropriation made in the year just closing and which are unpaid at the close of such year. Taxes or other revenue collected in advance are

sums received in the year just closing but which are not due until after the beginning of the new fiscal year. (1955, c. 698.)

Editor's Note. — The 1955 amendment revised and rewrote this article which formerly consisted of four sections.

§ 160-409.1. Municipal accountant.—In all cases where a city or town charter provides for the office of accountant or director of finance, the incumbent in such office shall be the municipal accountant of such city or town for the purposes of this article. Where the city or town charter does not create such an office, the municipal accountant shall be designated or appointed as follows: (a) In cities and towns governed under the manager form of government, the powers and duties herein imposed and conferred on the municipal accountant shall be imposed and conferred on the manager or on some person designated or appointed by the manager to serve at the will of the manager; (b) in cities and towns having a full-time mayor, the powers and duties herein imposed and conferred on the municipal accountant shall be imposed and conferred on the full-time mayor or on some person appointed or designated by the mayor to serve at the will of the mayor; (c) in cities and towns having neither a manager nor a full-time mayor, the powers and duties herein imposed and conferred on the municipal accountant shall be imposed and conferred on the clerk of the municipality or on some person appointed or designated by the governing body to serve at the will of the governing body. Provided, that the experience, training, and qualifications of any person on whom the powers and duties of the municipal accountant are imposed and conferred by or under this section shall be approved by the Local Government Commission, which approval shall continue until revoked by such Commission. If any person upon whom the powers and duties of the municipal accountant are imposed and conferred is a tax collecting officer of the municipality, it shall be the duty of the governing body to require all his books and accounts to be audited at least annually by a certified public accountant or by a public accountant registered under chapter 93 of the General Statutes. (1955, c. 698.)

§ 160-409.2. Bond of accountants.—Every person designated or appointed as municipal accountant may be required to furnish bond in some surety company authorized to do business in North Carolina, the amount of such bond to be fixed by the governing body, approved by the governing body and by the Local Government Commission, and conditioned for the faithful performance of his duties imposed by law. (1955, c. 698.)

§ 160-409.3. Additional duties of municipal accountants.—In addition to the duties imposed and powers conferred upon the municipal accountant by this article he shall have the following duties and powers:

(a) He shall act as accountant for the municipality and subdivisions in settling with all municipal officers.

(b) He shall keep or cause to be kept a record of the date, source, and amount of each item of receipt, and the date the payee or contractor the specific purpose, and the amount of every disbursement or contract made; and he shall keep or cause to be kept a copy of every contract made requiring the payment of money.

(c) He shall examine once a month, or at such other times as the governing body may direct, all books, accounts, receipts vouchers, and other records of all officers and employees receiving or expending money of the municipality or any subdivision thereof: Provided, that the governing body may relieve the municipal accountant of the duty of examining the records of any such officer or employee whose records are audited at least annually by a certified public accountant or by a public accountant registered under chapter 93 of the General Statutes.

(d) He shall, as often as he may be directed by the governing body, file with the governing body a complete statement of the financial condition of the mu-

nicipality and subdivisions, showing the receipts and expenditures of the different offices, departments, institutions, and agencies.

(e) He shall advise with the heads of offices, departments, institutions, and agencies of the municipality and its subdivisions and with State officers as to the best and most convenient method of keeping accounts, and shall inform himself as to the best and simplest methods of keeping accounts, so as to bring about as far as possible a simple, accurate, and uniform system of keeping accounts of the municipality and subdivisions.

(f) He shall not allow any bill or claim unless the same be so itemized as to show the nature of the services rendered.

(g) He shall perform such other duties having relation to the purposes of this article as may be imposed upon him by the governing body (1955, c. 698.)

§ 160-410. Heads of offices, departments, institutions, and agencies to file budget statements before June 1.—It shall be the duty of all heads of offices, departments, institutions, and agencies of the municipality and its subdivisions to file with the municipal accountant on or before such date prior to the first day of June each year as the municipal accountant may direct (a) a complete statement of the amounts expended for each object of expenditure in his office, department, institution, or agency, in the fiscal year preceding the then current fiscal year, and (b) a complete statement of the amount expended and estimated to be expended for each object in his office, department, institution, or agency in the current fiscal year and (c) an estimate of the requirements of his office, department, institution, or agency for each object in the budget year. Such statements and estimates shall list each object of expenditure in such form and in such detail as may be prescribed by the municipal accountant, and shall include such other supporting information as may be prescribed by the municipal accountant. (1955, c. 698.)

§ 160-410.1. Budget estimate.—Upon receipt of such statements and estimates, the municipal accountant in municipalities not having the manager form of government or the manager in municipalities having the manager form of government, shall prepare (a) his estimate of the amounts necessary to be appropriated for the budget year for the various offices, departments, institutions, and agencies of the municipality and its subdivisions, listing the same under the appropriate funds maintained as required by § 160-409, which estimate shall include the full amount of all debt service which the municipal accountant or manager through the exercise of due diligence determines will be due and payable in the budget year and also shall include the full amount of any deficit in any fund, and it may include a contingency estimate for each fund to meet expenditures for which need develops subsequent to the passage of the appropriation ordinance, and (b) an itemized estimate of the revenue to be available during the budget year, separating revenue from taxation from revenue from other sources and classifying the same under the appropriate funds maintained as required by § 160-409, and (c) an estimate of the amount of surplus in each fund as of the beginning of the budget year which he recommends be appropriated to meet expenditures for the budget year. These estimates shall be broken down into as much detail and have appended thereto such information as the governing body may direct and otherwise to take such form as the municipal accountant or manager may determine. The estimates of revenues when added to the surplus figure for each fund shall equal the estimates of appropriations for that fund. The municipal accountant or manager shall also include with such estimates a statement of the rate of tax which will have to be levied in each fund in order to raise the amount of revenue from taxation included in the estimates of revenue: Provided, that the municipal accountant or manager shall indicate clearly in such statement the percentage of taxes levied which he estimates will be collected in the budget year and on which he has based the rate of tax necessary to raise the amount of revenue

from taxation included in the estimates of revenue. Such estimates and statements of the municipal accountant or manager shall be termed the "budget estimate," and shall be submitted to the governing body not later than the 7th day of July of each year: Provided, that the budget estimate may be submitted to the governing body on such earlier date as the municipal accountant or manager, with the approval of the governing body may determine The municipal accountant or manager may submit a budget message with the budget estimate which may contain an outline of the proposed financial policies of the municipality for the budget year, may describe in connection therewith the important features of the budget plan, may set forth the reasons for stated changes from the previous year in appropriation and revenue items, and may explain any major changes in financial policy. (1955, c. 698.)

§ **160-410.2. Time for filing budget estimate.**—Immediately upon the submission of the budget estimate, and at least twenty days before the adoption of the budget ordinance, the governing body shall: (a) File the budget estimate in the office of the clerk of the municipality where it shall remain for public inspection, and (b) make available a copy of the budget estimate for all newspapers published in the municipality, and (c) cause to be published in at least one newspaper published in the municipality a statement that the budget estimate has been presented to the governing body and that a copy of the same is on file for public inspection in the office of the clerk of the municipality, which statement may also include such other information as the municipal accountant may determine: Provided, however, that if no newspaper be published in the municipality, such statement shall be posted at the door of the city hall or town hall and at least three other public places in the municipality at least twenty days before the passage of the budget ordinance. (1955, c. 698.)

§ **160-410.3. Budget ordinance.**—It shall be the duty of the governing body, at least twenty days subsequent to the publication of the statement required by § 160-410.2 but not later than the 28th day of July in each year, to adopt and record on its minutes a budget ordinance, the form of which shall be prescribed by the municipal accountant or manager. The budget ordinance shall, on the basis of the estimates and statements submitted by the municipal accountant or manager, make appropriations for the several offices, departments, institutions, and agencies of the municipality and its subdivisions, and the budget ordinance shall provide for the financing of the appropriations so made. The appropriations shall be made in such sums as the governing body may deem sufficient and proper, whether greater or less than the recommendations of the budget estimate, and the appropriation or appropriations for each office, department institution, or agency shall be made in such detail as the governing body deems advisable: Provided, however, that (a) no appropriation recommended by the municipal accountant or manager for debt service shall be reduced, and (b) the governing body shall appropriate the full amount of all lawful deficits reported in the budget estimate, and (c) no contingency appropriation shall be included in any fund in excess of five per cent (5%) of the total of the other appropriations in the fund: Provided, that before any or all of such contingency appropriation be expended, the governing body must by ordinance authorize the expenditure, and (d) no appropriations shall be made which will necessitate the levy of a tax in excess of any constitutional or statutory limits of taxation, and (e) the total of all appropriations in each fund shall not be in excess of the estimated revenues and surplus available to that fund The revenue portion of the budget ordinance shall include the following: (a) A statement of the revenue estimated to be received in the budget year in each fund maintained as required by § 160-409, separating revenues from taxes to be levied for the budget year from revenues from other sources and including such amount of the surplus of each fund on hand or estimated to be on hand at the beginning of the budget year as the governing body deems advisable to appropriate to meet expenditures of such fund for the budget year; and (b)

the levy of such rate of tax for each fund in the budget year as will be necessary to produce the sum appropriated less the estimates of revenue from sources other than taxation and less that part of the surplus of the fund which is proposed to be appropriated to meet expenditures in the budget year. In determining the rate of tax necessary to produce such sums, the governing body shall decide what portion of the levy is likely to be collected and available to finance appropriations and shall make the levy accordingly; and further the governing body shall not estimate revenue from any source other than the property tax in an amount in excess of the amount received or estimated to be received in the year preceding the budget year unless it shall determine that the facts warrant the expectation that such excess amount will actually be realized in cash during the budget year. (1955, c. 698.)

§ **160-410.4. Copies of ordinance filed with municipal treasurer and municipal accountant.**—A copy of the budget ordinance shall be filed with the municipal treasurer or other officer or agent performing the functions ordinarily assigned to the municipal treasurer, and another copy thereof shall be filed with the municipal accountant, both copies so filed to be kept on file for their direction in the disbursement of municipal funds. (1955, c. 698.)

§ **160-410.5. Failure to raise revenue a misdemeanor.**—Any member of a governing body of any municipality who shall fail to vote to raise sufficient revenue for the operating expenses of the municipality as provided for in § 160-410.3, shall be guilty of a misdemeanor, punishable by a fine or imprisonment, or both in the discretion of the court. (1955, c. 698.)

§ **160-410.6. Emergencies.**—In case an emergency arises necessitating the expenditure of funds and in case under the existing budget ordinance there are no funds available to meet such expenditure, the governing body may make application to the Local Government Commission and such Commission may permit the governing body to anticipate the taxes of the next fiscal year by not more than five per cent (5%) of the tax levy for the current year. In the event of the approval of such anticipation of the taxes of the next fiscal year by the Commission, the governing body of any such municipality is authorized to provide by resolution for the issuance of a note or notes in an amount not in excess of the amount authorized by such Commission, and such note or notes shall be payable not later than the 30th day of June of the next fiscal year and shall be paid by a special tax levied for such purpose. Any such note or notes shall be issued in accordance with the provisions of § 160-376. (1955, c. 698.)

§ **160-410.7. Publication of statement of financial condition.**—As soon as practicable after the close of each fiscal year, the municipal accountant shall prepare and cause to be published in a newspaper published in the municipality, or if no newspaper be published in the municipality then by posting at the door of the city hall or town hall and at least three other public places in the municipality, a statement of the financial condition of the municipality, containing such figures and information as the municipal accountant with the approval of the governing body may consider it advisable to publish, which statement as so published or posted shall include a statement of the assets and liabilities of several funds of the municipality as of the close of the preceding fiscal year together with a summary statement of the revenue receipts and expenditures of such funds in the preceding year, a statement of the bonded debt of the municipality as of the close of the preceding fiscal year, and a statement of assessed valuations, tax rates, tax levied and uncollected taxes for the preceding three fiscal years. (1955, c. 698.)

§ **160-410.8. Amendments to the budget ordinance.** — The governing body in the event the members thereof deem it necessary, may by ordinance amend the budget ordinance after its passage in any or all of the following ways: (a)

By transferring the unencumbered balance of any appropriation, or any portion of such balance, to any other appropriation within the same fund or to any new appropriation within the same fund; (b) by making a supplemental appropriation in any fund in all or any portion of the amount of the unappropriated surplus of such fund or the amount by which total revenue receipts have exceeded total estimated revenues in such fund as of the date of the making of the supplemental appropriations; (c) by transferring all or any portion of the unencumbered balance of any appropriation in the general fund to any existing appropriation or to any new appropriation in another fund or by making a supplemental appropriation in another fund financed by unappropriated surplus or excess revenue receipts of the general fund: Provided, that no amendment to the budget ordinance shall be made if the effect of such amendment is to authorize an expenditure for a purpose which could not have been legally authorized in the original budget ordinance: Provided, further, that where the governing body shall determine that changed circumstances in the operation of a utility will result in the receipt in cash of revenues in excess of the estimates of revenues contained in the budget ordinance, that body may amend the estimates of revenues of the utility fund concerned as such estimates are set forth in the budget ordinance and may thereupon make a supplemental appropriation in such utility fund in the amount by which the amended estimates of revenues exceed the estimates of revenues in the budget ordinance, whether or not such excess has been actually received in cash as of the date of the making of such supplemental appropriation. Copies of any ordinance made pursuant to this section shall be made available to the municipal treasurer, municipal accountant, and the head of each office, department, institution, or agency affected thereby. (1955, c. 698.)

§ **160-410.9. Interim appropriations.**—In case the adoption of the budget ordinance is delayed until after the beginning of the budget year, the governing body may make appropriations for the purpose of paying salaries, the principal and interest of indebtedness, and the usual ordinary expenses of the municipality and its subdivisions for the interval between the beginning of the budget year and the adoption of the annual budget ordinance. The interim appropriations so made shall be chargeable to the several appropriations, respectively, thereafter made in the annual budget ordinance for the year. (1955, c. 698.)

§ **160-411. Provisions for payment.**—No contract or agreement requiring the payment of money, or requisitions for supplies or materials, shall be made, and no warrant or order for the payment of money shall be drawn upon the treasury of the municipality or a subdivision, unless provision for the payment thereof has been made by (a) an appropriation as provided by this article or (b) through the means of bonds or notes duly authorized by the General Assembly and by the governing body, and further authorized, in all cases required by law or the Constitution, by a vote of qualified voters or taxpayers or otherwise; nor shall such contract, agreement, or requisition be made unless the unencumbered balance of such appropriation or provision remains sufficient for such payment. No contract or agreement or requisition requiring the payment of money shall be valid unless the same be in writing, and unless the same shall have printed, written, or typewritten thereon a statement signed by the municipal accountant as follows: "Provision for the payment of moneys to fall due under this agreement has been made by appropriation duly made or by bonds or notes duly authorized as required by the 'Municipal Fiscal Control Act.'" Such certificate shall not, however make valid any agreement or contract made in violation of this section. Before making such certificate, the municipal accountant shall ascertain that a sufficient unencumbered balance of the specific appropriation remains for the payment of the obligation, or that bonds or notes have been so authorized the proceeds of which are applicable to such payment, and the appropriation or provision so made shall thereafter be deemed encumbered by the amount to be paid

on such contract or agreement until the municipality is discharged therefrom. (1955, c. 698.)

§ 160-411.1. Warrants for payment.—No bill or claim against the municipality or any subdivision shall be paid unless the same shall have been approved by the head of the office, department, institution, or agency for which the expense was incurred nor unless the same shall have been presented to and approved by the municipal accountant, or in the case of his disapproval of such bill or claim, by the governing body. The governing body shall not approve any bill or claim which has been disallowed by the municipal accountant without entering upon the minutes of the governing body its reason for approving the same in such detail as may show the governing body's reason for reversing the municipal accountant's disallowance. No bill or claim against the municipality or any subdivision shall be paid except by means of a warrant or order on the municipal treasurer or depository, and no warrant or order, except a warrant or order for the payment of maturing bonds notes, or interest coupons thereto appertaining, and except a warrant or order for the payment of any bill or claim approved by the governing body over the disallowance of the municipal accountant as above provided, shall be valid unless the same shall bear the signature of the municipal accountant below a statement which he shall cause to be written, printed, or typewritten thereon containing the words: "Provision for the payment of this warrant (or order) has been made by an appropriation duly made or a bond or note duly authorized, as required by the 'Municipal Fiscal Control Act.'" (1955, c. 698.)

§ 160-411.2. Contracts or expenditures in violation of preceding section.—If any municipal accountant shall make any certificate on any contract, agreement, requisition, warrant, or order as required by § 160-411 or § 160-411.1, when there is not a sufficient unencumbered balance remaining for the payment of the obligation, he shall be personally liable for all damages caused thereby. If any officer or employee shall make any contract, agreement, or requisition without having obtained the certificate of the municipal accountant as required by § 160-411, or if any officer or employee shall pay out or cause to be paid out any funds in violation of the provisions of § 160-411.1, he shall be personally liable for all damages caused thereby. (1955, c. 698.)

§ 160-411.3. Accounts to be kept by municipal accountant. — Accounts shall be kept by the municipal accountant for each appropriation made in the budget ordinance or amendment thereto, which appropriations shall be classified under the various funds maintained as required in § 160-409, and every warrant or order upon the municipal treasury shall state specifically against which of such funds the warrant or order is drawn; information shall be kept for each such account so as to show in detail the amount appropriated thereto, the amount drawn thereupon, the unpaid obligations charged against it, and the unencumbered balance to the credit thereof. (1955, c. 698.)

§ 160-411.4. Daily deposits by collecting or receiving officers. — Every public officer and employee whose duty it is to collect or receive any funds or money belonging to any municipality or subdivision thereof shall deposit the same daily or if the governing body grants its approval he shall be required to deposit the same only when he has as much as two hundred fifty dollars ($250.00) in his possession, with the municipal treasurer or in a bank, banks, or trust company designated by the governing body in an account approved by the municipal accountant and secured as provided in § 159-28, and he shall report the same immediately following such deposit to the municipal accountant by means of a treasurer's receipt or duplicate deposit ticket signed by the depository: Provided, that a deposit shall in any event be made on the last business day of each month. He shall settle with the municipal accountant monthly, or oftener if the governing

body so directs, reporting to the municipal accountant at such time the amount of money collected or received from each of the various sources of revenue. If such officer or employee collects or receives such public moneys for a taxing district for which he is not an officer or an employee, he shall pay over periodically, as directed by the governing body, to the proper officer of such district the amount so collected or received and take receipt therefor.

The governing body is hereby authorized and empowered to select and designate, by recorded ordinance, some bank or banks or trust company in this State as official depository or depositories of the funds of the municipality, which funds shall be secured in accordance with § 159-28.

It shall be unlawful for any public moneys to be deposited by any officer or employee in any place, bank, or trust company other than those selected and designated as official depositories. Any person or corporation violating the provisions of this section or aiding or abetting such violation shall be guilty of a misdemeanor and punished by fine or imprisonment or both, in the discretion of the court. (1955 c. 698.)

§ 160-411.5. Investment of funds. — Municipalities may, from time to time and upon the terms and conditions hereinafter provided, invest all or any part of the cash balance of any one or more of their funds as defined in paragraph (e) of § 160-409 of this article: Provided, that the provisions of this section shall not apply to sinking funds created and maintained for the payment of term bonds. Such investments shall be authorized by resolution of the governing body, duly adopted and recorded, in which resolution the governing body shall determine

(1) The amount of money of each fund to be invested,

(2) The type of investment in which each such amount is to be invested, and

(3) The period or periods of time in which such amount shall remain so invested. In determining such period or periods the governing body shall exercise due diligence to assure that the amount of money invested shall be available to the municipality as needed for the purpose for which it was raised.

In such resolution the governing body shall designate some officer of the municipality as custodian of the evidences of investment and it shall be his duty to safely keep the same as long as all or any part of the money remains invested. Types of investment shall be limited to the following:

(1) Certificates of deposit of any bank or trust company organized under the laws of this State or organized under the laws of the United States of America and having its principal office in this State: Provided, such bank or trust company shall, upon issuance of a certificate of deposit, furnish security for protection of the deposit in the manner required by law;

(2) Time deposit in any bank or trust company organized under the laws of this State or organized under the laws of the United States of America and having its principal office in this State: Provided, such bank or trust company shall, at the time of such deposit, furnish security for the protection of the deposit in the manner required by law;

(3) Shares of any building and loan association organized under the laws of this State or of any federal savings and loan association having its principal office in this State: Provided, no money may be invested in shares of any building and loan association or of any savings and loan association of amount in excess of the amount insured by the federal government or an agency thereof, and no such investment shall be made except upon condition that such shares shall be redeemable to the municipality upon a maximum of thirty (30) days'

notice. Interest earned on investment shall be prorated and credited to the various funds upon the basis of amounts thereof invested. (1957, c. 864, s. 1.)

Editor's Note.—Section 2 of the act inserting this section, effective July 1, 1957, provides that the powers granted are in addition to and not in substitution for existing powers granted by general laws or special acts to cities and towns.

§ 160-412. Conduct by municipal accountant constituting misdemeanor.—If a municipal accountant shall knowingly approve any fraudulent, erroneous or otherwise invalid claim or bill, or make any statement required by this article, knowing the same to be false, or shall willfully fail to perform any duties imposed upon him by this article, he shall be guilty of a misdemeanor and punishable for each offense by a fine of not less than fifty dollars ($50.00) or imprisonment for not less than twenty (20) days, or both fine and imprisonment, in the discretion of the court, and shall be liable for all damages caused by such violation or failure. (1955, c. 698.)

§ 160-412.1. Liability for damages for violation by officer or person.—If any municipal officer or head of any office, department, institution, or agency, or other official or person of whom duties are required by this article shall willfully violate any part of this article, or shall willfully fail to perform any of such duties, he shall be guilty of a misdemeanor and punishable for each offense by a fine of not less than fifty dollars ($50.00) or imprisonment for not less than twenty (20) days, or both fine and imprisonment, in the discretion of the court, and shall be liable for all damages caused by such violation or failure. (1955, c. 698.)

§ 160-412.2. Recovery of damages.—The recovery of all damages allowed by this article may be made in the court having jurisdiction of the suit of the municipality, any subdivision thereof, or any taxpayer or other person aggrieved. (1955, c. 698.)

§ 160-412.3. Mayor to report to solicitor.—It shall be the duty of the mayor of the municipality to report to the solicitor of the district within which the municipality lies all facts and circumstances showing the commission of any offenses defined herein, and it shall be the duty of the solicitor to prosecute. At the request of the solicitor, the governing body is authorized within its discretion, to provide legal assistance to the solicitor in prosecuting such cases and any other case involving official misconduct for violation of a public trust within said municipality and pay the cost of same out of the general fund of the municipality. (1955, c. 698.)

§ 160-412.4. Purpose of article.—It is the purpose of this article to provide a uniform procedure for the preparation and administration of budgets to the end that every municipality in the State may balance its budget on the basis of actual cash receipts within the budget period and carry out its functions without incurring deficits. Its provisions are intended to enable governing bodies to make financial plans to meet expenditures, to insure that municipal officials administer their respective offices, departments, institutions, and agencies in accordance with these plans, and to permit taxpayers and bondholders to form intelligent opinions based on sufficient information as to the financial policies and administration of the municipalities in which they are interested. (1955, c. 698.)

§ 160-412.5. Application of article.—Sections 160-275 and 160-276 and all other laws and parts of laws heretofore or hereafter enacted, whether general, local, or special, which are in conflict with this article are hereby repealed, except a law hereafter enacted expressly repealing or amending this article: Provided, this article shall be construed with § 160-399 as amended and nothing herein shall be deemed to repeal any of the provisions of that section. Nothing herein

contained, however, shall require any municipality to comply with this article which operates under a budget system provided by charter or by any local or special act, but any such municipality may, in the discretion of its governing body, elect to conduct its procedure under any one or more sections of this article as that body may deem best. All such municipalities shall nevertheless be subject to the requirements of certain provisions of this article, which are (a) the annual publication of financial information substantially as required by § 160-410.7, (b) the adoption of a budget ordinance which shall appropriate the full amount of all deficits not funded and the full amount required for debt service, and which shall levy sufficient taxes to meet all appropriations, all as required by § 160-410.3, (c) endorsement by some one municipal officer, who shall either be the municipal accountant or an officer designated for that purpose by the governing body, of all contracts, agreements, requisitions, warrants, and orders, substantially as provided by §§ 160-411 and 160-411.1, (d) the maintenance of the funds required by paragraph (e), § 160-409, and (e) compliance with all the provisions of § 160-411.4; and all the provisions of §§ 160-411.2, 160-412, 160-412.1, 160-412.2, and 160-412.3, as to penalties, liability for damage, and requirements for reporting offenses to the district solicitor, shall apply in all such municipalities so far as such municipalities are herein required to comply with this article. (1955, c. 698.)

Article 34.

Revenue Bond Act of 1938.

§ 160-413. Title of article.

The very purpose of the Revenue Bond Act is to permit municipalities to engage in nongovernmental activities of a public nature by pledging the revenue derived from such undertakings to the payment of bonds issued in connection therewith. Thus, it avoids pledging the credit of the municipality to the payment of a debt, for by such arrangements no debt is incurred within the meaning of the Constitution. Britt v. Wilmington, 236 N. C. 446, 73 S. E. (2d) 289 (1952).

§ 160-414. Definitions.

(b) The term "municipality" as used in this article shall mean any county, city, town, incorporated village, sanitary district, or other political subdivision or public corporation of this State now or hereafter incorporated.

(c) The term "governing body" shall mean the board or body, or boards or bodies, in which the general legislative powers of the municipality are vested.

(e) The word "airport" shall mean and shall include lands, runways, lighting and signal systems, terminals, hangars, offices, shops, parking spaces, and each and every structure, improvement, device or facility desirable or useful in connection therewith. (Ex. Sess. 1938, c. 2, s. 2; 1939, c. 295; 1941, c. 207, s. 2; 1951, c. 703, s. 1; 1953, c. 901, ss. 4, 5; 1953, c. 922, s. 1.)

Editor's Note.—

The first 1953 amendment (chapter 901, ratified April 22) inserted the words "or boards or bodies" in subsection (c), and also directed that the words "or any group or combination of such counties, cities or towns" be added at the end of subsection (b). The second 1953 amendment (chapter 922, ratified April 23), which added subsection (e), also struck out all of subsection (b) and rewrote the subsection, omitting the words added by the first amendment and inserting the words "or other political subdivision or public corporation". Only the second 1953 amendment is reflected in subsection (b) set out above.

As the rest of the section was not affected by the amendments, only subsections (b), (c) and (e) are set out.

Subsection (d), as Applied to On-Street Parking, Is Void.—A municipality has no authority to charge a fee or toll for the parking of vehicles upon its streets or to lease or let its system of on-street parking meters for operation by a private corporation or individual. Therefore, it may not pledge revenue derived from on-street parking meters to the payment of proposed bonds for off-street parking arrangements, or consolidate into one project on-street and off-street parking. Sections 160-414

(d) and 160-415 (g) as they relate to on-street parking are void. Britt v. Wilmington, 236 N. C. 446, 73 S. E. (2d) 289 (1952). See note to § 160-499.

§ 160-415. Additional powers.

(f) To lease all or any part of any undertaking upon such terms and conditions and for such term of years as the governing body may deem advisable to carry out the provisions of this article, and to provide in such lease for the extension or renewal thereof;

(h) To sell, and to grant an option or options to purchase (either as a part of any lease or otherwise) all or any part of any undertaking; provided, however, that the powers granted by this subsection (h) shall be subject to any limitations or restrictions on the disposal of the undertaking or any part thereof contained in any resolution or resolutions authorizing the issuance of bonds therefor under the provisions of this article; and provided, however, that any sale of any undertaking or part thereof shall not impair the obligation of any revenue bonds issued hereunder or any pledge of revenues for the payment of such bonds or the interest thereof. (Ex. Sess. 1938, c. 2, s. 3; 1951, c. 703, ss. 2, 3; 1953, c. 922, s. 2.)

Editor's Note.—

The 1953 amendment added the words "and to provide in such lease for the extension or renewal thereof" at the end of subsection (f). It also added subsection (h). Only these two subsections are set out as the rest of the section was not affected by the amendment.

Subsection (g) Held Void.—A municipality has no authority to charge a fee or toll for the parking of vehicles upon its streets or to lease or let its system of on-street parking meters for operation by a private corporation or individual. Therefore, it may not pledge revenue derived from on-street parking meters to the payment of proposed bonds for off-street parking arrangements, or consolidate into one project on-street and off-street parking. Sections 160-414 (d) and 160-415 (g) as they relate to on-street parking are void. Britt v. Wilmington, 236 N. C. 446, 73 S. E. (2d) 289 (1952). See note to § 160-499.

§ 160-419. No municipal liability on bonds. — Revenue bonds issued under this article shall not be payable from or charged upon any funds other than the revenue pledged to the payment thereof, nor shall the municipality issuing the same be subject to any pecuniary liability thereon; provided, however, that if there shall be a sale of the undertaking for which bonds were issued while any of the bonds issued for the said undertaking or interest thereon is unpaid, so much of the purchase price as shall be required to pay all of said bonds and interest remaining unpaid together with all the costs and expenses of sale and other costs and expenses in connection with the payment of said bonds and interest shall be applied to the payment of said bonds and interest, and such costs and expenses, or said amount shall be paid into a sinking fund for the payment of said bonds and interest in such manner and with such requirements as shall be prescribed by the resolution or resolutions authorizing the issuance of the bonds. No holder or holders of any such bonds shall ever have the right to compel any exercise of the taxing power of the municipality to pay any such bonds or the interest thereon; nor to enforce payment thereof against any property of the municipality; nor shall any such bonds constitute a charge, lien, or encumbrance, legal or equitable, upon any property of the municipality. Every bond issued under this article shall contain a statement on its face that "this bond is not a debt of ....., but is payable solely from the revenues of the undertaking for which it is issued, as provided by law and the proceedings in accordance therewith, and the holder hereof has no right to compel the levy of any tax for the payment of this bond or the interest to accrue hereon and has no charge, lien or encumbrance legal or equitable upon any property of said .....". (Ex. Sess. 1938, c. 2, s. 7; 1953, c. 922, s. 3.)

Editor's Note. — The 1953 amendment added the proviso to the first sentence.

§ 160-421.1. Revenue refunding bonds. — A municipality is hereby authorized to provide for the issuance of revenue refunding bonds of the municipality for the purpose of refunding any revenue 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 municipality, to provide for the issuance of its revenue refunding bonds for the combined purpose of refunding any bonds then outstanding which shall have been issued under the provisions of this article and to finance in whole or in part the reconstruction, improvement, betterment or extension of the undertaking for which the bonds to be refunded shall have been issued, or the acquisition, construction, reconstruction, improvement, betterment or extension of any undertaking combined or to be combined with the undertaking for which the bonds to be refunded shall have been issued.

The issuance of such bonds, the maturities and other details thereof, and the rights, duties and obligations of the municipality in respect of the same, shall be governed by the provisions of this article insofar as the same may be applicable. (1953, c. 692.)

Article 34A.

Bonds to Finance Sewage Disposal System.

§ 160-424.1. Issuance of bonds by municipality.

Cross Reference. — As to water and sewer authorities, see § 162A-1 et seq.

§ 160-424.5. Inclusion of charges as part of water bill; water disconnected upon failure to pay charges.

Local Modification.—Town of Rutherfordton: 1961, c. 785, s. 2½; town of Spindale: 1961, c. 785, s. 2.

SUBCHAPTER V. CAPITAL RESERVE FUNDS.

Article 35.

Capital Reserve Funds.

§ 160-425. Short title. — This article shall be known and may be cited as "The Municipal Capital Reserve Act." (1957, c. 863, s. 1.)

Editor's Note.—

Session Laws 1957, c. 863, effective July 1, 1957, repealed the former article, consisting of §§ 160-425 through 160-444, and substituted in lieu thereof the present article, consisting of §§ 160-425 through 160-434. The former article was codified from Session Laws 1943, c. 467 as amended by Session Laws 1945, c. 464.

Powers Supplementary; Capital Reserve Act of 1943.—Session Laws 1957, c. 863, s. 2, provides: "The powers granted to municipalities by this act shall be deemed supplementary to and not in substitution for any like powers heretofore or hereafter granted in their charters or by local act, and capital reserve funds established pursuant to charter provision or local act shall be governed thereby. Reserve funds established pursuant to the Capital Reserve Act of 1943, as amended, and presently existing shall continue to be governed by the provisions thereof, notwithstanding any provision of this act to the contrary."

§ 160-426. Meaning of terms.—In this article the following terms shall have the following meanings:

(1) "Municipality" means and includes any city and town in this State, now or hereafter incorporated;

(2) "Governing body" means the board or body in which the general legislative powers of the municipality are vested;

(3) "Necessary expenses" means the necessary expenses referred to in § 7 of Article VII of the Constitution of North Carolina. (1957, c. 863, s. 1.)

§ 160-427. Powers conferred. — In addition to all other funds now authorized by law, a municipality is hereby authorized and empowered to establish and maintain a capital reserve fund in the manner hereinafter provided. (1957, c. 863, s. 1.)

§ 160-428. Establishment of fund.—When the governing body of any municipality elects to establish a capital reserve fund, it shall adopt an ordinance creating the fund. In such ordinance, the governing body may provide that all or a part of the fund shall be used specifically for any one or more of the purposes enumerated in § 160-432, or it may provide that all or a part of the fund shall be used for any of such enumerated purposes as may later be determined necessary by the governing body. (1957, c. 863, s. 1.)

§ 160-429. Appropriations.—Upon the adoption of an ordinance establishing a capital reserve fund, the governing body may, pursuant to the provisions of the Municipal Fiscal Control Act, make appropriations from the general fund of the municipality for payment to the capital reserve fund. Thereafter, appropriations may be made in the same manner at any time or from time to time in the discretion of the governing body. (1957, c. 863, s. 1.)

§ 160-430. Depository; security. — In the ordinance creating the capital reserve fund, the governing body shall designate some bank, banks or trust company in this State as depository in which moneys of the fund shall be deposited. All such deposits shall be secured as provided by § 159-28 of the Local Government Act. (1957, c. 863, s. 1.)

§ 160-431. Investments.—Pending their use for the purposes hereinafter authorized, all or part of the moneys in the capital reserve fund may be invested in either bonds, notes or certificates of indebtedness of the United States of America; or in bonds or notes of any agency or instrumentality of the United States of America the payment of principal and interest of which is guaranteed by the United States of America; or in bonds or notes of the State of North Carolina; or in bonds of any county, city or town of North Carolina which have been approved by the Local Government Commission for the purpose of such investment; or in shares of any building and loan association organized and licensed under the laws of this State, or in shares of any federal savings and loan association organized under the laws of the United States with its principal office in this State, to the extent that such investment is insured by the federal government or an agency thereof. The proceeds of the sale or realization of such investments and any interest resulting from such investments shall accrue to the capital reserve fund. (1957, c. 863, s. 1.)

§ 160-432. Purposes of expenditure.—Subject to the provisions of the ordinance establishing the capital reserve fund, expenditure of moneys in the fund may be made at any time, or from time to time, in the manner hereinafter provided, for all or part of the cost of the following purposes:

(1) Construction, reconstruction or enlargement of and extensions to systems, plants, works and properties used or useful in connection with the obtaining of a water supply and the collection, treatment, and disposal of water for public and private uses;

(2) Construction, reconstruction or enlargement of and extensions to systems, plants, works and properties used or useful in connection with the collection, treatment, and disposal of sewage, waste and storm water;

(3) Construction, reconstruction or enlargement of and extensions to sys-

tems, plants, works and properties used or useful in connection with the generation, production, transmission, and distribution of gas (natural, artificial or mixed) or electric energy for lighting, heating, and power for public and private uses;

(4) Construction, reconstruction or enlargement of plants used or useful in connection with the collection or disposal of ashes, garbage, or refuse other than sewage;

(5) Constructing or reconstructing roads, streets, highways, bridges or culverts, which may include contemporaneous construction or reconstruction of sidewalks, curbs and gutters and necessary grading and drainage;

(6) The elimination of any grade crossing or crossings and improvements incident thereto;

(7) Fire fighting equipment and apparatus and fire and police alarm systems;

(8) Cemeteries;

(9) Buildings used in housing departments of the municipal government.

All of the foregoing purposes are hereby declared to be necessary expenses and the cost thereof shall be deemed to include land, easements, rights in land, water rights, contract rights, franchises, and equipment used or useful in connection with said purposes. (1957, c. 863, s. 1.)

§ 160-433. Withdrawals. — The governing body shall by resolution authorize withdrawal of moneys in the capital reserve fund. The resolution shall specify the amount of each withdrawal and the purpose or purposes for which such amount shall be expended. In the event that changed conditions make it necessary to use all or part of such fund for some purpose authorized by § 160-432, but not specified in the ordinance establishing the fund the governing body may amend the ordinance to include such other purpose. Such amendment shall declare that changed conditions make it necessary to use all or part of the fund for such other purpose and shall set forth facts which, in the judgment of the governing body, are necessary to show that changed conditions do exist. (1957, c. 863, s. 1.)

§ 160-434. Limitation.—It shall be unlawful to withdraw or expend or to cause to be withdrawn and expended, all or any part of a capital reserve fund for any purpose other than the purposes authorized by this article. (1957, c. 863, s. 1.)

§§ 160-435 to 160-444: Repealed by Session Laws 1957, c. 863, s. 1.

SUBCHAPTER VI. EXTENSION OF CORPORATE LIMITS.

Article 36.

Extension of Corporate Limits.

Part 1. In General.

§ 160-445. Procedure for adoption of ordinance extending limits; effect of adoption when no election required.

Cross Reference. — As to sanitary districts and municipalities extending boundaries and corporate limits simultaneously, see § 130-56.1.

Editor's Note.—

The provisions of this part, that is, §§ 160-445 to 160-453 with the exception of § 160-452, are repealed, effective July 1, 1961, as to certain counties by Session Laws 1959, chapters 1009 and 1010, codified as parts 2 and 3 of this article. See §§ 160-453.11 and 160-453.23. The provisions of this part, however, are continued with respect to certain other counties by the aforesaid Session Laws 1959. See §§ 160-453.12 and 160-453.24.

The word "municipality" was intended to mean cities and towns and is limited to that meaning. This is apparent from the caption of the act inserting this article and its preamble. State v. Lenoir, 249 N. C. 96, 105 S. E. (2d) 411 (1958).

A sanitary district is not a "municipality" within the meaning of this section so as to preclude a municipality from annexing territory within a sanitary district. State v. Lenoir, 249 N. C. 96, 105 S. E. (2d) 411 (1958).

A sanitary district has no right to challenge the enlargement of the boundaries of a municipal corporation to include part of the territory of the sanitary district, since the mere enlargement of the city's boundaries does not appropriate the property of the district or deprive the district of its function of selling water transported through its mains to all its customers living in the districts. State v. Lenoir, 249 N. C. 96, 105 S. E. (2d) 411 (1958).

Cited in Pee Dee Electric Membership Corp. v. Carolina Power & Light Co., 253 N. C. 610, 117 S. E. (2d) 764 (1961).

§ 160-446. Referendum on question of extension.

Attempted Annexation without Election Is Void. — Where, at a meeting of the governing body of a municipality to consider the question of annexing adjacent territory, a petition, requesting a referendum, signed by more than 15% of the qualified voters resident in the area proposed to be annexed, is filed, there can be no annexation of the area unless and until a majority of the qualified voters therein vote in favor thereof in an election called and conducted as prescribed by statute, and in the absence of such election any attempted annexation by ordinance or otherwise would be void. Rheinhardt v. Yancey, 241 N. C. 184, 84 S. E. (2d) 655 (1954).

But Passage of Void Annexation Ordinance Will Not Be Enjoined.—Where an action was instituted to restrain the governing body of a municipality from passing an ordinance annexing certain territory without first holding an election as required by this section, demurrer to the complaint should have been sustained, since equity will not enjoin the passage of the ordinance even though it would be void. Rheinhardt v. Yancey, 241 N. C. 184, 84 S. E. (2d) 655 (1954).

§ 160-448. Action required by county board of elections; publication of resolution as to election; costs of election.

Cited in Rheinhardt v. Yancey, 241 N. C. 184, 84 S. E. (2d) 655 (1954).

§ 160-449. Ballots; effect of majority vote for extension.

Local Modification.—Wake: 1955, c. 177.

Applied in Thomasson v. Smith, 249 N. C. 84, 105 S. E. (2d) 416 (1958).

Cited in Rheinhardt v. Yancey, 241 N. C. 184, 84 S. E. (2d) 655 (1954); Pee Dee Electric Membership Corp. v. Carolina Power & Light Co., 253 N. C. 610, 117 S. E. (2d) 764 (1961).

§ 160-452. Annexation by petition.—(a) The governing board of any municipality may annex by ordinance any area contiguous to its boundaries upon presentation to the governing board of a petition signed by the owners of all the real property located within such area. The petition shall be signed by each owner of real property in the area and shall contain the address of each such owner.

(b) The petition shall be prepared in substantially the following form:

DATE:

To the ..... (name of governing board) of the (City or Town) of .....

1. We the undersigned owners of real property respectfully request that the area described in paragraph 2 below be annexed to the (City or Town) of .....

2. The area to be annexed is contiguous to the (City or Town) of ..... and the boundaries of such territory are as follows: .....

(c) Upon receipt of the petition, the municipal governing board shall cause the clerk of the municipality to investigate the sufficiency thereof and to certify the result of his investigation. Upon receipt of the certification, the municipal

governing board shall fix a date for a public hearing on the question of annexation, and shall cause notice of the public hearing to be published once in a newspaper having general circulation in the municipality at least ten days prior to the date of the public hearing; provided, if there be no such paper, the governing board shall have notices posted in three or more public places within the area to be annexed and three or more public places within the municipality.

(d) At the public hearing all persons owning property in the area to be annexed who allege an error in the petition shall be given an opportunity to be heard, as well as residents of the municipality who question the necessity for annexation. The governing board shall then determine whether the petition meets the requirements of this section. Upon a finding that the petition meets the requirements of this section, the governing board shall have authority to pass an ordinance annexing the territory described in the petition. The governing board shall have authority to make the annexing ordinance effective immediately or on any specified date within six months from the date of passage of the ordinance.

(e) From and after the effective date of the annexation ordinance, the territory and its citizens and property shall be subject to all debts, laws, ordinances and regulations in force in such municipality and shall be entitled to the same privileges and benefits as other parts of such municipality. The newly annexed territory shall be subject to municipal taxes levied for the fiscal year following the date of annexation. If the effective date of annexation falls between January 1 and June 30, the municipality shall, for purposes of levying taxes for the fiscal year beginning July 1 following the date of annexation, obtain from the county a record of property in the area being annexed which was listed for taxation as of said January 1. If the effective date of annexation falls between June 1 and June 30, and the effective date of the privilege license tax ordinance of the annexing municipality is June 1, then businesses in the area to be annexed shall be liable for taxes imposed in such ordinance from and after the effective date of annexation.

(f) For purposes of this section, an area shall be deemed "contiguous" if, at the time the petition is submitted, such area either abuts directly on the municipal boundary or is separated from the municipal boundary by a street or street right of way, a creek or river, or the right of way of a railroad or other public service corporation, lands owned by the municipality or some other political subdivision, or lands owned by the State of North Carolina. In describing the area to be annexed in the annexation ordinance, the municipal governing board may include within the description any territory described in this subsection which separates the municipal boundary from the area petitioning for annexation. (1947, c. 725, s. 8; 1959, c. 713.)

Local Modification. — City of Greensboro: 1959, c. 1137, s. 18; town of Atlantic Beach: 1959, c. 395.

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

§ 160-453. Powers granted supplemental. — The powers granted by this article shall be supplemental and additional to powers conferred by any other law, and shall not be regarded as in derogation of any powers now existing: Provided, that this article shall not apply to any town or municipality in Dare County. (1947, c. 725, s. 9; 1951, c. 824; 1959, c. 427.)

Cross Reference. — As to sanitary districts and municipalities extending boundaries and corporate limits simultaneously, see § 130-56.1.

Editor's Note.—

The 1959 amendment deleted New Hanover County from the proviso thereby making this article applicable to the county.

Part 2. Municipalities of Less than 5,000.

§ **160-453.1. Declaration of policy.**—It is hereby declared as a matter of State policy:

(1) That sound urban development is essential to the continued economic development of North Carolina;

(2) That municipalities are created to provide the governmental services essential for sound urban development and for the protection of health, safety and welfare in areas being intensively used for residential, commercial, industrial, institutional and government purposes or in areas undergoing such development;

(3) That municipal boundaries should be extended, in accordance with legislative standards applicable throughout the State, to include such areas and to provide the high quality of governmental services needed therein for the public health, safety and welfare; and

(4) That new urban development in and around municipalities having a population of less than five thousand (5,000) persons tends to be concentrated close to the municipal boundary rather than being scattered and dispersed as in the vicinity of larger municipalities, so that the legislative standards governing annexation by smaller municipalities can be simpler than those for large municipalities and still attain the objectives set forth in this section;

(5) That areas annexed to municipalities in accordance with such uniform legislative standards should receive the services provided by the annexing municipality as soon as possible following annexation. (1959, c. 1010, s. 1.)

Annexation of territory by a municipality is a legislative and not a judicial act, and in the absence of statutory directive, the court, on appeal from an annexation ordinance, cannot divide the territory and annex a part thereof and refuse to annex the remainder. Huntley v. Potter, 255 N. C. 619, 122 S. E. (2d) 681 (1961).

Municipality Need Not Acquire Private Water and Sewer Systems.—An annexation ordinance may not be attacked on the ground that the municipality has no plans to purchase or finance the purchase of private water and sewer systems existing in the annexed territory, since the mere existence of such private systems within the territory to be annexed does not compel the city to purchase or acquire ownership of them. Huntley v. Potter, 255 N. C. 619, 122 S. E. (2d) 681 (1961).

Mere Extension of Limits Does Not Appropriate Such Systems.—Where a municipality annexes territory served by private water or sewer lines, the owners of such lines may not recover the value thereof from the municipality in the absence of provisions for payment by contract or ordinance unless the municipality appropriates such private lines and controls them as proprietor, and the mere extension of the city limits to include such lines or the voluntary maintenance of such lines by the city does not amount to an appropriation of such lines by the municipality. Huntley v. Potter, 255 N. C. 619, 122 S. E. (2d) 681 (1961).

§ **160-453.2. Authority to annex.**—The governing board of any municipality having a population of less than five thousand (5,000) persons according to the last federal decennial census may extend the corporate limits of such municipality under the procedure set forth in this part. (1959, c. 1010, s. 2.)

The annexation of territory to a municipal corporation is a legislative function which may not be delegated to a court. Huntley v. Potter, 255 N. C. 619, 122 S. E. (2d) 681 (1961).

Municipality's Discretion Limited to Method of Annexation.—The only discretion given to the governing boards of municipalities is the permission and discretionary right to use the new method of annexation set out in this article, provided such boards conform to the procedure and meet the requirements set out in this part as a condition precedent to the right to annex. Huntley v. Potter, 255 N. C. 619, 122 S. E. (2d) 681 (1961).

§ **160-453.3. Prerequisites to annexation; ability to serve; report and plans.** — A municipality exercising authority under this part shall make

plans for the extension of services to the area proposed to be annexed and shall, prior to the public hearing provided for in § 160-453.5, prepare a report setting forth such plans to provide services to such area. The report shall include:

(1) A map or maps of the municipality and adjacent territory to show the following information:
   a. The present and proposed boundaries of the municipality.
   b. The proposed extensions of water mains and sewer outfalls to serve the annexed area, if such utilities are operated by the municipality.

(2) A statement showing that the area to be annexed meets the requirements of § 160-453.4.

(3) A statement setting forth the plans of the municipality for extending to the area to be annexed each major municipal service performed within the municipality at the time of annexation. Specifically, such plans shall:
   a. Provide for extending police protection, fire protection, garbage collection and street maintenance services to the area to be annexed on the date of annexation on substantially the same basis and in the same manner as such services are provided within the rest of the municipality prior to annexation. If a water distribution system is not available in the area to be annexed, the plans must call for reasonably effective fire protection services until such time as water lines are made available in such area under existing municipal policies for the extension of water lines.
   b. Provide for extension of water mains and sewer lines into the area to be annexed so that property owners in the area to be annexed will be able to secure public water and sewer services according to the policies in effect in such municipality for extending water and sewer lines to individual lots or subdivisions. If the municipality must, at its own expense, extend water and/or sewer mains into the area to be annexed before property owners in the area can, according to municipal policies, make such connection to such lines, then the plans must call for contracts to be let and construction to begin on such lines within one year following the effective date of annexation.
   c. Set forth the method under which the municipality plans to finance extension of services into the area to be annexed. (1959, c. 1010, s. 3.)

Local Modification.—Town of Beaufort: 1963, c. 1189.

The municipality, as a condition precedent to the right to annex, must file a report showing on its face strict compliance with statutory requirements, and upon review in superior court has the burden of sustaining the regularity, adequacy, veracity and validity of the report and annexation ordinance by competent evidence. Huntley v. Potter, 255 N. C. 619, 122 S. E. (2d) 681 (1961).

Record Sustaining Finding of Compliance. — Where the record discloses the plans of the municipality for extending municipal services to the area annexed, itemizing the cost, and that such cost would be obtained from current taxes, the record supports a finding by the court of compliance with this section, and such finding will not be disturbed in the absence of evidence to the contrary of sufficient weight to overcome the prima facie presumption of regularity. Huntley v. Potter, 255 N. C. 619, 122 S. E. (2d) 681 (1961).

§ 160-453.4. Character of area to be annexed. — (a) A municipal governing board may extend the municipal corporate limits to include any area which meets the general standards of subsection (b), and which meets the requirements of subsection (c).

(b) The total area to be annexed must meet the following standards:

(1) It must be adjacent or contiguous to the municipality's boundaries at the time the annexation proceeding is begun.

(2) At least one eighth of the aggregate external boundaries of the area must coincide with the municipal boundary.

(3) No part of the area shall be included within the boundary of another incorporated municipality.

(c) The area to be annexed must be developed for urban purposes. An area developed for urban purposes is defined as any area which is so developed that at least sixty per cent (60%) of the total number of lots and tracts in the area at the time of annexation are used for residential, commercial, industrial, institutional or governmental purposes, and is subdivided into lots and tracts such that at least sixty per cent (60%) of the total acreage, not counting the acreage used at the time of annexation for commercial, industrial, governmental or institutional purposes, consists of lots and tracts five acres or less in size.

(d) In fixing new municipal boundaries, a municipal governing board shall, wherever practical, use natural topographic features such as ridge lines and streams and creeks as boundaries, and if a street is used as a boundary, include within the municipality developed land on both sides of the street. (1959, c. 1010, s. 4.)

Annexation Ordinance Statement Insufficient without Specific Findings. — A statement in an annexation ordinance that the area to be annexed is in the process of being developed for urban purposes and that more than 60 per cent of the area is in use for residential, commercial, industrial, governmental or institutional purposes, and at least 60 per cent of the total acreage, not counting the acreage so used, consists of lots and tracts five acres or less in size, does not meet the requirements of this section, the statement being a mere conclusion without specific findings or showing on the face of the record as to the method used by the municipality in making its calculations or any showing as to the present use of any particular tract. Huntley v. Potter, 255 N. C. 619, 122 S. E. (2d) 681 (1961).

§ 160-453.5. Procedure for annexation.—(a) Notice of Intent.—Any municipal governing board desiring to annex territory under the provisions of this part shall first pass a resolution stating the intent of the municipality to consider annexation. Such resolution shall describe the boundaries of the area under consideration and fix a date for a public hearing on the question of annexation, the date for such public hearing to be not less than thirty days and not more than sixty days following passage of the resolution.

(b) Notice of Public Hearing.—The notice of public hearing shall

(1) Fix the date, hour and place of the public hearing.

(2) Describe clearly the boundaries of the area under consideration.

(3) State that the report required in § 160-453.3 will be available at the office of the municipal clerk at least fourteen days prior to the date of the public hearing.

Such notice shall be given by publication in a newspaper having general circulation in the municipality once a week for at least four successive weeks prior to the date of the hearing. The period from the date of the first publication to the date of the last publication, both dates inclusive, shall be not less than twenty-two days including Sundays, and the date of the last publication shall be not more than seven days preceding the date of public hearing. If there be no such newspaper, the municipality shall post the notice in at least five public places within the municipality and at least five public places in the area to be annexed for thirty days prior to the date of public hearing.

(c) Action Prior to Hearing.—At least fourteen days before the date of the public hearing, the governing board shall approve the report provided for in § 160-453.3, and shall make it available to the public at the office of the municipal clerk. In addition, the municipality may prepare a summary of the full report for public distribution.

(d) Public Hearing.—At the public hearing a representative of the municipality shall first make an explanation of the report required in § 160-453.3. Following such explanation, all persons resident or owning property in the territory described in the notice of public hearing, and all residents of the municipality, shall be given an opportunity to be heard.

(e) Passage of the Annexation Ordinance.—The municipal governing board shall take into consideration facts presented at the public hearing and shall have authority to amend the report required by § 160-453.3 to make changes in the plans for serving the area proposed to be annexed so long as such changes meet the requirements of § 160-453.3. At any regular or special meeting held no sooner than the seventh day following the public hearing and not later than sixty days following such public hearing, the governing board shall have authority to adopt an ordinance extending the corporate limits of the municipality to include all, or such part, of the area described in the notice of public hearing which meets the requirements of § 160-453.4 and which the governing board has concluded should be annexed. The ordinance shall:

(1) Contain specific findings showing that the area to be annexed meets the requirements of § 160-453.4. The external boundaries of the area to be annexed shall be described by metes and bounds. In showing the application of § 160-453.4 (c) and (d) to the area, the governing board may refer to boundaries set forth on a map of the area and incorporate same by reference as a part of the ordinance.

(2) A statement of the intent of the municipality to provide services to the area being annexed as set forth in the report required by § 160-453.3.

(3) A specific finding that on the effective date of annexation the municipality will have funds appropriated in sufficient amount to finance construction of any water and sewer lines found necessary in the report required by § 160-453.3 to extend the basic water and/or sewer system of the municipality into the area to be annexed, or that on the effective date of annexation the municipality will have authority to issue bonds in an amount sufficient to finance such construction. If authority to issue such bonds must be secured from the electorate of the municipality prior to the effective date of annexation, then the effective date of annexation shall be no earlier than the day following the statement of the successful result of the bond election.

(4) Fix the effective date of annexation. The effective date of annexation may be fixed for any date within twelve months from the date of passage of the ordinance.

(f) Effect of Annexation Ordinance.—From and after the effective date of the annexation ordinance, the territory and its citizens and property shall be subject to all debts, laws, ordinances and regulations in force in such municipality and shall be entitled to the same privileges and benefits as other parts of such municipality. The newly annexed territory shall be subject to municipal taxes levied for the fiscal year following the effective date of annexation. If the effective date of annexation falls between January 1 and June 30, the municipality shall, for purposes of levying taxes for the fiscal year beginning July 1 following the date of annexation, obtain from the county a record of property in the area being annexed which was listed for taxation as of said January 1. If the effective date of annexation falls between June 1 and June 30, and the effective date of the privilege license tax ordinance of the annexing municipality is June 1, then businesses in the area to be annexed shall be liable for taxes imposed in such ordinance from and after the effective date of annexation.

(g) Simultaneous Annexation Proceedings.—If a municipality is considering the annexation of two or more areas which are all adjacent to the municipal boundary but are not adjacent to one another, it may undertake simultaneous proceedings under authority of this part for the annexation of such areas.

(h) Remedies for Failure to Provide Services.—If, not earlier than one year from the effective date of annexation, and not later than fifteen months from the effective date of annexation, any person owning property in the annexed territory shall believe that the municipality has not followed through on its service plans adopted under the provisions of §§ 160-453.3 (3) and 160-453.5 (e), such person may apply for a writ of mandamus under the provisions of article 40, chapter 1 of the General Statutes. Relief may be granted by the judge of superior court

(1) If the municipality has not provided the services set forth in its plan submitted under the provisions of § 160-453.3 (3) a on substantially the same basis and in the same manner as such services were provided within the rest of the municipality prior to the effective date of annexation, and

(2) If at the time the writ is sought such services set forth in the plan submitted under the provisions of § 160-453.3 (3) a are still being provided on substantially the same basis and in the same manner as on the date of annexation of the municipality.

Relief may also be granted by the judge of superior court

(1) If the plans submitted under the provisions of § 160-453.3 (3) c require the construction of major trunk water mains and sewer outfall lines and

(2) If contracts for such construction have not yet been let.

If a unit is issued, costs in the action, including a reasonable attorney's fee for such aggrieved person, shall be charged to the municipality. (1959, c. 1010, s. 5.)

Applied in Huntley v. Potter, 255 N. C. 619, 122 S. E. (2d) 681 (1961).

Cited in Duke Power Co. v. Blue Ridge Electric Membership Corp., 253 N. C. 596, 117 S. E. (2d) 812 (1961).

§ 160-453.6. Appeal.—(a) Within thirty days following the passage of an annexation ordinance under authority of this part, any person owning property in the annexed territory who shall believe that he will suffer material injury by reason of the failure of the municipal governing board to comply with the procedure set forth in this part or to meet the requirements set forth in § 160-453.4 as they apply to his property may file a petition in the superior court of the county in which the municipality is located seeking review of the action of the governing board.

(b) Such petition shall explicitly state what exceptions are taken to the action of the governing board and what relief the petitioner seeks. Within five days after the petition is filed with the court, the person seeking review shall serve copies of the petition by registered mail, return receipt requested, upon the municipality.

(c) Within fifteen days after receipt of the copy of the petition for review, or within such additional time as the court may allow, the municipality shall transmit to the reviewing court

(1) A transcript of the portions of the municipal journal or minute book in which the procedure for annexation has been set forth and

(2) A copy of the report setting forth the plans for extending services to the annexed area as required in § 160-453.3.

(d) If two or more petitions for review are submitted to the court, the court may consolidate all such petitions for review at a single hearing, and the municipality shall be required to submit only one set of minutes and one report as required in subsection (c).

(e) At any time before or during the review proceeding, any petitioner or petitioners may apply to the reviewing court for an order staying the operation of the annexation ordinance pending the outcome of the review. The court may grant or deny the stay in its discretion upon such terms as it deems proper, and

it may permit annexation of any part of the area described in the ordinance concerning which no question for review has been raised.

(f) The court shall fix the date for review of annexation proceedings under this chapter, which review date shall preferably be within thirty days following the last day for receiving petitions to the end that review shall be expeditious and without unnecessary delays. The review shall be conducted by the court without a jury. The court may hear oral arguments and receive written briefs, and may take evidence intended to show either

(1) That the statutory procedure was not followed or

(2) That the provisions of § 160-453.3 were not met, or

(3) That the provisions of § 160-453.4 have not been met.

(g) The court may affirm the action of the governing board without change, or it may

(1) Remand the ordinance to the municipal governing board for further proceedings if procedural irregularities are found to have materially prejudiced the substantive rights of any of the petitioners.

(2) Remand the ordinance to the municipal governing board for amendment of the boundaries to conform to the provisions of § 160-453.4 if it finds that the provisions of § 160-453.4 have not been met; provided, that the court cannot remand the ordinance to the municipal governing board with directions to add area to the municipality which was not included in the notice of public hearing and not provided for in plans for service.

(3) Remand the report to the municipal governing board for amendment of the plans for providing services to the end that the provisions of § 160-453.3 are satisfied.

If any municipality shall fail to take action in accordance with the court's instructions upon remand within three months from receipt of such instructions, the annexation proceeding shall be deemed null and void.

(h) Any party to the review proceedings, including the municipality, 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 in its final determination, or a stay of the annexation ordinance, whichever shall be appropriate, pending the outcome of the appeal to the Supreme Court; provided, that the superior court may, with the agreement of the municipality, permit annexation to be effective with respect to any part of the area concerning which no appeal is being made and which can be incorporated into the city without regard to any part of the area concerning which an appeal is being made.

(i) If part or all of the area annexed under the terms of an annexation ordinance is the subject of an appeal to the superior or Supreme Court on the effective date of the ordinance, then the ordinance shall be deemed amended to make the effective date with respect to such area the date of the final judgment of the superior or Supreme Court, whichever is appropriate, or the date the municipal governing board completes action to make the ordinance conform to the court's instructions in the event of remand. (1959, c. 1010, s. 6.)

Record Must Show Prima Facie Compliance. — Upon review in the superior court of a municipal annexation ordinance enacted pursuant to this article, the record of the proceedings, including the report and annexation ordinance, must show prima facie complete and substantial compliance with this article as a condition precedent to the right of the municipality to annex the territory. Huntley v. Potter, 255 N. C. 619, 122 S. E. (2d) 681 (1961); In re Annexation Ordinance, 255 N. C. 633, 122 S. E. (2d) 690 (1961).

Which Puts Burden on Petitioners to Prove Prejudicial Irregularity. — Where, upon review in the superior court of an annexation ordinance, the record of the proceeding shows prima facie that there has been substantial compliance with the requirements and provisions of the annexation statute, the burden is upon petitioners to show by competent evidence failure

on the part of the municipality to comply with the statutory requirements as a matter of fact, or irregularity in the proceedings which materially prejudices the substantive rights of petitioners. Huntley v. Potter, 255 N. C. 619, 122 S. E. (2d) 681 (1961); In re Annexation Ordinance, 255 N. C. 633, 122 S. E. (2d) 690 (1961).

The burden is upon petitioners in such case by reason of the presumption that public officials will discharge their duties in good faith and exercise their powers in accord wth the spirit and purpose of the law. Huntley v. Potter, 255 N. C. 619, 122 S. E. (2d) 681 (1961).

Court May Not Amend Record. — The superior court itself is without authority to amend the report, ordinance or other part of the record. This is true even if evidence is presented which justifies amendment. Huntley v. Potter, 255 N. C. 619, 122 S. E. (2d) 681 (1961).

But Must Remand Where Compliance Not Shown by Record.—Under this section, if the record of annexation proceedings on its face fails to show substantial compliance with any essential provision of the article, the superior court upon review must remand to the governing board for amendment with respect to such noncompliance. Huntley v. Potter, 255 N. C. 619, 122 S. E. (2d) 681 (1961).

When Court May Permit Annexation of Part of Area. — The superior court may permit, under subsection (h) of this section, an annexation ordinance to be effective with respect to a part of the area proposed only when there is no appeal in regard to such part and the municipality agrees to the order for such partial annexation. Huntley v. Potter, 255 N. C. 619, 122 S. E. (2d) 681 (1961).

Where an order is issued restraining the operation of an annexation ordinance as to the entire area pending review, subsection (e) of this section has no application, since the statute permits the court to approve the annexation of a part of the proposed area only when no question for review has been raised as to such part. Huntley v. Potter, 255 N. C. 619, 122 S. E. (2d) 681 (1961).

§ 160-453.7. Annexation recorded.—Whenever the limits of a municipality are enlarged in accordance with the provisions of this part, it shall be the duty of the mayor of the municipality to cause an accurate map of such annexed territory, together with a copy of the ordinance duly certified, to be recorded in the office of the register of deeds of the county or counties in which such territory is situated and in the office of the Secretary of State. (1959, c. 1010, s. 7.)

§ 160-453.8. Authorized expenditures.—Municipalities initiating annexations under the provisions of this part are authorized to make expenditures for surveys required to describe the property under consideration or for any other purpose necessary to plan for the study and/or annexation of unincorporated territory adjacent to the municipality. In addition, following final passage of the annexation ordinance, the annexing municipality shall have authority to proceed with expenditures for construction of water and sewer lines and other capital facilities and for any other purpose calculated to bring services into the annexed area in a more effective and expeditious manner prior to the effective date of annexation. (1959, c. 1010, s. 8.)

§ 160-453.9. Definitions.—The following terms where used in this part shall have the following meanings, except where the context clearly indicates a different meaning:

(1) "Contiguous area" shall mean any area which, at the time annexation procedures are initiated, either abuts directly on the municipal boundary or is separated from the municipal boundary by a street or street right of way, a creek or river, the right of way of a railroad or other public service corporation, lands owned by the municipality or some other political subdivision, or lands owned by the State of North Carolina.

(2) "Used for residential purposes" shall mean any lot or tract five acres or less in size on which is constructed a habitable dwelling unit. (1959, c. 1010, s. 9.)

Quoted in Huntley v. Potter, 255 N. C. 619, 122 S. E. (2d) 681 (1961).

§ 160-453.10. Land estimates.—In determining degree of land subdivision for purposes of meeting the requirements of § 160-453.4, the municipality shall use methods calculated to provide reasonably accurate results. In determining whether the standards set forth in § 160-453.4 have been met on appeal to the superior court under § 160-453.6, the reviewing court shall accept the estimates of the municipality:

(1) As to total area if the estimate is based on an actual survey, or on county tax maps or records, or on aerial photographs, or on some other reasonably reliable map used for official purposes by a governmental agency unless the petitioners on appeal demonstrate that such estimates are in error in the amount of five per cent (5%) or more.

(2) As to degree of land subdivision, if the estimates are based on an actual survey, or on county tax maps or records, or on aerial photographs, or on some other reasonably reliable source, unless the petitioners on appeal show that such estimates are in error in the amount of five per cent (5%) or more. (1959, c. 1010, s. 10.)

Applied in Huntley v. Potter, 255 N. C. 619, 122 S. E. (2d) 681 (1961).

§ 160-453.11. Effect of part on other laws.—From and after July 1, 1959, this part shall be in full force and effect with respect to all municipalities having a population of less than five thousand (5,000) persons according to the last preceding federal decennial census. The provisions of article 36 of chapter 160 of the General Statutes of North Carolina shall remain in full force and effect with respect to such municipalities as an alternative procedure until June 30, 1962. From and after July 1, 1962, all the provisions of article 36 of chapter 160 of the General Statutes of North Carolina, with the exception of § 160-452 as it exists at the time of the passage of this part or as it may be amended at this session of the General Assembly, shall be repealed. Insofar as the provisions of this part are inconsistent with the provisions of any other law, the provisions of this part shall be controlling. (1959, c. 1010, s. 11; 1961, c. 655, s. 1.)

Editor's Note. — The 1961 amendment changed "1961," appearing twice in line seven, to "1962."

§ 160-453.12. Counties excepted from part; part 1 continued for such counties.—The provisions of this part shall not apply to the following counties: Alleghany, Cumberland, Edgecombe, Franklin, Halifax, Harnett, Iredell, Nash, Pender, Perquimans, Person and Randolph, provided the provisions of this part shall apply to the town of Battleboro in Edgecombe and Nash counties.

Notwithstanding any other provisions of this part, part 1 of article 36 of chapter 160 of the General Statutes of North Carolina and specifically G. S. 160-452, as the same may be rewritten or amended, shall remain in full force and effect as to the counties herein named. (1959, c. 1010, s. 12; 1961, c. 1081.)

Editor's Note.—The 1961 amendment added at the end of the first paragraph the words "provided the provisions of this part shall apply to the town of Battleboro in Edgecombe and Nash counties."

Part 3. Municipalities of 5,000 or More.

§ 160-453.13. Declaration of policy.—It is hereby declared as a matter of State policy:

(1) That sound urban development is essential to the continued economic development of North Carolina;

(2) That municipalities are created to provide the governmental services essential for sound urban development and for the protection of

health, safety and welfare in areas being intensively used for residential, commercial, industrial, institutional and governmental purposes or in areas undergoing such development;

(3) That municipal boundaries should be extended in accordance with legislative standards applicable throughout the State, to include such areas and to provide the high quality of governmental services needed therein for the public health, safety and welfare;

(4) That new urban development in and around municipalities having a population of five thousand (5,000) or more persons is more scattered than in and around smaller municipalities, and that such larger municipalities have greater difficulty in expanding municipal utility systems and other service facilities to serve such scattered development, so that the legislative standards governing annexation by larger municipalities must take these facts into account if the objectives set forth in this section are to be attained;

(5) That areas annexed to municipalities in accordance with such uniform legislative standards should receive the services provided by the annexing municipality as soon as possible following annexation. (1959, c. 1009, s. 1.)

Quoted in In re Annexation Ordinances, 253 N. C. 637 117 S. E. (2d) 795 (1961).

§ 160-453.14. Authority to annex.—The governing board of any municipality having a population of five thousand (5,000) or more persons according to the last federal decennial census may extend the corporate limits of such municipality under the procedure set forth in this part. (1959, c. 1009, s. 2.)

This section is constitutional. In re Annexation Ordinances, 253 N. C. 637, 117 S. E. (2d) 795 (1961).

No Discretion Delegated to Municipalities.—It is clear that by the enactment of part 3 of this article the General Assembly did not delegate to the municipalities of the State having a population of 5,000 or more any discretion with respect to the provisions of the law. The guiding standards and requirements of the act are set out in great detail. The only discretion given to the governing boards of such municipalities is the permissive or discretionary right to use this new method of annexation, provided such boards conform to the procedure and meet the requirements set out in the act as a condition precedent to the right to annex. In re Annexation Ordinances, 253 N. C. 637, 117 S. E. (2d) 795 (1961).

§ 160-453.15. Prerequisites to annexation; ability to serve; report and plans.—A municipality exercising authority under this part shall make plans for the extension of services to the area proposed to be annexed and shall, prior to the public hearing provided for in § 160-453.17, prepare a report setting forth such plans to provide services to such area. The report shall include:

(1) A map or maps of the municipality and adjacent territory to show the following information:

a. The present and proposed boundaries of the municipality.

b. The present major trunk water mains and sewer interceptors and outfalls, and the proposed extensions of such mains and outfalls as required in subdivision (3) of this section.

c. The general land use pattern in the area to be annexed.

(2) A statement showing that the area to be annexed meets the requirements of § 160-453.16.

(3) A statement setting forth the plans of the municipality for extending to the area to be annexed each major municipal service performed within the municipality at the time of annexation. Specifically, such plans shall:

a. Provide for extending police protection, fire protection, garbage collection and street maintenance services to the area to be

annexed on the date of annexation on substantially the same basis and in the same manner as such services are provided within the rest of the municipality prior to annexation. If a water distribution system is not available in the area to be annexed, the plans must call for reasonably effective fire protection services until such time as water lines are made available in such area under existing municipal policies for the extension of water lines.

b. Provide for extension of major trunk water mains and sewer outfall lines into the area to be annexed so that when such lines are constructed, property owners in the area to be annexed will be able to secure public water and sewer service, according to the policies in effect in such municipality for extending water and sewer lines to individual lots or subdivisions.

c. If extension of major trunk water mains and sewer outfall lines into the area to be annexed is necessary, set forth a proposed timetable for construction of such mains and outfalls as soon as possible following the effective date of annexation. In any event, the plans shall call for contracts to be let and construction to begin within twelve months following the effective date of annexation.

d. Set forth the method under which the municipality plans to finance extension of services into the area to be annexed. (1959, c. 1009, s. 3.)

Plans for Extension of Services Must Be Made.—The requirement of plans for extension to the area to be annexed of all major municipal services performed within the municipality at the time of annexation is a condition precedent to annexation. In re Annexation Ordinance, 255 N. C. 633, 122 S. E. (2d) 690 (1961).

And City May Not Delegate Duty of Extending Services.—The city must furnish major municipal services to areas annexed as provided by parts 2 and 3 of this article. The performance of this duty may not be made to depend upon a doubtful contingency, and may not be delegated to others by the city so as to relieve the city of the duty. If other parties are obligated to the city to perform such duty, the city must enforce the obligation directly against such parties and may not be otherwise relieved of its primary duty to the area which it seeks to make a part of the city for all other purposes. In re Annexation Ordinance, 255 N. C. 633, 122 S. E. (2d) 690 (1961).

But Plans May Provide for Only Needed Services.—Plans for extension of services may, of course, take into consideration all circumstances and provide only for services if and when needed. In re Annexation Ordinance, 255 N. C. 633, 122 S. E. (2d) 690 (1961).

Thus, City Must Plan to Maintain Streets.—So far as an annexation proceeding is concerned, the primary duty of street maintenance in an area after annexation is upon the city, and it must in good faith make plans to maintain the streets, whether paved or unpaved, "on substantially the same basis and in the same manner as such services are provided within the rest of the municipality prior to annexation." In re Annexation Ordinance, 255 N. C. 633, 122 S. E. (2d) 690 (1961).

And Not Limit Its Duty to Streets Meeting Certain Standards.—A municipality may not limit its obligations to maintain streets in the area to be annexed by it to those streets which are improved to stipulated standards by the landowners and developers in the area. Any obligation of the landowners and developers to the city to improve the streets is a matter between them and the municipality and is irrelevant to the question of the sufficiency of the annexation ordinance to meet the requirements of the statute. In re Annexation Ordinance, 255 N. C. 633, 122 S. E. (2d) 690 (1961).

Even if the property owners and developers in the area to be annexed are under duty to the city to pave all streets and provide storm sewers and curb and gutter, the city is in no position to rely on this obligation in an annexation proceeding and thereby shift to others the duty which this article imposes on the city as a condition precedent to annexation. In re Annexation Ordinance, 255 N. C. 633, 122 S. E. (2d) 690 (1961).

And May Not Limit Water and Sewer Services to Existing Lines. — Where an annexation ordinance contains no plans for the municipality to extend water and sewer services in the area to be annexed beyond those services presently in existence in the area unless the water and sewer lines are extended by landowners and developers in the area, the ordinance fails to meet the requirements of subsection (3) b of this section. In re Annexation Ordinance, 255 N. C. 633, 122 S. E. (2d) 690 (1961).

Since Equal Service Is Required.—This article requires that the services be provided on substantially the same basis and in the same manner as such services are provided within the rest of the municipality prior to annexation. When a municipality engages in supplying water to its inhabitants, it owes the duty of equal service to consumers within its corporate limits, as a general rule. In re Annexation Ordinance, 255 N. C. 633, 122 S. E. (2d) 690 (1961).

The cost of water and sewer extensions may be assessed upon the lots or parcels of land abutting directly on lateral mains of water and sewer systems pursuant to §§ 160-241 to 160-248 and 160-255. In re Annexation Ordinance, 255 N. C. 633, 122 S. E. (2d) 690 (1961).

Full Compliance as to Police and Fire Protection Shown.—Record of annexation proceedings held to show prima facie full compliance with this section in regard to extension of police and fire protection to the area to be annexed. In re Annexation Ordinance, 255 N. C. 633, 122 S. E. (2d) 690 (1961).

Cited in Upchurch v. Raleigh, 252 N. C. 676, 114 S. E. (2d) 772 (1960).

§ **160-453.16. Character of area to be annexed.**—(a) A municipal governing board may extend the municipal corporate limits to include any area

(1) Which meets the general standards of subsection (b), and

(2) Every part of which meets the requirements of either subsection (c) or subsection (d).

(b) The total area to be annexed must meet the following standards:

(1) It must be adjacent or contiguous to the municipality's boundaries at the time the annexation proceeding is begun.

(2) At least one eighth of the aggregate external boundaries of the area must coincide with the municipal boundary.

(3) No part of the area shall be included within the boundary of another incorporated municipality.

(c) Part or all of the area to be annexed must be developed for urban purposes. An area developed for urban purposes is defined as any area which meets any one of the following standards:

(1) Has a total resident population equal to at least two persons for each acre of land included within its boundaries; or

(2) Has a total resident population equal to at least one person for each acre of land included within its boundaries, and is subdivided into lots and tracts such that at least sixty per cent (60%) of the total acreage consists of lots and tracts five acres or less in size and such that at least sixty per cent (60%) of the total number of lots and tracts are one acre or less in size; or

(3) Is so developed that at least sixty per cent (60%) of the total number of lots and tracts in the area at the time of annexation are used for residential, commercial, industrial, institutional or governmental purposes, and is subdivided into lots and tracts such that at least sixty per cent (60%) of the total acreage, not counting the acreage used at the time of annexation for commercial, industrial, governmental or institutional purposes, consists of lots and tracts five acres or less in size.

(d) In addition to areas developed for urban purposes, a governing board may include in the area to be annexed any area which does not meet the requirements of subsection (c) if such area either:

(1) Lies between the municipal boundary and an area developed for urban purposes so that the area developed for urban purposes is either not

adjacent to the municipal boundary or cannot be served by the municipality without extending services and/or water and/or sewer lines through such sparsely-developed area; or

(2) Is adjacent, on at least sixty per cent (60%) of its external boundary, to any combination of the municipal boundary and the boundary of an area or areas developed for urban purposes as defined in subsection (c).

The purpose of this subsection is to permit municipal governing boards to extend corporate limits to include all nearby areas developed for urban purposes and where necessary to include areas which at the time of annexation are not yet developed for urban purposes but which constitute necessary land connections between the municipality and areas developed for urban purposes or between two or more areas developed for urban purposes.

(e) In fixing new municipal boundaries, a municipal governing board shall, wherever practical, use natural topographic features such as ridge lines and streams and creeks as boundaries, and if a street is used as a boundary, include within the municipality land on both sides of the street and such outside boundary may not extend more than 200 feet beyond the right of way of the street. (1959, c. 1009, s. 4.)

Inclusion of Undeveloped Tract. — Where the area proposed to be annexed by a municipality, when considered as a whole, meets the requirements of subsections (b) and (c) of this section, the fact that a part of the area is an undeveloped tract which does not comply with the standards set out in statute does not require that such part be excluded from annexation. In re Annexation Ordinance, 255 N. C. 633, 122 S. E. (2d) 690 (1961).

The language of this section simply means that where a developed tract and an undeveloped tract are included in an area to be annexed, and the developed tract complies with subsection (c), but when the undeveloped tract is added, the area as a whole does not so comply, then the undeveloped tract must be excluded unless it complies with one of the requirements of subsection (d). In re Annexation Ordinance, 255 N. C. 633, 122 S. E. (2d) 690 (1961).

Record of annexation proceedings held to show prima facie full compliance with requirements of this section as to the character of the area to be annexed. In re Annexation Ordinance, 255 N. C. 633, 122 S. E. (2d) 690 (1961).

Cited in In re Annexation Ordinances, 253 N. C. 637, 117 S. E. (2d) 795 (1961).

§ 160-453.17. Procedure for annexation. — (a) Notice of Intent. — Any municipal governing board desiring to annex territory under the provisions of this part shall first pass a resolution stating the intent of the municipality to consider annexation. Such resolution shall describe the boundaries of the area under consideration and fix a date for a public hearing on the question of annexation, the date for such public hearing to be not less than thirty days and not more than sixty days following passage of the resolution.

(b) Notice of Public Hearing.—The notice of public hearing shall

(1) Fix the date, hour and place of the public hearing.

(2) Describe clearly the boundaries of the area under consideration.

(3) State that the report required in § 160-453.15 will be available at the office of the municipal clerk at least fourteen days prior to the date of the public hearing.

Such notice shall be given by publication in a newspaper having general circulation in the municipality once a week for at least four successive weeks prior to the date of the hearing. The period from the date of the first publication to the date of the last publication, both dates inclusive, shall be not less than twenty-two days including Sundays, and the date of the last publication shall be not more than seven days preceding the date of public hearing. If there be no such newspaper, the municipality shall post the notice in at least five public places within the municipality and at least five public places in the area to be annexed for thirty days prior to the date of public hearing.

(c) Action Prior to Hearing.—At least fourteen days before the date of the public hearing, the governing board shall approve the report provided for in § 160-453.15, and shall make it available to the public at the office of the municipal clerk. In addition, the municipality may prepare a summary of the full report for public distribution.

(d) Public Hearing.—At the public hearing a representative of the municipality shall first make an explanation of the report required in § 160-453.15. Following such explanation, all persons resident or owning property in the territory described in the notice of public hearing, and all residents of the municipality, shall be given an opportunity to be heard.

(e) Passage of the Annexation Ordinance.—The municipal governing board shall take into consideration facts presented at the public hearing and shall have authority to amend the report required by § 160-453.15 to make changes in the plans for serving the area proposed to be annexed so long as such changes meet the requirements of § 160-453.15. At any regular or special meeting held no sooner than the seventh day following the public hearing and no later than sixty days following such public hearing, the governing board shall have authority to adopt an ordinance extending the corporate limits of the municipality to include all, or such part, of the area described in the notice of public hearing which meets the requirements of § 160-453.16 and which the governing board has concluded should be annexed. The ordinance shall:

(1) Contain specific findings showing that the area to be annexed meets the requirements of § 160-453.16. The external boundaries of the area to be annexed shall be described by metes and bounds. In showing the application of § 160-453.16 (c) and (d) to the area, the governing board may refer to boundaries set forth on a map of the area and incorporate same by reference as a part of the ordinance.

(2) A statement of the intent of the municipality to provide services to the area being annexed as set forth in the report required by § 160-453.-15.

(3) A specific finding that on the effective date of annexation the municipality will have funds appropriated in sufficient amount to finance construction of any major trunk water mains and sewer outfalls found necessary in the report required by § 160-453.15 to extend the basic water and/or sewer system of the municipality into the area to be annexed, or that on the effective date of annexation the municipality will have authority to issue bonds in an amount sufficient to finance such construction. If authority to issue such bonds must be secured from the electorate of the municipality prior to the effective date of annexation, then the effective date of annexation shall be no earlier than the day following the statement of the successful result of the bond election.

(4) Fix the effective date of annexation. The effective date of annexation may be fixed for any date within twelve months from the date of passage of the ordinance.

(f) Effect of Annexation Ordinance.—From and after the effective date of the annexation ordinance, the territory and its citizens and property shall be subject to all debts, laws, ordinances and regulations in force in such municipality and shall be entitled to the same privileges and benefits as other parts of such municipality. The newly annexed territory shall be subject to municipal taxes levied for the fiscal year following the effective date of annexation. Provided that annexed property which is a part of a sanitary district, which has installed water and sewer lines, paid for by the residents of said district, shall not be subject to that part of the municipal taxes levied for debt service for the first five years after the effective date of annexation. If this proviso should be declared by a court of competent jurisdiction to be in violation of any provision of the federal or State Constitution, the same shall not affect the remaining provisions

of this part. If the effective date of annexation falls between January 1 and June 30, the municipality shall, for purposes of levying taxes for the fiscal year beginning July 1 following the date of annexation, obtain from the county a record of property in the area being annexed which was listed for taxation as of said January 1. If the effective date of annexation falls between June 1 and June 30, and the effective date of the privilege license tax ordinance of the annexing municipality is June 1, then businesses in the area to be annexed shall be liable for taxes imposed in such ordinances from and after the effective date of annexation.

(g) Simultaneous Annexation Proceedings.—If a municipality is considering the annexation of two or more areas which are all adjacent to the municipal boundary but are not adjacent to one another, it may undertake simultaneous proceedings under authority of this part for the annexation of such areas.

(h) Remedies for Failure to Provide Services.—If, not earlier than one year from the effective date of annexation, and not later than fifteen months from the effective date of annexation, any person owning property in the annexed territory shall believe that the municipality has not followed through on its service plans adopted under the provisions of §§ 160-453.15 (3) and 160-453.17 (e), such person may apply for a writ of mandamus under the provisions of article 40, chapter 1 of the General Statutes. Relief may be granted by the judge of superior court

(1) If the municipality has not provided the services set forth in its plan submitted under the provisions of § 160-453.15 (3) a on substantially the same basis and in the same manner as such services were provided within the rest of the municipality prior to the effective date of annexation, and

(2) If at the time the writ is sought such services set forth in the plan submitted under the provisions of § 160-453.15 (3) a are still being provided on substantially the same basis and in the same manner as on the date of annexation of the municipality.

Relief may also be granted by the judge of superior court

(1) If the plans submitted under the provisions of § 160-453.15 (3) c require the construction of major trunk water mains and sewer outfall lines and

(2) If contracts for such construction have not yet been let.

If a writ is issued, costs in the action, including a reasonable attorney's fee for such aggrieved person, shall be charged to the municipality. (1959, c. 1009, s. 5.)

Quoted in Upchurch v. Raleigh, 252 N. C. 676, 114 S. E. (2d) 772 (1960).

§ 160-453.18. Appeal.—(a) Within thirty days following the passage of an annexation ordinance under authority of this part, any person owning property in the annexed territory who shall believe that he will suffer material injury by reason of the failure of the municipal governing board to comply with the procedure set forth in this part or to meet the requirements set forth in § 160-453.16 as they apply to his property may file a petition in the superior court of the county in which the municipality is located seeking review of the action of the governing board.

(b) Such petition shall explicitly state what exceptions are taken to the action of the governing board and what relief the petitioner seeks. Within five days after the petition is filed with the court, the person seeking review shall serve copies of the petition by registered mail, return receipt requested, upon the municipality.

(c) Within fifteen days after receipt of the copy of the petition for review, or within such additional time as the court may allow, the municipality shall transmit to the reviewing court

(1) A transcript of the portions of the municipal journal or minute book in which the procedure for annexation has been set forth and

(2) A copy of the report setting forth the plans for extending services to the annexed area as required in § 160-453.15.

(d) If two or more petitions for review are submitted to the court, the court may consolidate all such petitions for review at a single hearing, and the municipality shall be required to submit only one set of minutes and one report as required in subsection (c).

(e) At any time before or during the review proceeding, any petitioner or petitioners may apply to the reviewing court for an order staying the operation of the annexation ordinance pending the outcome of the review. The court may grant or deny the stay in its discretion upon such terms as it deems proper, and it may permit annexation of any part of the area described in the ordinance concerning which no question for review has been raised.

(f) The court shall fix the date for review of annexation proceedings under this chapter, which review date shall preferably be within thirty days following the last day for receiving petitions to the end that review shall be expeditious and without unnecessary delays. The review shall be conducted by the court without a jury. The court may hear oral arguments and receive written briefs, and may take evidence intended to show either

(1) That the statutory procedure was not followed or

(2) That the provisions of § 160-453.15 were not met, or

(3) That the provisions of § 160-453.16 have not been met.

(g) The court may affirm the action of the governing board without change, or it may

(1) Remand the ordinance to the municipal governing board for further proceedings if procedural irregularities are found to have materially prejudiced the substantive rights of any of the petitioners.

(2) Remand the ordinance to the municipal governing board for amendment of the boundaries to conform to the provisions of § 160-453.16 if it finds that the provisions of § 160-453.16 have not been met; provided, that the court cannot remand the ordinance to the municipal governing board with directions to add area to the municipality which was not included in the notice of public hearing and not provided for in plans for service.

(3) Remand the report to the municipal governing board for amendment of the plans for providing services to the end that the provisions of § 160-453.15 are satisfied.

If any municipality shall fail to take action in accordance with the court's instructions upon remand within three months from receipt of such instructions, the annexation proceeding shall be deemed null and void.

(h) Any party to the review proceedings, including the municipality, 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 in its final determination, or a stay of the annexation ordinance, whichever shall be appropriate, pending the outcome of the appeal to the Supreme Court; provided, that the superior court may, with the agreement of the municipality, permit annexation to be effective with respect to any part of the area concerning which no appeal is being made and which can be incorporated into the city without regard to any part of the area concerning which an appeal is being made.

(i) If part or all of the area annexed under the terms of an annexation ordinance is the subject of an appeal to the superior or Supreme Court on the effective date of the ordinance, then the ordinance shall be deemed amended to make the effective date with respect to such area the date of the final judgment of the superior or Supreme Court, whichever is appropriate, or the date the municipal

governing board completes action to make the ordinance conform to the court's instructions in the event of remand. (1959, c. 1009, s. 6.)

Record Must Show Prima Facie Compliance. — Upon review in the superior court of a municipal annexation ordinance enacted pursuant to parts 2 and 3 of this article, the record of the proceedings, including the report and annexation ordinance, must show prima facie complete and substantial compliance with this article as a condition precedent to the right of the municipality to annex the territory. In re Annexation Ordinance, 255 N. C. 633, 122 S. E. (2d) 690 (1961).

Which Puts Burden on Petitioners to Prove Prejudicial Irregularity.—Where an appeal is taken from an annexation ordinance and a petition has been filed requesting review of the annexation proceedings, and the proceedings show prima facie that there has been substantial compliance with the requirements and provisions of this article, the burden is upon petitioners to show by competent evidence failure on the part of the municipality to comply with the statutory requirements as a matter of fact, or irregularity in proceedings which materially prejudice the substantive rights of petitioners. In re Annexation Ordinance, 255 N. C. 633, 122 S. E. (2d) 690 (1961).

§ **160-453.19. Annexation recorded.**—Whenever the limits of a municipality are enlarged in accordance with the provisions of this part, it shall be the duty of the mayor of the municipality to cause an accurate map of such annexed territory, together with a copy of the ordinance duly certified, to be recorded in the office of the register of deeds of the county or counties in which such territory is situated and in the office of the Secretary of State. (1959, c. 1009, s. 7.)

§ **160-453.20. Authorized expenditures.**—Municipalities initiating annexations under the provisions of this part are authorized to make expenditures for surveys required to describe the property under consideration or for any other purpose necessary to plan for the study and/or annexation of unincorporated territory adjacent to the municipality. In addition, following final passage of the annexation ordinance, the annexing municipality shall have authority to proceed with expenditures for construction of water and sewer lines and other capital facilities and for any other purpose calculated to bring services into the annexed area in a more effective and expeditious manner prior to the effective date of annexation. (1959, c. 1009, s. 8.)

§ **160-453.21. Definitions.**—The following terms where used in this part shall have the following meanings, except where the context clearly indicates a different meaning:

(1) "Contiguous area" shall mean any area which, at the time annexation procedures are initiated, either abuts directly on the municipal boundary or is separated from the municipal boundary by a street or street right of way, a creek or river, the right of way of a railroad or other public service corporation, lands owned by the city or some other political subdivision, or lands owned by the State of North Carolina.

(2) "Used for residential purposes" shall mean any lot or tract five acres or less in size on which is constructed a habitable dwelling unit. (1959, c. 1009, s. 9.)

§ **160-453.22. Population and land estimates.**—In determining population and degree of land subdivision for purposes of meeting the requirements of § 160-453.16, the municipality shall use methods calculated to provide reasonably accurate results. In determining whether the standards set forth in § 160-453.16 have been met on appeal to the superior court under § 160-453.18, the reviewing court shall accept the estimates of the municipality:

(1) As to population, if the estimate is based on the number of dwelling units in the area multiplied by the average family size in such area, or in the township or townships of which such area is a part, as de-

termined by the last preceding federal decennial census; or if it is based on a new enumeration carried out under reasonable rules and regulations by the annexing municipality; provided, that the court shall not accept such estimates if the petitioners demonstrate that such estimates are in error in the amount of ten per cent (10%) or more.

(2) As to total area if the estimate is based on an actual survey, or on county tax maps or records, or on aerial photographs, or on some other reasonably reliable map used for official purposes by a governmental agency, unless the petitioners on appeal demonstrate that such estimates are in error in the amount of five per cent (5%) or more.

(3) As to degree of land subdivision, if the estimates are based on an actual survey, or on county tax maps or records, or on aerial photographs, or on some other reasonably reliable source, unless the petitioners on appeal show that such estimates are in error in the amount of five per cent (5%) or more. (1959, c. 1009, s. 10.)

§ 160-453.23. Effect of part on other laws.—From and after July 1, 1959, this part shall be in full force and effect with respect to all municipalities having a population of five thousand (5,000) or more persons according to the last preceding federal decennial census. The provisions of article 36 of chapter 160 of the General Statutes of North Carolina shall remain in full force and effect with respect to such municipalities as an alternative procedure until June 30, 1962. From and after July 1, 1962, all the provisions of article 36 of chapter 160 of the General Statutes of North Carolina, with the exception of § 160-452 as it exists at the time of the passage of this part or as it may be amended at this session of the General Assembly, shall be repealed. Insofar as the provisions of this part are inconsistent with the provisions of any other law, the provisions of this part shall be controlling. (1959, c. 1009, s. 11; 1961, c. 655, s. 2.)

Editor's Note. — The 1961 amendment changed "1961" in the second and third sentences to "1962."

§ 160-453.24. Counties excepted from part; part 1 continued for such counties.—The provisions of this part shall not apply to the following counties: Columbus, Cumberland, Franklin, Halifax, Harnett, Pender, Perquimans and Randolph.

Notwithstanding any other provisions of this part, part 1 of article 36 of chapter 160 of the General Statutes of North Carolina and specifically G. S. 160-452, as the same may be rewritten or amended, shall remain in full force and effect as to the counties herein named. (1959, c. 1009, s. 12; 1961, cc. 468, 787; 1963, c. 728.)

Editor's Note.—The first 1961 amendment deleted "Edgecombe" and "Nash" from the list of counties. And the second 1961 amendment deleted "Iredell" from the list.

The 1963 amendment deleted "Person" from the list of counties.

SUBCHAPTER VII. URBAN REDEVELOPMENT.

Article 37.

Urban Redevelopment Law.

§ 160-454. Short title.

Constitutionality.—The Urban Redevelopment Law does not confer any illegal delegation of legislative power in violation of N. C. Const., Art. II, § 1. Redevelopment Comm. of Greensboro v. Security Nat. Bank of Greensboro, 252 N. C. 595, 114 S. E. (2d) 688 (1960); Horton v. Redevelopment Comm. of High Point, 259 N. C. 605, 131 S. E. (2d) 464 (1963).

The Urban Redevelopment Law is a constitutional delegation of power by the State to municipal corporations. Horton v.

Redevelopment Comm. of High Point, 259 N. C. 605, 131 S. E. (2d) 464 (1963).

Condemnation of blighted and slum areas within a municipality for redevelopment under safeguards to prevent such areas from reverting to slum areas is in the interest of the public health, safety, morals and welfare, and therefore such condemnation is for a public use and is not a taking of private property in violation of N. C. Const., Art. I, §§ 1 or 17. Redevelopment Comm. of Greensboro v. Security Nat. Bank of Greensboro, 252 N. C. 595, 114 S. E. (2d) 688 (1960).

The ultimate result which the Urban Redevelopment Law seeks to achieve is to eliminate the injurious consequences caused by a blighted area in a municipality and to substitute for them a use of the area which it is hoped will render impossible future blight and its injurious consequences. This is, in its broad purpose, a preventive measure. Horton v. Redevelopment Comm. of High Point, 259 N. C. 605, 131 S. E. (2d) 464 (1963).

The General Assembly has prescribed a definite and adequate guide, and the governing body of the municipality in creating or not creating a redevelopment commission cannot act "in its absolute or unguided discretion." Redevelopment Comm. of Greensboro v. Security Nat. Bank of Greensboro, 252 N. C. 595, 114 S. E. (2d) 688 (1960).

Wisdom of Article a Legislative Question.—It may be that the urban redevelopment project may prove eventually to be a disappointment, and is ill advised, but the wisdom of the enactment is a legislative and not a judicial question. Horton v. Redevelopment Comm. of High Point, 259 N. C. 605, 131 S. E. (2d) 464 (1963).

Redevelopment Expenses Are Not "Necessary Expenses".—The expenses incurred, or to be incurred, by a municipality in putting into effect an urban redevelopment plan, pursuant to the authority vested in it by the Urban Redevelopment Law, are not expenses incurred, or to be incurred, by a municipality in the maintenance of public peace or administration of justice, do not partake of a governmental nature, and do not purport to be an exercise by a municipality of a portion of the State's delegated sovereignty, and consequently are not "necessary expenses" within the purview of Const., Art. VII, § 6. Horton v. Redevelopment Comm. of High Point, 259 N. C. 605, 131 S. E. (2d) 464 (1963).

Cited in Greensboro v. Wall, 247 N. C. 516, 101 S. E. (2d) 413 (1958).

§ 160-455. Findings and declaration of policy.

Quoted in Redevelopment Comm. of Greensboro v. Security Nat. Bank of Greensboro, 252 N. C. 595, 114 S. E. (2d) 688 (1960).

§ 160-455.1. Additional findings and declaration of policy. — It is further determined and declared as a matter of legislative finding:

(1) That the cities of North Carolina constitute important assets for the State and its citizens; that the preservation of the cities and of urban life against physical, social, and other hazards is vital to the safety, health, and welfare of the citizens of the State, and sound urban development in the future is essential to the continued economic development of North Carolina, and that the creation, existence, and growth of substandard areas present substantial hazards to the cities of the State, to urban life, and to sound future urban development.

(2) That blight exists in commercial and industrial areas as well as in residential areas, in the form of dilapidated, deteriorated, poorly-ventilated, obsolete, over-crowded, unsanitary, or unsafe buildings, inadequate and unsafe streets, inadequate lots, and other conditions detrimental to the sound growth of the community; that the presence of such conditions tends to depress the value of neighboring properties, to impair the tax base of the community, and to inhibit private efforts to rehabilitate or improve other structures in the area; and that the acquisition, preparation, sale, sound replanning and redevelopment of such areas in accordance with sound and approved plans will promote the public health, safety, convenience and welfare.

(3) That not only is it in the interest of the public health, safety, convenience and welfare to eliminate existing substandard areas of all types, but it is also in the public interest and less costly to the community

to prevent the creation of new blighted areas or the expansion of existing blighted areas; that vigorous enforcement of municipal and State building standards, sound planning of new community facilities, public acquisition of dilapidated, obsolescent buildings, and other municipal action can aid in preventing the creation of new blighted areas or the expansion of existing blighted areas; and that rehabilitation, conservation, and reconditioning of areas in accordance with sound and approved plans, where, in the absence of such action, there is a clear and present danger that the area will become blighted, will protect and promote the public health, safety, convenience and welfare.

Therefore it is hereby declared to be the policy of the State of North Carolina to protect and promote the health, safety, and welfare of the inhabitants of its urban areas by authorizing redevelopment commissions to undertake nonresidential redevelopment in accord with sound and approved plans and to undertake the rehabilitation, conservation, and reconditioning of areas where, in the absence of such action, there is a clear and present danger that the area will become blighted. (1961, c. 837, s. 1.)

§ 160-456. Definitions.

(d) "Area of operation"—The area within the territorial boundaries of the city for which a particular commission is created.

(g) "Municipality"—Any incorporated city or town.

(l) "Redevelopment" — The acquisition, replanning, clearance, rehabilitation or rebuilding of an area for residential, recreational, commercial, industrial or other purposes, including the provision of streets, utilities, parks, recreational areas and other open spaces; provided, without limiting the generality thereof, the term "redevelopment" may include a program of repair and rehabilitation of buildings and other improvements, and may include the exercise of any powers under this article with respect to the area for which such program is undertaken.

(m) "Redevelopment area"—Any area which a planning commission may find to be

(1) A blighted area because of the conditions enumerated in subsection (q) of this section,

(2) A nonresidential redevelopment area because of conditions enumerated in subsection (q1) of this section;

(3) A rehabilitation, conservation, and reconditioning area within the meaning of subsection (q2) of this section;

(4) Any combination thereof, so as to require redevelopment under the provisions of this article.

(n) "Redevelopment plan" — A plan for the redevelopment of a redevelopment area made by a "commission" in accordance with the provisions of this article.

(p) "Redevelopment proposal"—A proposal, including supporting data and the form of a redevelopment contract for the redevelopment of all or any part of a redevelopment area.

(q) "Blighted area" shall mean an area in which there is a predominance of buildings or improvements (or which is predominantly residential in character), and which, by reason of dilapidation, deterioration, age or obsolescence, inadequate provision for ventilation, light, air, sanitation, or open spaces, high density of population and overcrowding, unsanitary or unsafe conditions, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, substantially impairs the sound growth of the community, is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency and crime, and is detrimental to the public health, safety, morals or welfare; provided, no area shall be considered a blighted area nor subject to the power of eminent domain, within the meaning of this article, unless it is determined by the planning commission that at least two-thirds of the num-

ber of buildings within the area are of the character described in this subsection and substantially contribute to the conditions making such area a blighted area; provided that if the power of eminent domain shall be exercised under the provisions of this article, the respondent or respondents shall be entitled to be represented by counsel of their own selection and their reasonable counsel fees fixed by the court, taxed as a part of the costs and paid by the petitioners.

(q1) "Nonresidential redevelopment area" shall mean an area in which there is a predominance of buildings or improvements, whose use is predominantly nonresidential, and which, by reason of:

(1) Dilapidation, deterioration, age or obsolescence of buildings and other structures,

(2) Inadequate provisions for ventilation, light, air, sanitation or open spaces,

(3) Defective or inadequate street layout,

(4) Faulty lot layout in relation to size, adequacy, accessibility, or usefulness,

(5) Tax or special assessment delinquency exceeding the fair value of the property,

(6) Unsanitary or unsafe conditions,

(7) The existence of conditions which endanger life or property by fire and other causes, or

(8) Any combination of such factors

a. Substantially impairs the sound growth of the community,

b. Has seriously adverse effects on surrounding development, and

c. Is detrimental to the public health, safety, morals or welfare;

provided, no such area shall be considered a nonresidential redevelopment area nor subject to the power of eminent domain, within the meaning of this article, unless it is determined by the planning commission that at least one half of the number of buildings within the area are of the character described in this subsection and substantially contribute to the conditions making such area a nonresidential redevelopment area; provided that if the power of eminent domain shall be exercised under the provisions of this article, the respondent or respondents shall be entitled to be represented by counsel of their own selection and their reasonable counsel fees fixed by the court, taxed as a part of the costs and paid by the petitioners.

(q2) "Rehabilitation, conservation, and reconditioning area" shall mean any area which the planning commission shall find, by reason of factors listed in subsection (q) or subsection (q1), to be subject to a clear and present danger that, in the absence of municipal action to rehabilitate, conserve, and recondition the area, it will become in the reasonably foreseeable future a blighted area or a nonresidential redevelopment area as defined herein. In such an area, no individual tract, building, or improvement shall be subject to the power of eminent domain, within the meaning of this article, unless it is of the character described in subsection (q) or subsection (q1) and substantially contributes to the conditions endangering the area; provided that if the power of eminent domain shall be exercised under the provisions of this article, the respondent or respondents shall be entitled to be represented by counsel of their own selection and their reasonable counsel fees fixed by the court, taxed as a part of the costs and paid by the petitioners.

(r) "Redevelopment project" shall mean any work or undertaking:

(1) To acquire blighted or nonresidential redevelopment areas or portions thereof, or individual tracts in rehabilitation, conservation, and reconditioning areas, including lands, structures, or improvements, the acquisition of which is necessary or incidental to the proper clearance, development, or redevelopment of such areas or to the prevention of the spread or recurrence of conditions of blight;

(2) To clear any such areas by demolition or removal of existing buildings, structures, streets, utilities or other improvements thereon and to install, construct, or reconstruct streets, utilities, and site improvements essential to the preparation of sites for uses in accordance with the redevelopment plan;

(3) To sell land in such areas for residential, recreational, commercial, industrial or other use or for the public use to the highest bidder as herein set out or to retain such land for public use, in accordance with the redevelopment plan;

(4) To carry out plans for a program of voluntary or compulsory repair, rehabilitation, or reconditioning of buildings or other improvements in such areas.

The term "redevelopment project" may also include the preparation of a redevelopment plan, the planning, survey and other work incident to a redevelopment project, and the preparation of all plans and arrangements for carrying out a redevelopment project. (1951, c. 1095, s. 3; 1957, c. 502, ss. 1-3; 1961, c. 837, ss. 2, 3, 4, 6.)

Editor's Note. — The 1957 amendment made changes in subsections (g), (l) and (q).

The 1961 amendment substituted "Area" for "Field" in the caption of subsection (d), rewrote subsection (m), deleted "area" from the caption of subsection (n), deleted the words "submitted for approval to the governing body by a commission" formerly appearing after the word "contract" in line two of subsection (p), added subsections (q1) and (q2), and changed subsection (r) by rewriting subdivision (1) and adding subdivision (4).

Only the subsections mentioned above are set out.

Applied in Greensboro v. Wall, 247 N. C. 516, 101 S. E. (2d) 413 (1958).

Cited in Redevelopment Comm. of Greensboro v. Security Nat. Bank of Greensboro, 252 N. C. 595, 114 S. E. (2d) 688 (1960).

§ 160-457. Formation of commissions.

Cited in Redevelopment Comm. of Greensboro v. Security Nat. Bank of Greensboro, 252 N. C. 595, 114 S. E. (2d) 688 (1960).

§ 160-462. Powers of commission.

(f) Within its area of operation, to purchase, obtain options upon, acquire by gift, grant, bequest, devise, eminent domain or otherwise, any real or personal property or any interest therein, together with any improvements thereon, necessary or incidental to a redevelopment project; to hold, improve, clear or prepare for redevelopment any such property, and notwithstanding the provisions of § 160-59 but subject to the provisions of § 160-464, and with the approval of the local governing body sell, exchange, transfer, assign, subdivide, retain for its own use, mortgage, pledge, hypothecate or otherwise encumber or dispose of any real or personal property or any interest therein, either as an entirety to a single "redeveloper" or in parts to several redevelopers; provided that the commission finds that the sale or other transfer of any such part will not be prejudicial to the sale of other parts of the redevelopment area, nor in any other way prejudicial to the realization of the redevelopment plan approved by the governing body; to enter into contracts with "redevelopers" of property containing covenants, restrictions and conditions regarding the use of such property for residential, commercial, industrial, recreational purposes or for public purposes in accordance with the redevelopment plan and such other covenants, restrictions and conditions as the commission may deem necessary to prevent a recurrence of blighted areas or to effectuate the purposes of this article; to make any of the covenants, restrictions or conditions of the foregoing contracts covenants running with the land, and to provide appropriate remedies for any breach of any such covenants or conditions, including the right to terminate such contracts and any interest in the property created pursuant thereto; to borrow money and issue bonds therefor and provide security for bonds; to insure or provide for the

insurance of any real or personal property or operations of the commission against any risks or hazards, including the power to pay premiums on any such insurance; and to enter into any contracts necessary to effectuate the purposes of this article;

(j) Within its area of operation, to make or have made all surveys, studies and plans (but not including the preparation of a general plan for the community) necessary to the carrying out of the purposes of this article and in connection therewith to enter into or upon any land, building, or improvement thereon for such purposes and to make soundings, test borings, surveys, appraisals and other preliminary studies and investigations necessary to carry out its powers but such entry shall constitute no cause of action for trespass in favor of the owner of such land, building, or improvement except for injuries resulting from negligence, wantonness or malice; and to contract or co-operate with any and all persons or agencies public or private, in the making and carrying out of such surveys, appraisals, studies and plans.

A redevelopment commission is hereby specifically authorized to make (i) plans for carrying out a program of voluntary repair and rehabilitation of buildings and improvements and (ii) plans for the enforcement of laws, codes, and regulations relating to the use of land and the use and occupancy of buildings and improvements, and to the compulsory repair, rehabilitation, demolition, or removal of buildings and improvements. The redevelopment commission is further authorized to develop, test and report methods and techniques, and carry out demonstrations and other activities, for the prevention and elimination of slums and urban blight.

(1961, c. 837, ss. 5, 7.)

Editor's Note.—The 1961 amendment substituted "plan" for "proposal" in line thirteen of subsection (f) and added the second paragraph to subsection (j). As only subsections (f) and (j) were affected by the amendment the rest of the section is not set out.

Necessary Facts Must Be Alleged in Each Separate Proceeding.—If a redevelopment commission elects to institute a separate and distinct proceeding for each parcel of land taken, it must, in each instance, allege all the facts necessary to justify the taking. Redevelopment Comm. of Greensboro v. Hagins, 258 N. C. 220, 128 S. E. (2d) 391 (1962).

But Owners of Different Tracts May Be Joined in One Proceeding.—Where it is sought to condemn several tracts of land belonging to different owners, all the owners may be joined in one proceeding, in the absence of any statutory provision to the contrary. Such a course is convenient, and can injure no one if damages are separately assessed to each owner. Redevelopment Comm. of Greensboro v. Hagins, 258 N. C. 220, 128 S. E. (2d) 391 (1962).

Each owner is entitled to defend upon the ground his property does not qualify for the purpose intended, or that its selection was the result of arbitrary or capricious conduct on the part of the taking agency. Redevelopment Comm. of Greensboro v. Hagins, 258 N. C. 220, 128 S. E. (2d) 391 (1962).

§ 160-463. Preparation and adoption of redevelopment plans. — (a) A commission shall prepare a redevelopment plan for any area certified by the planning commission to be a redevelopment area. A redevelopment plan shall be sufficiently complete to indicate its relationship to definite local objectives as to appropriate land uses, improved traffic, public transportation, public utilities, recreational and community facilities and other public improvements and the proposed land uses and building requirements in the redevelopment project area.

(b) The planning commission's certification of a redevelopment area shall be made in conformance with its comprehensive general plan, if any, (which may include, inter alia, a plan of major traffic arteries and terminals and a land use plan and projected population densities) for the area.

(c) A commission shall not acquire real property for a development project unless the governing body of the community in which the redevelopment project area is located has approved the redevelopment plan, as hereinafter prescribed.

(d) The redevelopment commission's redevelopment plan shall include, without being limited to, the following:

(1) The boundaries of the area, with a map showing the existing uses of the real property therein;

(2) A land use plan of the area showing proposed uses following redevelopment;

(3) Standards of population densities, land coverage and building intensities in the proposed redevelopment;

(4) A preliminary site plan of the area;

(5) A statement of the proposed changes, if any, in zoning ordinances or maps;

(6) A statement of any proposed changes in street layouts or street levels;

(7) A statement of the estimated cost and method of financing of acquisition of the redevelopment area, and of all other costs necessary to prepare the area for redevelopment;

(8) A statement of such continuing controls as may be deemed necessary to effectuate the purposes of this article;

(9) A statement of a feasible method proposed for the relocation of the families displaced.

(e) The commission shall hold a public hearing prior to its final determination of the redevelopment plan. Notice of such hearing shall be given once a week for two successive calendar weeks in a newspaper published in the municipality, or, if there be no newspaper published in the municipality, by posting such notice at four public places in the municipality, said notice to be published the first time or posted not less than fifteen days prior to the date fixed for said hearing.

(f) The commission shall submit the redevelopment plan to the planning commission for review. The planning commission, shall, within forty-five days, certify to the redevelopment commission its recommendation on the redevelopment plan, either of approval, rejection or modification, and in the latter event, specify the changes recommended.

(g) Upon receipt of the planning commission's recommendation, or at the expiration of forty-five days, if no recommendation is made by the planning commission, the commission shall submit to the governing body the redevelopment plan with the recommendation, if any, of the planning commission thereon. Prior to recommending a redevelopment plan to the governing body for approval, the commission shall consider whether the proposed land uses and building requirements in the redevelopment project area are designed with the general purpose of accomplishing, in conformance with the general plan, a co-ordinated, adjusted and harmonious development of the community and its environs, which will in accordance with present and future needs promote health, safety, morals, order, convenience, prosperity and the general welfare, as well as efficiency and economy in the process of development, including, among other things, adequate provision for traffic, vehicular parking, the promotion of safety from fire, panic and other dangers, adequate provision for light and air, the promotion of the healthful and convenient distribution of population, the provision of adequate transportation, water, sewerage and other public utilities, schools, parks, recreational and community facilities and other public requirements, the promotion of sound design and arrangements, the wise and efficient expenditure of public funds, the prevention of the recurrence of insanitary or unsafe dwelling accommodations, slums, or conditions or blight.

(h) The governing body, upon receipt of the redevelopment plan and the recommendation (if any) of the planning commission, shall hold a public hearing upon said plan. Notice of such hearing shall be given once a week for two successive weeks in a newspaper published in the municipality, or, if there be no newspaper published in the municipality, by posting such notice at four public

places in the municipality, said notice to be published the first time or posted not less than fifteen days prior to the date fixed for said hearing. The notice shall describe the redevelopment area by boundaries, in a manner designed to be understandable by the general public. The redevelopment plan, including such maps, plans, contracts, or other documents as form a part of it, together with the recommendation (if any) of the planning commission and supporting data, shall be available for public inspection at a location specified in the notice for at least ten days prior to the hearing.

At the hearing the governing body shall afford an opportunity to all persons or agencies interested to be heard and shall receive, make known, and consider recommendations in writing with reference to the redevelopment plan.

(i) The governing body shall approve, amend, or reject the redevelopment plan as submitted.

(j) Upon approval by the governing body of the redevelopment plan, the commission is authorized to acquire property, to execute contracts for clearance and preparation of the land for resale, and to take other actions necessary to carry out the plan, in accordance with the provisions of this article.

(k) A redevelopment plan may be modified at any time by the commission; provided that, if modified after the sale of real property in the redevelopment project area, the modification must be consented to by the redeveloper of such real property or his successor, or their successors in interest affected by the proposed modification. Where the proposed modification will substantially change the redevelopment plan as previously approved by the governing body the modification must similarly be approved by the governing body as provided above. (1951, c. 1095, s. 10; 1961, c. 837, s. 8.)

Editor's Note. — The 1961 amendment deleted "area" formerly appearing before "plan" in line one of subsection (d), rewrote subsection (e), substituted "plan" for "proposal" in subsections (f) and (g), and made changes in subsections (h), (i) and (j).

An urban redevelopment plan is not a necessary expense of a municipality within the meaning of Const., Art. VII, § 6, and therefore a municipality may be enjoined from spending ad valorem taxes or levying taxes and issuing bonds for an urban redevelopment project until and unless such project is approved by a majority of the qualified voters of such municipality, and any provisions of §§ 160-466 (b) and 160-470 authorizing a municipality to levy taxes and issue bonds for such purpose without a vote are unconstitutional. Horton v. Redevelopment Comm. of High Point, 259 N. C. 605, 131 S. E. (2d) 464 (1963).

The adoption of the redevelopment plan is equivalent to a cease and desist order preventing any development, rental, or sale of the property within the area. Redevelopment Comm. of Greensboro v. Hagins, 258 N. C. 220, 128 S. E. (2d) 391 (1962).

Each landowner has the right to know that the taking agency has on hand the money to pay for his property or, in lieu thereof, has present authority to obtain it. Redevelopment Comm. of Greensboro v. Hagins, 258 N. C. 220, 128 S. E. (2d) 391 (1962).

And Showing of Plan to Finance Entire Area Is Required.—In order that property owners may be protected against threatened taking which is never consummated, the act wisely requires a showing that the acquiring agency has a lawful plan by which, among other things, it may lawfully finance the whole area. Redevelopment Comm. of Greensboro v. Hagins, 258 N. C. 220, 128 S. E. (2d) 391 (1962).

Ability to finance the acquisition of one or two tracts is not a showing of a proper plan for financing the development, including the arrangements for relocating displaced families. Redevelopment Comm. of Greensboro v. Hagins, 258 N. C. 220, 128 S. E. (2d) 391 (1962).

Separate Plan for Each Parcel Not Contemplated. — It is seriously questioned whether the legislature contemplated a separate judicial proceeding for each lot or parcel of land any more than it contemplated a separate plan for each parcel. Redevelopment Comm. of Greensboro v. Hagins, 258 N. C. 220, 128 S. E. (2d) 391 (1962).

§ 160-464. Provisions of the redevelopment contract; powers of the commission; procedure on sale or contract.

(b) Except as hereinafter specified, no sale of any property by the commission or contract for the accomplishment of any redevelopment project by the commission or any contract with a developer shall be effected except after advertisement bid and awarded as hereinafter set out. The commission shall by public notice by publication once each week for two consecutive weeks in a newspaper having a general circulation in the municipality prior to the consideration of any sale or redevelopment or other contract proposal invite proposals and make available all pertinent information to any persons interested in undertaking a purchase of property, a contract or the redevelopment of an area or any part thereof. Such notice shall identify the property affected, shall specify in outline the property to be conveyed, the work to be accomplished and the conditions of the contract and shall state that further information may be obtained at the office of the commission. The commission may require such bid bond as it deems appropriate. After receipt of all bids, the contract shall be awarded to the lowest responsible bidder or the sale made to the highest responsible bidder as the case may be; provided, nothing herein shall prevent the sale at private sale to the municipality or other public body, or to a nonprofit association or corporation operated exclusively for educational, scientific, literary, cultural, charitable, or religious purposes, of such property as is specified in, and subject to the requirements of, subdivisions (c) (1), (2), (3) or (4) of this section; provided further, that nothing herein shall prohibit the commission from negotiating contracts with a municipality to perform such work as the commission shall deem appropriate. All bids may be rejected. All sales shall be subject to the approval of the governing body of the municipality. After any such required approval by the governing body of the municipality, the commission may execute such redevelopment or other contract and deliver deeds and other instruments and take all steps necessary to effectuate such redevelopment or other contract or sale. The commission may privately contract for engineering, legal, surveying, professional or other similar services without advertisement or bid and may similarly sell personal property of a value of less than $500 at private sale.

(c) In carrying out a redevelopment project, the commission may:

(1) Convey to the municipality in which the project is located with or without consideration such real property as, in accordance with the redevelopment plan, is to be laid out into streets, alleys, and public ways, at private sale;

(2) Grant easements and rights of way, for public utilities, sewers, streets and other similar facilities, in accordance with the redevelopment plan; and

(3) With or without consideration and at private sale convey to the municipality, county or other appropriate public body, such real property, as, in accordance with the redevelopment plan, is to be used for parks, schools, public buildings, facilities or other public purposes.

(4) After a public hearing advertised in accordance with the provisions of G. S. 160-463 (e), and subject to the approval of the governing body of the municipality, convey to a nonprofit association or corporation organized and operated exclusively for educational, scientific, literary, cultural, charitable, or religious purposes, no part of the net earnings of which inure to the benefit of any private shareholder or individual, such real property as, in accordance with the redevelopment plan, is to be used for the purposes of such associations or corporations. Such conveyance shall be for such consideration as may be agreed upon by the commission and the association or corporation, which shall not be less than the fair value of the property agreed

upon by a committee of three professional real estate appraisers currently practicing in the State, which committee shall be appointed by the commission. All conveyances made under the authority of this section shall contain restrictive covenants limiting the use of property so conveyed to the purposes for which the conveyance is made.

(d) The commission may temporarily rent or lease, operate and maintain real property in a redevelopment project area pending the disposition of the property for redevelopment, for such uses and purposes as may be deemed desirable even though not in conformity with the redevelopment plan. The contract between the commission and a redeveloper shall contain, without being limited to the following provisions:

(1) Plans prepared by the redeveloper or otherwise and other such documents as may be required to show the type, material, structure and general character of the redevelopment project;

(2) A statement of the use intended for each part of the project;

(3) A guaranty of completion of the redevelopment project within specified time limits;

(4) The amount, if known, of the consideration to be paid;

(5) Adequate safeguards for proper maintenance of all parts of the project;

(6) Such other continuing controls as may be deemed necessary to effectuate the purposes of this article.

(1961, c. 837, s. 9; 1963, c. 1212, ss. 1, 2.)

Editor's Note. — The 1961 amendment changed subsection (b) by substituting "two" for "four" in line five, rewriting the third sentence from the end of the subsection and inserting "any such required" before "approval" in the next to last sentence. It also inserted the words "rent or lease" in line one of subsection (d).

The 1963 amendment rewrote the first proviso of the fifth sentence of subsection (b) and added subdivision (4) of subsection (c).

Only subsections (b), (c) and (d) are set out above.

Section 4 of the 1963 amendatory act provides that it shall not apply to the counties of Craven, Duplin, Edgecombe, Forsyth, Macon, Madison, Mecklenburg, New Hanover, Swain and Yancey.

Sale of Condemned Property to Private Persons.—The fact that a municipal redevelopment commission may exchange, sell or transfer to private persons slum property condemned by it for redevelopment does not affect the question of whether the taking is for a public use, since the statute provides safeguards in the use and control of the land by the private developer to prevent the area from again becoming a blighted area, and the sale or transfer to the redeveloper is merely incidental or collateral to the primary purpose of clearing the slum area in the interest of the public health, safety, morals and welfare. Redevelopment Comm. of Greensboro v. Security Nat. Bank of Greensboro, 252 N. C. 595, 114 S. E. (2d) 688 (1960).

§ 160-465. Eminent domain.

Applied in Greensboro v. Wall, 247 N. C. 516, 101 S. E. (2d) 413 (1958).

§ 160-466. Issuance of bonds.

(d) Bonds shall be sold by the redevelopment commission at public sale upon such terms and in such manner, consistent with the provisions hereof, as the redevelopment commission may determine. Prior to the sale of bonds hereunder, the redevelopment commission shall first cause a notice of the sale of the bonds to be published at least once at least ten days before the date fixed for the receipt of bids for the bonds (i) in a newspaper having the largest or next largest circulation in the redevelopment commission's area of operation and (ii) in a publication that carries advertisements for the sale of State and municipal bonds published in the city of New York in the State of New York; provided, however, that in its discretion the redevelopment commission may cause any such notice of sale in the New York publication to be published as part of a consolidated notice of sale offering for sale the obligations of other public agencies in

addition to the redevelopment commission's bonds, and provided, further, that any bonds may be sold by the redevelopment commission to the government at private sale upon such terms and conditions as are mutually agreed upon between the commission and the government. No bonds issued pursuant to this article shall be sold at less than par and accrued interest. The provisions of the Local Government Act shall not be applicable with respect to bonds sold or issued under this article.

(1961, c. 837, s. 10.)

Editor's Note.—The 1961 amendment rewrote subsection (d). As the rest of the section was not changed it is not set out.

Constitutionality. — Any provisions of subsection (d) of this section and § 160-470 to the effect that bonds may be sold and issued by a redevelopment commission for the purpose of carrying out the provisions of an urban redevelopment plan or project under the provisions of the Urban Redevelopment Law, or that any municipality located within the area of such a commission may appropriate funds to a redevelopment commission for the purpose of aiding such a commission in carrying out any of its powers and functions under the Urban Redevelopment Law, and to obtain funds for this purpose, the municipality may levy taxes, and may in the manner prescribed by law issue and sell its bonds, without the approval of a vote of the qualified voters in the municipality, are repugnant to the provisions of Const., Art. VII, § 6. Horton v. Redevelopment Comm. of High Point, 259 N. C. 605, 131 S. E. (2d) 464 (1963).

§ 160-470. Grant of funds by community.

Cited in Redevelopment Comm. of Greensboro v. Security Nat. Bank of Greensboro, 252 N. C. 595, 114 S. E. (2d) 688 (1960).

§ **160-474. Inconsistent provisions.** — Insofar as the provisions of this article are inconsistent with the provisions of any other law, the provisions of this article shall be controlling. (1951, c. 1095, s. 22; 1955, c. 1349; 1957, c. 502, s. 4.)

Editor's Note.—Session Laws 1955, c. 1349, renumbering this section as 160-474.1 and inserting a new section numbered 160-474, was repealed by Session Laws 1957, c. 502, s. 4. Therefore, the inserted section has been deleted and this section has been given its old number.

§ **160-474.1. Certain actions and proceedings of commissions validated.**—All actions and proceedings of redevelopment commissions established under the Urban Redevelopment Law (G. S. 160-454 to 160-474) and of the governing bodies of incorporated cities and towns heretofore had and taken pertaining to the calling and holding of public hearings on such redevelopment plans, the giving and publication of notices of such public hearings and the time and manner of such publication are hereby in all respects legalized, ratified, approved, validated and confirmed, and all such public hearings are hereby declared to be valid and lawfully authorized. (1963, c. 194.)

Editor's Note.—The act from which this section is codified became effective April 11, 1963.

SUBCHAPTER VIII. PARKING AUTHORITIES AND FACILITIES.

Article 38.

Parking Authorities.

§ 160-481. Purpose and powers of the authority.

Local Modification.—City of Kinston: 1957, c. 860, s. 1.

§ 160-486. Notes of the authority.

Local Modification.—City of Kinston: 1957, c. 860, s. 2.

§ 160-487. Approval of Local Government Commission; application of Local Government Act.

Local Modification.—City of Kinston: 1957, c. 860, s. 3.

ARTICLE 39.

Financing Parking Facilities.

§ 160-499. General grant of powers.

Cross Reference. — As to authority of city to use revenue from on-street parking meters to finance off-street parking facilities, see also § 160-200, subsection 31, as amended by Session Laws 1953, c. 171, and the notes thereto and §§ 160-414 and 160-415 and the notes thereto.

Maintenance of Off-Street Parking Facilities Is a Commercial Undertaking. — See Britt v. Wilmington, 236 N. C. 446, 73 S. E. (2d) 289 (1952).

On-street parking meters are maintained by a municipality in the exercise of its governmental powers in the regulation of traffic on its streets, and the requirement of the deposit of a coin is in the nature of a tax and is not a fee or toll but simply the method for putting the meter into operation, and the revenue therefrom must be set apart and used for expenses incurred in the regulation and limitation of vehicular traffic on its streets. Britt v. Wilmington, 236 N. C. 446, 73 S. E. (2d) 289 (1952). See § 160-200, subsection 31.

City Has No Authority to Rent On-Street Parking Space for a Fee.—Streets of a municipality are provided for public use. A city board has no valid authority to rent, lease or let a parking space on the streets to an individual motorist for a fee, or to charge a rate or toll therefor. Much less may it lease or let the whole system of on-street parking meters for operation by a private corporation or individual. Britt v. Wilmington, 236 N. C 446, 73 S. E. (2d) 289 (1952).

On-street and off-street parking facilities may not be combined and operated as one undertaking. Britt v. Wilmington, 236 N. C. 446, 73 S. E. (2d) 289 (1952).

Nor May City Pledge Revenue from On-Street Meters to Finance Off-Street Facilities.—The "deposits" made in the on-street meters may not be pledged to secure, or be applied to, the payment of the revenue bonds issued to finance off-street parking facilities. Britt v. Wilmington, 236 N. C. 446, 73 S. E. (2d) 289 (1952).

Sections 160-414 (d) and 160-415 (g), insofar as they purport to authorize a city to pledge revenue derived from on-street parking meters to the payment of revenue bonds to finance off-street parking facilities, are void, and the provisions of this article are to like effect. Britt v. Wilmington, 236 N. C. 446, 73 S. E. (2d) 289 (1952).

A municipality may not bind itself to enact or enforce on-street and off-street parking regulations by penal ordinance for the period during which bonds issued to provide off-street parking facilities should be outstanding, since it may not contract away or bind itself in regard to its freedom to enact governmental regulations. Britt v. Wilmington, 236 N. C. 446, 73 S. E. (2d) 289 (1952). See, contra, Graham v. Karpark Corp., 194 F. (2d) 616 (1952).

Regulations for Off-Street Meters May Not Be Enforced by Criminal Prosecutions.—The regulations of a municipality for off-street parking meters maintained by it in its proprietary capacity may not be enforced by criminal prosecutions. Britt v. Wilmington, 236 N. C. 446, 73 S. E. (2d) 289 (1952).

§ 160-500. Issuance of bonds.

Cross Reference.—See annotations under § 160-499.

§ 160-501. Parking meters.

Cited in State v. Scoggin, 236 N. C. 1, 72 S. E. (2d) 97 (1952).

Cross Reference.—See note to § 160-499.

§ 160-502. Pledge of revenues.

Cross Reference.—See note to § 160-499.

§ 160-503. Authorizing ordinance.

Cross Reference.—See note to § 160-499

SUBCHAPTER IX. PHOTOGRAPHIC REPRODUCTION OF RECORDS.

Article 40.

Photographic Reproduction of Records.

§ 160-508. Municipalities brought under terms of county act.—All cities and towns shall be subject to, governed by, and have the authority granted to counties in, the provisions of article 2A of chapter 153 of the General Statutes (G. S. 153-15.1 to 153-15.6) and acts amendatory thereof and supplemental thereto, including acts ratified at the 1955 Session of the General Assembly, except as herein otherwise provided or except as the context shows that it is not intended that such acts shall be applicable to cities and towns. (1955, c. 451.)

§ 160-509. Terms in county act made applicable to cities and towns.—Except as the context may otherwise show, and for the purpose of applying the provisions of the county act, and acts amendatory thereof and supplemental thereto, cities and towns, wherever a county official is designated by title it shall mean any official of a city or town, the term, governing body of any city or town, shall take the place of the term, board of county commissioners, and the term, city or town shall take the place of the term, county. (1955, c. 451.)

Chapter 161.

Register of Deeds.

Article 1.

The Office.

Article 2.

The Duties.

Article 1.

The Office.

§ 161-2. Four-year term for registers of deeds; counties excepted. — At the general election for the year one thousand nine hundred and thirty-six and quadrennially thereafter there shall be elected in each county of this State by the qualified voters thereof a register of deeds, who shall serve for a term of four years from the first Monday in December after his election and until his successor is elected and qualified: Provided, however, that this section shall not apply to Alexander, Ashe, Beaufort, Cherokee, Clay, Dare, Davidson, Halifax, Haywood, Hyde, Iredell, Jackson, Johnston, Lincoln, Macon, Mitchell, Moore, Orange, Rowan, Swain, Vance and Yadkin counties. (1935, cc. 362, 392, 462; 1937, c. 271; 1939, cc. 11, 99; 1941, c. 192; 1949, cc. 756, 830; 1957, c. 1022, s. 2.)

Editor's Note.—
The 1957 amendment deleted "Avery" from the list of excepted counties.

§ 161-4. Bond required.—Every register of deeds shall give bond with sufficient surety, to be approved by the board of county commissioners, in a sum not exceeding ten thousand dollars, payable to the State, and conditioned for the safekeeping of the books and records, and for the faithful discharge of the duties

of his office. (1868, c. 35, s. 3; 1876-7, c. 276, s. 5; Code, s. 3648; 1899, c. 54, s. 52; Rev., s. 301; C. S., s. 3545; 1963, c. 204.)

Local Modification.—Nash: 1955, c. 690.

Editor's Note.—The 1963 amendment deleted the former provision as to renewal of bond.

§ 161-6. Appointment of assistant and deputy registers of deeds; authority to sign in name of register of deeds.—The registers of deeds of the several counties are hereby authorized to appoint one or more assistant registers of deeds and one or more deputy registers of deeds, whose acts as assistants or deputies shall be valid and for which the registers of deeds shall be officially responsible. The certificate of appointment of an assistant or deputy shall be filed by the appointing register of deeds in the office of the clerk of the superior court, who shall record the same.

Each assistant and deputy register of deeds so appointed shall be authorized, in addition to his other powers and duties, to register and sign instruments and documents in the name and under the title of the appointing register of deeds, by himself as assistant or deputy, as appropriate. Such signing shall be substantially as follows:

John Doe, Register of Deeds
by Richard Roe, Assistant (or Deputy, as appropriate).

Such registering and signing, when regular and sufficient in all other respects, shall be valid for all purposes, and of the same force and effect as if the instrument or document had been registered and signed by the register of deeds personally.

Wherever in the General Statutes reference is made to "the register of deeds and (or) his assistant" or "the register of deeds and (or) his deputy" or words substantially to this effect, or reference is made only to "the assistant register of deeds" or "the deputy register of deeds," such reference to either assistant or deputy, unless the contrary intent is specifically stated in the text, shall also include the other, insofar as such reference pertains to the authority, powers, duties, rights, privileges, or qualifications for office of assistant or deputy register of deeds. (1909, c. 628, s. 1; C. S., s. 3547; 1949, c. 261; 1959, c. 279; 1963, c. 191.)

Editor's Note.—The 1959 amendment rewrote the former second paragraph. The 1963 amendment rewrote the section.

§ 161-10. Fees of register of deeds.

Local Modification.—Hertford: 1955, c. 569; McDowell: 1953, c. 728; Perquimans: 619; Iredell: 1959, c. 654; Jones: 1961, c. 1953, c. 660; 1955, c. 108.

§ 161-10.1. Local variations as to fees of registers of deeds.

In Lenoir County the register of deeds shall receive a fee of one dollar ($1.00) for preparing and certifying a copy of any marriage license. (1961, c. 328.)

In Macon County, the register of deeds shall receive the following fees: For recording form deeds, quitclaim deeds, and right-of-way agreements, two dollars and fifty cents ($2.50); for recording each warranty deed, deed of trust, judgment and decree, two dollars and fifty cents ($2.50) for the first three hundred (300) words, and thirty cents (30¢) for each two hundred (200) words or fraction thereof in addition to the first three hundred (300) words; for recording each form deed of trust, three dollars ($3.00); for recording each form chattel mortgage, one dollar ($1.00); for recording each form crop lien contract, one dollar and fifty cents ($1.50); for furnishing certified copies of birth records, or death certificates, fifty cents (50¢) per copy; for issuing marriage licenses, five dollars ($5.00); for furnishing certified copies of marriage licenses, one dollar ($1.00); for recording maps, when photostated, five dollars ($5.00). (1963, c. 466.)

In Randolph County the register of deeds shall be allowed the sum of eighty cents (80¢) for registering chattel mortgages, statutory form. (1955, c. 556, s. 7.)

Local Modification. — Iredell: 1959, c. 654; Jones: 1961, c. 569; Perquimans: 1953, c. 660; 1955, c. 108.

Editor's Note.—

The 1955 amendment repealed the paragraph relating to Randolph County in the recompiled volume and inserted another paragraph with the same wording.

The 1961 amendment added the paragraph relating to Lenoir County.

The 1963 amendment added the paragraph relating to Macon County.

As the rest of the section was not changed only the paragraphs mentioned are set out.

Article 2.

The Duties.

§ 161-14.1. Recording subsequent entries as separate instruments in counties using microfilm. — In any county in which instruments are recorded in the office of the register of deeds by a microphotographic process or by any other method or process which renders impractical or impossible the subsequent entering of marginal notations upon the records of instruments, the register of deeds may, except as provided in G. S. 45-37.2 and G. S. 45-38, record all subsequent entries as separate instruments. Such instruments shall contain the information and notations required by law for the appropriate marginal entry, a reference by book and page number to the record of the instrument modified, and the date of recording the subsequent modifying instrument. There shall also be entered in the alphabetical indexes kept by the register of deeds, opposite the name of each indexed party to the original instrument, a reference by book and page to the record of the subsequent modifying instrument. (1963, c. 1021, s. 3.)

§ 161-21. General index kept.

Cited in McKnight v. M. & J. Finance Corp., 247 F. (2d) 112 (1957).

§ 161-22. Index and cross index of registered instruments.

Local Modification. — Duplin and Forsyth: 1963, c. 739.

Section Mandatory.—

In accord with original. See Cuthrell v. Camden County, 254 N. C. 181, 118 S. E. (2d) 601 (1961).

Section Construed in Pari Materia with §§ 2-42 and 108-30.1.—The recording and indexing requirements of § 108-30.1 are less specific than those relating to deeds and judgments. They should be construed in pari materia with the recording and indexing provisions of this section and § 2-42. Cuthrell v. Camden County, 254 N. C. 181, 118 S. E. (2d) 601 (1961).

Strict Compliance.—In its interpretation of the North Carolina recording statutes, the Supreme Court of that State has insisted on strict compliance. McKnight v. M. & J. Finance Corp., 247 F. (2d) 112 (1957).

Indexing and Cross-Indexing Is Essential, etc.—

In accord with 1st paragraph in original. See Johnson Cotton Co. v. Hobgood, 243 N. C. 227, 90 S. E. (2d) 541 (1955).

Section 2-42 does not require the cross-indexing of liens filed in the clerk's office and is not to be confused with the requirements for registering liens, deeds, etc., in the office of the register of deeds as provided by this section which does require cross-indexing. Saunders v. Woodhouse, 243 N. C. 608, 91 S. E. (2d) 701 (1956).

Effect of Erroneous Book and Page Number in Direct Index.—Where a chattel mortgage was duly transcribed upon the records in the office of the register of deeds in the chattel mortgage book and an erroneous book and page was given opposite the name of the grantor in the direct index and opposite the name of the grantee in the cross-index, but within two days of the time the chattel mortgage was transcribed on the records the cross-index was corrected, such indexing constituted a sufficient compliance with this section. Johnson Cotton Co. v. Hobgood, 243 N. C. 227, 90 S. E. (2d) 541 (1955).

Recording and indexing a mortgage executed by one not the owner of the property mentioned therein will not give con-

structive notice binding upon third parties dealing with the true owner. It is, at least as to third parties, as though no mortgage had been made. McKnight v. M. & J. Finance Corp., 247 F. (2d) 112 (1957).

Stated in Saunders v. Woodhouse, 243 N. C. 608, 91 S. E. (2d) 701 (1956).

§ 161-23. Clerk to board of commissioners. — The register of deeds, or such other county officer or employee as the board of county commissioners shall designate in accordance with the provisions of G. S. 153-40, shall be ex officio clerk of the board of county commissioners, and as such shall perform the duties imposed by law or by order of said board. (Const., art. 7, s. 2; 1868, c. 35, s. 15; Code, s. 3656; Rev., s. 2666; C. S., s. 3562; 1955, c. 247, s 2.)

Local Modification. — Guilford: 1955, c. 143; Wake: 1953, c. 644; 1959, c. 229.

Editor's Note. — The 1955 amendment made this section applicable to "such other county officer or employee as the board of county commissioners shall designate in accordance with the provisions of G. S. 153-40."

Chapter 162.

Sheriff.

Article 3.
Duties of Sheriff.

ARTICLE 1.

The Office.

§ 162-6. Fees of sheriff.

Local Modification. — Cumberland: 1957, c. 768; Lee: 1953, c. 769; Lenoir: 1953, c. 577; Moore: 1955, c. 538; Pasquotank: 1955, c. 771; Robeson: 1955, c. 1229; Rockingham: 1953, c. 580; 1957, c. 1203; Wake: 1955, c. 324; 1959, c. 775.

§ 162-7. Local modifications as to fees of sheriffs.

Alleghany.—The sheriff of Alleghany County is hereby authorized to charge the following fees:

For serving warrant	$3.00
For serving capias	3.00
For serving subpoena in criminal or civil cases in any court, each	1.00
For serving summons issued by justice of the peace	2.00
For serving claim and delivery summons	3.00

Provided, that when a fee is not fixed herein, such fee shall be charged as is now provided under G. S. 162-7.

The sheriff of Alleghany County shall charge in addition to the above fee for serving claim and delivery summons all actual expenses of transporting, keeping and caring for any property seized under claim and delivery. (1959, c. 919.)

Camden.—In addition to any other fees now allowed by law and which are not in conflict herewith, the sheriff of Camden County shall collect the following fees:

1. Serving summons in civil actions or special proceedings and serving all civil notices and citations one dollar and fifty cents ($1.50) for each defendant served.

2. For each arrest in criminal actions, two dollars and fifty cents ($2.50). (1955, c. 72.)

Gates.—The sheriff or other lawful officer of Gates County is authorized to charge the following fees:

For serving claim and delivery proceedings—each defendant	$3.00
For serving summons—each defendant	2.00
For serving warrant—each defendant	2.50
For serving execution—each defendant	2.00
For serving subpoenas—each	1.00

For serving capias—each person 2.50
For serving attachment proceedings—each defendant 4.00
For serving ejectment proceedings—each defendant 3.00
For serving order—each defendant 2.00
For making arrest 2.50
For summoning juror—each ..... .60
For posting notices ..... .60
For taking bond 1.00
For laying off homestead 5.00
Commission allowed under execution 5%
For serving sci fa—each person 2.00
For serving notice 2.00
For summoning appraisers to allot homestead or personal property exemption 5.00
For serving warrant for search and seizure of intoxicating liquors 4.00
For serving search warrant for stolen property 4.00

(1957, c. 328.)

Greene.—The sheriff of Greene County shall collect the following fees:

For serving execution against property ..... $ 2.00
Commission on collections of executions,
5% on first $500.00
2½% on all amounts collected over $500.00
Laying off homestead, for officer 3.00
To commissioners for laying off homestead, each $6.00 ..... 18.00
Total homestead fee 21.00
For serving civil summons, for each defendant 1.50
For serving claim & delivery process, for each defendant 3.00
For serving attachment proceeding, for each defendant 3.50
For serving execution in summary ejectment proceedings, for each defendant 2.00
For serving subpœna, for each witness 1.00
For serving warrant of arrest for each defendant 3.00
For serving capias, for each defendant 3.00

(1955, c. 1113.)

Jackson.—The sheriff or other lawful officer of Jackson County is authorized to charge the following fees:

For serving warrant of arrest $2.00
For serving civil summons, each defendant 1.50
For serving claim and delivery process 3.00
For serving attachment proceedings 3.00
For serving execution in summary ejectment proceedings, each defendant 2.00
For serving capias 2.00
For serving subpoena, each defendant 1.00
For serving sci fa, each defendant 1.50
For serving orders and notices, each 1.50
For serving warrant of attachment and levy 3.00
For serving garnishment proceedings $1.00
For serving execution in civil action, each defendant 2.00
Commission on collection of executions,
5% on first $500.00
2½% on all amounts collected over $500.00

(1959, c. 140.)

Macon.—The sheriff of Macon County and the constables for the various townships in said county shall collect the following fees: For serving summons in civil actions or special proceedings, and for serving all civil notices and citations, three dollars ($3.00), for each defendant or person, firm or corporation served; for serv-

ing subpoenas, two dollars ($2.00) for each person served; for serving warrant of arrest in criminal action, three dollars ($3.00); for serving claim and delivery process, three dollars and seventy-five cents ($3.75); for serving attachment proceedings, three dollars and seventy-five cents ($3.75). The sheriff shall be entitled to collect a commission of three per cent (3%) on collection of execution. (1955, c. 840; 1963, c. 463.)

Madison.—The sheriff or other lawful officer of Madison County is authorized to charge the following fees:

For arrests	$2.00
For serving civil summons	1.50
For serving subpoenas in civil or criminal cases	.50

(1957, c. 252.)

Moore.—The fees and expenses to be charged and collected by the sheriff of Moore County for services rendered by him and his deputies shall be as hereinafter set out:

Arrest, warrant and capias and civil, each defendant	$2.50
Subpoena, criminal and civil, each witness	1.00
Summons, each defendant	2.00
Claim and delivery	3.50
Each additional defendant	1.00
Attachments	3.00
Each additional defendant	1.00
Execution, each defendant	2.00
Homestead and personal property allotment, fees, sheriff and three commissioners	15.00
Serving notice, each copy	2.00
Summary of ejectment, service of summons, each defendant	1.50
Summary of ejectment, execution by removal	5.00
Commission on collections on executions,	
5% on first $500.00	
2½% all above $500.00	
Seizure fee, confiscated autos	3.00
Posting notices of sale, each copy	1.00

(1959, c. 417.)

New Hanover.—The sheriff of New Hanover County and the constables for the various townships in New Hanover County shall collect the following fees: Serving summons in civil actions or special proceedings and serving all civil notices and citations, one dollar ($1.00) for each defendant, or person, firm, or corporation served. (1953, c. 94.)

Surry.—The sheriff of Surry County shall collect as his fee, a commission on collection of executions as follows:

5% on first $500.00;

2½% on all amounts collected over $500.00; and the like commission on all moneys which may be paid to the plaintiff by the defendant while the execution is in the hands of the sheriff. (1959, c. 325.)

Watauga.—The sheriff of Watauga County is authorized to charge the following fees:

For serving claim and delivery proceedings, each defendant	$3.00
For serving summons, each defendant	2.00
For serving warrant, each defendant	2.50
For serving execution	2.00
For serving subpoenas, each	$1.00
For serving capias, each person	2.50
For serving attachment proceedings, each defendant	4.00
For serving ejectment proceedings, each defendant	3.00
For serving order, each defendant	2.00

For making arrest	2.50
For summoning juror, each	.60
For posting notices	.60
For taking bond	1.00
For laying off homestead	5.00
Commission allowed under execution, 5% of the amount	
For serving sci fa, each person	2.00
For serving notice	2.00
For summoning appraisers to allot homestead or personal property exemption	5.00
For serving warrant for search and seizure of intoxicating liquors	4.00
For serving search warrant for stolen property	4.00

The said fees to be charged by the sheriff of Watauga County shall be collected and retained by the sheriff's department. (1959, c. 371.)

Wayne.--The sheriff or other lawful officer of Wayne County is authorized to charge the following fees:

For arrest	$2.50
Serving capias	2.50
Taking bond	.50
Serving subpœna in criminal or civil case, each	1.00
Serving claim & delivery proceedings	4.00
Serving civil summons	1.00
Serving civil summons on each additional defendant	1.00
Serving writ of ejectment	2.00
Serving writ of attachment, or garnishment for taxes or other purpose	3.00
Serving injunction, or order to show cause, on each person	3.00
Serving other writ or paper whatsoever, not otherwise herein fixed, as to each party upon whom said service is made	2.00

The sheriff or other lawful officer whose duty it becomes to serve an execution shall charge in addition to the above fee all actual costs in connection with seizing and holding property under execution.

It shall be the duty of the sheriff to collect said fees and to turn the same over to the general fund of Wayne County for all warrants and other processes served by him or his salaried deputies. (1937, c. 254; 1955, c. 434; 1957, c. 291.)

Local Modification. — Wilson: 1959, c. 1112.

Editor's Note. — The 1963 amendment rewrote the paragraph relating to Macon County.

Only the paragraphs added or changed by the 1953, 1955, 1957, 1959 and 1963 acts are set out.

Article 2.

Sheriff's Bonds.

§ 162-8. Sheriff to execute two bonds.

Stated in State v. Corbett, 235 N. C. 33, 69 S. E. (2d) 20 (1952).

Article 3.

Duties of Sheriff.

§ 162-14. Execute process; penalty for false return.

Applied in East Carolina Lumber Co. v. West, 247 N. C. 699, 102 S. E. (2d) 248 (1958).

§ 162-19: Repealed by Session Laws 1953, c. 973, s. 3.

Chapter 162A.

Water and Sewer Authorities.

§ 162A-1. Title.—This chapter shall be known and may be cited as the "North Carolina Water and Sewer Authorities Act." (1955, c. 1195, s. 1.)

Cross References. — As to joint water supply facilities by municipalities, see §§ 160-191.6 to 160-191.10. As to acquisition and operation of water and sewerage facilities by counties or by counties and municipalities jointly, see § 153-267 et seq.

§ 162A-2. Definitions.—As used in this chapter 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 an authority created under the provisions of this chapter or, if such authority shall be abolished, the board, body or commission succeeding to the principal functions thereof or to whom the powers given by this chapter to the authority shall be given by law.

(b) The word "cost" as applied to a water system or a sewer system shall include the purchase price of any such system, the cost of construction, the cost of all labor and materials, machinery and equipment, the cost of improvements, the cost of all lands, property, rights, easements and franchises acquired, financing charges, interest prior to and during construction and, if deemed advisable by the authority, for one year after completion of construction, cost of plans and specifications, surveys and estimates of cost and of revenues, cost of engineering and legal services, and all other expenses necessary or incident to determining the feasibility or practicability of such construction, administrative expense and such other expenses, including reasonable provision for working capital, as may be necessary or incident to the financing herein authorized. Any obligation or expense incurred by the authority or by any political subdivision prior to the issuance of bonds under the provisions of this chapter in connection with any of the foregoing items of cost may be regarded as a part of such cost.

(c) The term "governing body" shall mean the board, commission, council or other body by whatever name it may be known, in which the general legislative powers of the political subdivision are vested.

(d) The word "improvements" shall mean such repairs, replacements, additions, extensions and betterments of and to a water system or a sewer system as are deemed necessary by the authority to place or to maintain such system in

proper condition for its safe, efficient and economic operation or to meet requirements for service in areas which may be served by the authority and for which no existing service is being rendered.

(e) The term "political subdivision" shall mean any county city, town, incorporated village, sanitary district or other political subdivision or public corporation of this State now or hereafter incorporated.

(f) The term "water system" shall mean and include all plants, systems, facilities or properties used or useful or having the present capacity for future use in connection with the supply or distribution of water, and any integral part thereof, including but not limited to water supply systems, water distribution systems, sources of water supply including lakes, reservoirs and wells, intakes, mains, laterals, aqueducts, pumping stations, standpipes, filtration plants, purification plants, hydrants, meters, valves, and all necessary appurtenances and equipment and all properties, rights, easements and franchises relating thereto and deemed necessary or convenient by the authority for the operation thereof.

(g) The word "sewage" shall mean the water-carried wastes created in and carried or to be carried away from residences, hotels, schools, hospitals, industrial establishments, commercial establishments or any other private or public building together with such surface or ground water or household and industrial wastes as may be present.

(h) The term "sewage disposal system" shall mean and shall include any plant, system, facility or property used or useful or having the present capacity for future use in connection with the collection, treatment, purification or disposal of sewage (including industrial wastes resulting from any processes of industry, manufacture, trade or business or from the development of any natural resources), or any integral part thereof, including but not limited to treatment plants, pumping stations, intercepting sewers, trunk sewers, pressure lines, mains and all necessary appurtenances and equipment, and all property, rights, easements and franchises relating thereto and deemed necessary or convenient by the authority for the operation thereof.

(i) The word "sewers" shall include mains, pipes and laterals for the reception of sewage and carrying such sewage to an outfall or some part of a sewage disposal system, including pumping stations where deemed necessary by the authority.

(j) The term "sewer system" shall embrace both sewers and sewage disposal systems and all property, rights, easements and franchises relating thereto.

(k) The word "Board" shall mean the Board of Water Commissioners of the State of North Carolina or the Board, Body or Commission succeeding to the principal functions thereof or to whom the powers given by this chapter to the Board shall be given by law.

(l) The word "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 and existing under the laws of this State or any other state or country. (1955, c. 1195, s. 2.)

§ 162A-3. Procedure for creation; certificate of incorporation; certification of principal office and officers.—(a) The governing bodies of any two or more political subdivisions may by resolution signify their determination to organize an authority under the provisions of this chapter. Each of such resolutions shall be adopted after a public hearing thereon, notice of which hearing shall be given by publication at least once, not less than ten days prior to the date fixed for such hearing, in a newspaper having a general circulation in the political subdivision. Such notice shall contain a brief statement of the substance of the proposed resolution, shall set forth the proposed articles of incorporation of the authority and shall state the time and place of the public hearing to be held there-

of. No such political subdivision shall be required to make any other publication of such resolution under the provisions of any other law.

(b) Each such resolution shall include articles of incorporation which shall set forth:

(1) the name of the authority;

(2) a statement that such authority is organized under this chapter;

(3) the names of the organizing political subdivisions; and

(4) the names and addresses of the first members of the authority appointed by the organizing political subdivisions.

(c) A certified copy of each of such resolutions signifying the determination to organize an authority under the provisions of this chapter shall be filed with the Secretary of State of North Carolina, together with proof of publication of the notice of hearing on each of such resolutions. If the Secretary of State finds that the resolutions, including the articles of incorporation, conform to the provisions of this chapter and that the notices of hearing were properly published, he shall file such resolutions and proofs of publication in his office and shall issue a certificate of incorporation under the seal of the State and shall record the same in an appropriate book of record in his office. The issuance of such certificate of incorporation by the Secretary of State shall constitute the authority a public body and body politic and corporate of the State of North Carolina. Said certificate of incorporation shall be conclusive evidence of the fact that such authority has been duly created and established under the provisions of this chapter.

(d) When the authority has been duly organized and its officers elected as herein provided the secretary of the authority shall certify to the Secretary of State the names and addresses of such officers as well as the address of the principal office of the authority. (1955, c. 1195, s. 3.)

§ 162A-4. Withdrawal from authority; joinder of new subdivision. —Whenever an authority has been organized under the provisions of this chapter, any political subdivision may withdraw therefrom at any time prior to the creation of any obligations by the authority, and any political subdivision not having joined in the original organization may, with the consent of the authority, join the authority; provided, that any political subdivision not having joined the original organization shall have the right upon reasonable terms and conditions, whether the authority shall consent thereto or not, to join the authority if the authority's water system or sewer system, or any part thereof is situated within the boundaries of the political subdivision or of the county within which the political subdivision is located.

Any political subdivision desiring to withdraw from or to join an existing authority shall signify its desire by resolution adopted after a public hearing thereon, notice of which hearing shall be given in the manner and at the time provided in § 162A-3. Such notice shall contain a brief statement of the substance of said resolution and shall state the time and place of the public hearing to be held thereon. In the case of a political subdivision desiring to join the authority, the resolution shall set forth all of the information required under § 162A-3 in connection with the original organization of the authority, including the name and address of the first member of the authority from the joining political subdivision.

A certified copy of each such resolution signifying the desire of a political subdivision to withdraw from or to join an existing authority, together with proof of publication of the notice of hearing on each such resolution and, in cases where such resolution provides for the political subdivision joining the authority, a certified copy of a resolution of the authority consenting to such joining (except in cases where such consent is unnecessary), shall be filed with the Secretary of State of North Carolina. If the Secretary of State finds that the resolutions conform to the provisions of this chapter and that the notices of hearing were properly published, he shall file such resolutions and proofs of publication in his office and shall issue a certificate of withdrawal, or a certificate of joinder, as the case may

be, and shall record the same in an appropriate book of record in his office. The withdrawal or joining shall become effective upon the issuance of such certificate, and such certificate shall be conclusive evidence thereof. (1955, c. 1195, s. 4.)

§ 162A-5. Members of authority; organization; quorum. — Each authority organized under this chapter shall consist of the number of members as may be agreed upon by the participating political subdivisions, such members to be selected by the respective participating political subdivisions, but in all cases at least one member appointed by the governing body of each of the participating political subdivisions and one member appointed by the Governor of North Carolina. A proportionate number (as nearly as can be) of the members of the authority first appointed shall have terms expiring two years, four years and six years, respectively, from the date on which the creation of the authority becomes effective. The terms of the individual members of the authority first appointed shall be selected by lot at the first meeting of all the members thereof. Successor members and members appointed by political subdivisions subsequently joining the authority shall each be appointed for a term of six years but any person appointed to fill a vacancy shall be appointed to serve only for the unexpired term and any member of the authority may be reappointed. Appointments of successor members shall, in each instance, be made by the governing body of the political subdivision or by the Governor of North Carolina appointing the member whose successor is to be appointed. Any member of the authority may be removed for cause by the governing body of the political subdivision or the Governor of North Carolina appointing him.

Each member of the authority before entering upon his duties shall take and subscribe an oath or affirmation to support the Constitution of the United States and of this State and to discharge faithfully the duties of his office, and a record of each such oath shall be filed with the secretary of the authority.

The authority shall select one of its members as chairman and another as vice chairman and shall also select a secretary and a treasurer who may but need not be members of the authority. The offices of secretary and treasurer may be combined. The terms of office of the chairman, vice chairman, secretary and treasurer shall be as provided in the bylaws of the authority.

A majority of the members of the authority shall constitute a quorum and the affirmative vote of a majority of all of the members of the authority 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 of the duties of the authority. The members of the authority shall serve without compensation but shall be reimbursed for the amount of actual expenses incurred by them in the performance of their duties. (1955, c. 1195, s. 5.)

§ 162A-6. Powers of authority generally. — Each authority created hereunder shall be deemed to be a public instrumentality exercising public and essential governmental functions to provide for the public health and welfare, and each such authority is, subject to the provisions of § 162A-7, 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 as it may designate;

(d) to sue and be sued in its own name, plead and be impleaded;

(e) to acquire, lease as lessee or lessor, construct, reconstruct, improve, extend, enlarge, equip, repair, maintain and operate any water system or part thereof or any sewer system or part thereof or any combination thereof within or without the participating political subdivisions or any thereof;

(f) to issue revenue bonds of the authority as hereinafter provided to pay the cost of such acquisition, construction, reconstruction, improvement, extension, enlargement or equipment;

(g) to issue revenue refunding bonds of the authority as hereinafter provided;

(h) to combine any water system and any sewer system as a single system for the purpose of operation and financing;

(i) to fix and revise from time to time and to collect rates, fees and other charges for the use of or for the services and facilities furnished by any system operated by the authority;

(j) to acquire in the name of the authority by gift, purchase or the exercise of the right of eminent domain in accordance with the General Statutes of North Carolina which may be applicable to the exercise of such powers by municipalities or counties, any lands or rights in land or water rights in connection therewith, and to acquire such personal property, as it may deem necessary in connection with the acquisition, construction, reconstruction, improvement, extension, enlargement or operation of any water system or sewer system, and to hold and dispose of all real and personal property under its control; provided, that the taking of water from any stream or reservoir by an authority created under the provisions of this chapter shall not vest in the taker any rights by prescription; provided, further, that nothing in this section shall affect rights by prescription, if any, now held by any municipality and which may be later transferred to any authority of which such municipality may become a member;

(k) 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 chapter, including a trust agreement or trust agreements securing any revenue bonds issued hereunder, and to employ such consulting and other engineers, superintendents, managers, construction and financial experts, accountants and attorneys, and such employees and agents as may, in the judgment of the authority be deemed necessary, and to fix their compensation; provided, however, that all such expenses shall be payable solely from funds made available under the provisions of this chapter;

(l) to enter into contracts with the government of the United States or any agency or instrumentality thereof, or with any political subdivision, private corporation, co-partnership, association or individual providing for the acquisition, construction, reconstruction, improvement, extension, enlargement operation or maintenance of any water system or sewer system or providing for or relating to the treatment and disposal of sewage or providing for or relating to any water system or the purchase or sale of water;

(m) to enter into contract with any political subdivision by which the authority shall assume the payment of the principal of and interest on indebtedness of such subdivision; and

(n) to do all acts and things necessary or convenient to carry out the powers granted by this chapter. (1955, c. 1195, s. 6.)

§ 162A-7. Prerequisites to acquisition of water, etc., by eminent domain.—(a) No authority shall institute proceedings in the nature of eminent domain to acquire water, water rights, or lands having water rights attached thereto without first securing from the Board a certificate authorizing such acquisition.

(b) An authority seeking such certificate shall petition the Board therefor in writing, which petition shall include a description of the waters or water rights involved, the plans for impounding or diverting such waters, and the names of riparian owners affected thereby insofar as known to the authority Upon receipt of such petition, the Board shall hold public hearing thereon after giving at least thirty days' written notice thereof to known affected riparian owners and notice published at least once each week for two successive weeks in a newspaper or newspapers of general circulation in each county in which lower riparian lands lie.

(c) The Board shall issue certificates only to projects which it finds to be consistent with the maximum beneficial use of the water resources in the State and shall give paramount consideration to the State-wide effect of the proposed

project rather than its purely local or regional effect. In making this determination, the Board shall specifically consider:

(1) The necessity of the proposed project;

(2) Whether the proposed project will promote and increase the storage and conservation of water;

(3) The extent of the probable detriment to be caused by the proposed project to the present beneficial use of water in the affected watershed and resulting damages to present beneficial users;

(4) The extent of the probable detriment to be caused by the proposed project to the potential beneficial use of water on the affected watershed;

(5) The feasibility of alternative sources of supply to the petitioning authority and the comparative cost thereof;

(6) The extent of the probable detriment to be caused by the use of alternative sources of supply to present and potential beneficial use of water on the watershed or watersheds affected by such alternative sources of supply;

(7) All other factors as will, in the Board's opinion produce the maximum beneficial use of water for all in all areas of the State affected by the proposed project or alternatives thereto.

Upon the considerations above set forth, the Board may grant its certificate in whole or in part or it may refuse the same.

(d) At the public hearing provided for in subsection (b) above the Board shall hear evidence from the authority and any others in support of its petition and from all persons opposed thereto.

(e) At any hearing authorized by this section, the Board shall have power to administer oaths; to take testimony; to issue subpœnas and compel the attendance of witnesses, which shall be served in the same manner as subpœnas issued by the superior courts of the State; and to order the taking of depositions in the same manner as depositions are taken for use in the superior court.

(f) Any final order or decision of the Board in administering the provisions of this section shall be subject to judicial review at the instance of any person or authority aggrieved by such order or decision by complying with the provisions of article 33, chapter 143 of the General Statutes of North Carolina. (1955, c. 1195, s. 6½.)

Cross Reference.—As to the word "authority" in this section being deemed to include counties and municipalities acting collectively or jointly under article 22, chapter 153, see § 153-279.

§ 162A-8. Revenue bonds generally.—Each authority is hereby authorized to issue, at one time or from time to time, revenue bonds of the authority for the purpose of paying all or any part of the cost of acquiring constructing, reconstructing, improving, extending, enlarging or equipping any water system or sewer system or any part or any combination thereof. The bonds of each issue shall be dated, shall mature at such time or times not exceeding forty years from their date or dates and shall bear interest at such rate or rates not exceeding five per centum (5%) per annum, 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 and the manner of execution of the bonds, including any interest coupons to be attached thereto and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest, which may be at any bank or trust company within or without the State In case any officer whose signature or a facsimile of whose signature shall appear on any bonds or coupons shall cease to be such officer before the delivery of such bonds, such signature or such fascimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. Notwithstanding any of the other provisions of this chapter or any recitals in any bonds issued under the provisions

of this chapter, all such bonds shall be deemed to be negotiable instruments under the laws of this State. The bonds may be issued in coupon or registered form or both, as the 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. Such bonds shall be approved and sold by the Local Government Commission in the same manner as municipal bonds are approved and sold by that Commission, except that the said Commission may sell any bonds issued pursuant to this chapter at private sale and without advertisement, and for such price with the consent of the authority, as it may determine to be for the best interests of the authority, 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 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 such bonds, by error of estimates or otherwise, shall be less than such cost, additional bonds may in like manner be issued to provide the amount of such deficit, and, 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, and any trust agreement securing such bonds, may also contain such limitations upon the issuance of additional revenue bonds as the authority 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 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, except that such interim receipts or temporary bonds shall be approved by the Local Government Commission in the same manner as the definitive bonds are approved by said Commission under the provisions of this chapter. Delivery of interim receipts or temporary bonds or of the bonds authorized pursuant to this chapter to the purchaser or order or delivery of definitive bonds in exchange for interim receipts or temporary bonds, shall be made in the same manner as municipal bonds may be delivered under the provisions of the Local Government Act. The authority may also provide for the replacement of any bonds which shall become mutilated or be destroyed or lost.

Excepting the requirement herein that approval of the Local Government Commission shall be obtained, bonds may be issued under the provisions of this chapter without obtaining the consent of any other commission, board, bureau or agency of the State or of any political subdivision, and without any other proceeding or the happening of other conditions or things than those proceedings, conditions or things which are specifically required by this chapter.

Revenue bonds issued under the provisions of this chapter shall not be deemed to constitute a debt of the State or of any political subdivision or a pledge of the faith and credit of the State or of any political subdivision, but such bonds shall be payable solely from the funds herein provided therefor and a statement to that effect shall be recited on the face of the bonds. (1955, c. 1195, s. 7.)

§ 162A-9. Rates and charges; contracts for water or services; deposits; delinquent charges.—Each authority shall fix, and may revise from time to time, reasonable rates, fees and other charges for the use of and for the services furnished or to be furnished by any water system or sewer system or parts thereof owned or operated by such authority. Such rates, fees and charges shall not be subject to supervision or regulation by any bureau, board, commission or other agency of the State or of any political subdivision. Such rates, fees and charges shall be fixed and revised so that the revenues of the authority, together with any other available funds, will be sufficient at all times (a) to pay the cost of maintaining, repairing and operating the systems or parts thereof owned or operated by the authority, including reserves for such purposes, and including provision for the payment of principal of and interest on indebtedness of a political subdivision or of political subdivisions which payment shall have been assumed by the authority, and (b) to pay the principal of and the interest on all bonds issued by the authority under the provisions of this chapter as the same shall become due and payable and to provide reserves therefor. Notwithstanding any of the foregoing provisions of this section, the authority may enter into contracts relating to the collection, treatment or disposal of sewage or the purchase or sale of water which shall not be subject to revision except in accordance with their terms.

In order to insure the payment of such rates, fees and charges as the same shall become due and payable, the authority may, in addition to any other remedies which it may have (1) require reasonable advance deposits to be made with it to be subject to application to the payment of delinquent rates, fees and charges, and (2) at the expiration of thirty days after any such rates, fees and charges become delinquent, discontinue supplying water or the services and facilities of any water system or sewer system of the authority. (1955, c. 1195, s. 8.)

§ 162A-10. Trust agreements securing bonds; pledges of revenues.—In the discretion of the authority, each or any issue of revenue bonds 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. The resolution authorizing the issuance of the bonds or such trust agreement may pledge the revenues to be received, but shall not convey or mortgage any water system or sewer system or any part thereof, and may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the authority in relation to the acquisition, construction, reconstruction, improvement, maintenance, repair, operation and insurance of any such system or systems, the fixing and revising of rates, fees and charges, and the custody, safeguarding and application of all moneys, and for the employment of consulting engineers in connection with such acquisition, construction, reconstruction or operation. It shall be lawful for any bank or trust company incorporated under the laws of the State which may act as depositary 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. Such resolution or trust agreement may set forth the rights and remedies of the bondholders and of the trustee, if any, and may restrict the individual right of action by bondholders. Such resolution or trust agreement may contain such other provisions in addition to the foregoing as the authority may deem reasonable and proper for the security of the bondholders. Except as in this chapter otherwise provided, the authority may provide for the payment of the proceeds of the sale of the bonds and the revenues of any water system or sewer system or part thereof to such officer, board or depositary as it may designate for the custody thereof, and for the method of disbursement thereof, with such safeguards and restrictions as it may determine. All expenses in-

curred in carrying out the provisions of such resolution or trust agreement may be treated as a part of the cost of operation.

All pledges of revenues under the provisions of this chapter shall be valid and binding from the time when such pledge is made. All such revenues so pledged and thereafter received by the authority shall immediately be subject to the lien of such pledges without any physical delivery thereof or further action, and the lien of such pledges shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the authority, irrespective of whether such parties have notice thereof. (1955, c. 1195, s. 9.)

§ 162A-11. Moneys received deemed trust funds.—All moneys received pursuant to the authority of this chapter shall be deemed to be trust funds, to be held and applied solely as provided in this chapter. The resolution authorizing the issuance of bonds or the trust agreement securing such bonds shall provide that any officer to whom, or bank, trust company or fiscal agent to which, such moneys shall be paid shall act as trustee of such moneys and shall hold and apply the same for the purposes hereof, subject to such regulations as this chapter and such resolution or trust agreement may provide. (1955, c. 1195, s. 10.)

§ 162A-12. Bondholder's remedies.—Any holder of revenue bonds issued under the provisions of this chapter or of 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 the resolution authorizing the issuance of such bonds or 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 resolution or trust agreement, and may enforce and compel the performance of all duties required by this chapter or by such resolution or trust agreement to be performed by the authority or by any officer thereof, including the fixing, charging and collecting of rates, fees and charges for the use of or for the services and facilities furnished by a water system or sewer system. (1955, c. 1195, s. 11.)

§ 162A-13. Refunding bonds. — Each authority is hereby authorized to issue from time to time revenue refunding bonds for the purpose of refunding any revenue bonds of the authority then outstanding, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds. The authority is further authorized to issue from time to time revenue bonds of the authority for the combined purpose of (a) refunding any revenue bonds or revenue refunding bonds of the authority then outstanding, 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 acquiring or constructing any additional water system or sewer system or part thereof, or any improvements, extensions or enlargements of any water system or sewer system. The issuance of such bonds, the maturities and other details thereof, the rights and remedies of the holders thereof, and the rights, powers, privileges, duties and obligations of the authority with respect to the same, shall be governed by the foregoing provisions of this chapter insofar as the same may be applicable. (1955, c. 1195, s. 12.)

§ 162A-14. Conveyances and contracts between political subdivisions and authority.—The governing body of any political subdivision is hereby authorized and empowered:

(a) Subject to the approval of the Local Government Commission, to transfer jurisdiction over, and to lease, lend, grant or convey to an authority upon the request of the authority, upon such terms and conditions as the governing body of such political subdivision may agree with the authority as reasonable and fair,

the whole or any part of any existing water system or sewer system or such real or personal property as may be necessary or desirable in connection with the acquisition, construction, reconstruction, improvement, extension, enlargement, equipment, repair, maintenance or operation of any water system or sewer system or part thereof by the authority, including public roads and other property already devoted to public use;

(b) to make and enter into contracts or agreements with an authority, upon such terms and conditions and for such periods as are agreed to by the governing body of such political subdivision and the authority:

(1) for the collection, treatment or disposal of sewage by the authority or for the purchase of a supply of water from the authority;

(2) for the collecting by such political subdivision or by the authority of fees, rates or charges for water furnished to such political subdivision or to its inhabitants and for the services and facilities rendered to such political subdivision or to its inhabitants by any water system or sewer system of the authority, and for the enforcement of delinquent charges for such water, services and facilities; and

(3) for shutting off the supply of water furnished by any water system owned or operated by such political subdivision in the event that the owner, tenant or occupant of any premises utilizing such water shall fail to pay any rates, fees or charges for the use of or for the services furnished by any sewer system of the authority, within the time or times specified in such contract;

(c) to fix, and revise from time to time, rates, fees and other charges for water and for the services furnished or to be furnished by any water system or sewer system of the authority, or parts thereof, under any contract between the authority and such political subdivision, and to pledge all or any part of the proceeds of such rates, fees and charges to the payment of any obligation of such political subdivision under such contract; and

(d) in its discretion, to submit to the qualified electors under the election laws applicable to such political subdivision any contract or agreement which such governing body is authorized to make and enter into with the authority under the provisions of this chapter; provided, however, that before any contract or agreement under subdivision (a) of this section shall become effective as to a political subdivision such contract or agreement shall be submitted to and approved by a majority of the qualified electors voting at an election held under the election laws applicable to such political subdivision. (1955, c. 1195, s. 13.)

§ 162A-15. Services to authority by private water companies; records of water taken by authority; reports to Board of Water Commissioners.—Each private water company which is supplying water to the owners, lessees or tenants of real property which is or will be served by any sewer system of an authority is authorized to act as the billing and collecting agent of the authority for any rates, fees or charges imposed by the authority for the services rendered by such sewer system. Any such company shall, if requested by an authority, furnish to the authority copies of its regular periodic meter reading and water consumption records and other pertinent data as may be required for the authority to act as its own billing and collecting agent. The authority shall pay to such water company the reasonable additional cost of clerical services and other expenses incurred by the water company in rendering such services to the authority. The authority shall by means of suitable measuring and recording devices and facilities record the quantity of water taken daily by it from any stream or reservoir and make monthly reports of such daily recordings to the Board of Water Commissioners of the State of North Carolina. (1955, c. 1195, s. 14.)

§ 162A-16. Contributions or advances to authority by political subdivisions.—Any political subdivision is hereby authorized to make contribu-

tions or advances to an authority, from any moneys which may be available for such purpose, to provide for the preliminary expenses of such authority in carrying out the provisions of this chapter. Any such advances may be repaid to such political subdivisions from the proceeds of bonds issued by such authority under this chapter. (1955, c. 1195, s. 15.)

§ 162A-17. Chapter regarded as supplemental.—This chapter shall be deemed to provide an additional and alternative method for the doing of the things authorized hereby and shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of or as repealing any powers now existing under any other law, either general, special or local; provided, however, that the issuance of revenue bonds or revenue refunding bonds under the provisions of this chapter need not comply with the requirements of any other law applicable to the issuance of bonds. (1955, c. 1195, s. 16.)

§ 162A-18. Actions against authority by riparian owners.—Any riparian owner alleging an injury as a result of any act of an authority created under this chapter may maintain an action for relief against the acts of the authority either in the county where the lands of such riparian owner lie or in the county in which the principal office of the authority is maintained. (1955, c. 1195, s. 16½.)

§ 162A-19. Inconsistent laws declared inapplicable.—All general, special or local laws, or parts thereof, inconsistent herewith are hereby declared to be inapplicable to the provisions of this chapter. (1955, c. 1195, s. 17.)

Chapter 162B.

Continuity of Local Government in Emergency.

Article 1.

In General.

Article 2.

Emergency Interim Succession to Local Offices.

ARTICLE 1.

In General.

§ 162B-1. Designated emergency location of government. — The governing body of each political subdivision of this State is hereby authorized to designate by ordinance, resolution or other manner, alternate sites or places, within or without the territorial limits of such political subdivision and within or without this State, as the emergency location of government. (1959, c. 349.)

§ 162B-2. Emergency meetings. — Whenever the Governor and Council of State acting together declare an emergency to exist by reason of actual or impending hostile attack upon the State of North Carolina and, due to the

emergency so declared, it becomes imprudent or impossible to conduct the affairs of local government at the regular or usual place or places thereof, the governing body of each political subdivision of this State is hereby authorized to meet from time to time upon call of the presiding officer or a majority of the members thereof at the designated emergency location of government during the period of the emergency and until the emergency is declared terminated by the Governor and Council of State. (1959, c. 349.)

§ **162B-3. Emergency public business; nature and conduct.**—Whenever the public business of any political subdivision is being conducted at a designated emergency location outside the territorial limits thereof, the members of the governing body may exercise such executive and legislative powers and functions as are pertinent to continued operation of the local government upon return to within the respective political subdivisions. Any action taken by any local governing body at a designated emergency location shall apply and be effective only within the territorial limits of the political subdivision which such governing body represents. During the period of time in which the public business is being conducted at a designated emergency location, the governing body may, when emergency conditions make impossible compliance with legally prescribed procedural requirements relating to the conduct of meetings and transaction of business, waive such compliance by adoption of an ordinance or resolution reciting the facts and conditions showing the impossibility of compliance. (1959, c. 349.)

§ **162B-4. Provisions of article control over local law.**—The provisions of this article shall be effective in the event it shall be employed notwithstanding any statutory, charter or ordinance provision to the contrary or in conflict herewith. (1959, c. 349.)

Article 2.

Emergency Interim Succession to Local Offices.

§ **162B-5. Short title.**—This article shall be known and may be cited as the North Carolina "Emergency Interim Local Government Executive Succession Act of 1959." (1959, c. 314, s. 1.)

§ **162B-6. Policy and purpose.** — Because of the existing possibility of attack upon the State of North Carolina of unprecedented size and destructiveness, and in order, in the event of such an attack, to assure continuity of local government through legally constituted leadership, authority and responsibility in offices of political subdivisions of the State of North Carolina; to provide for the effective operation of local governments during an emergency; and to facilitate the early resumption of functions temporarily suspended, it is found and declared to be necessary to provide for emergency interim succession to governmental offices of political subdivisions in the event the incumbents thereof and their deputies, assistants or other subordinate officers authorized, pursuant to law, to exercise all of the powers and discharge the duties of such offices (hereinafter referred to as deputies) are unavailable to perform the duties and functions of such offices. (1959, c. 314, s. 2.)

§ **162B-7. Definitions.**—Unless otherwise clearly required by the context, as used in this article:

(a) "Unavailable" means either that a vacancy in office exists and there is no deputy authorized to exercise all of the powers and discharge the duties of the office, or that the lawful incumbent of the office (including any deputy exercising the powers and discharging the duties of an office because of a vacancy) and his duly authorized deputy are absent or unable to exercise the powers and discharge the duties of the office.

(b) "Emergency interim successor" means a person designated pursuant to

this article, in the event the officer is unavailable, to exercise the powers and discharge the duties of an office until a successor is appointed or elected and qualified as may be provided by the statutes, charters and ordinances or until the lawful incumbent is able to resume the exercise of the powers and discharge the duties of the office.

(c) "Office" includes all local offices, the powers and duties of which are defined by statutes, charters and ordinances.

(d) "Attack" means any attack or series of attacks by an enemy of the United States upon the State of North Carolina causing, or which may cause, substantial damage or injury to civilian property or persons in the State in any manner by sabotage or by the use of bombs, missiles, shellfire, or atomic, radiological, chemical, bacteriological or biological means or other weapons or processes.

(e) "Political subdivision" includes counties, cities, towns, townships, districts, authorities and other municipal corporations and entities whether organized and existing under charter or general law. (1959, c. 314, s. 3.)

§ 162B-8. Enabling authority for emergency interim successors for local offices.—With respect to local offices for which the governing bodies of cities, towns, townships, and counties may enact resolutions or ordinances relative to the manner in which vacancies will be filled or temporary appointments to office made, such governing bodies are hereby authorized to enact resolutions or ordinances providing for emergency interim successors to offices of the aforementioned governmental units. Such resolutions and ordinances shall not be inconsistent with the provisions of this article. (1959, c. 314, s. 4.)

§ 162B-9. Emergency interim successors for local officers.—The provisions of this section shall be applicable to officers of political subdivisions (including, but not limited to counties, cities, towns and townships as well as school, fire, drainage and other municipal corporate districts) not included in § 162B-8. Such governing bodies, pursuant to such regulations as they may adopt, shall upon approval of this article, designate by title (if feasible) or by named person, emergency interim successors and specify their order of succession. The local governing body shall review and revise, as necessary, designations made pursuant to this article to insure their current status. The governing body will designate a sufficient number of persons so that there will be not less than three, nor more than seven, deputies or emergency interim successors or combination thereof at any time. In the event that any officer of any political subdivision (or his deputy provided for pursuant to law) is unavailable, the powers of the office shall be exercised and duties shall be discharged by his designated emergency interim successors in the order specified. The emergency interim successor shall exercise the powers and discharge the duties of the office to which designated until such time as a vacancy which may exist shall be filled in accordance with the Constitution or statutes; or until the officer (or his deputy or a preceding emergency interim successor) again becomes available to exercise the powers and discharge the duties of his office. (1959, c. 314, s. 5.)

§ 162B-10. Formalities of taking office.—At the time of their assumption of office, emergency interim successors shall take such oath as may be required for them to exercise the powers and discharge the duties of the office to which they may succeed. Notwithstanding any other provision of law, no person, as a prerequisite to the exercise of the powers or discharge of the duties of an office to which he succeeds, shall be required to comply with any other provision of law relative to taking office. (1959, c. 314, s. 6.)

§ 162B-11. Period in which authority may be exercised. — Emergency interim successors, authorized to act pursuant to this article, are empowered to exercise the powers and discharge the duties of an office as herein authorized only after an attack upon the State of North Carolina, as defined herein, has occurred. The local governing body, by a duly adopted resolution,

may at any time terminate the authority of said emergency interim successors to exercise the powers and discharge the duties of office as herein provided. (1959, c. 314, s. 7.)

§ 162B-12. Removal of designees. — Until such time as the persons designated as emergency interim successors are authorized to exercise the powers and discharge the duties of an office in accordance with this article, including § 162B-11 hereof, said persons shall serve in their designated capacities at the pleasure of the designating authority and may be removed or replaced by said designating authority at any time, with or without cause. (1959, c. 314, s. 8.)

§ 162B-13. Disputes.—Any dispute concerning a question of fact arising under this article with respect to an office in any political subdivision shall be adjudicated by the local governing body and their decision shall be final. (1959, c. 314, s. 9.)

Chapter 163.

Elections and Election Laws.

SUBCHAPTER I. GENERAL ELECTIONS.

Article 2.

Time of Elections.

Article 4.

County Board of Elections.

Article 5.

Precinct Election Officers and Election Precincts.

Article 6.

Qualification of Voters.

Article 7.

Registration of Voters.

SUBCHAPTER I. GENERAL ELECTIONS.

Article 1.

Political Parties.

§ 163-1. Political party defined; creation of new party.

Editor's Note.—

For case law survey on elections, see 41 N. C. Law Rev. 433.

Article 2.

Time of Elections.

§ 163-4. For congressmen, legislators, county officers, and solicitors.

Cited in Rider v. Lenoir County, 236 N. C. 620, 73 S. E. (2d) 913 (1952).

§ 163-6. Filling vacancies for members of General Assembly.—If a vacancy shall occur in the General Assembly by death, resignation or otherwise, the said vacancy shall be filled immediately by the Governor appointing the person recommended by the executive committee of the county in which the deceased or resigned member was resident, being the executive committee of the political party with which the deceased or resigned member was affiliated at the time of his election. (1901, c. 89, s. 74; Rev., s. 4298; C. S., s. 5919; 1947, c. 505, s. 1; 1953, c. 1191, s. 1.)

Editor's Note.—

The 1953 amendment rewrote this section.

§ 163-7. For vacancies in State offices.

Section Inapplicable to Governor and Lieutenant-Governor.—When the General Assembly enacted this section, it clearly recognized that the Governor and the Lieutenant-Governor were not subject to its provisions and that is the reason the section contains the provision, "except as otherwise provided for in the Constitution." Thomas v. State Board of Elections, 256 N. C. 401, 124 S. E. (2d) 164 (1962).

Article 3.

State Board of Elections.

§ 163-8. State Board of Elections; appointment; term of office.—All of the terms of office of the present members of the State Board of Elections shall expire on May 1, 1953, or when their successors in office are appointed and qualified. The State Board of Elections shall consist of five electors whose terms of office shall begin on May 1, 1953, and shall continue for four years, and until their successors are appointed and qualified. The Governor shall appoint the members of this Board and likewise shall appoint their successors every four years at the expiration of each four-year term. Not more than three members

of said Board shall be of the same political party. (1901, c. 89, s. 5; Rev., s. 4300; C. S., s. 5921; 1933, c. 165, s. 1; 1953, c. 428.)

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

§ 163-10. Duties of the State Board of Elections.

Cited in Ponder v. North Carolina State Board of Elections, 233 N. C. 707, 65 S. E. (2d) 377 (1951); Strickland v. Hill, 253 N. C. 198, 116 S. E. (2d) 463 (1960); Bazemore v. Bertie County Board of Elections, 254 N. C. 398, 119 S. E. (2d) 637 (1961).

ARTICLE 4.

County Board of Elections.

§ 163-11. County boards of elections; appointments; term of office and qualifications.—There shall be in every county in the State a county board of elections to consist of three persons of good moral character, who are electors in the county in which they are to act, who shall be appointed by the State Board of Elections on the Friday preceding the tenth Saturday preceding each primary election, and whose terms of office shall continue for two years from the time of their appointment and until their successors are appointed and qualified. Not more than two members of the county board of elections shall belong to the same political party, and the State chairman of each political party shall have the right to recommend three electors in each county for such offices, and it shall be the duty of the State Board of Elections to appoint said county board from the names thus recommended: Provided, that said chairman shall recommend such persons at least fifteen days before the tenth Saturday before the primary election is to be held.

(1955, c. 871, s. 1.)

Editor's Note.—
The 1955 amendment inserted "on the Friday preceding the tenth Saturday" in lieu of "on the tenth Saturday" formerly appearing in the fourth line of the first paragraph. As the rest of the section was not affected it is not set out.

§ 163-12. Meetings of county boards of elections; vacancies; pay.—The county board of elections in each county in the State shall meet in their respective counties at the courthouse at noon on the ninth Saturday before each primary election, and a majority being present, they shall take the oath of office and shall then organize by electing one of its members chairman and another member secretary, and it may meet at such other times and places as the chairman of said board, or any two members thereof may direct, for the performance of such duties as required by law.

Whenever a vacancy occurs in the membership of a county board of election, the State chairman of the political party of the vacated member shall have the right to recommend two electors for such office, and it shall be the duty of the State Board of Elections or the chairman of the State Board of Elections to fill the vacancy from the names thus recommended.

The members of the county board of elections shall receive in full compensation for their services fifteen dollars per day for the time they are actually engaged in the discharge of their duties, together with such other expenses as are necessary and incidental to the discharge of their duties: Provided, that the chairman of a county board of elections shall receive for his services, when actually engaged in the discharge of his duties, the sum of fifteen dollars per day. Provided further that the board of county commissioners of a county shall have the right and authority, in lieu of the provisions of this section relating to the compensation of the chairman of the county board of elections, to pay additional compensation to

the chairman other than that mentioned above. (1901, c. 89, s. 11; Rev., s. 4304; C. S., s. 5925; 1923, c. 111, s. 1; 1933, c. 165, s. 2; 1941, c. 305, s. 1; 1945, c. 758, s. 2; 1953, c. 410, s. 1; 1953, c. 1191, s. 2; 1957, c. 182, s. 1; 1959, c. 1203, s. 1.)

Editor's Note.—The first 1953 amendment rewrote the second paragraph. The second 1953 amendment increased the amount in line two of the third paragraph from five to ten dollars, and the amount in line six from seven to ten dollars. It also added the second proviso to the third paragraph. The 1957 amendment increased the amount in line two of the third paragraph from ten to fifteen dollars. The 1959 amendment substituted "ninth Saturday" for "seventh Saturday" in the first paragraph. It also substituted "fifteen dollars" for "ten dollars" in line six of the third paragraph.

§ 163-12.1. Compensation of board members and other personnel in counties having loose-leaf and visible registration system and permanent registration.—In counties in which a modern loose-leaf and visible registration system has been established as permitted by G. S. 163-43, with a full time and permanent registration as authorized by G. S. 163-31 and 163-31.2, the members of the county board of elections shall be paid such compensation for the performance of their duties as shall be fixed in the discretion of the county commissioners of such county, and the executive secretaries, if such be named, and all special registration commissioners, other clerks, employees and other board personnel of such county board of elections shall be paid such compensation for the performance of their duties as shall be fixed in the discretion of the county board of elections, by and with the consent and approval of the board of county commissioners of the county. (1953, c. 843; 1955, c. 800; 1963, c. 303, s. 1.)

Editor's Note.—The 1955 amendment inserted "one or more municipalities with a population in excess of 10,000" in lieu of "two or more municipalities, each with a population in excess of 35,000" formerly appearing near the beginning of the section.

The 1963 amendment deleted the words inserted by the 1955 amendment.

§ 163-13. Removal of member of county board of elections; filling vacancies.—The State Board of Elections shall have the power to remove from office any member of the county board of elections for incompetency, failure of duty, fraud, or for any other satisfactory cause. When any member of the county board shall be removed by the State Board, the vacancy occurring shall be filled by the State Board of Elections. Whenever a vacancy occurs in the membership of a county board of elections for any other cause than removal by the State Board of Elections, the State chairman of the political party of the vacating member shall have the right to recommend two electors for such office and it shall be the duty of the State Board of Elections or the chairman of the State Board of Elections to fill the vacancy from the names thus recommended. (1901, c. 89, s. 11; Rev., s. 4305; 1913, c. 138; C. S., s. 5926; 1921, c. 181, s. 1; 1923, c. 196; 1933, c. 165, s. 2; 1953, c. 410, s. 2.)

Editor's Note.—The 1953 amendment rewrote the part of this section comprising the third sentence.

§ 163-14.1. Executive secretaries to county boards in counties having loose-leaf and visible registration system and permanent registration.—In counties in which a modern loose-leaf and visible registration system has been established as permitted by G. S. 163-43, with a full time and permanent registration as authorized by G. S. 163-31 and 163-31.2, the county board of elections shall have the power and authority by a majority vote to designate and appoint from time to time executive secretaries, and to delegate to such executive secretaries, by specific resolution, so much of the administrative details of election functions, duties and work of the county board of elections, the officers and members thereof, or the supervisory heads of county units, where

such units have been established as provided by G. S. 163-14.2, as is now, or may hereafter be, vested in county boards of elections, its officers and members, by chapter 163 of the General Statutes of North Carolina, as said county board of elections may see fit by such majority vote to give to such executive secretaries, and thereafter such executive secretaries shall act within the limitation of the authority and duties delegated and imposed upon them by the county board of elections, as fully and to the same extent as though the same were actually done and performed by the county board of elections, its officers and members: Provided, that no delegation of the quasi-judicial or policy making duties and authority of the county board of elections shall be made. No person shall serve as an executive secretary who holds any elective public office or who is a candidate for any office in a primary or election, or who holds an official position with any political party. (1953, c. 843; 1955, c. 800; 1963, c. 303, s. 1.)

Editor's Note.--The 1955 amendment inserted "one or more municipalities with a population in excess of 10,000" in lieu of "two or more municipalities, each with a population in excess of 35,000" formerly appearing near the beginning of the section.

The 1963 amendment deleted the words inserted by the 1955 amendment.

§ 163-14.2. Creation of administrative and jurisdictional units and designation of supervisory heads thereof in such counties.—In counties in which a modern loose-leaf and visible registration system has been established as permitted by G. S. 163-43, with a full time and permanent registration as authorized by G. S. 163-31 and 163-31.2, the county board of elections may, by a resolution passed by a majority vote, divide said county into two or more administrative and jurisdictional units and specify by name the member of the county board of elections who shall serve in the capacity of supervising head of said specified unit of the county. Upon a certification of this resolution by the county board of elections to the State Board of Elections, the member of the county board of elections, specified as the administrative and supervisory head of such unit, shall thereafter possess all of the authority and powers and be charged with all of the duties with respect to the unit of the county so specified in said resolution as are now, or may hereafter be, specified for chairmen of county boards of elections. Such division of a county into units for administrative supervision and authority shall be subject to immediate revocation at any time by the county board of elections upon a resolution passed by a majority vote and filed with the State Board of Elections. Whenever a county board of elections has divided a county into administrative and supervisory units under the provisions of this section, it is authorized to divide the registration and other records as they pertain to the administrative and supervisory units created, and to maintain separate offices in each of the administrative and supervisory units created. The creation of such administrative units and designation of supervisory heads shall be in addition to the general powers and authority of the officers of the county board of elections and shall not be a limitation thereof. (1953, c. 843; 1955, c. 800; 1963, c. 303, s. 1.)

Editor's Note.--The 1955 amendment inserted "one or more municipalities with a population in excess of 10,000" in lieu of "two or more municipalities, each with a population in excess of 35,000" formerly appearing near the beginning of the section.

The 1963 amendment deleted the words inserted by the 1955 amendment.

§ 163-14.3. Power of boards of elections in such counties to authorize and publish unofficial reports of elections.—In counties in which a loose-leaf and visible registration system has been established as permitted by G. S. 163-43 with a full time and permanent registration as authorized by G. S. 163-31 and 163-31.2, the county board of elections is authorized to require each registrar, immediately following the counting of ballots in any primary or general election, to report the same personally, by telephone or otherwise to the county

board of elections, the report to be unofficial and to have no binding effect upon the official county canvass to follow thereafter. The county board of elections is authorized to publish the reports so received from the registrars to the press and to radio and television stations in such manner and upon such terms and conditions as it may think proper. The method and manner of receiving such precinct reports from the registrars and the publication of the same, as aforesaid, shall be by and with the consent and approval of the board of county commissioners. The expense thereof shall be fixed in the discretion of the county board of elections by and with the consent and approval of the county commissioners. (1953, c. 843; 1955, c. 800; 1963, c. 303, s. 1.)

Editor's Note.—The 1955 amendment inserted "one or more municipalities with a population in excess of 10,000" in lieu of "two or more municipalities, with a population in excess of 35,000" formerly appearing near the beginning of the section. The 1963 amendment deleted the words inserted by the 1955 amendment.

Article 5.

Precinct Election Officers and Election Precincts.

§ 163-15. Appointment of registrars and judges of elections; qualifications; special registration commissioners in certain counties.—The county boards of elections, at the first meeting herein provided to be held on the seventh Saturday before each primary election, shall select one person of good repute who shall act as registrar and two other persons of good repute who shall act as judges of election for each election precinct in the respective counties for both the ensuing primary and general election, whose terms of office shall continue for two years from the time of their appointment, or until their successors are appointed and qualified, and who shall conduct the primaries and elections within their respective precincts. Each registrar and judge of election so appointed shall be able to read and write and they shall be residents of the precincts for which they are appointed. The chairman of each political party in each county shall have the right to recommend from three to five electors in each precinct, who are residents of the precinct, and who shall be of good moral character and able to read and write, for appointment as registrar and for judges of election in each precinct, and such appointments may be made from such names so recommended: Provided, such recommendations are made by the seventh Saturday before each primary election: Provided, further, that in any primary, when only one political party participates in such primary then all of the precinct officials selected for holding such primary shall be chosen only from such political party so participating. In a primary, where more than one political party participates, and in the general election, not more than one judge of election in each precinct shall be of the same political party with that of the registrar. No person holding any office or place of trust or profit under the government of the United States, or the State of North Carolina, or any political subdivision thereof, shall be eligible to appointment as an election official: Provided that nothing herein contained shall extend to officers in the militia, notaries public, justices of the peace, commissioners of public charities, or commissioners for special purposes. No person who is a candidate shall be eligible to serve as a registrar or judge or assistant.

Provided that in counties in which a modern loose-leaf and visible registration system has been established as permitted by G. S. 163-43 with a full time and permanent registration as authorized by G. S. 163-31 and 163-31.2, the county board of elections may at such time select such additional persons of good repute as may be deemed necessary who shall act as special registration commissioners, who shall serve for two years at the will of the board of elections, and whose authority may be terminated at any time without cause. Such special registration commissioners shall take the oath required of regular registrars and shall there-

after be qualified and have the authority to receive applications and administer oaths for registration but shall have no powers or duties relative to the holding of any primary or general election. All registrations executed and sworn to before special registration commissioners shall be official registrations only when received and approved by the county board of elections, which, acting through its officers, shall have the power to register electors to the extent only of reviewing, processing, rejecting or completing applications received by it from the special registration commissioners. Such special registration commissioners shall be selected upon nomination in the same manner as that provided for nomination of regular registrars. All registrars shall have the authority to register any qualified citizen within such county, and all special registration commissioners shall have the authority to receive applications and to administer oaths for registration, at any time or place within such county, regardless of the precinct residence of the registrar, the special registration commissioner, or of the citizen applying for registration: Provided, however, that the county board of elections in any county covered by this paragraph shall have power to limit the authority of registrars to their own precincts, wards, or election districts and to limit the areas over which any special registration commissioners may exercise authority to receive applications and administer oaths for registration.

The registrars, judges and assistants shall, before entering upon their duties, have the oath of office administered to them by some officer authorized to administer oaths. (1901, c. 89, s. 8; Rev., s. 4307; C. S., s. 5928; 1933, c. 165, s. 3; 1947, c. 505, s. 2; 1953, c. 843; c. 1191, s. 3; 1955, c. 800; 1957, c. 784, s. 1; 1963, c. 303, s. 1.)

Editor's Note.—

The first 1953 amendment inserted the second paragraph. And the second 1953 amendment struck out a former sentence of the first paragraph which read: "The county boards of elections shall also have the right to appoint assistants for such precincts where there are more than three hundred registered voters when deemed advisable."

The 1955 amendment inserted "one or more municipalities with a population in excess of 10,000" in lieu of "two or more municipalities, each with a population in excess of 35,000" formerly appearing in the first and second lines of the second paragraph.

The 1957 amendment added the proviso at the end of the second paragraph.

The 1963 amendment deleted the words inserted by the 1955 amendment.

Appointment of Registrars in Violation of Residence Requirements. — Where neither the regular registrar of a precinct nor the person appointed registrar for one day under § 163-17 resided in the area in which the special annexation election was held, nevertheless, they were at least de facto registrars during the time they served as such, and in the absence of any evidence that the result of the election was affected thereby, their appointments would be deemed irregularities but insufficient to void the election. McPherson v. Burlington, 249 N. C. 569, 107 S. E. (2d) 147 (1959).

§ 163-17. Vacancies in precinct offices; how filled.

Cross Reference.—See note to § 163-15.

§ 163-20. Compensation of precinct officers.—Judges of elections and assistants shall each receive for their services on the day of a primary or election the sum of ten dollars ($10.00). The registrar shall receive the sum of fifteen dollars ($15.00) per day for his services on the day of a primary or election, and shall also receive the sum of fifteen dollars ($15.00) per day for each Saturday during the period of registration that he attends at the polling place for the purpose of registering voters. Any person sworn in to act as registrar or judge of election shall receive the same compensation as the registrar and judge: Provided, that markers appointed for assisting voters in marking their ballots shall not receive any compensation therefor: Provided, further, that the registrars and judges of elections shall receive the same compensation for attending any meeting called by the chairman of the county board of elections relating to their duties in any primary or election: Provided, further, that the board of commis-

sioners of any county may provide for additional compensation for such precinct election officials. (1901, c. 89, s. 42; Rev., s. 4311; C. S., s. 5932; 1927, c. 260, s. 2; 1931, c. 254, s. 16; 1933, c. 165, s. 3; 1935, c. 421, s. 1; 1939, c. 264, s. 1; 1941, c. 304, s. 1; 1945, c. 758, s. 3; 1947, c. 505, s. 11; 1951, c. 1009, s. 1; 1957, c. 182, s. 2.)

Local Modification. — Lincoln: 1963, c. 874.

By virtue of Session Laws 1953, c. 36, the reference to Nash County in the recompiled volume should be deleted.

Editor's Note.—

The 1957 amendments substituted "ten dollars" for "seven dollars" in the first sentence, and "fifteen dollars" for "ten dollars" in the second sentence.

§ 163-20.1. Compensation of precinct officers and personnel in certain counties.—In counties in which a modern loose-leaf and visible registration system has been established as permitted by G. S. 163-43, with a full time and permanent registration as authorized by G. S. 163-31 and 163-31.2, the registrars shall receive for their registration services such compensation as shall be fixed in the discretion of the county board of elections, by and with the consent and approval of the board of county commissioners of the county, and the registrars, judges of election, assistants, clerks, ballot counters, and other precinct election personnel shall be paid such compensation for the performance of their duties as shall be fixed in the discretion of the county board of elections, by and with the consent and approval of the board of county commissioners of the county. (1953, c. 843; 1955, c. 800; 1963, c. 303, s. 1.)

Editor's Note.—The 1955 amendment inserted "one or more municipalities with a population in excess of 10,000" in lieu of "two or more municipalities, each with a population in excess of 35,000" formerly appearing near the beginning of the section.

The 1963 amendment deleted the words inserted by the 1955 amendment.

§ 163-21. Duties of registrars and judges of election.

Applied in Ponder v. Cobb, 257 N. C. 281, 126 S. E. (2d) 67 (1962).

§ 163-23. New registration of voters or revision of registration books; how made.

Local Modification.—Graham: 1957, c. 119.

Article 6.

Qualification of Voters.

§ 163-24. Persons excluded from electoral franchise.

Cited in Bazemore v. Bertie County Board of Elections, 254 N. C. 398, 119 S. E. (2d) 637 (1961).

§ 163-25. Qualifications of electors; residence defined. — Subject to the exceptions contained in the preceding section, every person born in the United States and every person who has been naturalized, and who shall have resided in the State of North Carolina for one year and in the precinct, ward, or other election district in which he offers to vote, thirty days next preceding the election shall, if otherwise qualified as prescribed in this chapter, be a qualified elector in the precinct, or ward or township in which he resides: Provided, that removal from one precinct, ward or other election district to another in this State shall not operate to deprive any person of the right to vote in the precinct, ward or other election district from which such person has removed until thirty days after such removal.

(1955, c. 871, s. 2.)

Editor's Note.—

The 1955 amendment substituted "thirty days" in lieu of "four months" formerly appearing in the fifth line of the first par-

agraph and rewrote the proviso to such paragraph. As the rest of the section was not affected by the amendment, only the first paragraph is set out.

Cited in Bazemore v. Bertie County Board of Elections, 254 N. C. 398, 119 S. E. (2d) 637 (1961).

§ 163-27. Registration a prerequisite.

Cited in Bazemore v. Bertie County Board of Elections, 254 N. C. 398, 119 S. E. (2d) 637 (1961).

§ 163-28. Voter must be able to read and write; registrar to administer section. — Every person presenting himself for registration shall be able to read and write any section of the Constitution of North Carolina in the English language. It shall be the duty of each registrar to administer the provisions of this section. (1901, c. 89, s. 12; Rev., s. 4318; C. S., s. 5939; 1927, c. 260, s. 3; 1957, c. 287, s. 1.)

Editor's Note.—

The 1957 amendment rewrote this section.

The provisions of this section are valid, etc.—

See also, Lassiter v. Northampton County Board of Elections, 248 N. C. 102, 102 S. E. (2d) 853 (1958), affirmed in 360 U. S. 45, 79 S. Ct. 985, 3 L. Ed. (2d) 1072 (1959).

The provision of this section requiring all persons applying for registration to be able to read and write any section of the Constitution as an educational qualification to the right to vote is authorized and, since it applies alike to all persons who present themselves for registration to vote, it makes no discrimination based on race, creed or color, and therefore does not conflict with the 14th, 15th or 17th Amendments to the Constitution of the United States. Lassiter v. Northampton County Board of Elections, 248 N. C. 102, 102 S. E. (2d) 853 (1958), affirmed in 360 U. S. 45, 79 S. Ct. 985, 3 L. Ed. (2d) 1072 (1959).

Meaning of "Read and Write."—The General Assembly intended the words "read and write" as used in this section to have those meanings commonly attributed to them in ordinary usage. In construing that section, we give to the words their ordinary, natural and general meaning. Bazemore v. Bertie County Board of Elections, 254 N. C. 398, 119 S. E. (2d) 637 (1961).

Section Provides Fair Method of Determining Literacy.—The present requirement, applicable to members of all races, that the prospective voter "be able to read and write any section of the Constitution of North Carolina in the English language" seems to us to be one fair way of determining whether a person is literate, not a calculated scheme to lay springes for the citizen. It cannot be condemned on its face as a device unrelated to the desire of North Carolina to raise the standards for people of all races who cast the ballot. Lassiter v. Northampton Board of Elections, 360 U. S. 45, 79 S. Ct. 985, 3 L. Ed. (2d) 1072 (1959).

It does not contemplate the utmost proficiency in reading and writing sections of the Constitution. Perfection is not the measure of qualification. The standard is reasonable proficiency in reading and writing any section of the Constitution in the English language. The occasional misspelling and mispronouncing of more difficult words should not necessarily disqualify. Bazemore v. Bertie County Board of Elections, 254 N. C. 398, 119 S. E. (2d) 637 (1961).

Writing from Dictation of Another Is Unreasonable.—Under the provisions of this section a test of literacy that requires an applicant for registration to write a section or sections of the Constitution from the reading and dictation of another, however fairly and clearly the same might be read and dictated, is unreasonable and beyond the clear intent of the statute. Bazemore v. Bertie County Board of Elections, 254 N. C. 398, 119 S. E. (2d) 637 (1961).

Challenging Section in Federal Court.—The question of whether this section should be declared void and its enforcement enjoined by a federal court on the ground that it was violative of rights under the federal Constitution would not be considered until plaintiff's administrative remedies had been exhausted and the North Carolina Supreme Court had interpreted the provisions of the section in the light of the North Carolina Constitution. Lassiter v. Taylor, 152 F. Supp. 295 (1957).

§ 163-28.1. Appeal from denial of registration.—Any person who is denied registration for any reason may appeal the decision of the registrar to the county board of elections of the county in which the precinct is located. Notice of appeal shall be filed with the registrar who denied registration, on the day of denial or by 5:00 P. M. on the day following the day of denial. The notice of appeal shall be in writing, signed by the appealing party, and shall set forth the name, age and address of the appealing party, and shall state the reasons for appeal. (1957, c. 287, s. 2.)

Cited in Lassiter v. Northampton County Board of Elections, 248 N. C. 102, 102 S. E. (2d) 853 (1958), affirmed in 360 U. S. 45, 79 S. Ct. 985, 3 L. Ed. (2d) 1072 (1959); Bazemore v. Bertie County Board of Elections, 254 N. C. 398, 119 S. E. (2d) 637 (1961).

§ 163-28.2. Hearing on appeal before county board of elections.—Every registrar receiving a notice of appeal shall promptly file such notice with the county board of elections, and every person appealing to the county board of elections shall be entitled to a prompt and fair hearing on the question of such person's right and qualifications to register as a voter. A majority of the county board of elections shall be a quorum for the purpose of hearing appeals on the question of registration, and the decision of a majority of the members of the board shall be the decision of the board All cases on appeal to a county board of elections shall be heard de novo, and the board is authorized to subpoena witnesses and to compel their attendance and testimony under oath, and is further authorized to subpoena papers and documents relevant to any matters pending before the board. If at the hearing the board shall find that the person appealing from the decision of the registrar is able to read and write any section of the Constitution of North Carolina in the English language and if the board further finds that such person meets all other requirements of law for registration as a voter in the precinct to which application was made, the board shall enter an order directing that such person be registered as a voter in the precinct from which the appeal was taken. The county board of elections shall not be authorized to order registration in any precinct other than the one from which an appeal has been taken. Each appealing party shall be notified of the board's decision in his case not later than ten (10) days after the hearing before the board. (1957, c. 287, s. 3.)

Cited in Lassiter v. Northampton County Board of Elections, 248 N. C. 102, 102 S. E. (2d) 853 (1958), affirmed in 360 U. S. 45, 79 S. Ct. 985, 3 L. Ed. (2d) 1072 (1959); Bazemore v. Bertie County Board of Elections, 254 N. C. 398, 119 S. E. (2d) 637 (1961).

§ 163-28.3. Appeal from county board of elections to superior court.—Any person aggrieved by a final order of a county board of elections may at any time within ten (10) days from the date of such order appeal therefrom to the superior court of the county in which the board is located. Upon such appeal, the appealing party shall be the plaintiff and the county board of elections shall be the defendant, and the matter shall be heard de novo in the superior court in the same manner as other civil actions are tried and disposed of therein. If the decision of the court be that the order of the county board of elections shall be set aside, then the court shall enter its order so providing and adjudging that such person is entitled to be registered as a qualified voter in the precinct to which application was originally made, and in such case the name of such person shall be entered on the registration books of that precinct. The court shall not be authorized to order the registration of any person in a precinct to which application was not made prior to the proceeding in court. From the judgment of the superior court an appeal may be taken to the Supreme Court in the same manner as other appeals are taken from judgments of such court in civil actions. (1957, c. 287, s. 4.)

Cited in Lassiter v. Northampton County Board of Elections, 248 N. C. 102, 102 S. E. (2d) 853 (1958), affirmed in 360 U. S. 45, 79 S. Ct. 985, 3 L. Ed. (2d) 1072 (1959); Bazemore v. Bertie County Board of Elections, 254 N. C. 398, 119 S. E. (2d) 637 (1961).

Article 7.

Registration of Voters.

§ 163-29. Qualification as to residence for voters; oath to be taken.—In all cases the applicant for registration shall be sworn before being registered, and shall state as accurately as possible his name, age, place of birth, place of residence, stating ward if he resides in an incorporated town or city; and any other questions which may be material upon the question of identity and qualification of the said applicant to be admitted to registration. If the applicant for registration has removed from another precinct, ward or election district in the same city, town or township since his or her last registration, such applicant shall, before being allowed to register, fill out and sign a printed transfer certificate, furnished to the registrars by the chairman of the county board of elections prior to the opening of the registration period, notifying the registrar of the precinct from which the applicant has removed of the removal of said applicant from the former precinct and authorizing the said registrar to remove his or her name from the old precinct registration book. The transfer certificate shall be in substantially the following form:

To the Registrar of ..... precinct, ... County.

I hereby certify that I have removed my residence from ..... voting precint, where I was a registered elector, to ..... voting precinct within the same city, town or township, and I have this day applied for registration before the undersigned Registrar of this precinct where I now reside, and I hereby authorize you to remove my name from your registration book as I am no longer qualified to vote in your precinct.

Signed this ..... day of ....., 19..

.....
Signature of Applicant

Witness:

..... Registrar
..... Precinct
..... Address

It shall be the duty of the registrar to sign said certificate as a witness to the applicant's signature and immediately after the close of the registration period the registrar shall mail all of such certificates so filled out to the chairman of the county board of elections. Upon the receipt of such certificates from the registrars, it shall be the duty of the chairman of the county board of elections to mail immediately such certificates to the respective registrars of the precincts from which the applicants have removed, and upon receipt of same the registrars shall cancel the registration of such applicants on the books.

The registrar, if in doubt as to the right of the applicant to register, may require other evidence satisfactory to him as to the qualification of the applicant. And thereupon, if the applicant shall be found to be duly qualified and entitled to be registered as an elector, the registrar shall register the applicant, giving his race opposite his name, and shall record his name, age, residence, place of birth, and the township, county, or state from whence he has removed, in the event of a removal, in the appropriate column of the registration books, and the registration books containing the said record shall be evidence against the applicant in any court of law in a proceeding for false or fraudulent registration. Every person qualified as an elector shall take the following oath:

I do solemnly swear (or affirm) that I will support the Constitution of the

United States, and the Constitution of the State of North Carolina not inconsistent therewith; that I have been a resident of the State of North Carolina for one year and of ..... township (precinct or ward) for thirty days; or that I was a resident of ..... township (ward or precinct) on the .... day of ..... (being thirty days preceding the election) and removed therefrom to ..... township (ward or precinct), where I have since resided; that I am twenty-one years of age; that I have not registered for this election in any other ward or precinct or township. So help me, God.

And thereupon the said person, if otherwise qualified, shall be entitled to register.

Provided that in counties in which a modern loose-leaf and visible registration system has been established as permitted by G. S. 163-43, with a full time and permanent registration as authorized by G. S. 163-31 and 163-31.2, no registered voter shall be required to re-register upon moving from one precinct, ward or election district to another precinct, ward or election district in the same county, and in lieu thereof such removing elector shall file with the county board of elections, or with any registrar, or with any special registration commissioner, an affidavit setting forth the former residence, the new residence, the date of removal to the new residence, and further setting forth that all other qualifications to register and vote still exist as of the time of the former registration, upon such form as shall be prescribed by the county board of elections, and thereupon the county board of elections, if the facts of such affidavit are found to be true, shall immediately transfer the registration of such citizen to the precinct, ward, or election district of the new residence of such person, and thereafter such person shall be considered registered and qualified to vote in the precinct, ward, or election district of the new residence; provided, however, that such affidavit requesting transfer shall be made not less than 21 days prior to a primary or general election; provided, further, that the county boards of elections shall have authority to require the elector removing from one precinct, ward, or election district to another precinct, ward, or election district in the same county to file the above-mentioned affidavit with the registrar of the precinct, ward, or election district to which the elector has moved, with the registration commissioner authorized by the said board to receive such affidavit or with the county board of elections. (1901, c. 89, s. 12; Rev., s. 4319; C. S., s. 5940; Ex. Sess. 1920, c. 93; 1933, c. 165, s. 5; 1951, c. 984, s. 1; 1953, c. 843; 1955, c. 800; c. 871, s. 2; 1957, c. 784, s. 2; 1963 c. 303, s. 1.)

Editor's Note.—

The 1953 amendment added the last paragraph. The first 1955 amendment inserted "one or more municipalities with a population in excess of 10,000" in lieu of "two or more municipalities, each with a population in excess of 35,000" formerly appearing near the beginning of the last paragraph, and the second 1955 amendment inserted "thirty days" in lieu of "four months" formerly appearing two places in the registration oath.

The 1957 amendment added the proviso at the end of the last paragraph.

The 1963 amendment deleted the words inserted by the 1955 amendment.

§ 163-31. Time when registration books shall be opened and closed; oath and duty of registrar; registration in certain counties; new registration when books destroyed or mutilated.—The registration books shall be opened for the registration of voters at nine o'clock a. m., on the fourth Saturday before each election; provided, that where a new county-wide registration is ordered to be held in a county, the registration books in such county shall be opened for the registration of voters at nine o'clock a. m. on the fifth Saturday before such election. The said books shall be closed at sunset on the second Saturday before each election. Every registrar, before entering upon the discharge of the duties of his office, shall take an oath before a justice of the peace or some other person authorized to administer oaths, that he will support the Constitution of the United States and the Constitution of North Carolina not inconsistent

therewith, and that he will honestly and impartially discharge his duties as registrar, and honestly and fairly conduct such election. The registrar of each township, ward or precinct shall be furnished with a registration book prepared as hereinbefore provided, and it shall be his duty, between the hours of nine o'clock a. m. and sunset on each day during the period when registration books are open, to keep open said books for the registration of any voters residing within such township, ward or precinct, and entitled to registration. On each Saturday during the period of registration the registrar shall attend with his registration books at the polling place of his precinct or ward, between the hours of nine o'clock a. m. and sunset, for the registration of voters.

Provided that in counties in which a modern loose-leaf and visible registration system has been established as permitted by G. S. 163-43, the registration books, process, or records shall, when ordered by the county board of elections and approved by a majority of the board of county commissioners, be open continuously for the registration of voters or the acceptance of registration applications at all reasonable hours and times at the home of the registrar or the special registration commissioner or wherever the registrar or special registration commissioner may be within the county, and such registrars may register all qualified citizens of the county, and the special registration commissioners may take the registration application and administer the oath without regard to the precinct residence of the registrar, the special commissioner, or of the citizen applying for registration: Provided, however, that the county board of elections in any county covered by this paragraph shall have power to limit the authority of registrars to register persons to their own precincts, wards, or election districts and to limit the areas over which any special registration commissioners may exercise authority to receive applications and administer oaths for registration. The county board of elections in such counties is authorized and empowered to make reasonable rules and regulations to insure such full time registration, including provisions for an immediate delivery of all registrations by the registrars, and the delivery of all applications and oaths by the special registration commissioners to the county board of elections. No person shall be registered to vote without first making a written, sworn and signed application therefor, setting forth the qualifications for registration upon such form as may be approved and adopted by the county board of elections. Registrars in such counties shall attend the polling places only on such days and at such hours as may be fixed in the discretion of the county board of election; provided that no such attendance by the registrars at the polling places shall fall on a day less than 21 days prior to a primary election or a general or special election; and provided, further, that the county board of elections may, in its discretion, require no attendance at the polling places for registering voters, if approved by the county commissioners.

In the event that the registration books for any township, ward or precinct shall, prior to thirty days preceding any primary, general, or special election, be destroyed from fire or other cause or shall become mutilated to the extent that such books can no longer be used, new registration books shall be provided for the registration of voters in such township, ward or precinct and such new registration books shall be opened for the registration of voters at the times and places and in the manner prescribed by this section. Such new registration books may thereafter be used in such township, ward or precinct for all general, primary or special elections, including municipal elections. Notice of such new registration shall be given by advertisement in a newspaper published in the municipality or county in which such township, ward or precinct is located at least ten days before the opening of the new registration books and such notice shall also state the location of the polling place and the name of the registrar for such township, ward or precinct. When a special registration is held under this law the Saturday for challenge day may be combined with the last Saturday for registration, so that voters may be registered on challenge day when time does not per-

mit an extra Saturday for challenge day prior to any primary or election. (1901, c. 89, s. 18; Rev., s. 4323; C. S., s. 5947; 1923, c. 111, s. 3; 1933, c. 165, s. 5; 1947, c. 475; 1953, c. 843; 1955, c. 800; 1957, c. 784, s. 3; 1961, c. 382; 1963, c. 303, s. 2.)

Editor's Note.—

The 1953 amendment inserted the second paragraph. The 1955 amendment inserted "one or more municipalities with a population in excess of 10,000" in lieu of "two or more municipalities, each with a population in excess of 35,000" formerly appearing near the beginning of the second paragraph. The 1957 amendment inserted the second proviso in the second paragraph, and changed "14 days" to "21 days" in the latter part of the paragraph.

The 1961 amendment added the proviso at the end of the first sentence of the first paragraph.

The 1963 amendment deleted the words inserted by the 1955 amendment. It also added nearby the following: "when ordered by the county board of elections and approved by a majority of the board of county commissioners."

§ 163-31.1. When registration a qualification to vote in certain counties having loose-leaf and visible registration system. — In counties in which a modern loose-leaf and visible registration system has been established as permitted by G. S. 163-43, with a full time and permanent registration as authorized by G. S. 163-31 and 163-31.2, no registration shall be a qualification to vote in a particular primary election or general election, unless the same shall have been made by the elector not less than 21 days next preceding the primary election or general election to be held. (1953, c. 843; 1955, c. 800; 1957, c. 784, s. 4; 1963, c. 303, s. 1.)

Editor's Note.—The 1955 amendment inserted "one or more municipalities with a population in excess of 10,000" in lieu of "two or more municipalities, each with a population in excess of 35,000" formerly appearing near the beginning of the section.

The 1957 amendment changed "14 days" to "21 days" near the end of the section.

The 1963 amendment deleted the words inserted by the 1955 amendment.

§ 163-31.2. Permanent registration in such counties.—In counties in which a modern loose-leaf and visible registration system has been established as permitted by G. S. 163-43, with a full time registration as authorized by G. S. 163-31, such registration shall be a permanent public record of registration and qualification to vote, and the same shall not thereafter be cancelled and a new registration ordered, either by precinct or countywide, unless such registration has been lost or destroyed by theft, fire or other hazard. In the event of any division of precincts or change in boundaries the county board of elections shall not cancel the existing registration or order a new registration, but said county board of elections shall immediately correct the existing precinct registration to conform to such division or change. To the end that such permanent registration shall be purged of those registered electors who have died or who have become unqualified to vote since registration, the register of deeds of such county shall immediately furnish to the county board of elections a certification of all death certificates recorded in his office and, upon receipt thereof the county board of elections shall cause the name of any person appearing upon such certification of death to be removed from the registration books or permanent records of registration of such county; and, in addition, the county board of elections of such county is authorized to remove from the registration books or permanent records of registration the names of all persons who have failed to vote, according to the poll or other record of voting of such county board of elections, for a period of six years. Nothing herein shall prohibit the county board of elections from restoring the names of persons whose names have been removed from the registration books or permanent records of registration, upon proof that such person is not dead or that such person has voted within the county within said six year period. And nothing herein shall prohibit a person whose name has been removed from the

registration book, or permanent registration record of such county, for failure to vote for six consecutive years, from re-registering in the manner provided by law. Prior to the removal of the name of any person from the registration books or permanent records of registration for failure to vote, as hereinbefore authorized, the county board of elections shall cause to be mailed to such person, at the address shown by the registration books or permanent records of registration, notice to show cause, and such registration shall not be removed, if such person shall appear and show that such qualifications still exist. (1953, c. 843; 1955, c. 800; 1963, c. 303, s. 1.)

Editor's Note.—The 1955 amendment inserted "one or more municipalities with a population in excess of 10,000" in lieu of "two or more municipalities, each with a population in excess of 35,000" formerly appearing near the beginning of the section.

The 1963 amendment deleted the words inserted by the 1955 amendment.

§ 163-31.3. Municipal corporations authorized to use county registration books.—Any city, town or municipal corporation is hereby authorized and empowered to use, in its discretion and upon such terms and conditions as may be mutually agreed upon by the governing body thereof and the board of commissioners of the county in which such city, town or municipal corporation is located, the registration books, process or records of such county for the registration of voters or the acceptance of registration applications, and in such event the provisions of law which are applicable to the registration of voters in such county shall apply to such city, town or municipal corporation for the purpose of any primary, general, regular or special election.

All elections heretofore held or ordered to be held by any city, town or municipal corporation in which the registration books, process or records of the county in which the city, town or municipal corporation is located were used or ordered to be used are hereby in all respects ratified, validated and confirmed. (1955, c. 763.)

Article 8.

Permanent Registration.

§ 163-32. Persons entitled to permanent registration.

Cited in Lassiter v. Northampton County Board of Elections, 360 U. S. 45, 79 S. Ct. 985, 3 L. Ed. (2d) 1072 (1959).

Article 9.

New State-Wide Registration of Voters.

§ 163-43. State-wide revision of registration books and relisting of voters in one general registration book.—Prior to the next State-wide primary election of 1950 there shall be a revision made of the registration books and a relisting of the registered voters into one new general registration book for each and every precinct in the State in the manner hereinafter provided. The State Board of Elections shall, as soon as possible after April 13, 1949, meet and adopt a new form of a general registration book to be substituted for the separate party primary registration books and the general election registration book now used in each voting precinct in this State, which new general registration book shall be the only kind of registration book to be used hereafter in each precinct in all primaries and general elections held in this State: Provided, any county board of elections, by and with the approval of a majority of the board of county commissioners, shall have the authority to order and to install a modern loose-leaf registration book system in any one or all of the voting precincts of the county. The new general registration book shall be so prepared as to contain all of the information pertaining to a registered voter now required by law, except the new registration book shall also contain a column or space to

enter the party affiliation of each registered voter. The new registration book shall also have printed on each page thereof a column index giving the first two letters of the surnames and the pages where such voters are registered so that a registrar can turn immediately to the page where a voter is registered and find the name.

The State Board of Elections shall, through the State Department of Purchase and Contract, order the printing or purchase of a sufficient number of the said new general registration books to furnish one for each voting precinct in the State, the cost of which shall be paid for by the State out of the contingency and emergency fund. (1939, c. 263, s. 1; 1949, c. 916, s. 1; 1961, c. 381.)

Editor's Note.—

The 1961 amendment rewrote the proviso following the second sentence.

§ 163-43.1. Procedure for registration in certain counties having loose-leaf and visible registration system.—In counties in which a modern loose-leaf and visible registration system has been established as permitted by G. S. 163-43, with a full time and permanent registration as authorized by G. S. 163-31 and 163-31.2, the registration shall be made and kept upon such form or forms as shall be prescribed by the county board of elections, shall contain all information necessary to show qualification to register and shall be signed and sworn to by the registering elector. If the registering elector cannot write because of physical disability, or if the elector cannot read and write and is qualified to register under Article VI, section 4 of the North Carolina Constitution and the acts of the General Assembly made pursuant thereto, then the name of such elector shall be signed by the registrar, or the special registration commissioner, but the specific reason for the failure of the elector to sign the registration certificate shall be clearly stated upon the face of the registration certificate. All original registration certificates shall be kept by the county board of elections in a safe place to be provided by the board of county commissioners of the county. An exact typewritten, mimeographed or printed duplicate or copy shall be made by the county board of elections of each original registration certificate which duplicate shall be placed in the proper precinct registration book in lieu of the original. Such duplicates in the precinct registration books, properly certified by the county board of elections, shall be the official precinct registration books of the county for the purpose of holding all primaries, general elections and other elections whatsoever; provided, however, that the original registration certificates shall at all times be the official and sole evidence of registration and the county board of elections shall have the power to correct the duplicates in the precinct registration books to conform to the original registration certificates at any time whatsoever, including the day of any primary or election. (1953, c. 843; 1955, c. 800; 1963, c. 303, s. 1.)

Editor's Note.—The 1955 amendment inserted "one or more municipalities with a population in excess of 10,000" in lieu of "two or more municipalities, each with a population in excess of 35,000" formerly appearing near the beginning of the section.

The 1963 amendment deleted the words inserted by the 1955 amendment.

§ 163-46. How new general registration book is to be used by registrar.

It shall likewise be the duty of a registrar, when any person applies for new registration during the regular registration periods held hereafter prior to any primary or general election, to request the applicant to state his or her political party affiliation and record that party affiliation on the new book opposite the name. If such applicant refuses to declare his or her party affiliation upon request, then the registrar shall register such applicant's name, if found qualified to register, on the new registration book without indicating any party affiliation op-

posite the name, but the registrar shall then advise such person that he or she cannot vote in any party primary election but only in a general election held thereafter. If such applicant for registration states to the registrar that he or she is an independent, indicating affiliation with no political party, the registrar shall register such applicant as an independent, if found qualified to register, and shall likewise advise such person that he or she cannot vote in any party primary election held thereafter as he or she does not affiliate with any political party: Provided, that in all cases where no party affiliation was recorded in the registration book opposite the name of any registered elector, but not including those registered as Independents, any such registered elector may on primary election day appear before his or her registrar and declare his or her party affiliation to the registrar, and the registrar shall, upon such elector's taking an oath to support in the next general election the nominees of the party with which he then declared his affiliation, record such declared party affiliation of such elector opposite the name of such elector on the registration book, and permit such elector to vote in the primary of such party as thus declared and recorded. Such recorded party affiliation on the registration book shall thereafter be permanent unless, or until, the same shall be changed by such elector in accordance with the provisions of § 163-50 of the General Statutes.

(1955, c. 871, s. 3.)

Editor's Note. — The 1955 amendment added the proviso and the last sentence to the second paragraph. As the first, third, fourth and fifth paragraphs were not affected by the amendment they are not set out.

§ 163-49.1. Custody, etc., of records of registration in counties having loose-leaf and visible registration system. — In counties in which a modern loose-leaf and visible registration system has been established as permitted by G. S. 163-43, the registration books, registration certificates, indexes and other records of registration shall be and remain in the possession of the county board of elections, and such board of elections may, by a majority vote, direct the supervision and control of same, through such officers, secretaries and clerks as it may see fit to designate. (1953, c. 843; 1955, c. 800; 1963, c. 303, s. 1.)

Editor's Note.—The 1955 amendment inserted "one or more municipalities with a population in excess of 10,000" in lieu of "two or more municipalities, each with a population in excess of 35,000" formerly appearing near the beginning of the section.

The 1963 amendment deleted the words inserted by the 1955 amendment.

§ 163-50. Change of party affiliation.

Provided that in counties in which a modern loose-leaf and visible registration system has been established as permitted by G. S. 163-43, with a full time and permanent registration as authorized by G. S. 163-31 and 163-31.2, any elector who desires to change his party affiliation for a primary election from the registration book or records of registration on which registered to that of another party shall, not less than 21 days prior to such primary election, file with the county board of elections, or with any registrar, or with any special registration commissioner, an affidavit in the form of the oath hereinbefore set forth, and thereupon the county board of elections shall immediately change the party affiliation of such elector to conform to such affidavit, and thereafter such elector shall be considered registered and qualified to vote in the primary election of the new party designated by said affidavit: Provided, however, that the county board of elections shall have the authority to require the elector desiring to change his party affiliation in accordance with the provisions of this section to file the required affidavit with the registrar of the precinct, ward, or election district in which the elector is registered, or with the special registration commissioner authorized by the said board to receive the said affidavit, or with the

county board of elections. (1939, c. 263, s. 6; 1949, c. 916, s. 8; 1953, c. 843; 1955, c. 800; 1957, c. 784, s. 5; 1963, c. 303, s. 1.)

Editor's Note.—

The 1953 amendment added the above paragraph at the end of this section. The 1955 amendment inserted "one or more municipalities with a population in excess of 10,000" in lieu of "two or more municipalities, each with a population in excess of 35,000" formerly appearing near the beginning of the above paragraph. The 1957 amendment added the proviso at the end of the last paragraph.

The 1963 amendment deleted the words inserted by the 1955 amendment.

As the rest of the section was not affected by the amendments it is not set out.

Article 10.

Absent Voters.

§ 163-53. Registration of voters expecting to be absent during registration period.

Local Modification. — Graham, as to whole article: 1959, c. 780, s. 1.

§ 163-54. Who may vote an absentee ballot. — Any qualified voter of the State who expects to be absent from the county in which he is a qualified elector during the entire period that the polls are open on the day of a State-wide general election; or who because of sickness or other physical disability will be unable to be present at the polls to vote in person on the day of a State-wide general election, may vote at such election in the manner as hereinafter provided in this article. (1939, c. 159, s. 1; 1963, c. 457, s. 1.)

Local Modification.—Sampson: 1963, c. 882.

Editor's Note.—

The 1963 amendment rewrote this section.

§ 163-55. Application for absentee ballot; form of application. — Any voter as defined in the foregoing section expecting to vote an absentee ballot in any State-wide general election may apply for an absentee ballot not more than forty-five (45) days, nor after 6:00 o'clock P. M. on Wednesday, the fifth day prior to the election; provided that in the case of an unexpected illness or physical disability occurring to any elector after 6:00 o'clock P. M. on Wednesday, the fifth day before the election, up until 10:00 o'clock A. M. on Monday before the election, such elector may be able to apply for an absentee ballot in the manner hereinafter prescribed.

(1) Expected Absence from County on Election Day.—Such voter expecting to be absent from the county of his or her residence during the entire period that the polls will be open on election day, shall apply in writing to the chairman of the county board of elections of applicant's residence, for an absentee ballot not more than forty-five (45), nor less than five (5), days, prior to the election. Such application shall be made on an application form to be furnished by the chairman of the county board of elections only, which application form shall be signed by the voters personally, and shall be sworn to before any officer with a seal who is authorized to administer an oath. Such officer shall sign the certificate at the bottom of the application and shall place his official seal thereon. The application form, when properly filled out, signed, sworn and certified to, shall be transmitted by mail or delivered in person by such voter to the chairman of the county board of elections of applicant's residence. The application form for use by such absent voter shall be as follows:

APPLICATION AND AFFIDAVIT FOR BALLOT BY ELECTOR WHO EXPECTS TO BE ABSENT FROM COUNTY ON ELECTION DAY

(Anyone falsifying this statement is subject to a fine or imprisonment, or both.)

Application No. ..... (Issued to:) .....
(To be filled in before issuance)

State of .....
County of .....

I, ..., do solemnly swear that I am a registered voter residing in ..... precinct, ... township, in the County of ....., N. C., and that I am lawfully entitled to vote in such precinct at the general election to be held therein on the ..... day of ....., 19..; that I expect to be absent from the county of my residence during the entire period that the polls are open on the day of holding such general election, and that I will have no opportunity to vote in person on that day.

I hereby make application for an official ballot or ballots to be voted by me at such election, and I will return said ballot, or ballots, by mail or deliver same in person to the chairman of my county board of elections prior to 12:00 o'clock, noon, on Saturday preceding such election.

.....
(Signature of voter)

.....
(P.O. Address to which ballot is to be mailed.)

.....
Signature of officer administering oath)

Subscribed and sworn to by ....., before me this ..... day of ....., 19.....

.....
(Address of such officer)

(SEAL)

(2) Absence for Protracted Illness or Physical Disability Occurring More than Five (5) Days before the Election.—Any voter expecting to be unable to go to the polls to vote in person on election day, either because of protracted illness or physical disability occuring more than five (5) days before the election, shall apply in writing to the chairman of the county board of elections of his or her residence for an absentee ballot. Such application shall be made within the time and in the manner as provided in subdivision (1) above. The application form for such voter shall be as follows:

APPLICATION AND AFFIDAVIT FOR BALLOT BY ELECTOR WHO EXPECTS TO BE UNABLE TO GO TO POLLS BECAUSE OF PROTRACTED ILLNESS OR PHYSICAL DISABILITY OCCURRING MORE THAN FIVE (5) DAYS PRIOR TO ELECTION.

(Anyone falsifying this statement is subject to a fine or imprisonment, or both.)

Application No. ..... (Issued to:) .....
(To be filled in before issuance)

State of North Carolina
County of .....

I, ..., do solemnly swear that I am a registered voter residing in ..... precinct, ... township, in the County of ....., N. C., and that I am lawfully entitled to vote in such precinct

at the general election to be held therein on the ..... day of ....., 19..; that by reason of protracted illness or physical disability, to wit: ..... I will be unable to travel from my home,
(Give nature of illness or disability)
or place of confinement, to the voting place in my precinct on election day.

I hereby make application for an official ballot or ballots to be voted by me at such election, and I will return said ballot, or ballots, to the chairman of my county board of elections prior to 12:00 o'clock, noon, on Saturday preceding such election.

.....
(Signature of voter or applicant)

.....
(P.O. Address to which ballot is to be mailed.)

Subscribed and sworn to by ....., before me this the ..... day of ....., 19..

.....
(Signature of officer administering oath)

(SEAL)

(3) Absence Because of Illness or Physical Disability Arising after 6:00 o'clock P. M. on the Fifth Day before Election.—Any voter who becomes unable to go to the polls to vote in person on election day because of unexpected illness or physical disability, arising after 6:00 P. M. on the fifth day before the election, may apply in writing to the chairman of the county board of elections of his or her residence for an absentee ballot, not more than five (5) days prior to the election on application form to be furnished by the chairman of the county board of elections only. The chairman shall not issue or accept such application after 10:00 o'clock A. M. on Monday preceding election day. The application form must be filled in and signed by the voter or by his or her husband, wife, brother, sister, parent or child only when voter's illness or disability has occurred within five (5) days before the election. The application form must be signed in the presence of a subscribing witness, and the certificate on the bottom of the application form must be filled in by an attending licensed physician in the State and signed by said physician in the presence of a subscribing witness, and containing the correct address of said certifying physician and witness. Such application form, when properly filled out, signed by the voter or applicant as herein provided, and his subscribing witness, with the signature of the attending physician and his subscribing witness, may be transmitted by such voter to the chairman of the county board of elections of his or her residence, by mail or by a member of voter's immediate family as above described. The application form for use by such voter shall be as follows:

APPLICATION AND CERTIFICATE OF PHYSICIAN FOR BALLOT BY SICK OR PHYSICALLY DISABLED VOTER WHO CANNOT ATTEND POLLS TO VOTE DUE TO UNEXPECTED ILLNESS OR PHYSICAL DISABILITY ARISING AFTER 6:00 O'CLOCK P. M. ON THE FIFTH DAY BEFORE THE ELECTION.

(Anyone falsifying this statement is subject to a fine or imprisonment, or both.)

Application No. ..... (Issued to:) .....
(To be filled in before issuance)

State of .....
County of .....

I, ..., do hereby certify that I am a registered voter residing in ..... precinct, ... township, in the County of ....., N. C., and that I am lawfully entitled to vote in such precinct at the general election to be held therein on the ..... day of ....., 19..; that by reason of unexpected illness, or other physical disability arising since 6:00 o'clock P. M. last Wednesday, I will be unable to travel from my home, or place of confinement, to the voting place in my precinct on election day.

I hereby make application for an official ballot, or ballots, to be voted by me at such election, and I will transmit said ballot, or ballots, to the chairman of the county board of elections of my county prior to 3:00 o'clock P. M. on election day.

This ..... day of ....., 19..

.....
(Signature of voter or applicant)

.....
(Address to which ballot to be delivered)

.....
(Relationship of person applying for voter if not signed by voter)

Witness: .....
(Signature of witness)

.....
(Address of witness)

State of .....
County of .....

I, ..., do hereby certify that I am a physician, duly licensed to practice medicine in the State of .....; that I have examined ..... on ..... for a sudden illness or physical disability occurring since 6:00 o'clock P. M. last Wednesday, and that I believe that he (or she) will be physically incapable of being at the polls at said election on the ..... day of ....., 19.., for the following reasons:
(voter's name) (date)

.....

This ..... day of ....., 19..

.....
(Signature of physician)

.....
(Address of physician)

Witness: .....
(Signature of witness)

.....
(Address of witness)

(4) Application Forms Issued by Chairman Only; Procedure.—The chair-

man of the county board of elections shall keep all absentee ballot applications in his custody and shall issue no more than one to a voter unless the application is returned to the chairman and marked "Void" by him. In such event, the chairman may issue another application form to an authorized person; but the chairman shall retain the "Void" application in his records. At the time of isusance of an application, the chairman shall number the application and shall write the voter's name in the space provided therefor at the top of the application. The chairman may deliver the application to the voter personally at the office of the county board of elections, or he may mail the application to an absent voter upon receipt of written request from the voter. The chairman shall not entrust any other person to deliver an application to the voter, nor shall he mail an application to a voter who has not made written request for such application, except as provided in this article.

(5) Applications and Absentee Ballots Transmitted by Mail or in Person. —An application for an absentee ballot may be made only by the voter applying for same, and shall be valid only when transmitted by the voter in person, or by the United States mail to the county board of elections. No other person shall make or sign any application for a voter except as herein provided. Likewise, all absentee ballots approved and issued by the county board of elections shall be transmitted by it to the voter applying for same person or by mail to the post-office address set out in the application. Likewise, all executed absentee ballots returned to the county board shall be transmitted by the voter in person or by mail addressed to the chairman of the county board of elections and must be received by the chairman of the county board of elections not later than 12:00 o'clock noon on the Saturday just preceding the State-wide general election to be accepted for voting: Provided, that the provisions of (3) above shall apply as to voters who become unexpectedly ill or disabled within five (5) days of the election and such absentee ballots may be received by the chairman up to 3:00 o'clock P. M. on election day. Upon the approval of the application of a voter having unexpected illness or physical disability arising within five (5) days of the election, the sealed envelope containing the absentee ballots may be delivered to the voter by a member of the voter's immediate family, and may also be delivered back to the chairman by a member of the voter's immediate family.

The time limit herein provided for applications to be made for absentee ballots is not applicable to servicemen. (1939, c. 159, s. 2; 1943, c. 751, s. 1; 1963, c. 457, s. 2.)

Local Modification.—Sampson: 1963, c. 882.

Editor's Note.—
The 1963 amendment rewrote this section.

§ 163-56. Procedure for issuance of absentee ballot by county board.—The procedure to be followed in receiving, passing upon the validity of the application, and the issuance of the absentee ballots to the absent voter shall be as follows:

(1) Record of Applications Received and Ballots Issued.—Upon receipt of the written application from a voter applying for an absentee ballot, provided it is received within the time prescribed in the foregoing section, the chairman of the county board of elections shall promptly enter on the Register of Absentee Applications and Ballots Issued

supplied to him by the State Board of Elections for the purpose, the following information with respect to letters a through f below:

a. Name of voter applying for absentee ballot.
b. Number of the application.
c. Precinct in which applicant is registered.
d. Address to which ballot to be mailed.
e. Reason assigned for request for ballot.
f. Date of receipt of application.
g. Approval or disapproval of application by county board of elections and date of same.
h. Date absentee ballots mailed or delivered to voter if approved by board.

(g and h above to be completed after application is approved or disapproved by county board.)

(2) Determination of Validity of Applications by County Board of Elections.—The county board of elections in each county shall constitute the proper official body to pass upon the validity of all applications for absentee ballots, and not just the chairman of said board. Between the time when an application may be first made by an absent voter forty-five (45) days prior to a State-wide general election, and when the time closes for voters to apply five (5) days before such election, the county board of elections shall hold public meetings weekly at 10:00 o'clock A. M. on each Monday and Friday, and on Monday preceding election day at 10:00 o'clock A. M., at the courthouse or office of said board, to pass upon all absentee applications received by the board or chairman. It will not be necessary for the chairman to give notice of each such weekly meetings to the members of the board, as the time and place is fixed by statute. At such meetings any elector of the county may be heard and allowed to present evidence in opposition to, or in favor of, the issuance of an absentee ballot to the voter making application therefor. The chairman shall present to the board meeting the applications received during the preceding week, together with the container envelope, provided that where said application was delivered in person by the voter, only the application shall be presented to the board. The county board of elections, by a majority vote, shall pass upon the validity of each application received for an absentee ballot, and only the applications so approved shall be accepted for absentee voting purposes. The chairman of the county board of elections shall note on the Register of Absentee Applications opposite the name of each applicant whether such application was approved or disapproved by the county board of elections at its last weekly meeting held for the purpose, and also the date when the absentee ballot was mailed or delivered to absent voter, if approved. The board may consider the registration book evidence of the voter's signature, or other evidence that may be necessary to pass upon such applications. The decision of the county board of elections on the validity of such applications shall be final, subject only to such review as may be necessary in the event of an election contest, and in the event an application for a ballot previously voted in person by a voter, shall be declared invalid, such ballot voted pursuant thereto, shall be void subject only to such review as hereinabove provided.

(3) Delivery of Absentee Ballots and Envelopes to Applicant.—If the board shall find that the applicant is a qualified voter of the county and precinct containing his or her residence as stated in the application, and that the application of the voter is in proper form, the chairman of the board shall, by mail only, except as is otherwise provided here-

in, transmit to the applicant at the address designated by the voter on the application, an official ballot of each kind to be used in said election. Before mailing or delivering same to the voter, the chairman shall write or type on the top margin of each kind of regular ballot the following: "Absentee Ballot No. ....", filling in the number which shall be the same number of such voter's application as entered on the Register of Absentee Applications. This number as entered on each ballot issued shall be for the purpose of identifying the voter of such ballot in the event of a contest. No other writing or printing or signing of the ballot for absentee voting purposes shall appear on the ballot. Separate absentee ballots shall not be printed, as only the regular official ballots as are to be voted by electors voting in person shall be used for absentee voting. The chairman of the county board of elections shall fold and enclose each kind of such absentee ballots, after filling out the number on the top margin of each one, in the container-return envelope as provided for in the following section, and leave such envelope unsealed. He shall then put the return envelope inside of another mailing envelope, addressed to the voter, and seal same. The chairman shall also enclose with the absentee ballot a printed sheet of instructions to the voter on how voter is to vote the ballots and return them to the county board. Except where previously delivered to and voted by the absentee voter, all such absentee ballots shall be mailed promptly to each applicant by the chairman after approval of same by the board. All postage needed for the mailing of all absentee ballots to the voter shall be supplied by the board. All return postage shall be supplied by the voter. (1939, c. 159, s. 3; 1963, c. 457, s. 3.)

Local Modification.—Sampson: 1963, c. 882.

Editor's Note. — The 1963 amendment rewrote this section.

§ 163-57. **Container envelopes provided for absentee ballots; affidavit of absent voter.**—It shall be the duty of the said chairman of the county board of elections to fold the ballots, enclose them in the container return envelope furnished by him, which envelope shall bear on one side thereof, written by said chairman, the name of the voter, the number of the application, and the precinct in which the ballot is to be voted, and on the other side thereof the return address of the chairman together with a printed affidavit as follows:

Affidavit of Absentee or Sick Voter

State of ..... County of ..... I, ..., do solemnly swear that I am a resident and qualified voter in ..... precinct, ... County, North Carolina; that I will be absent from my county on the day of the general election on November .....; (or that due to illness or physical disability I will be unable to travel to the voting place on election day). I further swear that I made application for this absentee ballot, and that I marked the ballots enclosed herein, or the same were marked for me in my presence and according to my instructions.

.....

Signature of voter.

Sworn to and subscribed before me this ..... day of ....., 19..

(Seal)

.....

Signature and title of Officer.

(Acknowledgment of servicemen may be taken before any commissioned officer.) (1939, c. 159, s. 4; 1943, c. 751, s. 2; 1963, c. 457, s. 4.)

Local Modification.—Sampson: 1963, c. 882.

Editor's Note.—
The 1933 amendment struck out the

words "or same was made for me by some member of my immediate family," following the word "ballot" in the second sentence of the affidavit. The amendatory act provides that "the provisions of G. S. 163-58, permitting the absentee voter to mark the ballots or cause the same to be marked in his presence and according to his instructions, are in no sense abrogated, but are specifically approved and confirmed."

§ 163-58. Instructions for voting absentee ballots. — In using such ballot the absent voter shall make and subscribe to the appropriate affidavit prescribed in § 163-57, before an officer authorized by law to administer oaths, having an official seal, which seal shall be affixed, and in the presence of such officer, mark the ballot, or ballots, or cause the same to be marked in his presence according to his instructions, and the ballot, or ballots, shall then in the presence of the officer be folded by the voter or attendant, so that each ballot will be separate and then in the presence of such officer be placed in the container envelope, and the container envelope securely sealed. The container envelope, with the ballot enclosed, shall be placed in the return envelope and shall be mailed by the voter to the chairman of the county board of elections issuing the ballot. Provided, that in the case of voters who are members of the armed or auxiliary forces of the United States, the signature of any commissioned or noncommissioned officer of the rank of sergeant in the army, or chief petty officer in the navy, or the equivalent thereof, as a witness to the execution of any certificate required by this or any other section of this article to be under oath shall have the force and effect of the jurat of an officer with a seal fully authorized to take and administer oaths in connection with the absentee ballots. (1939, c. 159, s. 5; 1941, c. 248; 1943, c. 736; 1945, c. 758, s. 5; 1963, c. 457, s. 5.)

Local Modification.—Sampson: 1963, c. 882.

Cross Reference.—See Editor's Note to § 163-57.

Editor's Note.—

The 1963 amendment struck out the words "and shall sign or cause to be signed on the back or margin of said ballot, or ballots, his or her name" immediately following the word "instructions" near the middle of the first sentence. It also struck out the words "if the voter is absent from the county" at the end of the second sentence and eliminated provisions requiring delivery of the ballot before three p. m. on the day of the election where the voter was within the county at the time of signing the affidavit and marking the ballot.

§ 163-59. List of applications made in triplicate; certificate of correctness.—On the morning of the day before any general election, the chairman of the county board of elections shall make a list, in triplicate, of all applications received by him from voters to whom he has issued absent voters' ballots, and mail said list, with the original of all applications received by him, by registered mail, to the chairman of the State Board of Elections, at Raleigh, North Carolina, and post one copy thereof at a conspicuous place at the courthouse door; reserving for himself the duplicate of said list. On said list he shall make, under oath, a certificate as follows:

I, ..., chairman of the county board of elections of ..... County, do hereby certify that the foregoing is a list of all applications filed with me for absent voters' ballots to be voted in the election, on the ..... day of ....., 19....; and I further certify that I have issued ballots to no other persons than those listed therein, whose original applications are enclosed and filed herewith; and I further certify that I did not deliver any of the ballots to any other person than to the elector by mail addressed to the voter.

(Signed) .....

Chairman ..... County Board of Elections

Dated .....

Sworn to and subscribed before me this ....day of ....., 19....
Witness my hand and official seal .....
Title of Officer

(1939, c. 159, s. 6; 1943, c. 751, s. 3; 1963, c. 457, s. 6.)

Local Modification.—Sampson: 1963, c. 882.

Editor's Note.—
The 1963 amendment struck out the words "personally, or a member of his, or her, immediate family, or" following the word "elector" near the end of the certificate.

§ 163-60. Absentee ballots with list of same for each precinct delivered to registrars on election morning; copy mailed to State Board of Elections.—On the morning of the day of a general election the chairman of the county board of elections shall deliver, or cause to be delivered, to each registrar in the county two copies of a list of all of the absentee ballots received by him from absent voters for such precinct, and at the same time there shall be delivered to the registrars all of the absentee container-return envelopes unopened for such precinct which the chairman has received back from the voters. The registrar shall post one copy of said list of absentee voters in a public place at the polls by noon on election day. The registrar shall retain the other copy of said list until all challenges of absentee ballots have been heard. On election day the chairman of the county board of elections shall mail or cause to be mailed to the State Board of Elections one copy of the list of absentee ballots received by him. (1939, c. 159, s. 7; 1943, c. 751, s. 4; 1963, c. 457, s. 7.)

Local Modification.—Sampson: 1963, c. 882.

Editor's Note.—
The 1963 amendment inserted the words "two copies of" near the middle of the first sentence. It also rewrote the second sentence and added the third and fourth sentences.

§ 163-61. Ballots deemed voted upon delivery to precinct officials; opening, depositing and recording; rejected ballots; challenges. — Absent voters' ballots shall be deemed to be voted when delivered to the precinct officials unless it shall appear that the affidavit and jurat, or either, are not in due form, in which event, the ballot shall not be voted, nor counted. Immediately upon the closing of the polls for the voting of voters in person, the recording of the absent voters' names on the poll book and depositing the ballot in the ballot box shall be begun and the procedure shall be as follows:

(1) The name of the voter as it appears on the affidavit on the envelope shall be called by one of the judges of elections. If it be found that he is a registered and qualified voter of the precinct, and no challenge is offered to the vote, the name shall then be recorded in the poll book with the notation "Absent Voter." A judge of elections shall then open the envelope by slitting it with a sharp instrument in such manner as not to destroy, tear or obliterate any part of the affidavit. The ballot shall then be removed from the envelope without unfolding the same so as to disclose how the ballot is marked, and such ballot, without examination as to how it is marked, shall be deposited in the appropriate ballot box as other ballots are deposited; provided, however, that if the affidavit and jurat are not in due form, or the voter did not sign his name on the affidavit on the envelope, or the officer's seal is not affixed, said ballot shall not be deposited in the ballot box, nor counted, but returned to its envelope and marked "rejected."

(2) If an absent voter's ballot is challenged and the challenge is sustained, the ballot shall be returned to its envelope and marked "Challenge Sustained" and returned as provided for the return of rejected ballots.

All envelopes shall be carefully preserved and, with the ballots marked "Rejected" and "Challenge Sustained," shall be filed with the chairman of the county board of elections at the time the returns from said precinct are filed, and shall

be preserved intact by the chairman for a period of six (6) months, or longer if any contests shall then be pending concerning the validity of any of the absentee ballots so delivered to him. (1939, c. 159, s. 8; 1963, c. 457, s. 8.)

Local Modification.—Sampson: 1963, c. 882.

Editor's Note. — The 1963 amendment rewrote the opening paragraph and subdivision (1). It also deleted the words "of the county board of elections" following the word "chairman" near the middle of the last paragraph.

§ 163-62. Procedure for challenging absentee ballots on election day; appeals to county board.—Any elector may challenge an absent voter's ballot on election day. Any challenge to any absentee ballot must be made in writing to the precinct registrar by the person making the challenge, and such challenger shall set out, in writing, the specific reasons given for each absentee ballot challenged, and also specify why the absentee ballot challenged fails to be in compliance with the law relating thereto, or why such absent voter is not legally entitled to vote in that election. Each absent voter's ballot must be challenged separately with the reason stated in writing in each case. Upon such challenge being filed in accordance with the provisions herein set forth, then it shall be the duty of the registrar and judges to proceed to hear the challenger's reasons for each such a challenge made and decide same. The burden of proof shall be upon the challenger in each case on election day to sustain each challenge so made.

Any absent voter whose absentee ballot has been challenged, and the challenge sustained, may, either personally or through a duly authorized representative, appeal to the county board of elections on canvass day to sustain the validity of the voter's ballot, and if its validity is sustained his or her absentee ballot shall be counted and added by the board to the returns from the proper precinct. (1939, c. 159, s. 9; 1945, c. 758, s. 8; 1953, c. 1114.)

Local Modification.—Sampson: 1963, c. 882.

Editor's Note.—
The 1953 amendment rewrote this section, adding the provisions as to procedure for challenging absentee ballots.

§ 163-63. Register of applications declared a public record.

Local Modification.—Sampson: 1963, c. 882.

§ 163-64. Absentee voting where voting machines are used.—In all counties and precincts in which voting machines are used, all of the provisions of this article relating to absentee voting shall apply. Paper ballots shall be printed for use in absentee voting in such counties and used in the same manner as counties not using voting machines, except after the absentee ballots are counted in each precinct upon the closing of the polls, the absentee vote shall be added to the totals for each candidate or proposition as shown on the voting machines, and the combined total entered on the official precinct returns for the precinct. The absentee ballots and envelopes shall be returned by the registrars to the county board of elections on canvass day. (1963, c. 457, s. 9.)

Local Modification.—Sampson: 1963, c. 882.

Editor's Note. — Session Laws 1963, c. 457, s. 9, repealed former § 163-64, making it a misdemeanor to certify an absentee voter's affidavit without administering the oath to such voter, and substituted the above section therefor.

§ 163-65. False statements under oath made misdemeanor.

Local Modification.—Sampson: 1963, c. 882.

§ 163-66. False statements not under oath made misdemeanor.

Local Modification.—Sampson: 1963, c. 882.

§ 163-67. Custody of applications, ballots, etc.—The chairman of the county board of elections in each county shall be the sole custodian of blank applications for absent voters' ballots, the official ballots, blank certificates and envelopes, and he shall issue same only in strict accordance with the provisions of this article. The issuance of such absent voters' ballots is the responsibility and duty of the chairman of the county board of elections. Blank applications for absent voters' ballots may be delivered to any elector applying for same for his or her own personal use, and not for the use of others. He shall keep all records and make all reports, promptly, required by him by the terms of this article.

The willful violation of the terms of this section shall constitute a misdemeanor, and upon conviction, the offender shall be fined not less than one hundred dollars ($100.00), or imprisoned not less than sixty days, or both, in the discretion of the court. (1939, c. 159, s. 14; 1963, c. 457, s. 10.)

Local Modification.—Sampson: 1963, c. 882.

Editor's Note. — The 1963 amendment added to the third sentence the words "for his or her own personal use, and not for the use of others."

§ 163-68. Violations not otherwise provided for made misdemeanor.

Local Modification.—Sampson: 1963, c. 882.

§ 163-69. Reports of violations to Attorney General and solicitor.

Local Modification.—Sampson: 1963, c. 882.

§ 163-69.1. Articles 11 and 11A, relating to voting by servicemen, not applicable.—Except as therein otherwise provided, articles 11 and 11A of chapter 163 of the General Statutes of North Carolina relating to absentee registration and voting by servicemen shall not be applicable to the provisions of this article. (1963, c. 457, s. 11.)

Local Modification.—Sampson: 1963, c. 882.

Article 11.

Absentee Voting in Primaries by Voters in Military and Naval Service.

§ 163-71. Application for ballot; blanks furnished; name of applicant and other information entered on register.—Such voter at any time before the date of the primary may make an application in writing duly signed by him to the chairman of the county board of elections of his county for an official primary ballot of the party of his affiliation as shown by the party primary registration books.

Said application shall show the precinct in which the applicant is registered and entitled to vote and the company or other armed unit of which he is a member.

The county board of elections shall furnish appropriate application blanks to any such voter on request. The application, however, shall not be required to be on such form but may be informally made in writing signed by the voter.

Upon the receipt of such application the chairman of the county board of elections of the county of the voter's residence shall enter on a register kept for that purpose the name of the applicant, his party affiliation and the precinct in which applicant is entitled to vote as shown by the application. (1941, c. 346, ss. 2, 3; 1963, c. 457, s. 12.)

Editor's Note. — The 1963 amendment deleted from the first and third paragraphs provisions relating to the signing of the voter's name by a member of his immediate family.

§ 163-72. How ballot mailed to applicant.—The chairman of the county board of elections shall register said application in the chairman's Absentee Regis-

ter of Absentee Military Applications, and if the application is in proper form the said chairman shall then write or type on the top of each kind of primary ballot being used in such primary election the words "Absentee Ballot No. ....", filling in the proper number of the application, and enclose said ballots in a container-return envelope, together with a sheet of instructions to voter, unsealed, and then place the said envelope in another mailing envelope and mail same direct to the applicant voter to the same address furnished by the absent voter. (1941, c. 346, ss. 4, 5; 1963, c. 457, s. 13.)

Editor's Note. — The 1963 amendment rewrote this section.

§ 163-73. Envelope for return of ballot; form of certificate on envelope.—The return envelope which the chairman shall send to the serviceman who applied for a primary absentee ballot to vote in the next State-wide primary election shall bear on one side thereof, written by said chairman, the name of the voter, the number of the application, and the precinct in which the ballot is to be voted, and on the other side on the face of the envelope the return address of the chairman, together with a printed certificate as follows:

PRIMARY ELECTION

Certificate of Serviceman

I, ..., a duly qualified Democrat—Republican (Strike out whichever is inappropriate) voter in ..... precinct, ... County, do hereby certify that I am a qualified voter of said precinct; that I am in the Armed Forces of the United States, a member of ..... Company or Unit, and I am mailing this ballot duly marked by me to the chairman of the county board of elections of the county of my residence to be voted in the forthcoming primary of said party.

Witness my hand in the presence of ..... officer this the .... day of ....., 19.....

.....
(Signature of voter)

Witness: .....
(Signature of officer)

.....
(Title and unit of officer)

Note: May be witnessed by any commissioned or noncommissioned officer of the rank of sergeant in the Army, or petty officer in the Navy, or the equivalent thereof. (1941, c. 346, s. 6; 1963, c. 457, s. 14.)

Editor's Note. — The 1963 amendment rewrote this section.

§ 163-74. Voting of ballot; mailing and delivery to proper precinct; application of article 10 as to depositing, voting, counting, certifying, etc.—Upon the receipt of his absentee ballot by mail from the chairman the voter shall vote same by properly marking the ballot in the presence of any commissioned or noncommissioned officer of the rank of sergeant in the Army, or petty officer in the Navy, or the equivalent thereof. The voter shall then enclose the ballot in the container return envelope, seal the envelope, and sign his name on the certificate printed on the face of the envelope in the presence of the subscribing officer, which officer shall also sign as a witness in the place provided therefor at the bottom of the certificate on the envelope. The voter shall then mail the said container-return envelope to the chairman of the county board of elections. The chairman of the county board of elections on the day of the primary election shall deliver all such primary absentee ballot envelopes received by him unopened to the registrar of the proper precincts. Except as is herein provided,

the provisions of article 10 shall apply as to the manner of depositing and voting of such primary absentee ballots, the counting and certifying the results, etc. (1941, c. 346, ss. 7-10; 1963, c. 457, s. 15.)

Editor's Note. — The 1963 amendment rewrote this section.

Article 11A.

Absentee Registration and Voting in General Elections by Persons in Military or Naval Service.

§ 163-77.1. Persons in armed forces, their wives, veterans, service civilians and members of Peace Corps may register and vote by mail. —Every individual absent from the county of his residence and serving in the land or naval forces of the United States, including the members of the Army Nurse Corps, the Navy Nurse Corps, the Women's Navy Reserve, and the Women's Army Auxiliary Corps and Merchant Marine, who is eligible to register for and is qualified to vote at any election held under the laws of this State, shall be entitled to register and vote in the manner hereinafter provided.

All of the provisions of this section and of this article shall apply equally to the wife of a serviceman residing with her husband outside of the county of her husband's residence; to a discharged, disabled war veteran in a government hospital; and to a civilian attached to and serving outside of the United States with the armed forces and members of the United States Peace Corps, thus permitting such persons, when qualified to register and vote under the laws of this State, to register by mail and vote absentee ballots in all State-wide primaries and elections held in North Carolina. (1943, c. 503, s. 1; 1953, c. 908; 1963, c. 457, s. 16.)

Editor's Note. — The 1953 amendment added the second paragraph.

The 1963 amendment inserted in the second paragraph the reference to the United States Peace Corps.

Article 12.

Challenges.

§ 163-78. Registrar to attend polling place for challenges.

Cited in Overton v. Mayor & City Com'rs of Hendersonville, 253 N. C. 306, 116 S. E. (2d) 808 (1960).

§ 163-79. How challenges heard.

You do solemnly swear (or affirm) that you are a citizen of the United States; that you are twenty-one years old, and that you have resided in this State for one year, and in this precinct (ward or township) for thirty days next preceding this election, and that you are not disqualified from voting by the Constitution and laws of this State; that your name is (here insert name given), and that in such name you were duly registered as a voter of this township; and that you are the identical person you represent yourself to be, and that you have not voted in this election at this or any other polling place. So help you, God.

(1955, c. 871, s. 2.)

Editor's Note.—The 1955 amendment inserted "thirty days" in lieu of "four months" formerly appearing in the third line of the oath of the challenged elector. As only the oath was affected by the amendment, the first and last paragraphs are not set out.

§ 163-79.1. Registration records open to public in counties having loose-leaf and visible registration system and permanent registration; challenges in such counties.—In counties in which a modern loose-leaf and visible registration system has been established as permitted by G. S. 163-

43, with a full time and permanent registration as authorized by G. S. 163-31 and 163-31.2, the registration books or permanent records of registration shall be open to public inspection by any elector of the county between such reasonable hours and on such day or days of each week as the county board of elections shall find reasonable, at which time the registration of any elector shall be subject to objection and challenge. Except as hereinafter provided, G. S. 163-78 and 163-79 shall not apply to such counties. All challenges shall be made to and heard solely by the county boards of elections in the same manner as that provided in G. S. 163-79 for the hearing of challenges by precinct election officials. Nothing herein shall be taken to prohibit any elector from challenging or objecting to the name of any other elector offering to vote on the day of any primary or general election, and, in the event of such challenge, the same shall be heard and determined by the registrar and judges of election in the manner provided by G. S. 163-79. (1953, c. 843; 1955, c. 800; 1963, c. 303, s. 1.)

Editor's Note.—The 1955 amendment inserted "one or more municipalities with a population in excess of 10,000" in lieu of "two or more municipalities, each with a population in excess of 35,000" formerly appearing near the beginning of the section.

The 1963 amendment deleted the words inserted by the 1955 amendment.

ARTICLE 13.

Conduct of Elections.

§ 163-81. Special elections.

Cited in Ponder v. Cobb, 257 N. C. 281, 126 S. E. (2d) 67 (1962).

§ 163-82. Power of election officers to maintain order.—The registrar and judges of election in each ward or precinct, the board of elections of each county, and the State Board of Elections shall respectively possess full power and authority to maintain order, and to enforce obedience to their lawful commands during their sessions, respectively, and shall be constituted inferior courts for that purpose, and if any person shall refuse to obey the lawful commands of any such registrar or judges of election, county boards of elections, or the State Board of Elections, or by disorderly conduct in their hearing or presence shall interrupt or disturb their proceedings, they may, by an order in writing, signed by their chairman, and attested by their clerk, commit the person so offending to the common jail of the county for a period not exceeding thirty days, and such order shall be executed by any sheriff or constable to whom the same shall be delivered, or if a sheriff or constable shall not be present, or shall refuse to act, by any other person who shall be deputed by such State or county boards of elections in writing, and the keeper of such jail shall receive the person so committed and safely keep him for such time as shall be mentioned in the commitment. Provided, that any person committed under the provisions of this section shall have the right to post a two hundred dollar ($200.00) bond with the clerk of the superior court and appeal to the superior court for a trial on the merits of his commitment. (1901, c. 89, s. 72; Rev., s. 4376; C. S., s. 5977; 1955, c. 871, s. 4.)

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

ARTICLE 14.

Counting of Ballots; Precinct Returns; Canvass of Votes and Preparation of Abstracts; Certification of Results by County Board of Elections.

§ 163-84. Proceedings when polls close; counting of ballots; report of vote to county board of elections.—At the time for closing the polls the registrar shall announce that the polls are closed, but any qualified electors who

are in the process of voting, or are in line within the voting enclosure waiting to vote, shall be allowed to vote before the polls close.

The county board of elections of any county may, by a majority vote, authorize the use of precinct ballot counters to aid the registrars and judges of election in the counting of the ballots in any precinct or precincts within the county and such ballot counters, to the extent of the number designated by the county board of elections, may be selected by the county board of elections or the registrars as the county board may direct. Upon acceptance of the appointment as ballot counters, such persons shall appear before the registrar at the polling place immediately at the close of the polls and take an oath administered by the registrar to support the Constitution of the United States and the Constitution of North Carolina not inconsistent therewith and that they will honestly discharge the duties of ballot counter and will fairly and honestly tabulate the votes as cast in said primary or election. In a general election one ballot box may be emptied at a time upon a table and all those ballots marked as a straight party vote for all of the candidates of one party may be put into one pile and each such ballot counted as one vote for each candidate on said ballot of such party as marked in the party circle above, and shall be so tallied on the tally sheet. All split-voted ballots—that is for candidates of more than one party—shall be called out and tallied according to the manner in which they are marked for the individual candidates. All questions arising upon the counting of the votes or the tabulation thereof as to how a ballot shall be counted shall be referred to the registrar and judges of election for determination before the completion of the counting of a box. More than one box may be counted at a time by the precinct officials, clerks, and ballot counters, but the registrar and judges of election shall have supervision over the counting of all boxes and be responsible for them. Before any primary or election the chairman of the county board of elections shall furnish to each registrar written instructions on how ballots shall be marked and counted under the provisions of the law. Before the counting of the ballots begins the registrar shall properly instruct all of the ballot counters, clerks and judges on how differently marked ballots shall be counted and tallied. The counting of the ballots in each box shall be made in the presence of the election officials, witnesses and watchers who are present and who may desire to watch same. Provided, that in all primary elections, when the counting of the ballots begins after the polls close, one ballot shall be taken at a time from the ballot box by one of the election officials named herein and opened in full view of all of the election officials and witnesses present, and the name of each candidate voted for shall be read aloud distinctly. The vote received by each candidate shall be tallied on the tally sheet. This same procedure for counting the ballots shall apply to all the ballot boxes being counted at the same time in a primary election.

No ballot shall be counted which is marked contrary to law, except that no ballot shall be rejected for any technical error unless it is impossible to determine the voter's choice.

The counting of ballots shall be continuous until completed. From the time the ballot box is opened and the count of votes begun, until the votes are counted and returns are made out, signed and certified as herein required, and given to the presiding judge or registrar for delivery to the county board as required herein, the registrar and judges of election in each precinct shall not separate, nor shall a registrar or judge leave the polling place except from unavoidable necessity. In case of illness or unavoidable necessity, the board of elections may substitute another qualified person for any precinct official so incapacitated.

Immediately following the completion of the counting of the votes on election night and the certification of the official precinct returns, the registrar, or one of the judges selected by him, shall report the total precinct vote for such candidate or proposition by telephone or otherwise to the office of the county board of elections, which report shall be unofficial and shall have no binding effect upon the

official county canvass to follow thereafter. The chairman or secretary or clerk to the county board of elections shall, as soon as such reports are received from the registrars, publish such reports to the press and to the radio and television. The cost thereof shall be charged to the operating expense of the county board of elections. (1933, c. 165, s. 8; 1955, c. 891; 1961, c. 487.)

Editor's Note — The 1955 amendment struck out the former second sentence of the first paragraph, and substituted a new paragraph for the former second paragraph.

The 1961 amendment added the last paragraph.

Cited in Strickland v. Hill, 253 N. C. 198, 116 S. E. (2d) 463 (1960); Ponder v. Cobb, 257 N. C. 281, 126 S. E. (2d) 67 (1962).

§ 163-84.1. Precinct ballot counters in counties having loose-leaf and visible registration system and permanent registration; counting and tabulation of returns in such counties.—In counties in which a modern loose-leaf and visible registration system has been established as permitted by G. S. 163-43, with a full time and permanent registration as authorized by G. S. 163-31 and 163-31.2, the county board of elections may by a majority vote authorize the use of precinct ballot counters to aid the registrars and judges of elections and thereupon the county board of elections, or the registrars, to the extent of the number of ballot counters designated by the county board of elections, may select ballot counters to aid the registrars and judges of elections in counting the ballots and making precinct returns. The names and addresses of all ballot counters serving in any precinct, whether appointed by the county board of elections or by the registrars, shall be reported by the registrars to the county board of elections at the county canvass following the election. Upon acceptance of appointment as ballot counter, such person shall appear before the registrar at the polling place upon the closing of the polls and take oath that such person will support the Constitution of the United States and the Constitution of North Carolina not inconsistent therewith and will honestly and impartially discharge the duties of a ballot counter and will honestly and fairly tabulate and make return of the count and will not keep or make any memorandum of such count, except that which he is called upon to make to the county board of elections, and will not make any statement with reference to said count and return, unless called upon to testify in a judicial proceeding for a violation of the election laws of this State. The registrars, judges of election, clerks, and ballot counters, shall, upon the closing of the polls, proceed to open the ballot boxes and to count and tabulate the returns by teams in such manner as may be prescribed by the county board of elections. All questions or challenges arising upon the count and tabulation or with reference to any ballot or ballots cast at said election shall be heard and determined by the registrars and judges of election in the manner provided by law. (1953, c. 843; 1955, c. 800; 1963, c. 303, s. 1.)

Editor's Note.—The 1955 amendment inserted "one or more municipalities with a population in excess of 10,000" in lieu of "two or more municipalities, each with a population in excess of 35,000" formerly appearing near the beginning of the section.

The 1963 amendment deleted the words inserted by the 1955 amendment.

§ 163-84.2. Preservation of ballots; locking and sealing of ballot boxes; signing of certificates.—After the counting is completed on the night of any primary or election, all ballots voted shall be put back in the proper ballot boxes from which they were taken, and the registrar and judges shall promptly securely lock each ballot box, and securely place a seal around the top of the boxes so that no ballot can be taken from or put in any of the boxes, and the registrar and judges shall sign the seal on each box. These ballot boxes shall remain in the safe custody of the registrar subject to any orders from the chairman of the county board of elections as to their disposition. It shall be the duty of the chairman of the county board of elections to furnish to each registrar all locks and proper seals for all ballot boxes, with proper instructions as to how each box is to

be securely locked and sealed in compliance with this section. There shall be printed on each precinct return form to be signed by the registrar and judges after the count is completed a certificate certifying that each ballot box was properly locked, sealed and signed by the registrar and judges, as herein prescribed, before they left the polling place on primary or election night. Willful failure to securely lock, seal and sign the seal on each ballot box on the night of any primary or election, and willful failure to sign the certificate on the duplicate return forms certifying that this has been done shall constitute a misdemeanor. (1959, c. 1203, s. 2.)

§ 163-85. How precinct returns are to be made and canvassed.

Returns Admissible as Substantive Evidence.—See State v. Ponder, 234 N. C. 294, 67 S. E. (2d) 292 (1951).

Cited in Strickland v. Hill, 253 N. C. 198, 116 S. E. (2d) 463 (1960).

§ 163-86. County board of elections to canvass returns and declare results.

This section modifies or supersedes § 163-143 to the extent of any conflict. Strickland v. Hill, 253 N. C. 198, 116 S. E. (2d) 463 (1960).

Recounts.—Where a candidate in a primary election, prior to the time fixed for the county board of elections to canvass the returns, suggests errors in tabulating ballots in certain precincts because persons not legally qualified acted as counters and tabulators, but makes no assertion that any person voted who was not entitled to vote or that any qualified elector was prevented from voting, and files a written request for recount, the county board has authority, in the exercise of its judgment and discretion in good faith, to order and conduct a recount of the ballots cast and to certify the candidate having the majority of the votes as ascertained by such recount as the nominee of the party, notwithstanding that the returns of the precinct officials are regular upon their face. Strickland v. Hill, 253 N. C. 198, 116 S. E. (2d) 463 (1960).

§ 163-88. Preparation of original abstracts; where filed.

Abstract Admissible as Substantive Evidence.—See State v. Ponder, 234 N. C. 294, 67 S. E. (2d) 292 (1951).

§ 163-91. Who declared elected by county board; proclamation of result.—In the general election, the person having the greatest number of legal votes for a county or township office, or for the House of Representatives, or for the State Senate in a district composed of only one county, shall be declared elected by the county board of elections. But, if two or more county candidates, having the greatest number of votes, shall have an equal number the county board of elections shall determine which shall be elected. Provided that a write-in candidate must receive as many as 5% of the votes cast for candidates for Congress in the township or county or other jurisdiction in which said write-in candidate is running as a prerequisite to his being elected.

When the county board of elections shall have completed the canvass, they shall judicially determine the result of the election in their county for all persons voted for, and proclaim the same at the courthouse door with the number of votes cast for each. (1933, c. 165, s. 8; 1957, c. 1263.)

Editor's Note.—
The 1957 amendment added the proviso to the first paragraph.

§ 163-92. Chairman of county board of elections to furnish county officers certificate of election.—The chairman of the county board of elections of each county shall furnish, within ten days, the member or members elected to the House of Representatives and the county officers, a certificate of election under his hand and seal. He shall also immediately notify all persons elected to the county offices to meet at the courthouse on the first Monday in the ensuing De-

cember to be qualified. The chairman of the county board of elections shall also issue a certificate of election to each township officer elected to office within the county: Provided, that where an election contest is properly pending before a county board of elections or on appeal from a county board to the State Board of Elections, either after a primary or a general election, the said county board of elections shall not certify the results of the primary or election for the office in controversy until the contest has been finally decided by the county or State Board of Elections, or until at least five days after the results of the election have been officially certified and public notice given of the results and no contest or appeals have been filed with the county board of elections contesting the official declared results. (1933, c. 165, s. 8; 1947, c. 505, s. 4; 1955, c. 871, s. 5; 1959, c. 1203, s. 3.)

Editor's Note.—

The 1955 amendment added the proviso.

The 1959 amendment added the part of the section appearing after "Elections" in line thirteen.

Conclusiveness of Adjudication of Board and Certificate of Election.—The adjudication of the board and the resultant certificate of election constitute conclusive evidence of the certificate holder's right to the office in every proceeding except a direct proceeding under § 1-514 et seq. to try the title to the office. State v. Ponder, 234 N. C. 294, 67 S. E. (2d) 292 (1951).

Article 15.

Canvass of Returns for Higher Offices and Preparation of State Abstracts.

§ 163-97. Results certified to the Secretary of State; certificate of election issued.

Cited in Ponder v. Cobb, 257 N. C. 281, 126 S. E. (2d) 67 (1962).

Article 16.

State Officers, Senators and Congressmen.

§ 163-102. Election of Senator to fill unexpired term.—If such vacancy shall occur more than thirty days before any general State election, the Governor shall issue his writ for the election by the people, at the next general election, of a Senator to fill the unexpired part of the term, and said election shall take effect from the date of the canvassing of the returns, and the State Board of Elections may meet at the call of the chairman as soon as he shall have received returns from all of the counties and prepared an abstract of same for the purpose of canvassing the returns and certifying the results of said election. (1913, c. 114, s. 2; C. S., s. 6002; 1955, c. 871, s. 6.)

Editor's Note.—The 1955 amendment rewrote the latter part of the section following the word "returns" in the fifth line.

§ 163-103. Congressional districts specified.—For the purpose of selecting representatives to the Congress of the United States, the State af North Carolina shall be divided into eleven districts as follows:

First District: Beaufort, Bertie, Camden, Chowan, Currituck, Dare, Gates, Hertford, Hyde, Martin, Pasquotank, Perquimans, Pitt, Tyrrell and Washington Counties.

Second District: Edgecombe, Franklin, Greene, Halifax, Lenoir, Northampton, Vance, Warren and Wilson Counties.

Third District: Carteret, Craven, Duplin, Harnett, Jones, Onslow, Pamlico, Pender, Sampson and Wayne Counties.

Fourth District: Chatham, Davidson, Johnston, Nash, Randolph and Wake Counties.

Fifth District: Caswell, Forsyth, Granville, Person, Rockingham, Stokes, Surry and Wilkes Counties.

Sixth District: Alamance, Durham, Guilford and Orange Counties.

Seventh District: Bladen, Brunswick, Columbus, Cumberland, Hoke, New Hanover, Robeson and Scotland Counties.

Eighth District: Anson, Lee, Lincoln, Mecklenburg, Montgomery, Moore, Richmond and Union Counties.

Ninth District: Alexander, Alleghany, Ashe, Cabarrus, Caldwell, Davie, Iredell, Rowan, Stanly, Watauga and Yadkin Counties.

Tenth District: Avery, Burke, Catawba, Cleveland, Gaston, Mitchell and Rutherford Counties.

Eleventh District: Buncombe, Cherokee, Clay, Graham, Haywood, Henderson, Jackson, Macon, Madison, McDowell, Polk, Swain, Transylvania and Yancey Counties. (Rev., s. 4366; 1911, c. 97; C. S., s. 6004; 1931, c. 216; 1941, c. 3; 1961, c. 864.)

Editor's Note.— The 1961 amendment changed the number of congressional districts from twelve to eleven.

Article 18.

Miscellaneous Provisions as to General Elections.

§ 163-115. Registrars to permit copying of poll and registration books.—In any primary or general election held in this State, and at any time prior to the holding of such primary or general election, and while the registration and poll books shall be in the hands of any registrar, it shall be the duty of such registrar, on application of any candidate or the chairman of any political party, to permit said poll book or registration book to be copied: Provided, such poll book or registration book shall not be removed from the polling place if there, or the residence of such registrar, if there: Provided, also, it shall be lawful for such registrar himself to furnish to such applicant, in lieu of the books themselves, a true copy of the same, for which service he shall be entitled to receive two cents per name. Any person willfully failing or refusing to comply with the provisions and requirements of this section shall be guilty of a misdemeanor and upon conviction thereof shall be fined not exceeding fifty dollars, or imprisoned not exceeding thirty days. (1901, c. 89, s. 83; Rev., s. 4382; C. S., s. 6016; 1931, c. 80; 1959, c. 883.)

Editor's Note.— The 1959 amendment substituted "two cents" for "one cent" in the last proviso to the first sentence.

§ 163-115.1. Copies of registration in counties having loose-leaf and visible registration system and permanent registration.—In counties in which a modern loose-leaf and visible registration system has been established as permitted by G. S. 163-43, with a full time and permanent registration as authorized by G. S. 163-31 and 163-31.2, it shall be the duty of the county board of elections, on application of any candidate, or the chairman of any political party, or any other person, to furnish a copy or copies of the registration. Such lists shall be furnished upon such cards, postal cards, or envelopes, and at such charges as may be fixed by such county board of elections. In case the list is a partial or selected list by party affiliation, sex, color, date of registration, or any other selection the county board of elections may see fit to prescribe and make, the charge therefor may be based upon the total registration of the precinct or precincts from which such selected list is made, regardless of the number of selected names upon such list so made. In such county no registrar shall furnish registration lists or permit a copy of the registration. (1953, c. 843; 1955, c. 800; 1963, c. 303, s. 1.)

Editor's Note.—The 1955 amendment inserted "one or more municipalities with a population in excess of 10,000" in lieu of "two or more municipalities, each with a population in excess of 35,000" formerly appearing near the beginning of the section.

The 1963 amendment deleted the words inserted by the 1955 amendment.

SUBCHAPTER II. PRIMARY ELECTIONS.

ARTICLE 19.

Primary Elections.

§ 163-117. Date for holding primaries.

Local Modification.—Session Laws 1957, c. 826, as amended by Session Laws 1959, c. 621, s. 2, provides that this article shall not apply to nominations of Democratic candidates for county offices and members of the House of Representatives in Cherokee County, but such candidates shall be nominated by convention of the Democratic Party.

Session Laws 1961, c. 484 provides that this article shall not apply to nominations of Republican candidates for county offices and members of the General Assembly in Cherokee County, but such candidates shall be nominated by conventions of the Republican Party.

Editor's Note. — Session Laws 1953, c. 1069, as amended by Session Laws 1959, c. 238, made this article applicable to Watauga County. Session Laws 1955, c. 439, to the extent provided, made this article applicable to Yancey County. Session Laws 1955, c. 442, made this article applicable to the counties of Avery, Madison, Mitchell and Yancey for the purpose of nominating Democratic candidates for the State Senate.

There is a well-defined distinction between a primary election and a regular election. A primary election is a means provided by law whereby members of a political party select by ballot candidates or nominees for office; whereas a regular election is a means whereby officers are elected and public offices are filled according to established rules of law. In short, a primary election is merely a mode of choosing candidates of political parties, whereas a regular election is the final choice of the entire electorate. Rider v. Lenoir County, 236 N. C. 620, 73 S. E. (2d) 913 (1952).

Cited in Rider v. Lenoir County, 236 N. C. 620, 73 S. E. (2d) 913 (1952); Strickland v. Hill, 253 N. C. 198, 116 S. E. (2d) 463 (1960).

§ 163-118. Primaries governed by general election laws.

Quoted in Strickland v. Hill, 253 N. C. 198, 116 S. E. (2d) 463 (1960).

§ 163-119. Notices and pledges of candidates; with whom filed.— Every candidate for selection as the nominee of any politcial party for the offices of Governor and all State officers, justices of the Supreme Court, the judges of the superior court, United States Senators, members of Congress, and solicitors to be voted for in any primary election shall file with and place in the possession of the State Board of Elections, by twelve o'clock noon on or before Friday preceding the tenth Saturday before such primary election is to be held, a notice and pledge in the following form, the blanks being properly filled in and the same signed by the candidate:

"I hereby file my notice as a candidate for the nomination as ..... in the primary election to be held on ..... I affiliate with the ..... party, and I hereby pledge myself to abide by the results of said primary, and to support in the next general election all candidates nominated by the ..... party. I further pledge myself that if I am defeated in said primary, I will not run for any office as a write-in candidate in the next general election."

Every candidate for selection as the nominee of any political party for the office of State Senator in a primary election, member of the House of Representatives, and all county and township offices shall file with and place in the possession of the county board of elections of the county in which they reside by twelve o'clock noon on or before the Friday preceding the sixth Saturday before such primary election is to be held a like notice and pledge.

The notice of candidacy required by this section to be filed by a candidate in the primary must be signed personally by the candidate himself or herself, and

such signature of the candidate must be signed in the presence of the chairman or secretary of the board of elections with whom such candidate is filing, or a candidate must have his or her signature on the notice of candidacy acknowledged and certified to by any officer authorized to administer an oath. Any notice of candidacy of any candidate signed by an agent in behalf of a candidate shall not be valid. No person shall be permitted to file as a candidate of any political party in a party primary when such person, at the time of filing his or her notice of candidacy, is registered on the registration book as an affiliate of a different political party from that party in whose primary he or she is now attempting to file as a candidate. Any unregistered person who desires to become a candidate in a party primary may do so if such person signs a written pledge with the chairman along with the filing form that he or she will, during the registration period just prior to the next primary, register as an affiliate of the political party in whose primary he or she now intends to run as a candidate. Any person registered as an Independent, or with no party affiliation recorded on the registration book, shall not be eligible to file as a candidate in a primary election. (1915, c. 101, s. 6; c. 1009, s. 3; 1955, c. 755; c. 871, s. 1; 1959, c. 1203, s. 4.)

Editor's Note.—The first 1955 amendment substituted in the next to the last paragraph "twelve o'clock noon" for "six o'clock p. m." The second 1955 amendment inserted "Friday preceding the tenth Saturday before such primary election" in lieu of "the tenth Saturday before such primary election" formerly appearing in the first paragraph.

The 1959 amendment added the second sentence to the notice of candidacy form, and the last sentence to the last paragraph. The amendment also inserted in line five of the next to last paragraph the words "the Friday preceding," and subsequently in the same sentence inserted "election" after the word "primary."

Cited in Ratcliff v. Rodman, 258 N. C. 60, 127 S. E. (2d) 788 (1962).

§ 163-120. Filing fees required of candidates in primary.—At the time of filing a notice of candidacy for nomination for any congressional or State office, including judges of the Supreme and superior court and solicitors, each candidate for such office shall pay to the State Board of Elections a filing fee of one per cent of the annual salary of such office. At the time of filing a notice of candidacy for nomination for any legislative or county office, each candidate for such office shall pay to the county board of elections of the county of their residence a filing fee of one per cent of the annual salary of such office: Provided, that all candidates for nomination for any county or township office operated on a fee basis shall pay to the county board of elections a flat filing fee as follows: County commissioners, ten dollars ($10.00); county board of education, five dollars ($5.00); sheriff, clerk of the superior court and register of deeds, forty dollars ($40.00), plus one per cent (1%) of the income of the office above four thousand dollars ($4,000.00); and any other county office on a fee basis, twenty dollars ($20.00), plus one per cent (1%) of the income of the office above two thousand dollars ($2,000.00); township constable, ten dollars ($10.00), plus one per cent (1%) of the income of the office above one thousand dollars ($1,000.00); and justice of the peace, ten dollars ($10.00), plus one per cent (1%) of the income of the office above one thousand dollars ($1,000.00). The filing fees which shall be paid by candidates for a county or township office operated on a part salary and part-fee basis shall be one per cent (1%) of the first annual salary received and shall not include any fees received. (1915, c. 101, s. 4; 1917, c. 218; 1919, c. 139; C. S., s. 6023; 1927, c. 260, s. 20; 1933, c. 165, s. 12; 1939, c. 264, s. 2; 1959, c. 1203, s. 5.)

Editor's Note.—The 1959 amendment rewrote the part of the section beginning with "Provided" in line eight.

§ 163-123. Registration of voters.—The regular registration books shall be kept open before the primary election in the same manner and for the same time

as is prescribed by law for general elections, and electors may be registered for both primary and general elections.

No person shall be entitled to participate or vote in the primary election of any political party unless he be a legal voter, or shall become legally entitled to vote at the next general election, and has first declared and had recorded on the registration book that he affiliates with the political party in whose primary he proposes to vote and is in good faith a member thereof, meaning that he intends to affiliate with the political party in whose primary he proposes to vote and is in good faith a member thereof.

Under this section any person who will have become qualified by age or residence to register and vote in the general election for which the primary is held, even though not so qualified by age or residence by the date of the primary election, shall be entitled to register and vote in the said primary election if otherwise qualified; provided, such person shall register while the registration books are open prior to the primary election in compliance with the provisions set forth in the above paragraph and in other registration requirements. No such person shall be permitted to register on the day of the first or second primary under this provision who fails to register during the regular registration period prior to such primary. (1915, c. 101, s. 5; 1917, c. 218; C. S., s. 6027; 1959, c. 1203, s. 6.)

Editor's Note. — The 1959 amendment added the third paragraph.

§ 163-126. How primary conducted; voter's rights; polling books; information given; observation allowed. — When an elector offers himself and expresses the desire to vote at a primary held under this article, he shall declare the political party with which he affiliates and in whose primary he desires to vote, as hereinbefore provided, and he shall then be furnished by the registrar ballots, as desired by him, of the political party with which he affiliates, which he may vote, and he shall not in such primary be allowed to vote a ticket marked with the name of any political party of which he has not declared himself to be a member as herein defined; but anyone may at any time any elector proposes to vote challenge his right to vote in the primary of any party upon the ground that he does not affiliate with such party or does not in good faith intend to support the candidates nominated in the primary of such party, and it shall be the duty of the registrar and judges of election upon such challenge to determine whether or not the elector has a right to vote in said primary: Provided, that he may vote for candidates for all or any of the offices printed on such ballot, as he shall elect, and he shall be required to disclose the name of the political party printed thereon and no more. He may in the manner hereinbefore prescribed mark such names as he desires, and these and only these shall be counted as being voted for by him, and he shall have the right to so vote for only one candidate as his choice for each office. If he be a qualified elector and has elected to vote in the primary of a party of which he has declared himself to be a member, as provided herein, he may deposit his ballots in the proper ballot boxes, or he may permit the registrar or a judge of election to so deposit them for him.

(1959, c. 1203, s. 7.)

Editor's Note.—

The 1959 amendment deleted the last sentence of the first paragraph. For somewhat similar provision, see the last paragraph of § 163-123.

As only this paragraph was affected the rest of the section is not set out.

§ 163-126.1. Permanent poll record in counties having loose-leaf and visible registration system.—In counties in which a modern loose-leaf and visible registration system has been established as permitted by G. S. 163-43, separate poll books as required by G. S. 163-126 shall not be required and kept and in lieu thereof the county board of elections shall provide a permanent poll record to be kept upon the registration certificates in the form

approved by the county board of elections. (1953, c. 843; 1955, c. 1142; 1963, c. 303, s. 1.)

Editor's Note. — The 1955 amendment struck out the following words: "two or more municipalities, each with a population in excess of 35,000," and substituted therefor the words "one or more municipalities with a population in excess of 10,000."

The 1963 amendment deleted the words inserted by the 1955 amendment.

§ 163-129. Primaries for county offices; candidates to comply with requirements.

Local Modification.—By virtue of Session Laws 1953, c. 1069, the reference to Watauga in the recompiled volume should be deleted.

§ 163-140. When results determined by plurality or majority; second primaries.—In the case of all officers mentioned in this article, nominations shall be determined by a majority of the votes cast.

If in the case of an office no aspirant shall receive a majority of the votes cast, a second primary, subject to the conditions hereinafter set out, shall be held in which only the two aspirants who shall have received the highest and next highest number of votes shall be voted for: Provided, that if either of such two shall withdraw and decline to run, and shall file notice to the effect with the appropriate board of elections, such board shall declare the other aspirant nominated: Provided further, that unless the aspirant for any legislative, county or township office receiving the second highest number of votes shall, by twelve o'clock noon on the fifth day after the result of the first primary election shall have been officially declared, and such aspirant has been notified by the chairman or secretary of the appropriate county board of elections, file in writing with the appropriate county board of elections a request that a second primary be called and held, the aspirant receiving the highest number of votes cast shall be declared nominated by the county board of elections; or unless the aspirant for any district or State office, who is required by law to file with the State Board of Elections, and who receives the second highest number of votes shall, by twelve o'clock noon on the third day after the result of the first primary election shall have been officially declared, and such aspirant has been notified by the chairman or secretary of the State Board of Elections, file in writing or by telegram with the State Board of Elections a request that a second primary be called and held, the aspirant receiving the highest number of votes cast shall be declared nominated by the State Board of Elections.

If a second primary be ordered by the State or a county board of elections, it shall be held four weeks after the first primary, in which case such second primary shall be held under the same laws, rules, and regulations as are provided for the first primary, except that there shall be no further registration of voters other than such as may have become legally qualified after the first primary election, and such persons may register on the day of the second primary, and shall be entitled to vote therein under the provisions of this article. If a nominee for a single office is to be selected, with more than one candidate, then the majority within the meaning of this section shall be ascertained by dividing the total vote cast for all candidates by two, and any excess of the sum so ascertained shall be a majority within the meaning of this section.

If nominees for two or more offices (constituting a group) are to be selected, and there are more candidates for nomination than there are such offices, then the majority within the meaning of this section shall be ascertained by dividing the total vote cast for all of such candidates by the number of positions to be filled, and then dividing the result by two. Any excess of the sum so ascertained, shall be the majority within the meaning of this section. If in ascertaining the result in this way, it appears that more candidates have obtained this majority than there are positions to be filled, then those having the highest vote, if beyond the majority just defined, shall be declared the nominees for the posi-

tions to be filled. Where candidates for all the offices within such group do not receive a majority as defined and set out in this section, those candidates equal in number to the positions to be filled and having the highest number of votes shall be declared nominated unless a second primary shall be demanded, which may be done by any one or all of the candidates equal in number to the positions remaining to be filled and having the second highest number of votes. When any one or all of such candidates in the group receiving the second highest number of votes demand a second primary, such second primary shall be held and the names of all those candidates in the group receiving the highest number of votes and all those in the group receiving the second highest number of votes and demanding a second primary shall be put on the ballot for such primary. In no case shall there be a third primary, but the candidates receiving the highest number of votes in the second primary shall be nominated.

In the event of a tie vote between two candidates for party nomination for a legislative, county or township office in the first primary, a recount of the votes for both candidates shall be made by the county board of elections in the county in which the two candidates were voted for, and the results of said recount shall be declared by the county board of elections. If such recount should still result in a tie vote, then a second primary shall be had on the date prescribed for holding second primaries between the two candidates having an equal vote, unless one of the two candidates should withdraw and file a written notice of withdrawal within three days thereafter with the proper board of elections with which the candidate filed his notice of candidacy. In the event of a tie vote in a primary election between two candidates for any district or State office, or for United States Senator, no recount shall be held by reason of the tie, but the two candidates having a tie vote shall be entered in a second primary to be held on the prescribed date for second primaries, unless one of the two candidates files a notice of withdrawal with the State Board of Elections within three days after the results of the first primary have been officially declared and published. If in any second primary there is a tie vote between any two candidates, no third primary shall be held, but the proper party executive committee shall select the party nominee for such office in accordance with the provisions of G. S. 163-145.

In the event of a tie vote between more than two candidates, all of whom received the same highest vote for party nomination, no recount shall be held, but all of such candidates shall run in a second primary and the one who receives the highest vote in the second primary shall be the nominee.

In the event one candidate receives the highest number of votes cast, but short of a majority, and two or more other candidates receive the second highest number of votes cast in an equal number, then unless all but one of the tied candidates receiving the second highest number of votes withdraw in writing within three days after the official declaration of the results of the primary, the proper board of elections shall declare the candidate having the highest vote as the party nominee. If all but one of the candidates receiving the second highest vote withdraw in writing within the three-day period herein prescribed, and such remaining candidate demands in writing a second primary, then a second primary shall be held between the candidates receiving the highest vote and the remaining candidate who received the second highest vote. (1915, c. 101, s. 24; 1917, c. 179, s. 2; 1917, c. 218; C. S., s. 6045; 1927, c. 260, s. 23; 1931, c. 254, s. 17; 1959, c. 1055; 1961, c. 383.)

Editor's Note.—

The 1959 amendment added the three paragraphs at the end of this section.

The 1961 amendment rewrote the last proviso of the second paragraph.

§ 163-143. Election board may refer to ballot boxes to resolve doubts.

To the extent of any conflict between this section and § 163-86, the latter section controls. Strickland v. Hill, 253 N. C. 198, 116 S. E. (2d) 463 (1960).

§ 163-145. Filling vacancies among candidates. — In the event that any person nominated in any primary election, or a person who has been declared nominated without opposition after the time for filing notice of candidacy has expired, as the candidate of a political party for a State office, including the office of U. S. Senator, shall die, resign or for any reason become ineligible or disqualified before the date of the ensuing general election, the vacancy in the nomination caused thereby shall be filled by the action of the State executive committee of such political party in which the vacancy occurred; in the event of such a vacancy in the nomination of a candidate for a district office, including the office of Representative in the Congress of the United States, judge of the superior court, solicitor or State senator in a senatorial district composed of more than one county, the same shall be filled by the action of the appropriate executive committee for such district of such political party in which the vacancy occurred; and in the event of such vacancy in the nomination of a candidate for a county office, or the State House of Representatives, or the State Senate in a district composed of only one county, and including the county entitled to furnish the senator under a rotation agreement as provided for in § 163-113, the same shall be filled by the action of the executive committee of the party affected thereby in the county wherein such vacancy occurred; provided that where the general election ballots have already been printed before the vacancy occurs then § 163-153 shall apply. Provided that except in case of the death of a candidate who is required by law to file his notice of candidacy with a county board of elections, no substitution of candidates may be made after the primary or convention except by order of the county board of elections for good cause shown.

In the event that any vacancy in any elective office, except a county office other than the office of clerk of superior court, should occur at any time within ten days prior to the closing of the filing time as now prescribed by law for the office in which such vacancy occurs, or after such closing of the filing time and thirty days prior to the next general election, a nomination shall be made by the proper executive committee of all political parties as above provided, and the names of the party candidates so nominated shall be printed on the official general election ballots, provided that where the general election ballots have already been printed before the vacancy occurs, then the provisions of § 163-153 shall apply; and in the event of any such vacancy arising in any elective office more than ten days prior to the closing of the filing time, as now prescribed by law, for candidates to file for the office affected, nominations of party candidates for such office shall be made in the ensuing primary election, and all candidates for said office shall file their notices of candidacy with the proper board of elections as is provided for in §§ 163-119 and 163-120; provided that in all special elections held for congressmen the provisions of § 163-105 shall apply.

In the event of a vacancy in the office of a clerk of a superior court within thirty days prior to a general election, then the nomination of a party candidate shall be made by the county executive committee. (1915, c. 101, s. 33; 1917, c. 179, s. 3; 1917, c. 218; C. S., s. 6053; 1923, c. 111, s. 16; 1955, c. 574; 1957, c. 1242.)

Editor's Note.—The 1955 amendment repealed the former section and substituted the present section therefor. The 1957 amendment added the proviso to the first paragraph.

§ 163-145.1. Death of candidate prior to primary election; filling vacancy; procedure.—(a) Whenever any candidate of a political party for nomination to any office in a primary election shall die before the primary ballots have been printed, or if printed and there is sufficient time left in the opinion of the proper board of elections to reprint the ballots before the primary, and there was only one other candidate filed for the same office of the same political party, then the board of elections with whom such deceased candidate filed shall imme-

diately upon receiving notice of the death of such candidate, reopen the filing time for filing notices of candidacy for the same office, for a period of five (5) days. The names of all candidates of the same party as that of the deceased candidate who filed for such office during the period in which the filing time was reopened and who paid the proper filing fees, shall be printed on the primary ballots along with the other one candidate for the same office who had filed the first filing period, and shall be voted for in the first regular primary election.

(b) Whenever any candidate of a political party for nomination to any office in a primary election shall die after the primary ballots for that office have been printed, and in the opinion of the proper board of elections there is not sufficient time left to reprint the ballots for that office for the primary, and regardless of whether one or more other candidates has filed for nomination to such office in the same party, then the primary ballots shall not be reprinted, and the name of the candidate who had died since the ballots were printed shall remain on the primary ballots along with all the other party candidates for nomination to said office. In the event that the highest number of votes cast in the primary were for the deceased candidate, even though short of receiving a majority of the votes cast, the proper party executive committee shall appoint the party nominee under the provisions of § 163-145 of the General Statutes of North Carolina. In the event that no candidate for such office received a majority of the votes cast in the first primary after one of the candidates had died, and the second highest vote short of a majority was cast for the deceased candidate in that primary, then it shall be considered as favoring the candidate receiving the highest vote in the first primary, and the candidate receiving the highest vote, even if short of a majority, shall be declared the party nominee to such office by the proper board of elections without a second primary being held. (1959, c. 1054.)

SUBCHAPTER III. GENERAL ELECTION LAWS.

ARTICLE 20.

Election Laws of 1929.

§ 163-148. Applicable to all subdivisions of State.

Quoted in Parker v. Anson County, 237 N. C. 78, 74 S. E. (2d) 338 (1953).

§ 163-150. Applicable to all issues submitted to people; form of ballot.

This section is to be construed in pari materia with § 153-96. Both sections relate to the same subject matter, and as there is no material conflict between them, they are now in full force and effect. Parker v. Anson County, 237 N. C. 78, 74 S. E. (2d) 338 (1953).

Ballot for School Bond Election Held Sufficient.—See annotation under § 153-96.

§ 163-151. Ballots; provisions as to; names of candidates and issue.—The ballots printed for use under the provisions of this article shall be printed and delivered to the county boards of elections at least thirty days previous to the date of election, and shall contain the names of all candidates who have been put in nomination by any primary, convention, mass meeting, or other assembly of any political party in this State, or have duly filed notice of their independent candidacy, and all questions or issues to be voted on. It shall be the duty of the county board of elections to have printed all necessary ballots for use under the provisions of this article for county, township, and district elections. It shall be the duty of the State Board of Elections to have printed all necessary ballots for use under the provisions hereof for State and national elections, constitutional amendments and propositions submitted to the vote of the people:

Provided, that in printing the names of candidates on all primary and general election ballots, only the legal name of the candidate as same appears on the notice of candidacy forms shall appear on the ballots, and no appendage such as doctor, reverend, judge, etc., may be used either before or following the name of any candidate, except that a married woman may use the prefix "Mrs." or a single woman may use the prefix "Miss" before her name if she elects to do so. Provided, that a candidate may use a nickname, by which he has been commonly known in the election district, together with his legal name which shall appear on the ballots in the primary and general election in the same form as the name appears on the notice of candidacy. The nickname of any candidate placed on the ballot for any primary or general election shall appear immediately before the surname of such candidate and shall be enclosed by parenthesis. No title or appellation indicating rank, status, or position, such as, but not limited to, doctor, major, professor, director, or president, shall be placed on any ballot as the nickname of a candidate. (1929, c. 164, s. 5; 1945, c. 972; 1957, c. 1264; 1963, c. 934.)

Editor's Note.— The 1957 amendment rewrote the proviso. The 1963 amendment added the last proviso.

§ 163-155. Number of ballots; what ballots shall contain; arrangement.

(b) On the official State ballot shall be printed the names of all candidates for State public offices, including candidates for judges of the superior court, and all other candidates for State offices not otherwise provided for. The names of all such State candidates to go upon the said official ballot which is herein provided, of each party and group of independent candidates, if any, shall be printed in one column and the party column shall be parallel and shall be separated by distinct black lines. At the head of each party column shall be printed the party name and under this shall be a blank circle one-half of an inch in diameter, which party circle shall be surrounded by the following instructions plainly printed: "For a straight ticket, mark within this circle." The columns for the independent candidates shall be similar to the party columns, except that above each column shall be printed the words "independent candidate." In each party column the names of all nominees of that party shall be printed in the customary order of the office, and the names of all candidates of each party for any one office shall be printed in a separate section, and at the top of each section shall be printed on one line the title of the office and a direction as to the number of candidates for whom a vote may be cast, unless there shall not be room for the direction, in which case it shall be printed directly below the title. If two or more candidates are nominated for the same office for different terms the term for which each is nominated shall be printed as a part of the title for the office. Each section shall be blocked in by black lines and the voting squares shall be set in a perpendicular column or columns to the left of each candidate's name. The printing on said ballot shall be plain and legible, and in no case shall it exceed in size ten-point type.

On the face of the ballot, at the top shall be printed in heavy type, the following instructions:

1. To vote a straight party ticket, make a cross (X) mark in the circle of the party you desire to vote for.

2. To vote a split ticket, or in other words for candidates of different parties, omit making a cross (X) mark in the party circle at the top of the ballot and mark in the voting square opposite the name of each candidate on the ballot for whom you wish to vote.

3. If you should mark in the party circle at the top of the ballot and also mark opposite the name of any candidate of any party, such ballot shall be counted as a straight party vote for all of the candidates of the party whose name the cross (X) mark is placed in the party circle.

On the bottom of the ballot shall be printed the following:

.....

Facsimile of signature of chairman of State Board of Elections.

The instructions hereby given for the State ballot shall be used when there are two or more State offices to be filled at an election, or when two or more kinds of ballots as herein given are printed on one ballot.

(1955, c. 812, s. 1.)

Editor's Note. — The 1955 amendment made changes in instructions 2 and 3 of subsection (b). As the rest of the section was not affected only subsection (b) is set out.

§ 163-163.1. Consolidation of precincts, etc., for district voting in certain counties.—In counties in which a modern loose-leaf and visible registration system has been established as permitted by G. S. 163-43, with a full time and permanent registration as authorized by G. S. 163-31 and 163-31.2, the county board of elections shall have the authority by a resolution passed by a majority vote to consolidate two or more precincts, wards, or election districts within a township for the sole purpose of district voting, to the end that voters in the two or more precincts, wards, or election districts, so consolidated for district voting, may vote together in the same polling place, provided that any such consolidation for district voting within a township shall be wholly within or wholly without any corporate municipality within such township. Upon the passage of a resolution consolidating two or more precincts, wards or election districts into a voting district, notice thereof shall be posted at the courthouse and the same shall be published in a newspaper of general circulation of said county at least 20 days prior to the election in which said district voting will be used. Such notice shall give the names, numbers, or other designations of the precincts, wards, or election districts, so consolidated for district voting, and shall likewise describe the location of the consolidated district voting place. Whenever two or more precincts, wards, or election districts within a township are consolidated for district voting, the county board of elections shall have the authority to consolidate the registration books for all of the precincts, wards, or election districts included in the district voting, to the end that the names of electors in the consolidated registration for said precincts, wards, or election districts shall be in alphabetical order for the consolidated voting rather than in separate books or volumes by precinct, ward, or election district. In all instances of district voting hereunder the registrars for all of the precincts, wards, or election districts included in said voting district, together with all of the judges of election therein, shall constitute a joint board of precinct, ward, or election district election officials, and shall hear and determine all matters usually heard by the registrar and judges of election of a precinct, ward, or election district, except that challenges or objections to the name of any person offering to vote on the day of any primary or general election as provided for in G. S. 163-79 shall be heard and determined by the registrar and judges of election appointed for the precinct, ward, or election district in which such elector is registered. (1953, c. 843; 1955, c. 800; 1963, c. 303, s. 1.)

Editor's Note.—The 1955 amendment inserted "one or more municipalities with a population in excess of 10,000" in lieu of "two or more municipalities, each with a population in excess of 35,000" formerly appearing near the beginning of the section.

The 1963 amendment deleted the words inserted by the 1955 amendment.

§ 163-166. Delivery of ballot to voter; testing registration. — The voter shall enter through the entrance provided, and shall forthwith give to the judge of election his name and residence. One of the judges shall thereupon announce the name and residence of the voter in distinct tone of voice. The registrar shall at once announce whether the name of such voter is duly registered. If

he be registered, and be not challenged, or if he be challenged and the challenge decided in his favor, or if he take the requisite oath and be lawfully entitled to vote, the proper judge of election shall prepare for him one official ballot of each kind, folded by such judge in the proper manner for voting, which is: first, bring the bottom of the ballot up to the margin of the printing at the top of the ballot, allowing the margin to overlap; and second, fold both sides of the center, so that when folded the face of the ballot, except the one inch margin at the top thereof, shall be concealed, and so that the ballot shall be not more than four inches wide. Such judge shall then instruct the voter to refold the ballot in the same creases when he has marked it. Provided, that when a county board of elections adopts for use in a county a type of ballot box, as approved by the State Board of Elections, into which only unfolded ballots can be deposited, then the requirement above that the ballots shall be folded before being delivered to a voter and deposited in the ballot box shall not be complied with. (1929, c. 164, s. 20; 1931, c. 254, s. 13; 1955, c. 767.)

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

§ **163-167. Marking ballots by voter.**—The voter shall then go to one of the voting booths and shall therein prepare his ballot by marking in the appropriate margin or place a cross (X) mark opposite the name of the candidate or party of his choice for each office to be filled, or by filling the name of the candidate of his choice in the blank space provided therefor. The voter may designate choice of candidate by a cross (X) or by a check mark, or other clear indicative mark. (1929, c. 164, s. 21; 1959, c. 1203, s. 8.)

Editor's Note. — The 1959 amendment deleted from the end of the first sentence the words "and marking a cross (X) opposite thereto."

§ **163-168. Depositing of ballots, signature of voter if challenged; delivery of poll books to chairman of county board of elections.**—When the voter has prepared his ballot or ballots, same shall be deposited in the proper boxes: Provided, however, that if the voter shall have been challenged and the challenge be decided in the voter's favor, before depositing the ballot or ballots in the proper boxes, the voter shall write his name on the ballot or ballots for identification in the event that any action should be taken later in regard to the voter's right to vote. After voting, the voter shall forthwith pass outside the guard-rail, unless he be one of the persons authorized to remain for purposes other than voting. No ballots except official ballots bearing the official endorsement shall be allowed to be deposited in the ballot boxes or to be counted. No person to whom any official ballot shall be delivered shall leave the space within the guard-rail until after he shall have delivered back all such ballots. When a person shall have received an official ballot from the judge, he shall be deemed to have begun the act of voting, and if he leaves the guard-rail before the deposit of his ballot in the box he shall not be entitled to pass again within the guard-rail for the purpose of voting.

The poll books required to be kept by the judges of elections shall be signed by the judge at the close of the election, and delivered to the registrar, who shall deliver them to the chairman of the county board of elections. (1929, c. 164, s. 22; 1931, c. 254, s. 14; 1939, c. 263, s. 3½; 1953, c. 1040.)

Editor's Note.—
The 1953 amendment rewrote this section, omitting therefrom the former provision as to folding of ballots.

Inquiry as to Voter's Qualifications Rests with Election Officials.—The law does not contemplate that a watcher or any other person may take charge when he challenges a voter at the polls and conduct a hearing with respect to the voter's right to vote. The inquiry with respect to the voter's qualifications to vote rests with the election officials. Overton v. Mayor & City Com'rs of Hendersonville, 253 N. C. 306, 116 S. E. (2d) 808 (1960).

§ 163-170. Who allowed in room or enclosure; peace officers.—No person other than voters in the act of voting shall be allowed in the room or enclosure in which said ballot box and booths are, except the officers of election and official markers as hereinafter provided, and official watchers. In case of cities having duly enrolled policemen or peace officers, the city authorities may designate the officers to keep the peace at the polls on the outside of the enclosure in which is the ballot box. But in no event shall said policemen or peace officers come nearer to said entrance than ten feet, or enter the room or enclosure in which is the ballot box, unless specially requested to do so by the officers holding the elections, and then only for the purpose of preventing disorder; and at any time when requested to do so by said officers holding the elections, the said policemen shall retire from the room or enclosure in which is the ballot box, and to a point not nearer than ten feet to the aforesaid entrance. (1929, c. 164, s. 24; 1955, c. 871, s. 7.)

Editor's Note. — The 1955 amendment added the words "and official watchers" at the end of the first sentence.

§ 163-172. Assistance to voters in election; counties excepted.—Prior to the date of any election hereunder the county board of elections, together with the registrar of each precinct of each county, shall designate for each precinct therein a sufficient number of persons of good moral character and of the requisite educational qualifications, who shall be bona fide electors of the precinct for which they are appointed, to act as markers, whose duty it shall be to assist voters in the preparation of their ballots. Elected officers and candidates for elective offices shall be ineligible to serve as markers, but all other governmental employees shall be eligible to serve as markers. The assistants or markers so appointed by the said county board of elections shall be so appointed as to give fair representation to each political party whose candidates appear upon the ballot. The chairman of the county organization of any political party may, not more than ten days before any election to be held, hereunder, submit to the county board of elections the names of not less than ten qualified voters in any voting precinct of the county, and thereupon the marker or markers appointed to represent such party in said election at said voting precinct shall be selected from among those so named. Such persons shall remain within the enclosure prepared for the holding of elections, but shall not come within ten feet of the guard-rail, except when going to or returning from the booth with any elector who has requested assistance. Such marker or assistant shall not in any manner seek to persuade or induce any voter to cast his vote in any particular way, and shall not make or keep any memorandum of anything occurring within such booth, and shall not, directly or indirectly, reveal to any other person how in any particular such voter marked his ballot, unless he, or they, be called upon to testify in a judicial proceeding for a violation of the election laws. Every such marker or assistant, together with the registrar and judge of election, shall, before the opening of the polls, take and subscribe an oath that he will not, in any manner, seek to persuade or induce any voter to vote for or against any particular candidate, or for or against any particular proposition, and that he will not make or keep any memorandum of anything occurring within the booth, and will not disclose the same, unless he be called upon to testify in a judicial proceeding for a violation of the election laws of this State. The said oath, after first being taken by the registrar, may be administered by him to the two judges of election and to the markers or assistants, as herein provided: Provided, that in all general elections held under the provisions of this article any voter may select another member of his or her family who shall have the right to accompany such voter into the voting booth and assist in the preparation of the ballot, but immediately after rendering such assistance the person so as-

sisting shall vacate the booth and withdraw from the voting arena. This section is not applicable to primary elections.

Provided that this section shall not apply to counties in which a modern loose-leaf and visible registration system has been established as permitted by G. S. 163-43 with a full time and permanent registration as authorized by G. S. 163-31 and 163-31.2. (1929, c. 164, s. 26; 1933, c. 165, s. 24; 1939, c. 352, s. 1; 1953, c. 843; 1955, c. 800; 1959, c. 616, s. 1; 1963, c. 303, s. 1.)

Editor's Note.—

The 1953 amendment added the second paragraph. The 1955 amendment inserted "one or more municipalities with a population in excess of 10,000" in lieu of "two or more municipalities, each with a population in excess of 35,000" formerly appearing in the first and second lines of said paragraph. The 1959 amendment inserted the second sentence of the first paragraph.

The 1963 amendment deleted the words inserted by the 1955 amendment.

Acts Violative of Section.—It is a violation of this section for a judge of elections to mark the ballots for voters without any request for assistance by the voters, or, in the event of a request for assistance, to fail to return the marked ballot to the voter in order that the voter may see how it was marked before putting it in the ballot box. Overton v. Mayor & City Com'rs of Hendersonville, 253 N. C. 306, 116 S. E. (2d) 808 (1960).

§ 163-173. Aid to persons suffering from physical disability or illiteracy; counties excepted.

Provided that the right to request assistance from any one of the markers shall not apply to counties in which a modern loose-leaf and visible registration system has been established as permitted by G. S. 163-43, with a full time and permanent registration as authorized by G. S. 163-31 and 163-31.2: Provided, however, that in counties covered by this paragraph the provisions of G. S. 163-174 shall apply also to general elections. (1929, c. 164, s. 27; 1939, c. 352, s. 1; 1953, c. 843; 1955, c. 800; 1957, c. 784, s. 6; 1963, c. 303, s. 1.)

Editor's Note.—

The 1953 amendment added the above paragraph at the end of this section. The 1955 amendment inserted "one or more municipalities with a population in excess of 10,000" in lieu of "two or more municipalities, each with a population in excess of 35,000" formerly appearing in the second and third lines of said paragraph. The 1957 amendment added the second proviso to the second paragraph.

The 1963 amendment deleted the words inserted by the 1955 amendment.

As the rest of the section was not affected by the amendments it is not set out.

§ 163-175. Method of marking ballots; improperly marked ballots; when not counted.

1. If the elector desires to vote a straight ticket, or in other words, for each and every candidate of one party for whatever office nominated, he shall, either:

(a) Make a cross mark in the circular space below the name of the party at the head of the ticket; or

(b) Make a cross mark on the left of and opposite the name of each and every candidate of such party in the blank space provided therefor.

(c) A voter who makes a cross mark (x) in the party circle at the top of the ballot and then marks in the voting square opposite the names of candidates of any party on the ballot, such ballot shall not be considered as defaced but shall count only as a straight party vote for all of the candidates of that party below the name of which the cross mark (x) is placed in the party circle above. This direction shall be placed upon all ballots as a part of their arrangement, and any and all provisions or language in the law to the contrary is hereby repealed.

2. If the elector desires to vote a split ticket, or in other words for candidates of different parties, he shall omit making a cross mark (x) in the party circle below the name of any party and make a cross mark (x) in the voting square opposite the name of each candidate on the ballot for whom he desires to vote on whatever party ticket he may be.

3. If the elector desires to vote for a person whose name does not appear on the ticket, he can substitute the name by writing it in with a pencil or ink in the proper place. When a name is written in on the official ballot, the new name so written in is to be treated like any other name on the ballot. No sticker is to be used. Any name written in on an official ballot by any election official, or by any person other than the voter or a person rendering assistance to a voter pursuant to §§ 163-172, 163-173 or 163-174, shall be invalid, and the name or names so written in shall not be counted.

[6. Where there are group candidates for the same office printed on the ballot on any county or municipal primary held in this State, and the names of several candidates therefor appear on the ballot grouped under the office for which they are all running, the elector shall cast his or her vote for as many candidates as there are offices to be filled, and where an elector votes for any number of such group candidates less than the number of offices to be filled, such ballot shall not be counted for any of the group candidates for said offices. There shall be printed under the title of the offices for group candidates the number of candidates to be voted for.]

The subsection in brackets shall apply only to Bladen, Catawba, Chowan, Columbus, Cumberland, Duplin, Franklin, Granville, Greene, Halifax, Hoke, Jones, Lenoir, Northampton, Onslow, Pender, Perquimans, Robeson, Sampson, Scotland, Surry and Wayne counties, and to municipal elections in the town of Gaston in Northampton County, and to municipal primary elections in the town of Williamston in Martin County, and to municipal elections in the municipalities in Franklin County, and to the general municipal elections in the town of Snow Hill in Greene County and the town of Clayton in Johnston County and the town of Fremont in Wayne County, and to elections in Bertie County and all municipalities in Bertie County.

(1955, c. 812, s. 2; c. 1104, ss. 1-2½; 1957, cc. 344, 440, 589, 647, 737, 1383; 1959, cc. 105, 604, 610, 888; c. 1203, s. 9; 1961, c. 451; 1963, cc. 154, 167, 376, 389, 390, 567, 774.)

Local Modification.—City of Washington: 1959, c. 847.

Editor's Note.—

This section was amended twice by Session Laws 1955. Chapter 812 added paragraph (c) to subsection 1 and struck out all of former subsection 2 and substituted the new subsection 2 appearing above. Chapter 1104, which was made applicable in certain named counties only, rewrote subsection 6 and attempted to strike out the following language which had appeared in old subsection 2 before it was stricken out by chapter 812: "Provided, that where there are group candidates for similar offices the elector may select and specially mark all of such candidates for whom he wishes to vote." For clarity new subsection 6 is set out above in brackets.

Such subsection was amended six times by Session Laws 1957. Chapters 344, 589, 647 and 737 made it applicable to Chowan, Stokes, Brunswick and Greene counties, respectively. Chapter 440 made it applicable to municipal elections in the town of Gaston in Northampton County, and chapter 1383 deleted the words "or election" following the word "primary" in line two of the subsection.

In addition to the amendments noted above, Session Laws 1957, c. 353, provides: G. S. 163-178, as it appears in the 1955 Supplement to the General Statutes, is amended by adding at the end thereof the following: "In Davidson County the paragraph numbered '6' above shall apply to primary elections in said county." It is apparent that the reference to G. S. 163-178 is an error and that chapter 353 was intended to amend this section.

Session Laws 1959, c. 1203, deleted from the end of the first sentence of subsection 3 the words "and making a cross (X) mark in the blank space at the left of the name so written in." Subsection 6 was amended several times by Session Laws 1959. Chapters 604 and 888 made it applicable to Jones and Sampson counties. Chapters 105 and 610 deleted Macon and Brunswick from the list of counties to which it applies.

The 1961 amendment deleted "Stokes" from the list of counties appearing in the second paragraph of subsection 6.

The first 1963 amendment added to the second paragraph of subsection 6 the provision as to municipal primary elections in the town of Williamston.

The second 1963 amendment inserted "Franklin" in the list of counties in the second paragraph of subsection 6 and also inserted in the paragraph the provision as to municipal elections in the municipalities in Franklin County.

The third 1963 amendment made subsection 6 applicable to general municipal elections in Clayton in Johnston County.

The fourth 1963 amendment inserted the word "Granville" in the second paragraph of subsection 6.

The fifth 1963 amendment made subsection 6 applicable to general municipal elections in Snow Hill in Greene County.

The sixth 1963 amendment added to the second paragraph of subsection 6 the provision as to the town of Fremont in Wayne County.

The seventh 1963 amendment added to the second paragraph of subsection 6 the provision as to Bertie County and municipalities therein.

Only the portions of this section affected by the various amendments are set out.

§ 163-178. Reading and numbering the ballots; certificate of result; delivery of boxes to board of elections.

Cross Reference.—For act purporting to amend this section when apparently G. S. 163-175 was intended, see note to G. S. 163-175.

§ 163-179. Hours of primaries and elections. — In all primary and general elections held in this State, including all local and municipal elections, the polls shall open at six-thirty A. M. and shall close at the hour of six-thirty P. M. Eastern Standard Time. Provided, that in all voting precincts in the State where voting machines are used, the board of elections of such county may permit the polls in such precincts to close at the hour of seven-thirty P. M. (1929, c. 164, s. 33; 1937, cc. 258, 457; 1941, c. 222; 1955, c. 1064.)

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

§ 163-181. Assistants at polls; when allowed and amount to be paid. —The county board of elections may appoint one clerk or assistant at any precinct in the county which has as many as five hundred qualified registered voters on the registration books in such precinct, and one additional such clerk or assistant for each additional five hundred qualified registered voters at such precinct where voting machines are used at such precinct; and where voting machines are not used, one clerk or assistant for each three hundred registered voters at a precinct. No other clerk or assistant shall be appointed for any precinct except as herein set out. Such assistants and clerks shall, in all cases, be qualified voters of the ward, or precinct, for which they are appointed, and they shall be paid the same compensation as is provided by law for the judges of election to be paid. (1929, c. 164, s. 35; 1933, c. 165, s. 24; 1953, c. 1191, s. 3.)

Editor's Note. — The 1953 amendment added that part of the first sentence beginning with the words "where voting machines."

§ 163-182. Watchers; challengers; counties excepted.—Each political party or independent candidate named on the ballot may, by writing signed by the county chairman of such political party, or, as the case may be, by the independent candidate or his manager, filed with one of the judges of election, appoint two watchers, who shall be qualified electors of the precinct for which they are appointed, to attend each polling place. Such watchers shall serve also as challengers: Provided, that no person shall be appointed as a watcher who is not of good moral character; and the judges of election and registrar may for good cause shown reject any appointee and require that another be appointed. Such official watchers shall have the right from the time the polls open until the polls close and the counting is completed to remain within the voting enclosure, and in a position where they may at all times during election day be in plain view of the precinct officials, the voting booths, the ballot boxes and the voting procedure, but shall not in any way impede the voting process or do any electioneering or interfere in any manner with the election except as the law

provides: Provided, that any elector when the name of any elector is called by the judges of election, may exercise the right of challenging the elector's right to vote and when he or she does so then such challenger may enter the election space to make good such challenge and then retire at once when such challenge is heard.

Provided that this section shall not apply to counties in which a modern loose-leaf and modern registration system has been established as permitted by G. S. 163-43 with a full time and permanent registration as authorized by G. S. 163-31 and 163-31.2. (1929, c. 164, s. 36; 1953, c. 843; 1955, c. 800; c. 871, s. 7; 1959, c. 616, s. 2; 1963, c. 303, s. 1.)

Editor's Note.—

The 1953 amendment added the last paragraph.

The first 1955 amendment inserted "one or more municipalities with a population in excess of 10,000" in lieu of "two or more municipalities, each with a population in excess of 35,000" formerly appearing in the first and second lines of the last paragraph. The second 1955 amendment rewrote the part of the third sentence appearing before the proviso thereto.

The 1959 amendment inserted after "watchers" in line five the following: "who shall be qualified electors of the precinct for which they are appointed."

The 1963 amendment deleted the words inserted by the 1955 amendment.

§ 163-183. Supervision over primaries and elections; regulations.

Cited in Strickland v. Hill, 253 N. C. 198, 116 S. E. (2d) 463 (1960).

§ 163-187.2. Adoption of voting machines.—The board of county commissioners or the governing body of a municipality, may if they so elect, submit to the voters of such county or municipality at a general or special election the question of whether it shall adopt voting machines for use in primaries and elections; provided that no special election shall be called for the sole purpose of determining this question; provided that the question of adopting voting machines may be submitted to the voters upon a petition filed with the board of county commissioners or the governing body of the municipality signed by at least five hundred (500) of the registered voters of such county or municipality. The petition shall be in writing and the precinct name or number of each signer shall be written after his signature. If a majority of the voters casting votes in said election approve of same, the board of county commissioners of the county, or the governing body of the municipality, may adopt for use in primaries and elections such type or kind of voting machines as shall be approved by the State Board of Elections, and said machines may be used in any and all primaries and elections held in the county or municipality or any part thereof for voting, registering and counting votes cast in such primaries and elections; provided that the provisions of this section shall in no way limit or affect the right or authority of a county board of elections of any county, or the municipal authorities of any municipality, to adopt and purchase voting machines, either separately or in cooperation with the county, for use in county or municipal elections held in this State as is provided in G. S. 163-187.1. (1953, c. 1001; 1955, c. 1066, s. 1.)

Editor's Note.—The 1955 amendment rewrote the proviso at the end of the section.

§ 163-187.3. Providing machines.—The authorities adopting the use of voting machines shall, as soon as practical thereafter, provide for each voting place one or more voting machines in complete working order and shall thereafter preserve and keep them in repair and have custody thereof when not in use at an election. They shall appoint as many custodians as may be necessary for the proper preparation of the machines for a primary or election and for their maintenance, storage and care. If it is unpractical to supply each precinct or election district with voting machines at any primary and election, as many may be supplied as it is practical to procure, and these may be used in the precincts

or districts in the municipality or county as the officers adopting the machines may direct. (1953, c. 1001.)

§ 163-187.4. General provisions as to conduct of elections. — The State Board of Elections shall prescribe rules and regulations for the handling and operation of voting machines, including but not limited to the form of ballots to be used, the operation of voting machines for primaries and elections, the duties of the custodian, protection of the machines, instruction of election officers, examination of voting machines, instructions to voters on election day and assistance to voters, manner of voting, and to prescribe such other rules and regulations which they may deem to be necessary and requisite to the fair, honest and satisfactory use of the machines. (1953, c. 1001.)

§ 163-187.5: Repealed by Session Laws 1955, c. 1066, s. 2.

Article 21.

Corrupt Practices Act of 1931.

§ 163-193. Statements under oath of pre-primary expenses of candidates; report after primary.—It shall be the duty of every person who shall be a candidate for nomination in any primary for any federal, State or district office, or for the State Senate in a district composed of more than one county, except where there shall be agreement for rotation as provided in § 163-113, to file, under oath, ten days before such primary, with the Secretary of State, an itemized statement of all expenditures made by him or which he knows to have been made by anyone for him, and of all contributions made to him, directly or indirectly and also to file, under oath, within twenty days after such primary, with the Secretary of State, an itemized statement of all expenditures made by him or which he knows to have been made by anyone else for him, and also of all contributions made to him, directly or indirectly, by any person, with detailed account of such contributions and expenditure as set out in § 163-194. And it shall be the duty of every person who shall be a candidate for nomination for the State Senate, except those to whom the preceding sentence applies, for the House of Representatives, and for any county office, to file a like statement with the clerk of the superior court of the county of his residence at the times hereinbefore prescribed for filing such statements by candidates for federal, State and district officers as set out in the preceding sentence. It shall be the duty of each chairman of a county board of elections to send a written notice to each candidate in a primary election who filed a notice of candidacy with said chairman, and who had one or more candidates to run against the candidate in the primary, of this requirement to file his or her primary campaign statement of expenses with the clerk of the superior court both before and after the primary. Such notice shall not be required where an unopposed candidate did not have to run in the primary and was nominated without party opposition. (1931, c. 348, s. 6; 1959, c. 1203, s. 10.)

Editor's Note. — The 1959 amendment added the last two sentences.

§ 163-196. Certain acts declared misdemeanors.

Indictment for Violation of Subsection (4) Held Insufficient. — An indictment charging that defendant unlawfully and willfully by his own boisterous and violent conduct disturbed a named registrar while in the performance of her duties in examining a named applicant for registration was insufficient, although charging the offense in the words of this section, since such words did not in themselves inform the accused of the specific offense of which he was accused so as to enable him to prepare his defense or plead his conviction or acquittal as a bar to further prosecution for the same offense. State v. Walker, 249 N. C. 35, 105 S. E. (2d) 101 (1958).

§ 163-197. Certain acts declared felonies.

Stated in Overton v. Mayor & City Com'rs of Hendersonville, 253 N. C. 306, 116 S. E. (2d) 808 (1960).

ARTICLE 23.

Petitions for Elections.

§ 163-208. Registration of notice of circulation of petition.—From and after July 1, 1957, notice of circulation of a petition calling for any election shall be registered with the election board with which such petition is to be filed, and the date of registration of such notice shall be the date of issuance and commencement of circulation of such petition. (1957, c. 1239, s. 1.)

§ 163-209. Petition void after one year from registration. — Petitions calling for elections shall be and become void and of no further force and effect one year after the date the notice of circulation is registered with the election board with which the same is required to be filed; and notwithstanding any public, special, local or private act to the contrary, no election shall thereafter be called or held pursuant to or based upon any such void petition. (1957, c. 1239, s. 2.)

§ 163-210. Limitation on petitions heretofore circulated.—Petitions heretofore circulated calling for elections shall be and become void and of no further force and effect one year after the date of issuance of such petitions for circulation; and notwithstanding any public, special, local or private act to the contrary, no election shall be called or held pursuant to or based upon any such void petition from and after July 1, 1957. (1957, c. 1239, s. 3.)

Chapter 164.

Concerning the General Statutes of North Carolina.

Article 1.

The General Statutes.

ARTICLE 1.

The General Statutes.

§ 164-2. Effect as to repealing other statutes.

Cited in Baker v. Varser, 240 N. C. 260, 82 S. E. (2d) 90 (1954).

§ 164-7. Statutes not repealed.

Applied in State v. Gales, 240 N. C. 319, 82 S. E. (2d) 80 (1954).

§ 164-10. Supplements to the General Statutes; rearrangement of laws, and correction of errors. — The Division of Legislative Drafting and Codification of Statutes of the Department of Justice, under the direction and

supervision of the Attorney General, shall have the following duties and powers with regard to the supplements to the General Statutes:

(1) Within six months after the adjournment of each General Assembly, or as soon thereafter as possible, the Division shall cause to be published under its supervision, cumulative pocket supplements to the General Statutes, and any replacement or recompiled volumes thereof, which shall contain an accurate transcription of all laws of a general and permanent nature enacted by the General Assembly, the material contained in the next preceding pocket and interim supplements, complete and accurate annotations to the statutes, appendix and other material accumulated since the publication of the next preceding pocket and interim supplements, and a cumulative index of said material.

(2) Periodically, every six months after the publication and issuance of a cumulative pocket supplement following a session of the General Assembly, or as soon thereafter as possible, except when the publication of the cumulative pocket supplement makes it unnecessary, the Division shall cause to be published an interim supplement containing all pertinent annotations and other material found by the Division to be necessary and proper, accumulating since the publication of the said cumulative pocket supplement or the last interim supplement.

(3) In the preparation of the general and permanent laws enacted by the General Assembly the Division is hereby authorized:

a. To rearrange the order of chapters, subchapters, articles, sections and other divisions or subdivisions;

b. To provide titles for any such divisions or subdivisions and section titles or catchlines when they are not provided by such laws;

c. To adopt a uniform system of lettering or numbering sections and the various subdivisions thereof and to reletter or renumber sections and section subdivisions in accordance with such uniform system;

d. To rearrange definitions in alphabetical order;

e. To rearrange lists of counties in alphabetical order; and

f. To make such other changes in arrangement and form that do not change the law as may be found by the Division necessary for an accurate, clear and orderly codification of such general and permanent laws. (1945, c. 863; 1947, c. 150; 1951, c. 1149, s. 1; 1957, c. 1013.)

Editor's Note.—

The 1957 amendment deleted the words "the four volumes of" formerly appearing before "the General Statutes" in line three of subdivision (1). It also deleted the words "for inclusion in the cumulative pocket supplements" formerly appearing after "Assembly" in line two of subdivision (3).

§ 164-11.1. Cumulative Supplements prima facie evidence of laws. —The 1945, 1947, 1949, 1951, 1953, 1955, and 1957 Cumulative Supplements to the General Statutes of North Carolina, or to any replacement or recompiled volumes of the General Statutes as compiled and published by The Michie Company under the supervision of the Department of Justice of the State of North Carolina, are hereby constituted and declared to be prima facie evidence of the laws of North Carolina contained in said Supplements. (1949, c. 45; 1951, c. 1149, s. 3; 1953, c. 140; 1955, c. 53; 1957, c. 371.)

Editor's Note.—

The 1953 amendment made this section applicable to the 1953 Cumulative Supplement, and inserted the reference to "replacement or recompiled volumes."

The 1955 amendment made this section

applicable to the 1955 Cumulative Supplement.

The 1957 amendment made this section applicable to the 1957 Cumulative Supplement.

§ 164-11.3. Adoption of Volumes 3A, 3B and 3C of the General Statutes.—The chapters, subchapters, articles and sections now comprising Volume 3 of the General Statutes of North Carolina, and cumulative supplements thereto, consisting of §§ 106-1 through 166-13, now in force, as amended, are hereby re-enacted and designated Volumes 3A, 3B and 3C respectively of the General Statutes of North Carolina. This re-enactment of Volumes 3A, 3B and 3C shall not be construed to invalidate or repeal any acts which have been passed during the 1953 Session of the General Assembly, prior to February 18, 1953, nor shall this re-enactment include any appended annotations, editorial notes, comments and cross references, legislative or historical references, or other material collected or supplemental to the said chapters, subchapters, articles and sections, but not contained in the body thereof. (1953, c. 99.)

§ 164-11.4. Adoption of Volumes 1A, 1B and 1C of the General Statutes.—The chapters, subchapters, articles and sections now comprising Volume 1 of the General Statutes of North Carolina, and Cumulative Supplements thereto, consisting of §§ 1-1 through 27-59, now in force, as amended, are hereby re-enacted and designated Volumes 1A, 1B and 1C respectively of the General Statutes of North Carolina. This enactment of Volumes 1A, 1B and 1C shall not be construed to invalidate or repeal any acts which have been passed during the 1955 Session of the General Assembly, prior to February 11, 1955, nor shall this enactment include any appended annotations, editorial notes, comments and cross references, legislative or historical references, or other material connected or supplemental to the said chapters, subchapters, articles and sections, but not contained in the body hereof. (1955, c. 43.)

§ 164-11.5. Adoption of Replacement Volumes 2C and 3B of the General Statutes.—(a) The chapters, subchapters, articles and sections now comprising Volume 2C of the General Statutes of North Carolina, and Cumulative Supplement thereto, consisting of §§ 83-1 through 105-462, now in force, as amended, are hereby re-enacted and designated Replacement Volume 2C of the General Statutes of North Carolina.

(b) The chapters, subchapters, articles and sections now comprising Volume 3B of the General Statutes of North Carolina, and Cumulative Supplement thereto, consisting of §§ 117-1 through 150-34, now in force, as amended, are hereby re-enacted and designated Replacement Volume 3B of the General Statutes of North Carolina.

(c) This enactment of Replacement Volumes 2C and 3B shall not be construed to invalidate or repeal any acts which have been passed during the 1959 Session of the General Assembly, prior to February 24, 1959, nor shall this enactment include any appended annotations, editorial notes, comments and cross references, legislative or historical references, or other material connected or supplemental to the said chapters, subchapters, articles and sections, but not contained in the body hereof. (1959, c. 12.)

§ 164-11.6. Adoption of Replacement Volumes 2B and 3A of the General Statutes. — (a) The chapters, subchapters, articles and sections now comprising Volume 2B of the General Statutes of North Carolina, and Cumulative Supplement thereto, consisting of §§ 53-1 through 82-18, now in force, as amended, are hereby re-enacted and designated as Replacement Volume 2B of the General Statutes of North Carolina.

(b) The chapters, subchapters, articles and sections now comprising Volume 3A of the General Statutes of North Carolina, and Cumulative Supplement thereto, consisting of §§ 106-1 through 116-185, now in force, as amended, are hereby re-

enacted and designated Replacement Volume 3A of the General Statutes of North Carolina.

(c) This enactment of Replacement Volumes 2B and 3A shall not be construed to invalidate or repeal any acts which have been passed during the 1961 Session of the General Assembly, prior to March 14, 1961, nor shall this enactment include any appended annotations, editorial notes, comments and cross references, legislative or historical references, or other material connected or supplemental to the said chapters, subchapters, articles and sections, but not contained in the body hereof. (1961, cc. 38, 185.)

Editor's Note.—Chapter 38 of the 1961 Session Laws inserted this section and in subsection (c) erroneously referred to 3C instead of 3A. Chapter 185 corrected the matter.

Article 2.

The General Statutes Commission.

§ 164-13. Duties; use of funds.—(a) It shall be the duty of the Commission:

(1) To advise and co-operate with the Division of Legislative Drafting and Codification of Statutes of the Department of Justice in the work of continuous statute research and correction for which the Division is made responsible by § 114-9 (c).

(2) To advise and co-operate with the Division of Legislative Drafting and Codification of Statutes in the preparation and issuance by the Division of supplements to the General Statutes pursuant to § 114-9 (b).

(3) To make a continuing study of all matters involved in the preparation and publication of modern codes of law.

(4) To recommend to the General Assembly the enactment of such substantive changes in the law as the Commission may deem advisable.

(b) Funds made available to the Commission by appropriation of the General Assembly, by allotment from the Contingency and Emergency Fund, or otherwise, may be used to employ the services of persons especially qualified to assist in the work of the Commission and for necessary clerical assistance. (1945, c. 157; 1951, c. 761; 1957, c. 1405.)

Editor's Note.—The 1957 amendment rewrote the provisions appearing in subsection (b). For brief comment on the 1951 amendment, see 29 N. C. Law Rev. 358.

Chapter 165.

Veterans.

Article 7.

Miscellaneous Provisions.

Sec.

165-44. Korean veterans; benefits and privileges.

Article 1.

North Carolina Veterans Commission.

§ 165-6. Powers and duties of the Commission; limitation.

Local Modification. — Mitchell: 1953, c. 602; Yancey: 1959, c. 936.

§ 165-7. **Director and employees.** — The Commission shall elect, with the approval of the Governor, a Director who shall be a veteran of competency and ability. He shall serve for such time as his services are satisfactory to the

Commission and his salary shall be fixed by the Governor subject to the approval of the Advisory Budget Commission.

The Director may, with the approval of the Commission, employ such assistants as may be necessary effectively to administer the provisions of this article and with the approval of the Commission may establish at such veterans administration facilities as are now or may hereafter be established, necessary personnel for the processing and presentation of all claims and benefits under federal or State laws, rules, and regulations; and to fix the salaries of such personnel subject to the approval of the Director of the Budget. In employing such persons, preference shall be given to veterans. (1945, c. 723, s. 1; 1957, c. 541, s. 19.)

Editor's Note.—Prior to the 1957 amendment the salary of the Director was fixed by the Commission and approved by the Director of the Budget.

Article 4.

Copies of Records Concerning Veterans.

§ 165-20. Copies to be furnished by Bureau of Vital Statistics.

Cross Reference.—As to furnishing statistical records to officers of veterans' organizations, see § 130-74.

Article 5.

Veterans' Recreation Authorities.

§ 165-27. Appointment, qualifications and tenure of commissioners.

Local Modification.—City of Charlotte: 1961, c. 303.

Article 7.

Miscellaneous Provisions.

§ 165-44. Korean veterans; benefits and privileges.—All benefits and privileges now granted by the laws of this State to veterans of World War I and World War II and their dependents and next of kin are hereby extended and granted to veterans of the Korean conflict and their dependents and next of kin.

For the purposes of this section, the term "veterans of the Korean conflict" means those persons serving in the armed forces of the United States during the period beginning the 27th of June, 1950, and ending on such date as shall be determined by Presidential proclamation or concurrent resolution of the Congress. (1953, c. 215.)

Chapter 166.

Civil Defense Agencies.

§ 166-1.1. Policy and purpose. — (a) Because of the existing and increasing possibility of the occurrence of disasters of unprecedented size and destructiveness resulting from enemy attack, sabotage or other hostile action, or from fire, flood, earthquake, hurricane, or other natural causes, and in order to insure that preparations of this State will be adequate to deal with such disasters, and generally to provide for the common defense and to protect the public peace, health, and safety, and to preserve the lives and property of the people of the State, it is hereby found and declared to be necessary:

(1) To create a State Civil Defense Agency, and to authorize the creation of areas within the State and to create local organizations for civil defense in the political subdivisions of the State;

(2) To confer upon the Governor and upon the executive heads or governing bodies of the political subdivisions of the State the emergency powers provided herein; and

(3) To provide for the rendering of mutual aid among the political subdivisions of the State and with other states and to co-operate with the federal government with respect to the carrying out of civil defense functions.

(b) It is further declared to be the purpose of this act and the policy of the State that all civil defense functions of this State be co-ordinated to the maximum extent with the comparable functions of the federal government including its various departments and agencies, of other states and localities, and of private agencies of every type, to the end that the most effective preparation and use may be made of the nation's manpower, resources, and facilities for dealing with any disaster that may occur. (1959, c. 337, s. 1.)

§ 166-2. Definitions.—As used in this chapter: (a) "Civil defense" shall mean the preparation for and the carrying out of all emergency functions, other than functions for which military forces are primarily responsible, to prevent, minimize and repair injury and damage resulting from disasters caused by enemy attack, sabotage or other hostile action or by fire, flood, earthquake, windstorm or explosion when so requested by the governing body of any county, city or town in the State. These functions include, without limitation, fire fighting services, police services, medical and health services, rescue, engineering, air raid warning services, communications, radiological, chemical and other special weapons of defense, evacuation of persons from stricken areas, emergency welfare services (civilian war aid), emergency transportation, existing or properly assigned functions of plant protection, temporary restoration of public utility services, and other functions related to civilian protection, together with all other activities necessary or incidental to the preparation for and carrying out of the foregoing functions.

(b) "Local organization for civil defense" shall mean an organization created in accordance with the provisions of this chapter by State or local authority to perform local civil defense functions.

(c) "Mobile support unit" shall mean an organization for civil defense created in accordance with the provisions of this chapter by State or local authority to be dispatched by the Governor to supplement local organizations for civil defense in a stricken area.

(d) "Political subdivision" shall mean counties and incorporated cities and towns. (1951, c. 1016, s. 2; 1953, c. 1099, s. 1; 1955, c. 387, s. 1.)

Editor's Note. — The 1953 amendment added the part of subsection (a) appearing after "hostile action" in line five. The 1955 amendment struck out the words "or winstorm" in line five and inserted in lieu thereof the words "windstorm or explosion."

§ 166-3. State Civil Defense Agency.—(a) There is hereby created within the executive branch of the State government a department of civil defense (hereinafter called the "Civil Defense Agency") and a Director of Civil Defense (hereinafter called "Director") who shall be the head thereof and shall be a full time administrative officer appointed by the Governor. He shall hold office during the pleasure of the Governor and his salary shall be fixed by the Governor subject to the approval of the Advisory Budget Commission.

(b) The Director may employ such technical, clerical, stenographic and other personnel and may make such expenditures within the appropriation therefor.

(c) The Director and other personnel of the Civil Defense Agency shall be provided with appropriate office space, furniture, equipment, supplies, stationery

and printing in the same manner as provided for personnel of other State agencies.

(d) The Director, subject to the direction and control of the Governor, shall be the administrative officer of the Civil Defense Agency and the State Disaster Co-ordinator and shall be responsible to the Governor for carrying out the program for civil defense of this State. He shall co-ordinate the activities of all organizations for civil defense within the State, and shall maintain liaison with and co-operate with civil defense agencies and organizations of other states and of the federal government, and shall have such additional authority, duties, and responsibilities authorized by this chapter as may be prescribed by the Governor. (1951, c. 1016, s. 3; 1959, c. 337, s. 2.)

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

§ 166-4. Civil Defense Advisory Council.—There is hereby created a Civil Defense Advisory Council (hereinafter called the "Council"), the members of which shall consist of all of those individuals designated as chiefs of service in the basic plan and amendments to the Operational Survival Plan of the North Carolina Civil Defense Agency. The Council shall advise the Governor and Director on all matters pertaining to civil defense when requested. The Governor shall serve as chairman of Council, and all members thereof serve without compensation. (1951, c. 1016, s. 3; 1953, c. 1099, s. 2; 1957, c. 541, s. 20; c. 950, s. 1; 1959, c. 337, s. 3.)

Editor's Note. — The 1959 amendment rewrote this section as changed by the 1953 and 1957 amendments. It formerly related to the Director of Civil Defense and other personnel.

§ 166-5. Civil defense powers of the Governor.—(a) The Governor shall have general direction and control of the Civil Defense Agency and shall be responsible for the carrying out of the provisions of this chapter and, in the event of disaster or the threat of disaster beyond local control or when requested by the governing body of any county, city or town in the State, may assume direct operational control over all or any part of the civil defense functions within this State.

(b) In performing his duties under this chapter and to effect its policy and purpose, the Governor is authorized and empowered:

(1) To make, amend, and rescind the necessary orders, rules, and regulations to carry out the provisions of this chapter within the limits of the authority conferred upon him herein, with due consideration of the plans of the federal government, which rules and regulations shall be available to the public generally at the office of the clerk of the superior court in each county and in each local civil defense office.

(2) To prepare a comprehensive plan and program for the civil defense of this State, such plan and program to be integrated into and co-ordinated with the civil defense plans of the federal government and of other states to the fullest possible extent, and to co-ordinate the preparations of plans and programs for civil defense by the political subdivisions of this State, such plans to be integrated into and co-ordinated with the civil defense plan and program of this State to the fullest possible extent, within the provisions of this chapter.

(3) In accordance with such plan and program for the civil defense of this State, to ascertain the requirements of the State or the political subdivisions thereof for food or clothing or other necessities of life in the event of attack and, within the appropriation therefor, to plan for and procure supplies, medicines, materials, and equipment, and to institute training programs and public information programs, and to take all other preparatory steps including the partial or full mobilization of civil defense organizations in advance of actual disaster, to insure the furnishing of adequately trained and equipped forces of civil defense personnel in time of need.

(4) To delegate any administrative authority vested in him under this chapter, and to provide for the sub-delegation of any such authority.

(5) To co-operate and co-ordinate with the President and the heads of the armed forces, the civil defense agency of the United States, and other appropriate federal officers and agencies, and with the officers and agencies of other states and local units of government in matters pertaining to the civil defense of the State and nation.

(6) By and with the consent of the Council of State to make appropriations from the contingency and emergency fund for the purpose of matching federal aid grants for the purposes outlined in this chapter.

(7) On behalf of this State to enter into mutual aid agreements or compacts with other states and with the federal government, either on a State-wide basis or local political subdivision basis, or with a neighboring state. Such mutual aid agreements shall be limited to the furnishing or exchange of food, clothing, medicine and other supplies; engineering services; emergency housing; police services, national or State guards while under the control of this State; health, medical and related services; fire-fighting, rescue, transportation and construction services and equipment; communications and radiological monitoring services, supplies and equipment; personnel necessary to provide or conduct these services; and such other supplies, equipment, facilities, personnel, and services as may be needed; the reimbursement of costs and expenses for equipment, supplies, personnel and similar items for mobile support units, and other agencies acting under such agreements; and on such terms and conditions as are deemed necessary.

(8) To make such studies and surveys of the industries, resources and facilities in this State as may be necessary to ascertain the capabilities of the State for civil defense, and to plan for the most efficient emergency use thereof. (1951, c. 1016, s. 3; 1953, c. 1099, s. 3; 1955, c. 387, ss. 2, 3.)

Editor's Note. — The 1953 amendment inserted in subsection (a) the words "or when requested by the governing body of any county, city or town in the State."

The 1955 amendment made subsection (a) also applicable in the event of "the threat of disaster," and deleted the words "due to hostile action" formerly appearing after the word "control" in line four. It also added paragraphs (7) and (8) to subsection (b).

§ 166-6. **Emergency powers.**—The provisions of this section shall be operative only during the existence of a state of civil defense emergency (referred to hereinafter in this section as "emergency"). The existence of such emergency may be proclaimed by the Governor, after joint decision of the Governor and the Council of State, or by concurrent resolution of the legislature if the Governor in such proclamation, or the legislature in such resolution, finds that an attack upon the United States has occurred or is anticipated in the immediate future, or that a natural disaster of major proportions has actually occurred within this State, and that the safety and welfare of the inhabitants of this State require an invocation of the provisions of this section. Any such emergency, whether proclaimed by the Governor or by the legislature, shall terminate upon the proclamation of the termination thereof by the Governor, or the passage by the legislature of a concurrent resolution terminating such emergency. During such period as such state of emergency exists or continues, the Governor shall have and may exercise the following additional emergency powers:

(1) To enforce all laws, rules, and regulations, relating to civil defense and to assume direct operational control of any or all civil defense forces and helpers in the State.

(2) To sell, lend, lease, give, transfer, or deliver materials or perform services for civil defense purposes on such terms and conditions as may be prescribed for any existing law, and to account to the State Treasurer for any funds received for such property.

(3) To procure, by purchase, condemnation, seizure, or other means, con-

struct, lease, transport, store, maintain, renovate or distribute materials and facilities for civil defense without regard to the limitations of any existing law provided he shall make compensation for the property so seized, taken, or condemned on the following basis:

a. In case property is taken for temporary use, the Governor, within thirty days of the taking, shall fix the amount of compensation to be paid for such damage or failure to return. Whenever the Governor shall deem it advisable for the State to take title to property taken under this section, he shall forthwith cause the owner of such property to be notified thereof in writing by registered mail, postage prepaid, or by the best means available, and forthwith cause to be filed a copy of said notice with the Secretary of State.

b. If the person entitled to receive the amount so determined by the Governor as just compensation is unwilling to accept the same as full and complete compensation for such property or the use thereof, he shall be paid seventy-five per centum (75%) of such amount and shall be entitled to recover from the State of North Carolina, in an action brought in the superior court in the county of residence of claimant, or in Wake County, in the same manner as other condemnation claims are brought, within three years after the date of the Governor's award such additional amount, if any, which, when added to the amount so paid to him, shall be just compensation.

(4) To provide for and compel, if deemed necessary, the evacuation of all or part of the population from any stricken or threatened area or areas within the State and to take such steps as are necessary for the receipt and care of such evacuees.

(5) Subject to the provisions of the State Constitution, to relieve any public officer having administrative responsibilities under this act of such responsibilities for willful failure to obey an order, rule, or regulation adopted pursuant to this act.

(6) To perform and exercise such other functions, powers, and duties as are necessary to promote and secure the safety and protection of the civilian population.

(7) To take such action and give such directions to State and local law enforcement officers and agencies as may be reasonable and necessary for the purpose of securing compliance with the provisions of this chapter and with the orders, rules and regulations made pursuant thereto, which officers and agencies shall comply with such direction.

(8) To employ such measures and give such directions to all State departments, commissions, boards, bureaus and other agencies, and to their counterparts in the political subdivisions, as may be reasonably necessary for the purpose of securing compliance with the provisions of this chapter or with the findings or recommendations of the above-named agencies by reason of conditions arising from enemy attack or the threat of enemy attack or otherwise.

(9) To establish a system of economic controls over all resources, materials, and services to include food, clothing, shelter, fuel, rents, and wages. (1951, c. 1016, s. 4; 1955, c. 387, s. 4; 1959, c. 337, s. 4.)

[In performing his duties under this chapter, the Governor is further authorized and empowered in the event of a declaration of war by the Congress of the United States or when the Governor and Council of State acting together shall find that there is imminent danger of hostile attack upon the State of North Carolina:

(3) To appoint an acting executive head of any State agency or institution

the executive head of which is regularly selected by a State board or commission, to serve

a. During the physical or mental incapacity of the regular holder of the office to discharge the duties of his office,
b. During the continued absence of the regular holder of the office, or
c. During a vacancy in the office and pending
   1. The selection and qualification of a person to serve for the unexpired term, or
   2. The selection of an acting executive head of the agency by the board or commission authorized to make such selection, and his qualification;

and to determine (after such inquiry as he deems appropriate) that the executive head of such State agency or institution is physically or mentally incapable of performing the duties of his office, and also to determine that such incapacity has terminated.

An acting executive head of a State agency or institution appointed in accordance with this subsection may perform any act and exercise any power which a regularly selected holder of such office could lawfully perform and exercise. All powers granted to an acting executive head of a State agency or institution under this section shall expire immediately

a. Upon the termination of the incapacity of the officer in whose stead he acts,
b. Upon the return of the officer in whose stead he acts, or
c. Upon (i) the selection and qualification of a person to serve for the unexpired term, or (ii) the selection of an acting executive head of the agency or institution by the board or commission authorized to make such selection, and his qualification. (1951, c. 1016, s. 4; 1955, c. 387, s. 4; 1959, c. 284, s. 2.)]

Editor's Note.—This section was twice amended by the Session Laws of 1959. Chapter 284 added to the section as changed by the 1955 amendment a new subdivision, to be designated (3). Chapter 337, which did not refer to chapter 284, rewrote the entire section. The section as rewritten by chapter 337 is set out first above. The subdivision added by chapter 284 is then set out in brackets, together with the preliminary paragraph from the section as it stood before its amendment by chapter 337.

Section 3 of chapter 284 provides: "Nothing in this act shall be deemed to repeal G. S. 128-39."

§ 166-8. Local organization for civil defense.—(a) Each political subdivision of this State is hereby authorized to establish a local organization for civil defense in accordance with the State civil defense plan and program; and it is further provided that in the event that any political subdivision of the State fails to establish such a local organization, and the Governor, in his discretion, determines that a need exists for such a local organization, then the Governor is hereby empowered to establish, or to establish through the Director of Civil Defense, a local organization within said political subdivision. Each local organization for civil defense shall have a director who shall be appointed by the governing body of the political subdivision, who may be paid in the discretion of the governing body of the political subdivision, and who shall have direct responsibility for the organization, administration and operation of such local organization for civil defense, subject to the direction and control of such governing body. Civil defense directors appointed by the governing bodies of counties shall co-ordinate the activities of all civil defense organizations within such county, including the activities of civil defense organizations of cities and towns within such counties. Each local organization for civil defense shall perform civil defense functions within the territorial limits of the political subdivision within which it is organized, and in addition, shall conduct such functions outside of such territorial

limits as may be required pursuant to the provisions of § 166-10. Counties and municipalities are hereby authorized to make appropriations for the purposes outlined in this section subject to the procedure and limitation established for appropriating municipal funds by the General Statutes.

(b) In carrying out the provisions of this chapter each political subdivision, in which any disaster due to hostile action as described in § 166-2 (a) occurs, or in the event of fire, flood, earthquake or windstorm when the governing body of any such political subdivision shall invoke the provisions of this chapter, shall have the power and authority:

(1) To appropriate and expend funds, make contracts, obtain and distribute equipment, materials, and supplies for civil defense purposes; provide for the health and safety of persons and property, including emergency assistance to the victims of any disaster resulting from enemy attack, or fire, flood, earthquake or windstorm, subject to the direct supervision of the governing body of such political subdivision; and to direct and co-ordinate the development of civil defense plans and programs in accordance with the policies and plans set by the federal and State civil defense agencies;

(2) To appoint, employ, remove, or provide, with or without compensation, a civil defense director, air-raid wardens, rescue teams, auxiliary fire and police personnel, and other civilian defense workers;

(3) To establish a primary and one or more secondary control centers to serve as command posts during an emergency;

(4) Subject to the order of the Governor, or the chief executive of the political subdivision, to assign and make available for duty the employees, property, or equipment of the subdivision relating to fire fighting, engineering, rescue, health, medical and related services, police, transportation, construction, and similar items or services for civil defense purposes and within or outside of the physical limits of the subdivision. (1951, c. 1016, s. 6; 1953, c. 1099, s. 4; 1957, c. 950, s. 2; 1959, c. 337, s. 5.)

Editor's Note. — The 1953 amendment inserted in the preliminary paragraph of subsection (b) the provision as to "fire, flood, earthquake or windstorm", and the provision relating to the quoted words in paragraph (1) of the subsection. It also inserted in paragraph (2) the words "a civil defense director."

The 1957 amendment added that part of the first sentence appearing after the semicolon.

The 1959 amendment added the reference to counties in the last sentence of subsection (a).

§ 166-8.1. No private liability.—Any person, firm or corporation owning or controlling real or personal property who, voluntarily or involuntarily, knowingly or unknowingly, with or without compensation, grants a license or privilege, or otherwise permits or allows the designation or use of the whole or any part or parts of such real or personal property for the purpose of sheltering, protecting, safeguarding or aiding in any way persons or property during an actual, impending, mock or practice attack, shall, together with his successors in interest, if any, not be civilly liable for the death of or injury to any person or the loss of or damage to the property of any person where such death, injury, loss or damage resulted from, through or because of the use of the said real or personal property for any of the above purposes. (1957, c. 950, s. 3.)

§ 166-9.1. Immunity and exemption. — (a) All functions hereunder and all other activities relating to civil defense are hereby declared to be governmental functions. Neither the State nor any political subdivision thereof nor other agencies of the State or political subdivision thereof, nor, except in cases of willful misconduct, gross negligence, or bad faith, any civil defense worker complying with or reasonably attempting to comply with this article, or any order, rule, or regulation promulgated pursuant to the provisions of this article, or pursuant to any ordinance relating to blackout, evacuation or other precautionary measures enacted by any political subdivision of the State, shall be liable for the

death of or injury to persons, or for damage to property, as a result of any such activity. The provisions of this section shall not affect the right of any person to receive benefits to which he would otherwise be entitled under this article, or under the Workmen's Compensation Law, or under any pension law, nor the right of any such person to receive any benefits or compensation under any act of Congress.

(b) Any requirement for a license to practice any professional, mechanical, or other skill shall not apply to any authorized civil defense worker who shall, in the course of performing his duties as such, practice such professional, mechanical, or other skill during a civil defense emergency.

(c) As used in this section, the term "civil defense worker" shall include any full or part-time paid, volunteer, or auxiliary employee of this State, or other states, territories, possessions or the District of Columbia, of the federal government, or any neighboring country, or of any political subdivision thereof, or of any agency or organization, performing civil defense services at any place in this State, subject to the order or control of, or pursuant to a request of, the State government or any political subdivision thereof.

(d) Any civil defense worker, as defined in this section, performing civil defense services at any place in this State pursuant to agreements, compacts or arrangements for mutual aid and assistance, to which the State or a political subdivision thereof is a party, shall possess the same powers, duties, immunities, and privileges he would ordinarily possess if performing his duties in the State, province or political subdivision thereof in which normally employed or rendering services. (1957, c. 950, s. 4.)

§ **166-11. Utilization of existing services and facilities.**—In carrying out the provisions of this chapter, the Governor is authorized to utilize the services, equipment, supplies and facilities of existing departments, offices, and agencies of the State and of the political subdivisions thereof, and the governing bodies of the political subdivisions of the State are authorized to utilize the services, equipment, supplies and facilities of their respective subdivisions, to the maximum extent practicable, and the officers and personnel of all such departments, offices and agencies are required to cooperate with and extend such services and facilities to the Governor and to the civil defense organizations of the State upon request. This authority shall extend to all disasters and for civil defense training purposes. (1951, c. 1016, s. 9; 1955, c. 387, s. 5; 1957, c. 950, s. 5.)

Editor's Note. — The 1955 amendment made co-operation by the officers and personnel of State departments, offices and agencies mandatory. It also added the last sentence.

The 1957 amendment rewrote this section.

§ **166-13:** Repealed by Session Laws 1955, c. 79.

Chapter 167.

State Civil Air Patrol.

Sec.

167-1. State Civil Air Patrol created; membership, appointment and terms of governing board.

167-2. Status and compensation of members; certain statutes inapplicable; State not liable on contracts, etc.

167-3. Powers of governing board.

§ **167-1. State Civil Air Patrol created; membership, appointment and terms of governing board.**—There is hereby created a State agency to be known and designated as "State Civil Air Patrol." The operations of the said State agency shall be governed by a board consisting of six ex officio members

and three members appointed by the Governor. The ex officio members shall be as follows:

(1) The Adjutant General of the State of North Carolina, as an additional duty of his office;

(2) The deputy wing commander of the North Carolina Wing of the Civil Air Patrol;

(3) The executive officer of the North Carolina Wing of the Civil Air Patrol;

(4) The adjutant of the North Carolina Wing of the Civil Air Patrol;

(5) The communications officer of the North Carolina Wing of the Civil Air Patrol; and

(6) The co-ordinator of the civil defense of the North Carolina Wing of the Civil Air Patrol.

The chairman of the board shall be ex officio, the wing commander of the North Carolina Wing of the Civil Air Patrol. The members of said board appointed by the Governor shall serve for terms of two years from and after their appointment or until their successors are duly appointed and qualified. The Governor shall fill all vacancies occurring in the appointive members of the said board. The Governor may, however, at his pleasure, remove any member of said board appointed by him. (1953, c. 1231, s. 1.)

§ 167-2. Status and compensation of members; certain statutes inapplicable; State not liable on contracts, etc.—The members of the State Civil Air Patrol, including the members of the governing board thereof, except the Adjutant General, shall serve without compensation and shall not be entitled to any benefits provided by the North Carolina Workmen's Compensation Act as set forth in chapter 97 of the General Statutes, and shall not be entitled to the benefits of the Retirement System of Teachers and State Employees as set forth in chapter 135 of the General Statutes. The provisions of article 39 of chapter 143 of the General Statutes, with respect to tort claims against State departments and agencies, shall not be applicable to the activities of the State Civil Air Patrol, and the State shall not in any manner be liable for injury or damage to any person, firm or corporation by reason of the acts of any of the members or officers thereof. The State shall not in any manner be liable for any of the contracts, debts or obligations of the said organization. The members of the governing board of the State Civil Air Patrol and the members thereof shall not, by reason of such membership, be deemed or considered as State employees. (1953, c. 1231, s. 2.)

§ 167-3. Powers of governing board.—The governing board of the State Civil Air Patrol shall be authorized and empowered:

(1) To make such reasonable rules and regulations as may be necessary for the proper operation of the said agency;

(2) To determine the basis for admission of members and all questions concerning the qualifications of members;

(3) To approve or disapprove within the limitations hereinafter set out, in its discretion, the expenditure of any monies appropriated by this chapter;

(4) To co-ordinate the efforts of the Civil Air Patrol with other defense agencies within the State of North Carolina;

(5) To acquire without liability therefor by the State of North Carolina, to be furnished to the North Carolina Wing of the Civil Air Patrol on a loan basis both radio communications and radar equipment to be used as a supplement to such equipment as may now or hereafter be owned by the North Carolina Wing of the Civil Air Patrol or any members thereof;

(6) To have all other powers which may be reasonably implied from the granting of express powers herein, together with such other powers as may be incident to or necessary for the carrying out and the performance of the powers and duties herein given to said board. (1953, c. 1231, s. 3.)

STATE OF NORTH CAROLINA

Department of Justice

Raleigh, North Carolina

October 1, 1963

I, Thomas Wade Bruton, Attorney General of North Carolina, do hereby certify that the foregoing 1963 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.

Thomas Wade Bruton,

Attorney General of North Carolina