THE GENERAL STATUTES OF NORTH CAROLINA

Containing General Laws of North Carolina through the Legislative Session of 1951

Prepared under the Supervision of the Department of Justice of the State of North Carolina

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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

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Scope of Volume

Statutes:

Full text of Chapters 151 through 166 of the General Statutes of North Carolina, including all enactments through the Legislative Session of 1951 heretofore contained in Volume 3 of the General Statutes of North Carolina and the 1951 Cumulative Supplement thereto.

Annotations:

Sources of the annotations to the General Statutes appearing in this volume are:

North Carolina Reports volumes 1-233 (p. 312).
Federal Reporter volumes 1-300.
Federal Reporter 2nd Series volumes 1-186 (p. 744).
Federal Supplement volumes 1-95 (p. 248).
United States Reports volumes 1-340 (p. 366).
Supreme Court Reporter volumes 1-71 (p. 473).
North Carolina Law Review volumes 1-29 (p. 226).

Abbreviations

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

P. R. ..... Potter's Revisal (1821, 1827)
R. S. ..... Revised Statutes (1837)
R. C. ..... Revised Code (1854)
C. C. P. ..... Code of Civil Procedure (1868)
Code ..... Code (1883)
Rev. ..... Revisal of 1905
C. S. ..... Consolidated Statutes (1919, 1924)

Preface

Volume 3 of the General Statutes of North Carolina of 1943 has been replaced by recompiled volumes 3A, 3B and 3C. These new volumes contain Chapters 106 through 166 of the General Statutes, as amended and supplemented by the enactments of the General Assembly down through the 1951 Session. Chapters 106 through 116 appear in volume 3A, Chapters 117 through 150 in volume 3B, and Chapters 151 through 166 in volume 3C

Both the statutes and the annotations in the recompiled volumes are in larger type and in more convenient form than in the original volume. The annotations in the new volumes comprise those which appeared in original volume 3 and the 1951 Cumulative Supplement thereto; however, they have been considerably revised, and it is believed that the present annotations are an improvement over the old.

The historical references appearing at the end of each section have been rearranged in chronological order. For instance, the historical references appended to § 31-5 read as follows: (1784, c. 204, s. 14; 1819, c. 1004, ss. 1, 2; 1840, c. 62; R. C., c. 119, s. 22; Code, s. 2176; Rev., s. 3115; C. S., s. 4133; 1945, c. 140.) In this connection attention should be called to a peculiarity in the manner of citing the early acts in the historical references. The acts through the year 1825 are cited, not by the chapter numbers of the session laws of the particular years, but by the chapter numbers assigned to them in Potter's Revisal (published in 1821 and containing the acts from 1715 through 1820) or in Potter's Revisal continued (published in 1827 and containing the acts from 1821 through 1825). Thus, in the illustration set out above the citations "1784, c. 204, s. 14; 1819, c. 1004, ss. 1, 2" refer to the chapter numbers in Potter's Revisal and not to the chapter numbers of the Laws of 1784 and 1819, respectively. The chapter numbers in Potter's Revisal and Potter's Revisal continued run consecutively, and hence do not correspond, at least after 1715, to the chapter numbers in the session laws of the particular years. After 1825 the chapter numbers in the session laws are used.

The recompiled volumes have been prepared and published under the supervision of the Department of Justice of the State of North Carolina. The members of the North Carolina Bar are requested to communicate any defects they may find in the General Statutes, and any suggestions they may have for improving them, to the Department, or to The Michie Company, Law Publishers, Charlottesville, Virginia.

HARRY MCMULLAN,
Attorney General.

January 31, 1952.

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Division XVII. County and City Government.

Chapter 151.

Constables.

§ 151-1. Election and term.—In each township there shall be a constable, elected by the voters thereof, who shall hold his office for two years. (Const., art. 4, s. 24; Rev., s. 933; C. S., s. 971.)

Cross References.—See § 153-9, subsecs. 10-12. See also, Const., Art. IV, § 24.

Term of Office.—The provision of Art. IV, § 25 of the Constitution that officers shall hold office until their successors are qualified, does not embrace the office of constable. State v. McLure, 84 N. C. 153. (1881).

Stated in Taylor v. Wake Forest, 228 N. C. 346, 45 S. E. (2d) 387 (1947).

§ 151-2. Oaths to be taken.—All constables, before they shall be qualified to act, shall take before the board of county commissioners the oaths prescribed for public officers, and also an oath of office. (R. C., c. 24, s. 8; Code, s. 642; Rev., s. 934; C. S., s. 972.)

Cross References.—As to form of oath, see § 11-11. As to oaths required of public officers, see §§ 11-6, 11-7; Const., Art. VI, § 7. As to penalty for failure to take oath, see § 128-5.

Stated in Taylor v. Wake Forest, 228 N. C. 346, 45 S. E. (2d) 387 (1947).

§ 151-3. Bond; where registered; how fees paid.—The board of commissioners of each county shall require of each constable, elected or appointed for a township, on entering upon the duties of his office, to give a bond with good surety, payable to the State of North Carolina, in a sum not exceeding one thousand dollars, conditioned as well for the faithful discharge of his duty as constable as for his diligently endeavoring to collect all claims put into his hands for collection, and faithfully paying over all sums thereon received, either with or without suit, unto the persons to whom the same may be due. Said bond shall be duly proved and registered and, after registration, filed in the office of the register of deeds; and certified copies of the same from the register's office shall be received and read in evidence in all actions and proceedings where the original might be. The fees for proving and registering the bond of constable shall be paid by the constable. (1818, c. 980, P. R.; 1820, c. 1045, s. 2, P. R.; 1833, c. 17; R. C., c. 24, s. 7; 1869-70, c. 185; Code, s. 647; 1891, c. 229; 1899, c. 54, s. 52; Rev., s. 302; C. S., s. 973.)

Local Modification.—Stanley: C. S. 973.

Cross References.—See §§ 109-3 through 109-15; 153-9, subsecs. 10-12.

See also, § 128-8 et seq. and notes thereto.

Liability Where No Execution Issued.—The securities on a constable's bond are accountable for his default in paying the moneys collected, even though no execution was issued for the purpose of collecting the same. Holcomb v. Franklin, 11 N. C. 274 (1826).

Failure to Pay Over Money. — Where a claim against a nonresident of the State, but subject to a single justice's jurisdiction, was put into a constable's hands for collection, and he collected the money, it was held that a failure to pay over such money on demand was a breach of his official bond. Dunton v. Doxey, 52 N. C. 222 (1859), distinguishing Dade v. Morris, 7 N. C. 146 (1819).

Money in Excess of Amount of Execution. — Where a sale of property under execution is made by a sheriff or a constable, and the property brings more than the amount of execution, it is the duty of such sheriff or constable to see that the excess is paid to the owner of the property. If he fails to do so, he is liable on his official bond. State v. Reed, 27 N. C. 357 (1845).

Failure to Collect.—Where a person put

into the constable's hands for collection a note, the amount of which exceeded the jurisdiction of a justice of the peace, and the constable procured the maker to substitute for it two notes, each within the jurisdiction of a justice, and afterwards failed to collect the same when he might have done so, it was held that he was liable on his bond. State v. Stephens, 25 N. C. 92 (1842).

Failure to Return Uncollected Notes.— Where a constable received notes to collect, and for want of time did not collect them before his term of office expired, and afterwards refused to deliver them up, it was held that his sureties were liable therefor on his official bond. State v. Johnson, 29 N. C. 77 (1846).

Constable Becoming Surety.—If an insolvent constable become surety for stay of execution committed to him for collection, it is a breach of his bond. The law requires him to take responsible sureties. Governor v. Davidson, 14 N. C. 361 (1832). See also, Governor v. Coble, 13 N. C. 489 (1830).

Necessity of Demand.—In an action upon a constable's bond for failing to pay over money collected by him, it is necessary to prove a demand on him. White v. Miller, 20 N. C. 50 (1838).

Where negligence in failing to collect is the breach assigned in a suit on a constable's bond, no demand is necessary. Nixon v. Bagby, 52 N. C. 4 (1859).

Defense to Suit on Constable's Bond.— It is a sufficient defense to a suit on a constable's bond for failing to return a note given him for collection that the note had been sued and judgment obtained upon it. The note is thus sufficiently accounted for. Miller v. Pharr, 87 N. C. 396 (1882). See also, State v. Hooks, 33 N. C. 371 (1850).

Limitation of Action. — An action by warrant against a constable's sureties to recover moneys collected by a constable by virtue of his office, can only be barred by the same length of time that bars an action on the bond. Wilson v. Coffield, 27 N. C. 513 (1845).

Parties.—Where a debt is due to A., and he places it in the hands of a constable for collection, A. is the only person who can maintain, as relator, an action on the official bond of the constable for a breach of duty, notwithstanding A. may have afterwards assigned his interest in the debt to another. Governor v. Deavor, 25 N. C. 56 (1842).

Nature of Damages. — In an action on the official bond of a constable for his failure to collect notes placed in his hands for collection, the plaintiff is entitled to recover only nominal damages, unless he shows some actual injury sustained. State v. Skinner, 25 N. C. 564 (1843).

§ **151-4. Fees of constables.**—Constables shall be allowed the same fees as sheriffs. (1883, c. 108; Code, s. 3742; Rev., s. 2787; C. S., s. 3922.)

§ **151-5. Special constables.** — For the better executing of any precept or mandate in extraordinary cases, any justice of the peace may direct the same, in the absence of or for want of a constable, to any person not being a party, who shall be obliged to execute the same under like penalty that any constable would be liable to. (Code, s. 645; Rev., s. 935; C. S., s. 974.)

Decision of Justice Conclusive as to Extraordinary Case. — The decision of the justice of the peace is conclusive as to the existence of an "extraordinary case" for which he is, under this section, authorized to appoint anyone a special constable to execute his mandate. State v. Armistead, 106 N. C. 639, 10 S. E. 872 (1890); State v. Wynne, 118 N. C. 1206, 24 S. E. 216 (1896).

However, while what has been stated in the preceding paragraph is true, it is always well to state that the person specifically appointed is so appointed for the want of a regularly constituted officer; as the section does not contemplate the appointment of special constables except on "extraordinary cases." State v. Dula, 100 N. C. 423, 6 S. E. 89 (1888).

Defective Deputation of Special Officer. —Though the process be defective because it is not signed, or the deputation of the special officer is not in writing, as this section by fair intendment would seem to require, the defect may be waived by the defendant by his appearance before the court. In such a case, whatever may be the rights of the defendant making the arrest, the validity of the judgment is not thereby affected. State v. Cale, 150 N. C. 805, 63 S. E. 958 (1909).

Powers and Duties of Special Constables.—When a special constable is appointed under this section, in writing and without words restricting his authority, it confers upon him a general power to serve all processes and perform all the duties in regard to the particular case as those of a regular constable. State v. Armistead, 106 N. C. 639, 10 S. E. 872 (1890).

What Validity of Arrest Dependent upon.—The validity of the prisoner's arrest

by the special constable depends upon the validity of the officer's deputation and not upon the sufficiency of the mittimus which is to terminate his duties. State v. Armistead, 106 N. C. 639, 10 S. E. 872 (1890).

In Civil Actions.—A justice of the peace has no authority to depute a special officer to serve process in a civil action. McKee v. Angel, 90 N. C. 60 (1884).

§ **151-6. Vacancies in office.**—Upon the death, failure to qualify or removal of any constable out of the township in which he was elected or appointed constable, or upon the failure of the voters of a township to elect a constable as required in § 151-1, the board of commissioners may appoint another person to fill the vacancy, who shall be qualified and act until the next election of constables. (R. C., c. 24, s. 6; Code, s. 646; Rev., s. 936; C. S., s. 975; 1925, c. 206.)

Local Modification.—Washington: 1925, c. 206, s. 2.

Cross Reference.—See Const., Art. IV, § 24.

Editor's Note. — The clause providing for appointment in case of failure to elect was inserted by the 1925 amendment.

County commissioners have the power to fill vacancies under the Constitution, Art. IV, § 24. State v. McLure, 84 N. C. 153 (1881).

§ **151-7. Powers and duties.**—Constables are hereby invested with and may execute the same power and authority as they have been by law heretofore vested with, and have executed; and, in discharge of their duties, they shall execute all precepts and processes of whatever nature to them directed by any justice of the peace or other competent authority within their county or upon any bay, river, or creek adjoining thereto; and the said precepts and processes shall be returned to the magistrate, or other proper authority. (R. C., c. 24, s. 9; Code, s. 643; Rev., s. 937; C. S., s. 976.)

Local Modification.—Henderson, Rutherford: 1941, c. 364; Scotland: 1951, c. 692.

Cross References.—See § 162-14. As to town constables, see § 160-17 et seq. As to contempt for certain omissions of duty, see § 5-8.

Powers and Duties Are Co-Extensive with Limits of County.—Constables have the same power and authority as they were invested with prior to our constitutional and statutory provisions, and their powers and duties are co-extensive with the limits of the county in which they are elected. Taylor v. Wake Forest, 228 N. C. 346, 45 S. E. (2d) 387 (1947).

Common-Law Rule Not Changed. — This section and § 162-14 do not change the common-law rule that an escaped convict may be rearrested in any county of the State, without new process, by the officer in charge of him. State v. Finch, 177 N. C. 599, 99 S. E. 409 (1919).

Effect of Constitutional Requirement.—Section 24, Article IV, of the Constitution of North Carolina, was not meant to restrict the powers and duties of the constables to the township in which they were elected, but to intersperse the constables throughout every part of the county. State v. Corpening, 207 N. C. 805, 178 S. E. 564 (1935).

Town Constable's Authority to Serve Papers Other than Process. — A town constable is given no authority to serve any papers for the superior court except process, and that only when expressly directed to him by the court. Forte v. Boone, 114 N. C. 177, 19 S. E. 632 (1894).

How Process Addressed to Officer.—To make a valid service of process from the superior courts by constables, the same should be specially addressed to such officer by his official title. Carson v. Woodrow, 160 N. C. 143, 75 S. E. 996 (1912).

§ **151-8. To execute notices within justice's jurisdiction.**—Constables shall likewise execute, within the places aforesaid, all notices tendered to them which are required by law to be given for the commencement or in the prosecution of any cause before a justice of the peace; and the service thereof shall be made by delivering a copy to the person to be notified or by leaving a copy at his usual place of abode, if in the jurisdiction of the constable, which service, with the time thereof, he shall return on the notice, and such return shall be evidence of its service. On demand they shall deliver the notice to the party at whose instance it was issued. (R. C., c. 24, s. 10; Code, s. 644; Rev., s. 938; C. S., s. 977.)

Chapter 152.

Coroners.

§ 152-1. Election; vacancies in office; appointment by clerk in special cases.—In each county a coroner shall be elected by the qualified voters thereof in the same manner and at the same time as the election of members of the General Assembly, and shall hold office for a term of four years, or until his successor is elected and qualified.

A vacancy in the office of coroner shall be filled by the county commissioners, and the person so appointed shall, upon qualification, hold office until his successor is elected and qualified.

When the coroner shall be out of the county, or shall for any reason be unable to hold the necessary inquest as provided by law, or there is a vacancy existing in the office of coroner which has not been filled by the county commissioners and it is made to appear to the clerk of the superior court by satisfactory evidence that a deceased person whose body has been found within the county probably came to his death by the criminal act or default of some person, it is the duty of the clerk to appoint some suitable person to act as coroner in such special case. (Const., art. 4, s. 24; 1903, c. 661; Rev., ss. 1047, 1049; C. S., ss. 1014, 1018; Ex. Sess. 1924, c. 65; 1935, c. 376.)

Cross References.—See § 153-9, subsections 10-12. See also, Const., Art. IV, § 24.

Editor's Note. — For an article discussing the provisions of this chapter and suggesting the abolition of the coroner system, see 26 N. C. Law Rev. 96.

§ 152-2. Oaths to be taken. — Every coroner, before entering upon the duties of his office, shall take and subscribe to the oaths prescribed for public officers, and an oath of office. (Code, s. 661; Rev., s. 1048; C. S., s. 1015; Ex. Sess. 1924, c. 65.)

Cross References.—As to form of oath, see § 11-11. As to oaths required of public officers, see §§ 11-6, 11-7; Const., Art. VI, § 7. As to penalty for failure to take oath, see § 128-5.

Editor's Note. — This section was reenacted without change by the 1924 amendment.

§ 152-3. Coroner's bond. — Every coroner shall execute an undertaking conditioned upon the faithful discharge of the duties of his office with good and sufficient surety in the penal sum of two thousand dollars ($2,000), payable to the State of North Carolina, and approved by the board of county commissioners. (1791, c. 342, ss. 1, 2, P. R.; 1820, c. 1047, ss. 1, 2, P. R.; R. C., c. 25, s. 2; Code, s. 661; 1899, c. 54, s. 52; Rev., s. 299; C. S., s. 1016; Ex. Sess. 1924, c. 65.)

Local Modification. — Yancey: 1945, c. 271.

Editor's Note. — The 1924 amendment inserted the words "and sufficient" and "penal sum".

Want of Official Bond.—Where one has

been appointed coroner of a county, though it may appear he has not renewed his official bond, as required by law, yet his acts as a coroner de facto are valid, at least as regards third persons. Mabry v. Turrentine, 30 N. C. 201 (1847).

§ 152-4. Coroners' bonds registered; certified copies evidence.—All official bonds of coroners shall be duly approved, certified, registered, and filed as sheriffs' bonds are required to be; and certified copies of the same duly certified by the register of deeds, with official seal attached, shall be received and read in evidence in the like cases and in like manner as such copies of sheriffs' bonds are now allowed to be read in evidence. (1860-1, c. 18; Code, s. 662; Rev., s. 300; C. S., s. 1017; Ex. Sess. 1924, c. 65.)

Cross References.—See §§ 109-3 through 109-15, 153-9, subsecs. 10-12. See also, § 128-8 et seq. and notes thereto.

Editor's Note. — The 1924 amendment substituted in this section the words "certified by the register of deeds with official seal attached" in lieu of "from the register's office."

§ 152-5. Fees of coroners.—Fees of coroners shall be the same as are or may be allowed sheriffs in similar cases:

For holding an inquest over a dead body, five dollars; if necessarily engaged more than one day, for each additional day, five dollars.

For burying a pauper over whom an inquest has been held, all necessary and actual expenses, to be approved by the board of county commissioners, and paid by the county. It is the duty of every coroner, where he or any juryman deems it necessary to the better investigation of the cause or manner of death, to summon a physician or surgeon, who shall be paid for his attendance and services ten dollars, and such further sum as the commissioners of the county may deem reasonable. (Code, s. 3743; 1903, c. 781; Rev., s. 2775; C. S., s. 3905.)

Local Modification. — Buncombe: 1949, c. 910; Cabarrus: 1947, c. 410; Caldwell: Pub. Loc. 1939, c. 191; Camden: 1947, c. 200; Cleveland: Pub. Loc. 1921, c. 75; Cumberland: 1941, c. 73; Davidson: Pub. Loc. 1923, c. 402; Johnston: Pub. Loc. 1927, c. 113; Pub. Loc. 1933, c. 365; Lenoir: 1941, c. 84; Onslow: 1951, c. 516; Pasquotank: Pub. Loc. 1939, c. 102; 1943, c. 630; Pender: 1947, c. 52; Richmond: 1951, c. 267; Rockingham: 1951, c. 430; Sampson: 1947, c. 747; Union: Pub. Loc. 1921, c. 75; Wake: Pub. Loc. 1923, c. 573; 1931, c. 137.

§ 152-6. Powers, penalties, and liabilities of special coroner. — The special coroner appointed under the provisions of § 152-1 shall be invested with all the powers and duties conferred upon the several coroners in respect to holding inquests over deceased bodies, and shall be subject to the penalties and liabilities imposed on the said coroners. (1903, c. 661, s. 2; Rev., s. 1050; C. S., s. 1019; Ex. Sess. 1924, c. 65.)

Editor's Note. — This section was reenacted without change by the 1924 amendment.

§ 152-7. Duties of coroners with respect to inquests and preliminary hearings.—The duties of the several coroners with respect to inquests and preliminary hearings shall be as follows:

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.

2. To summon forthwith a jury of six good and lawful men, freeholders, who are otherwise qualified to act as jurors, who shall not be related to the deceased by blood or marriage, or to any person suspected of guilt in connection with such death, and the coroner, upon the oath of the jury at the said place, which oath may be taken by him or any other person authorized to administer oaths, shall make further inquiry as to when, how and by what means such deceased person came to his death, and shall cause to come before himself and the said jury all such persons as may be necessary in order to complete said inquiry.

3. If it appears that the deceased was slain, or came to his death in such manner as to indicate any person or persons guilty of the crime in connection with the said death, then the said inquiry shall ascertain who was guilty, either as principal or accessory, or otherwise, if known; and the cause and manner of his death.

4. Whenever in such investigations, whether preliminary or before his jury, it shall appear to the coroner or to the jury that any person or persons are culpable in the matter of such death, he shall forthwith issue his warrant for such persons and cause the same to be brought before him and the inquiry shall proceed as in the case of preliminary hearings before justices of the peace, and in case it appears to the said coroner and the jury that such persons are probably guilty of any crime in connection with the death of the deceased, then the said coroner shall commit such persons to jail, if it appears that such persons are probably guilty of a capital crime, and in case it appears that such persons are not probably guilty of a capital crime, but are probably guilty of a lesser crime, then such coroner is to have the power and authority to fix bail for such person or persons. All such persons as are found probably guilty in such hearing shall be delivered to the keeper of the common jail for such county by the sheriff or such other officer as may perform his duties at such hearings and committed to jail unless such persons have been allowed and given the bail fixed by such coroner.

5. As many persons as are found to be material witnesses in the matters involved in such inquiry and hearings, and are not culpable themselves shall be bound in recognizance with sufficient surety to appear at the next superior court to give evidence, and such as may default in giving such recognizance may be by such coroner committed to jail as is provided for State witnesses in other cases.

6. To summon a physician or surgeon and to cause him to make such examination as may be necessary whenever it appears to such coroner as proper to have such examination made, or, upon request of his jury, or upon the request of the solicitor of his district or counsel for any accused or any member of the family of the deceased: Provided, however, that when the coroner shall himself be a physician or surgeon, he may make such examination himself.

7. Immediately upon information of the death of a person within his county under such circumstances as, in the opinion of the coroner, may make it necessary for him to investigate the same, to notify the solicitor of his district, and to make such additional investigation as he may be directed to do by such solicitor.

8. To permit counsel for the family of the deceased, the solicitor of his district, or anyone designated by him, and counsel for any accused person to be present and participate in such hearing and examine and cross-examine witnesses and, whenever a warrant shall have been issued for any accused person, such accused person shall be entitled to counsel and to a full and complete hearing.

9. To begin his inquiry with his jury where the body of the deceased shall be, but said hearing may be adjourned to other times and places, and the body of the deceased need not be present at such further hearing.

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. (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.)

Local Modification.—Nash: 1951, c. 502.

Cross References. — As to contempt for certain omissions of duty, see § 5-8. As to limitation on right to perform autopsy, see § 90-217. As to duty to report death involving motor vehicle, see § 20-166.

Editor's Note.—No radical changes were made by the 1924 amendment. The same procedural steps are retained but are set out in much greater detail. Subsections 7, 8, 9, and the portions of 10 referring to stenographic reports are new.

The Inquest a Judicial Proceeding.—The inquest is the coroner's court and it is an indispensable requisite that the jury which is summoned be sworn and charged by the coroner in the presence of the body of the deceased. Though the coroner is judge of the court and the power and authority to administer oaths to the witnesses rests in him, the administration of oaths is a ministerial act and may be performed by anyone by the direction and in the presence of the court. State v. Knight, 84 N. C. 790 (1881).

Autopsy.—A coroner has no authority to perform an autopsy in cases where there is no suspicion of foul play. Gurganious v. Simpson, 213 N. C. 613, 197 S. E. 163 (1938).

§ **152-8. Acts as sheriff in certain cases; special coroner.**—If at any time there is no person properly qualified to act as sheriff in any county, the coroner of such county is hereby required to execute all process and in all other things to act as sheriff, until some person is appointed sheriff in said county; and he shall be under the same rules and regulations, and subject to the same forfeitures, fines, and penalties as sheriffs are by law for neglect or disobedience of the same duties. If at any time the sheriff of any county is interested in or a party to any proceeding in any court, and there is no coroner in such county, or if the coroner is interested in any such proceeding, then the clerk of the court from which such process issues shall appoint some suitable person to act as special coroner to execute such process, and such special coroner shall be under the same rules, regulations, and penalties as hereinabove provided for. (Code, s. 658; 1891, c. 173; Rev., s. 1052; C. S., s. 1021; Ex. Sess. 1924, c. 65.)

Editor's Note. — This section was re-enacted without change by the 1924 amendment.

Service of Summons by Coroner When Sheriff Is Party. — In an action to which the sheriff is a party it is proper that the summons be addressed to and served by the coroner, State v. Baird, 118 N. C. 854, 24 S. E. 668 (1896), or by his deputy since the service of a summons is the discharge of a purely ministerial duty. Yeargin v. Siler, 83 N. C. 348 (1880).

The words "any proceedings in any court" contained in the provision for deputizing special officers where the sheriff and coroner are interested, have been given a literal interpretation and the provision is held applicable to courts of justices of the peace as well as to the higher courts. Baker v. Brem, 127 N. C. 322, 37 S. E. 454 (1900).

§ **152-9. Compensation of jurors at inquest.**—All persons who may be summoned to act as jurors in any inquest held by a coroner over dead bodies, and who, in obedience thereto, appear and act as such jurors, shall be entitled to the same compensation in per diem and mileage as is allowed by law to jurors acting in the superior courts. The coroners of the respective counties are authorized and empowered to take proof of the number of days of service of each juror so

acting, and also of the number of miles traveled by such juror in going to and returning from such place of inquest, and shall file with the board of commissioners of the county a correct account of the same, which shall be, by such commissioners, audited and paid in the manner provided for the pay of jurors acting in the superior courts. (Code, ss. 659, 660; Rev., s. 1053; C. S., s. 1022; Ex. Sess. 1924, c. 65.)

Cross Reference.—As to fees of jurors in superior court, see § 9-5.

Editor's Note. — This section was re-enacted without change by the 1924 amendment.

§ 152-10. Hearing by coroner in lieu of other preliminary hearing; habeas corpus.—All hearings by a coroner and his jury, as provided herein, when the accused has been arrested and has participated in such hearing, shall be in lieu of any other preliminary hearing before a justice of the peace or a recorder, and such cases shall be immediately sent to the clerk of the superior court of such county and docketed by him in the same manner as warrants from justices of the peace. Any accused person who shall be so committed by a coroner shall have the right, upon habeas corpus, to have a judge of the superior court review the action of the coroner in fixing bail or declining the same. (Ex. Sess. 1924, c. 65.)

§ 152-11. Service of process issued by coroner. — All process, both subpoenas and warrants for the arrest of any person or persons, and orders for the summoning of a jury, in case it may appear necessary for such coroner to issue such order, shall be served by the sheriff or other lawful officer of the county in which such dead body is found, and in case it is necessary to subpoena witnesses or to arrest persons in a county other than such county in which the body of the deceased is found, then such coroner may issue his process to any other county in the State, with his official seal attached, and such process shall be served by the sheriff or other lawful officer of the county to which it is directed, but such process shall not be served outside of the county in which such dead body is found unless attested by the official seal of such coroner. (Ex. Sess. 1924, c. 65.)

Chapter 153.

Counties and County Commissioners.

Article 1.

Corporate Existence and Powers of Counties.

Sec.

Article 2.

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Article 2A.

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Forms of County Government.

ARTICLE 1.

Corporate Existence and Powers of Counties.

§ 153-1. County as corporation; acts through commissioners.—Every county is a body politic and corporate, and has the powers prescribed by statute, and those necessarily implied by law, and no others; which powers can only be exercised by the board of commissioners, or in pursuance of a resolution adopted

by them. (1868, c. 20, ss. 1, 2; 1876-7, c. 141, s. 1; Code, ss. 702, 703; Rev., s. 1309; C. S., s. 1290.)

Counties Are Bodies Politic and Corporate to Exercise Powers Granted. — Counties are bodies politic and corporate to exercise as agents for the State only such powers as are prescribed by statute and those which are necessarily implied therefrom by law, essential to the exercise of the powers specifically conferred. O'Neal v. Wake County, 196 N. C. 184, 145 S. E. 28 (1928). See Board v. Hanchett Bond Co., 194 N. C. 137, 138 S. E. 614 (1927).

They Are Governmental Agencies.—The Constitution recognizes the existence of counties as governmental agencies. White v. Com'rs, 90 N. C. 437 (1884); Woodall v. Western Wake Highway Comm., 176 N. C. 377, 97 S. E. 226 (1918).

And Part of the State Government. — Counties are of, and constitute a part of, the State government. Their chief purpose is to establish its political organization, and effectuate the local civil administration of its powers and authority. They are in their general nature governmental—mere instrumentalities of government—and possess corporate powers adapted to its purposes. It is not their purpose to create civil liability on their part, and become answerable to individuals civilly or otherwise. Manuel v. Board, 98 N. C. 9, 31 S. E. 829 (1887), citing White v. Commissioners, 90 N. C. 437 (1884); McCormack v. Commissioners, 90 N. C. 441 (1884).

Counties are a branch of the State government. Bell v. Commissioners, 127 N. C. 85, 37 S. E. 136 (1900).

Power of Legislature to Create.—Under our Constitution, the legislature is given power to create special public quasi corporations for governmental purposes in certain designed portions of the State's territory subject to like control, and in the exercise of such power county lines may be disregarded. Board v. Webb, 155 N. C. 379, 71 S. E. 520 (1911).

It is within the power of the legislature to subdivide the territory of the State and invest the inhabitants of such subdivisions with the corporate functions, more or less extensive and varied in their character, for the purpose of government. The legislature alone can create counties, directly or indirectly, and invest them, and agencies in them, with powers, corporate or otherwise in their nature, to effectuate the purposes of the government, whether these be local or general, or both. Such organizations are intended to be instrumentalities and agencies employed to aid in the administration of the government, and are always under the control of the power that created them unless the same shall be restricted by some constitutional limitations. McCormack v. Commissioners, 90 N. C. 441 (1884); Board v. Webb, 155 N. C. 379, 71 S. E. 520 (1911); Commissioners v. Commissioners, 157 N. C. 514, 73 S. E. 195 (1911); Woodall v. Western Wake Highway Commission, 176 N. C. 377, 97 S. E. 226 (1918).

The powers of the legislature over counties is very broad and far-reaching, giving to it practically full control of them. Jones v. Madison County Com'rs, 137 N. C. 579, 50 S. E. 291 (1905); Woodall v. Western Wake Highway Comm., 176 N. C. 377, 97 S. E. 226 (1918).

It May Confer Corporate Powers and Impose Liability.—The legislature, subject to constitutional limitations, may confer upon counties such corporate powers to make contracts, create civil liabilities, and serve such business purposes, as it may deem expedient and wise and make them answerable in damages for the negligence of their officers and agents in failing to properly exercise the powers with which they are charged, or for exercising them improperly, to the injury of individuals. But such corporate authority and liability must be especially created by and appear from statutory provision, expressed in terms or necessarily implied. Manuel v. Board, 98 N. C. 9, 3 S. E. 829 (1887).

May Direct Performance of Duties. — The legislature may direct counties to perform as duties all things which it can empower them to do. State v. Board, 122 N. C. 812, 30 S. E. 352 (1898).

May Change Functions.—The functions of counties are not always the same, and they may be enlarged, abridged or modified at the will of the legislature. White v. Commissioners, 90 N. C. 437 (1884).

And May Alter or Abolish Counties.—Counties are legislative creations and subject to be changed, even abolished, or divided and subdivided at the will of the General Assembly. Jones v. Board of Com'rs, 143 N. C. 59, 55 S. E. 427 (1906); Board of Trustees v. Webb, 155 N. C. 379, 71 S. E. 520 (1911); Woodall v. Western Wake Highway Comm., 176 N. C. 377, 97 S. E. 226 (1918).

Powers of Counties Are Strictly Construed.—Corporations which exercise delegated governmental authority, such as counties, must be confined to a strict construction of the statutes granting their pow-

ers. There is nothing in the nature of their duties to give rise to the implication that the State intends to clothe them with any other power than that expressly conferred, and the further right to do what is necessary to the complete exercise of the express powers. Vaughn v. Commissioners, 118 N. C. 636, 24 S. E. 425 (1896).

Counties as Municipal Corporations. — By the Constitution, art. VII, counties are regarded as municipal corporations. Winslow v. Commissioners, 64 N. C. 218 (1870).

A county is a municipal corporation created by law for public and political purposes, and constitutes a part of the government of the State. Its powers are expressly defined by law, and, where they are not fixed by the Constitution, they may be enlarged or modified at any time by the legislature. Gooch v. Gregory, 65 N. C. 142 (1906).

Same—Differ from Cities and Towns.— Counties are not, in a strictly legal sense, municipal corporations, like cities and towns. Their purposes are more general and partake more largely of the purposes and powers of government proper. Manuel v. Board, 98 N. C. 9, 31 S. E. 829 (1887); Bell v. Commissioners, 127 N. C. 85, 37 S. E. 136 (1900); Martin v. Board of Com'rs, 208 N. C. 354, 180 S. E. 777 (1935).

Property and Revenue Not Subject to Execution.—A county can only acquire and hold property for necessary public purposes and for the benefit of all its citizens, and the principles of public policy prevent such property from being sold under execution to satisfy the debt of an individual. Hughes v. Commissioners, 107 N. C. 598, 12 S. E. 465 (1890). See Gooch v. Gregory, 65 N. C. 142 (1871).

The county revenue is safe from seizure by creditors, or even for taxes due the federal government, because, to admit the right to appropriate such revenue in satisfaction of a claim would be to concede the power to destroy the State government by depriving its agencies of the means of performing their proper functions. Subject to the restrictions contained in the federal Constitution, the State is a sovereignty, and it is essential to its preservation to give to all property held for it by such agencies as counties, the same protection as is given to that held in its own name. Hughes v. Commissioners, 107 N. C. 598, 12 S. E. 465 (1890); Vaughn v. Commissioners, 118 N. C. 636, 24 S. E. 425 (1896).

County Must Act through Commissioners in Legal Session.—For a county to exercise its power to contract, it is essential that it act through its county commissioners as a body convened in legal session, regular, adjourned or special, and, as a rule, authorized meetings are prerequisite to corporate action, which should be based upon deliberate conference and intelligent discussion of proposed measures. O'Neal v. Wake County, 196 N. C. 184, 145 S. E. 28 (1928); Davenport v. Pitt County Drainage Dist., 220 N. C. 237, 17 S. E. (2d) 1 (1941); Jefferson Standard Life Ins. Co. v. Guilford County, 225 N. C. 293, 34 S. E. (2d) 430 (1945).

And Not in Joint Meeting with Other Governmental Agencies.—The commissioners of a county are without authority, constitutional or statutory, to enter into a joint meeting with other State governmental agencies functioning as entirely separate departments respectively of the county and the State, and therein make a binding corporate contract by the adoption of a joint verbal agreement to pledge the faith and credit of the county for its part in the payment for the employment of a prison to render service in the capacity of a detective to determine and procure evidence against those who have committed a criminal offense. O'Neal v. Wake County, 196 N. C. 184, 145 S. E. 28 (1928).

May Issue Bonds to Make Repairs to Buildings. — This section when construed with § 153-77 gives the county statutory power to issue bonds to repair and make additions to the county jail or public schools, the greater power to "erect" necessarily including the lesser power to "repair." Harrell v. Board of Com'rs, 206 N. C. 225, 173 S. E. 614 (1934).

§ **153-2. Corporate powers of counties.**—A county is authorized:

1. To sue and be sued in the name of the county.

2. To purchase and hold lands within its limits and for the use of its inhabitants, subject to the supervision of the General Assembly.

3. To make such contracts, and to purchase and hold such personal property, as may be necessary to the exercise of its powers.

4. To make such orders for the disposition or use of its property as the interests of its inhabitants require. (1868, c. 20, s. 3; Code, s. 704; Rev., s. 1310; C. S., s. 1291.)

Cross References.—As to corporate powers of a municipal corporation, see § 160-2. As to authority to lease, convey or acquire property for use as armory, see § 143-235.

As to appropriations for benefit of military units, see § 143-236.

Suit in Name of County. — Where a county is the real party in interest, it must sue and be sued in its own name. Lenoir County v. Crabtree, 158 N. C. 357, 74 S. E. 105 (1912); Fountain v. Pitt County, 171 N. C. 113, 87 S. E. 990 (1916); Johnson v. Marrow, 228 N. C. 58, 44 S. E. (2d) 468 (1947).

A county is not required in an action for mandatory injunction to bring the suit in the name of the county commissioners, but it should be brought in the name of the county. Lenoir County v. Crabtree, 158 N. C. 357, 74 S. E. 105 (1912).

In the absence of a refusal of the board of commissioners of a county to institute an action in its behalf, the action must be instituted in the name of the county or on relation of the county. Johnson v. Marrow, 228 N. C. 58, 44 S. E. (2d) 468 (1947).

Same — Formerly in Name of County Commissioners.—Under the former statute all actions and proceedings by or against a county in its corporate capacity were required to be in the name of the board of commissioners. Pegram v. Commissioners, 65 N. C. 114 (1871); Askew v. Pollock, 66 N. C. 49 (1872); Fountain v. Pitt, 171 N. C. 113, 87 S. E. 990 (1916).

And under such statute an action upon a county treasurer's bond to recover an amount alleged to be due the county was required to be brought on the relation of the commissioners, and not by the successor treasurer. State v. Thees, 89 N. C. 55 (1883).

When an order to show cause, which is in the nature of an alternative writ of mandamus, could be brought against the board of commissioners, it was not to be directed to the individuals composing the board. It was only in case of disobedience that they could be proceeded against individually. Askew v. Pollock, 66 N. C. 49 (1872).

Suits against Board of Financial Control. —For the purpose of liquidating securities held by the county of Buncombe, the board of financial control for the county is nothing more nor less than a liquidating agent designated by law for that purpose and is sued as provided by this section. Bourne v. Board of Financial Control, 207 N. C. 170, 176 S. E. 306 (1934).

Liability of Counties.—Counties may be sued only in such cases and for such causes as may be allowed by statute. Bell v. Commissioners, 127 N. C. 85, 37 S. E. 136 (1900).

Counties are not ordinarily liable to be sued civilly for the manner in which they exercise, or fail to exercise, their corporate powers. White v. Commissioners, 90 N. C. 437 (1884).

A county was held not liable in damages for an injury occasioned by a defective bridge forming a part of the highway. Moffitt v. Asheville, 103 N. C. 237, 9 S. E. 695 (1889).

Same — Torts of Officers or Agents. — Counties are not liable in damages for the torts of their officials, in the absence of statutory provisions giving a right of action. Keenan v. Commissioners, 167 N. C. 356, 83 S. E. 556 (1914).

Generally a county is not liable for damages sustained by individuals by reason of the neglect of its officers or agents. Manuel v. Board, 98 N. C. 9, 3 S. E. 829 (1887).

Form of Action. — Where a good cause of action exists, a county may be sued in any form appropriate to the cause of action, and its liability does not differ as respects the form of the action from that of a private corporation or of an individual. Winslow v. Commissioners, 64 N. C. 218 (1870).

Venue of Action. — Under the former statute which provided that a county should "sue and be sued in the name of the board of commissioners", actions against a board of county commissioners were required to be brought in the county of such commissioners. Jones v. Commissioners, 69 N. C. 412 (1873); Steele v. Commissioners, 70 N. C. 137 (1874).

Commissioners' Supervisory Control. — Under the Constitution and public laws of North Carolina the boards of county commissioners are generally given supervision and control of governmental matters in the several counties. Bunch v. Commissioners, 159 N. C. 335, 74 S. E. 1048 (1912). As to powers of commissioners generally, see § 153-9 and notes thereto.

Power to Compromise. — The power to sue and to defend suits carries with it, by necessary implication, the power to make bona fide compromise adjustments of such suits. Board v. Tollman, 145 F. 753 (1906).

Power to Enter Consent Judgment. — Under this section the county commissioners have the authority to assent to the entry of a consent judgment in an action pending against the county, when such judgment is entered in good faith, and is free from fraud, etc., a consent judgment being a contract of the parties spread upon the records with the approval and sanction of a court of competent jurisdiction. Weaver v. Hampton, 204 N. C. 42, 167 S. E. 484 (1933).

Contract Relating to Care of the Poor.— Under the statute imposing the general duty on county commissioners to provide

for the poor, in order to make a binding pecuniary obligation on the county, there must be a contract to that effect, express in its terms, or the service must be done at the express request of an officer or agent charged with the duty and having the power to make contracts concerning it. Copple v. Commissioners, 138 N. C. 127, 50 S. E. 574 (1905).

When Commissioners May Not Sell Property. — County commissioners have no power to sell property held for corporate purposes, where its alienation would tend to embarrass or prevent the performance of its duties to the public. Vaughn v. Commissioners, 118 N. C. 636, 24 S. E. 425 (1896).

Cited in O'Neal v. Wake County, 196 N. C. 184, 145 S. E. 28 (1928).

§ 153-3. Reconveyance of property donated to county, etc., for specific purpose.—Any county, city or town to which any real property has been conveyed, without consideration, to be used for a specific purpose set out in the deed, shall have authority to reconvey the same without consideration to the grantor, his heirs, assigns or nominees whenever the governing body of such municipality shall officially determine that the said property will not be used for the purpose for which it was given: Provided, that due notice of such proposed conveyance shall be given by advertisement for two successive weeks in some newspaper of general circulation in the county. (1937, c. 441.)

Cross Reference.—As to abandonment of property dedicated to public use, see § 136-96.

ARTICLE 2.

County Commissioners.

§ 153-4. Election and number of commissioners. — There shall be elected in each county of the State, at the general election to be held in the year one thousand eight hundred and ninety-six, and every two years thereafter, by the duly qualified voters thereof, three persons to be chosen from the body of the county, who shall be styled "the board of commissioners for the county of ....." and shall hold their office for two years from date of their qualification and until their successors are elected and qualified. (Rev., s. 1311; C. S., s. 1292.)

Local Modification. — Bertie: 1951, c. 1106, s. 1; Cumberland: 1943, c. 44; Forsyth: 1949, c. 851; Nash: 1951, c. 1106, s. 1.

Cross References.—As to acting as commissioner before qualifying as such, see § 14-229. As to time of election of county commissioners, see § 163-4. As to provision that county commissioner can not practice law, see § 84-2.

Remedies to Try Title to Office.—As to remedies to try title to the office of county commissioner, see Lyon v. Board, 120 N. C. 237, 26 S. E. 929 (1897); State v. Taylor, 122 N. C. 141, 29 S. E. 101 (1898). See also, §§ 1-511, 1-515, and notes.

§ 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, 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.

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. (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; 1943, c. 368, s. 2.)

Editor's Note. — The 1941 amendment, which added a paragraph relating to Person County, was repealed by Session Laws 1943, c. 109. Session Laws 1943, c. 103, added "Lee" to the list of counties in the first paragraph. "Gates" and "Caswell" were impliedly inserted in the list by Session Laws 1943, cc. 18 and 43. Robeson County was impliedly stricken from the list by Session Laws 1943, c. 217, providing for the formation of a sixth commissioner's district in said county. And Brunswick County was stricken from the list by Session Laws 1943, c. 368, s. 2.

Session Laws 1943, c. 345, which impliedly struck "Pasquotank" from the list of counties in the first paragraph, provided that in primaries thereafter held preceding the general election in the county, there shall be nominated by each of the political parties participating therein one candidate from each of the five rural townships and two from Elizabeth City Township for the office of county commissioner, to be voted on by the qualified voters of the entire county.

Cited in Martin v. Board of Com'rs, 208 N. C. 354, 180 S. E. 777 (1935).

§ 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. (Code, s. 719; 1895, c. 135, s. 7; Rev., s. 1314; 1909, c. 490, s. 1; C. S., s. 1294.)

Authority of Clerk to Accept Resignation.—A tender of resignation by a county commissioner to the clerk of the superior court is a tender to the proper authority. While the mere filing of the resignation does not vacate the office, its acceptance by the clerk is final, and after its acceptance the commissioner has no power to withdraw it. Rockingham County v. Luten Bridge Co., 35 F. (2d) 301 (1929).

§ 153-7. When to qualify; oath to be filed.—The board of commissioners shall qualify and enter upon the duties of their office on the first Monday of December next succeeding their election, and they may take the oaths of office before the clerk of the superior court, or some judge, or justice of the peace or other person qualified by law to administer oaths. The oaths of office severally taken and subscribed by them shall be deposited with the clerk of the superior court. (Code, s. 708; 1895, c. 135, s. 4; Rev., s. 1316; C. S., s. 1295.)

Cross References.—As to oaths required, see §§ 11-6, 11-7, and 11-11. As to penalty for failure to take oath, see § 128-5.

§ 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 in his absence, 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.)

Local Modification. — Randolph: 1939, c. 172; Richmond: 1939, c. 88.

Editor's Note. — The 1951 amendment rewrote this section. Section 2 of the amendatory act repealed all laws, except public-local and private laws, in conflict with its provisions.

Construed as Directory.—The section is directory and is intended to forbid the commissioners from receiving compensation for attendance on other days than regular meetings. It does not, however, disable the commissioners from acting at other times on due notice to all concerned. People v. Green, 75 N. C. 329 (1876).

Hence, commissioners elected by the county commissioners at an adjourned meeting subject to the call of the chairman are at least de facto officers whose title cannot be collaterally attacked. Tripp v. Commissioners, 158 N. C. 180, 73 S. E. 896 (1912).

Cited in Rockingham County v. Luten Bridge Co., 35 F. (2d) 301 (1929).

§ 153-9. Powers of board.—The boards of commissioners of the several counties have power:

Cross References.—As to power of the county commissioners to establish courts inferior to the superior court, see §§ 7-265, 7-266, 7-308, 7-332, 7-351, 7-385 and 7-405; to establish a domestic relations court, see § 7-101; to reduce salaries of officers and employees of the county, see § 160-28; to administer oaths, see § 11-9; to increase pensions of Confederate veterans by levying a special tax therefor, see § 112-30; to elect to have county employees participate in retirement system, see § 128-33; to take depositions, see § 8-76; to protect public monuments, see § 100-9; to come under State Volunteer Fire Department, see § 69-21; to co-operate in forest fire protection, see § 113-59; to co-operate in establishment of employment bureau, see § 96-26; to provide farmers with erosion equipment, see § 106-521; to appoint electrical inspectors, see § 160-122. As to duty of county commissioners to prepare jury list, see § 9-1; to appoint county superintendent of public welfare, see § 108-13; to authorize state flag to be displayed at county courthouse, see § 144-4.

Board Has Perpetual Existence. — The board of commissioners of a county has a perpetual existence, continued by members who succeed each other, and the body remains the same, notwithstanding a change in the individuals who compose it. Pegram v. Commissioners, 65 N. C. 114 (1871).

Has Only Such Powers as Statute Prescribes.—The board of commissioners in a county possesses only those powers which have been prescribed by statute and those necessarily implied by law, and no others. This is the general rule. It has also been expressly declared by statute to be the rule which ascertains the true scope and limit of the board's power and authority. Fidelity, etc., Co. v. Fleming, 132 N. C. 332, 43 S. E. 899 (1903).

Exercise of Powers by Board Is Exercise by County. — The board's exercise of statutory powers is, in contemplation of law, the exercise of such powers by the county. Board v. Hanchett Bond Co., 194 N. C. 137, 138 S. E. 614 (1927).

Powers of De Facto Board. — An old board of commissioners, holding over, as de facto officers, have the right and the duty of performing, to the fullest extent, all the appropriate functions of office. State v. Jones, 80 N. C. 127 (1879).

Powers Exercised by Majority.—A majority of the commissioners constitute the legal body, and generally a majority of the members of the legally organized body can exercise the powers delegated to the county. Cleveland Cotton Mills v. Commissioners, 108 N. C. 678, 13 S. E. 271 (1891).

All Duties and Powers Equally Important.—There is no grade among the duties and powers of county commissioners, and no preference is given to one over another. Long v. Commissioners, 76 N. C. 273 (1877).

Power to Protect Bridges.—The county commissioners, under the general powers granted by this section may bring an action for an injunction to restrain the use of a non-floatable stream for floatage of logs, causing damage to a county bridge over such stream. Commissioners v. Lumber Co., 115 N. C. 590, 20 S. E. 707 (1894).

The board of commissioners has the power and duty of auditing and passing upon the validity of claims. If they refuse to audit or act upon a claim, mandamus will lie to compel them to do so. If after a hearing they refuse to allow or issue a warrant for its payment, an action will lie against the commissioners to establish the debt and for such other relief as the party may be entitled to. Reed v. Farmer, 211

N. C. 249, 189 S. E. 882 (1937), citing Martin v. Clark, 135 N. C. 178, 47 S. E. 397 (1904).

Board May Correct Clerical Error in Record.—Where the record of the board of county commissioners, through a clerical error, states that a tax levy for general county purposes is 20 cents on the $100 valuation of property, this error may subsequently be corrected by the board, at its own instance, to correctly show that in fact the levy was actually made for 15 cents for general county purposes, 5 cents thereof being for the improvement of the courthouse and county home, and thus within the constitutional requirement. Norfolk Southern R. Co. v. Forbes, 188 N. C. 151, 124 S. E. 132 (1924).

Personal Liability. — Where the legislature has created certain duties to be performed by the county commissioners, and has expressly imposed a personal liability upon their failure to perform some of them, but not as to others, such liability only attaches where it is expressly so declared. Fore v. Feimster, 171 N. C. 551, 88 S. E. 977 (1916).

Same — Ministerial Duties. — County commissioners are held to an individual liability in the negligent performance of, or negligent omission to perform, a purely ministerial duty, to a person specially injured thereby, when the means to do so are available and when it does not involve the exercise of a discretionary or judicial power conferred upon them by statute. Hipp v. Farrell, 169 N. C. 551, 86 S. E. 570 (1915).

Same—Judicial and Discretionary Acts. —Public officers are not personally liable to persons specially injured by their acts done in the exercise of judicial or discretionary powers conferred on them by statute, unless it is alleged and shown that in doing the acts complained of they did so corruptly and with malice. Hipp v. Ferrell, 169 N. C. 551, 86 S. E. 570 (1915).

When Commissioners Act Intra Vires.— A court has no power to interfere with the domestic administration of affairs of a county, so long as the board of commissioners acts intra vires. Long v. Commissioners, 76 N. C. 273 (1877).

Retaining the consideration of an ultra vires contract can impose no contractual liability upon a municipal corporation of this character. Berlin Iron Bridge Co. v. Board, 111 N. C. 317, 16 S. E. 314 (1892), citing Weir v. Page, 109 N. C. 220, 13 S. E. 773 (1891).

Mandamus to Compel Bond Issue. — Mandamus will lie against county commissioners who refuse to issue bonds, as required by an act of the legislature. Jones v. Commissioners, 137 N. C. 579, 50 S. E. 291 (1905).

When Membership of Board Changes between Order and Service of Mandamus. --When a writ of mandamus is obtained against a board of commissioners, and there is a change in the individual members between the time when the writ is ordered and when it is served, those who compose the board at the time of service must obey it. Pegram v. Commissioners, 65 N. C. 114 (1894).

Cited in O'Neal v. Wake County, 196 N. C. 184, 145 S. E. 28 (1928).

Taxation and Finance

1. To Exempt from Capitation Tax.—To exempt from capitation tax in special cases, on account of poverty and infirmity. (1868, c. 20, s. 8; Code, s. 707; Rev., s. 1318; C. S., s. 1297.)

Cross Reference. — For constitutional provision, see N. C. Constitution, art. V, § 1.

2. To Levy County Taxes.—To levy, in like manner with the State taxes, the necessary taxes for county purposes within the limits prescribed in the Constitution. (1868, c. 20, s. 8; Code, s. 707; Rev., s. 1318; C. S., s. 1297.)

Cross References. — As to constitutional limitation on county tax levies, see N. C. Constitution, art. V, § 6. As to the time for adoption of appropriation resolution and levy of taxes, see §§ 153-120, 153-124 and 105-339. As to duty to reduce ad valorem taxes, see § 153-55.

County Authority to Levy Taxes Subject to Limitations. — While the General Assembly may regulate the amount and methods for raising county revenues, the present system of county government contemplates that the function shall be performed by the county authorities, subject to the limitations prescribed by the Constitution. Parker v. Board, 104 N. C. 166, 10 S. E. 137 (1889).

When Commissioners May Levy. — In

Herring v. Dixon, 122 N. C. 420, 29 S. E. 368 (1898), the authorities are reviewed and their holdings summed up as follows:

(1) For necessary expenses, the county commissioners may levy up to the constitutional limitation without a vote of the people or legislative permission.

(2) For necessary expenses, the county commissioners may exceed the constitutional limitation by special legislative authority without a vote of the people. Constitution, article V, § 6.

(3) For other purposes than necessary expenses a tax cannot be levied either within or in excess of the constitutional limitation except by a vote of the people under special legislative authority. Constitution, article VII, § 7. State v. Board, 122 N. C. 812, 30 S. E. 352 (1898).

A special tax to pay indebtedness of the county incurred for its necessary expenses may be levied by the county commissioners, without special legislation, so long as such tax together with the regular taxes, does not exceed the constitutional limit; it being only in the latter case that art. 5, § 6, of the Constitution requires special authority. Smathers v. Commissioners, 125 N. C. 480, 34 S. E. 554 (1899).

Levy of Necessary Taxes within Discretion of Commissioners.—Where it was alleged that a board of commissioners had not levied a sufficient tax to defray the ordinary expenses of the county, on account of the levy of a tax to pay for repairing the courthouse, it was held to be no ground for interference by the courts. Long v. Commissioners, 76 N. C. 273 (1877).

Former Equation and Limitation Provision. — The equation and limitation of taxation established by art. 5, § 1 of the Constitution as it read prior to the 1920 amendment applied only to taxes levied for ordinary purposes of the State and counties. Jones v. Commissioners, 107 N. C. 248, 12 S. E. 69 (1890); Wagstaff v. Central Highway Commission, 177 N. C. 354, 99 S. E. 1 (1919).

Such former provision had no application to a special act of the legislature submitting the question of bonds and taxation to the qualified voters of the county for the special purpose of constructing and maintaining its public roads. Wagstaff v. Central Highway Comm., 177 N. C. 354, 99 S. E. 1 (1919).

Nor did such provision apply to debts made previous to the adoption of the Constitution. Uzzle v. Commissioners, 70 N. C. 564 (1874); Street v. Board, 70 N. C. 644 (1874); Mauney v. Board, 71 N. C. 486 (1874); Trull v. Board, 72 N. C. 388 (1875); Clifton v. Wynne, 80 N. C. 146 (1879).

The requirement that every act levying taxes shall state the objects to which they shall be appropriated (Const., art. 5, § 7) has no application to taxes levied by the county authorities for county purposes. Parker v. Board, 104 N. C. 166, 10 S. E. 137 (1889).

When Tax Intra Vires and When Ultra Vires. — Where a statute authorizing the levy of a tax beyond the constitutional limit for a special purpose is intra vires, the taxes collected beyond the requirements of the special purpose may be turned into the general fund and used for general purposes, but where the act authorizes the levy partly for a "special purpose" and partly for general purposes it is ultra vires and no part of the levy can be collected. Williams v. Commissioners, 119 N. C. 520, 26 S. E. 150 (1896).

When Commissioners May Not Exceed Restriction.—When bonds are issued by a county, by popular vote, under legislative authority, which does not further provide for a levy to exceed the constitutional limitation for the principal, interest or for a sinking fund, the commissioners are without authority to levy a tax to exceed the restriction. Commissioner v. McDonald, etc., Co., 148 N. C. 125, 61 S. E. 643 (1908).

In Williams v. Commissioners, 119 N. C. 520, 26 S. E. 150 (1896) approved in Herring v. Dixon, 122 N. C. 420, 29 S. E. 368 (1898), it was held that a statute authorizing a special county tax for the purpose of maintaining public ferries, building roads, and meeting other current expenses was not for a "special purpose," and that a tax levied thereunder in excess of the constitutional limitation was void. Southern R. Co. v. Cherokee County, 177 N. C. 86, 97 S. E. 758 (1919).

Required School Term and the Constitutional Limitation.—When it becomes necessary the county commissioners are required to levy a tax sufficient to maintain the county schools for the required term each year, and the constitutional limitation does not apply to defeat such a levy. Collie v. Commissioners, 145 N. C. 170, 59 S. E. 44 (1907), expressly overruling Barksdale v. Commissioners, 93 N. C. 472 (1885), and Board v. Board, 111 N. C. 578, 16 S. E. 621 (1892); Southern R. Co. v. Cherokee County, 177 N. C. 86, 97 S. E. 758 (1919).

Tax Rate Variable.—There is no constitutional requirement that the tax rate for county purposes shall be the same everywhere. It varies in the different counties, and may vary in different townships, parts of townships, districts, towns, and cities in

the same county. Jones v. Commissioners, 143 N. C. 60, 55 S. E. 427 (1906).

Property Subject to Taxation. — All of the property, including solvent credits, in the State, shall be assessed and taxed at its value in money. Caldwell Land, etc., Co. v. Smith, 146 N. C. 199, 59 S. E. 653 (1907).

Same — Back Tax. — In Caldwell Land, etc., Co. v. Smith, 146 N. C. 199, 59 S. E. 653 (1907), the court said: "We have no doubt of the power of the legislature to provide for the listing, assessment, and taxing of personal property omitted to be listed by the owner as the law requires. Nor do we perceive any reason why it may not be taxed for five or more preceding years if it has escaped taxation so long. These questions have been settled by several decisions of this court. Kyle v. Mayor, 75 N. C. 445 (1876); North Carolina R. Co. v. Commissioners, 82 N. C. 260 (1880); Wilmington v. Cronly, 122 N. C. 388, 30 S. E. 9 (1898)."

Same — When Realty of Schools and Railroads Exempt from Special Tax. — Where the act provided for the construction of a fence to inclose the whole of several districts and that the commissioners should levy a special tax on all the real estate in said district, which was taxable by the State and county, it was held, not to embrace the real estate of schools and railroads, which was not taxable for general purposes. Bradshaw v. Board, 92 N. C. 278 (1885).

Taxes Leviable Yearly. — General taxes for county purposes are leviable but once in the year. Bradshaw v. Board, 92 N. C. 278 (1885).

Tax Raised for One Purpose and Applied to Another. — In Long v. Commissioners, 76 N. C. 273 (1877), the court said: "We know of no statute nor any rule of law or of public policy which prevents county commissioners from applying a tax raised professedly for one purpose to any other legitimate purpose. There may, perhaps, be an exception where a tax is levied by a special authority from the legislature, or upon the vote of the people, which would not otherwise be lawful."

Tax Lists in Hands of Sheriff.—In Caldwell Land, etc., Co. v. Smith, 146 N. C. 199, 59 S. E. 653 (1907), it was said: "While no express power is conferred upon the commissioners after making the assessment to place the list so made in the hands of the sheriff, we think that by a fair construction, in the light of the power conferred in other portions of the statute respecting the regular tax list, such power is given."

The tax list is a judgment against every person for the amount of the tax, and the copy delivered to the sheriff is an execution. Higgins v. Hinson, 61 N. C. 126 (1867), cited and approved in Gore v. Mastin, 66 N. C. 371 (1872); Commissioners v. Piercy, 72 N. C. 181 (1875); London v. Wilmington, 78 N. C. 109 (1878); Raleigh, etc., R. Co. v. Lewis, 99 N. C. 62, 5 S. E. 82 (1888); State v. Georgia Co., 112 N. C. 34, 17 S. E. 10 (1893).

Act Held Not to Be "Special."—In Bennett v. Board, 173 N. C. 625, 92 S. E. 603 (1917), it is held that a statute conferring on county commissioners the power to borrow money for the necessary expenses of the county and provide for its payment neither is, nor does it purport to be, a special act and for a purpose within the meaning of the constitutional provision. Southern R. Co. v. Cherokee County, 177 N. C. 86, 97 S. E. 758 (1919).

Assessment for Stock Fence. — An assessment for the building of a stock law fence is not a tax which requires a referendum vote by the people. Tripp v. Commissioners, 158 N. C. 180, 73 S. E. 896 (1912).

3. To Provide for Payment of Existing Debts by Taxation or Otherwise.—To provide by taxation or otherwise for the prompt and regular payment, with interest, of any existing debt owing by the county. (1868, c. 20, s. 8; Code, s. 707; Rev., s. 1318; C. S., s. 1297.)

Mandamus Lies to Compel Levy of Tax. —A plaintiff, upon a proper prayer for judgment, may have a mandamus to compel the board of commissioners to levy a tax and pay the debt of a county. Winslow v. Commissioners, 64 N. C. 218 (1870).

Ordinarily, the only remedy of a judgment creditor of a county is a writ of mandamus to compel its commissioners to levy a tax to pay the debt. Hughes v. Commissioners, 107 N. C. 598, 12 S. E. 465 (1890), citing Pegram v. Commissioners, 64 N. C. 557 (1870); Lutterloh v. Board, 65 N. C. 403 (1871); Rogers v. Jenkins, 98 N. C. 129, 3 S. E. 821 (1887).

Same — Satisfaction of Judgment. — A plaintiff who has obtained a judgment against a county is not entitled to an execution against it. His remedy is by writ of mandamus against the board of commissioners of the county to compel them to levy a tax for the satisfaction of the judgment. Gooch v. Gregory, 65 N. C. 142 (1871).

Same — When Granted. — The writ of mandamus will be granted only where one demanding it shows that he has a specific legal right and has no other specific remedy adequate to enforce it. State v. Justices, 24 N. C. 430 (1842); Ex parte Biggs, 64 N. C. 202 (1870); Winslow v. Commissioners, 64 N. C. 218 (1870); Hughes v. Commissioners, 107 N. C. 598, 12 S. E. 465 (1890).

When Mandamus Unnecessary.—An action may be maintained against the county commissioners establishing a debt against the county without asking for a writ of mandamus, where it appears that the county has property subject to trusts, or such as can be reached only by proceedings supplemental to execution. Hughes v. Commissioners, 107 N. C. 598, 12 S. E. 465 (1890).

When Public and Private Interests Conflict.—Upon the principle that where public interests conflict with private interests, if the entire fund which can be raised by taxation is required to meet the necessary expenses of an economical administration of the county government, and none can be diverted to pay its indebtedness without serious detriment to the public, none ought to be thus appropriated. Cromartie v. Commissioners, 85 N. C. 211 (1881).

Bonds Issued under Unconstitutional Act.—A taxpayer may enjoin county commissioners from making a tax levy to pay interest on railroad bonds issued under an unconstitutional statute, without restoring to the bona fide holders of the bonds the consideration paid therefor. Graves v. Board, 135 N. C. 49, 47 S. E. 134 (1904).

Notice to Holder.—A county bond stating on its face the act under which it is issued is notice to the holder, and estops him from controverting the statement. Commissioners v. Call, 123 N. C. 308, 31 S. E. 481 (1898).

4. To Purchase County Indebtedness.—To purchase if they desire, at any price, not exceeding their par value and accumulated interest, any of the outstanding bonds or other indebtedness of the county. (1868-9, c. 269, s. 2; Code, s. 718; Rev., s. 1320; C. S., s. 1297.)

5. To Levy Taxes for Interest and Sinking Funds for Outstanding Bonds Not Provided for.—(a) To levy, in like manner with the county taxes, the necessary taxes to pay the interest and create a sinking fund for the retirement of bonds issued and sold for the purpose of meeting necessary expenses of the county, where no other provision for such levy has been specially provided for. Such levy shall not exceed any constitutional limitation.

(b) To levy, in like manner with the county taxes, the necessary taxes to pay the interest and create a sinking fund for the retirement of township road improvement bonds, issued either by vote of the people or by act of the General Assembly, where the amount of levy provided by the act under which the vote is held or tax levied is inadequate to pay the interest on bonds heretofore issued or authorized by acts now in force, but the levy shall not exceed any constitutional limitation. (1917, c. 121, ss. 1, 2; C. S., s. 1297.)

Funds Impressed with a Trust.—Where taxes are levied and collected to pay coupons on bonds issued by a county, the funds so collected are impressed with a trust for the benefit of the owners of the coupons. Board v. Tollman, 145 F. 753 (1906).

6. Special Tax Authorized for Certain Purposes; Limit of Rate.—The boards of commissioners of the various counties in the State, for the purpose of the upkeep of county buildings, county homes for the aged and infirm and other similar institutions, and to supplement the general county fund, are hereby authorized to levy annually a tax upon all taxable property not to exceed five cents on the one hundred dollars of valuation, in addition to any tax allowed by any special statute for the above enumerated purposes and in addition to the rate allowed by the Constitution. (C. S., s. 1297; 1923, c. 7.)

Local Modification. — Gaston: 1945, c. 207; Madison: 1931, c. 436.

In General.—This section authorizes the boards of commissioners of the various counties to levy a tax for the purpose of maintaining county homes for the aged and infirm. This is a special purpose within the contemplation of the constitutional provision, and the words "county aid and poor relief" should be construed to be within the scope of the special purpose which is indicated in the statute. Atlantic Coast

Line R. Co. v. Lenoir County, 200 N. C. 494, 157 S. E. 610 (1931).

Tax within the Limitation of Const., Art. V, § 6.—Where a county levies a tax within the limitation of const., art. V, § 6, its levy for poor relief is limited to a tax rate of five cents under the provisions of this section. Atlantic Coast Line R. Co. v. Duplin County, 226 N. C. 719, 40 S. E. (2d) 371 (1946).

Resolution Correcting Record as to Purpose of Levy. — Where tax records of county disclose a fifteen-cent levy for general purposes and a seven-cent levy for county poor, two cents of the seven-cent levy is patently excessive and no part thereof can be justified for items of general expense, but where, in action by taxpayer to recover the amount paid under protest under the two-cent levy, defendant county introduces resolutions of the board correcting records to show that two cents was for administration of old age assistance and aid to dependent children, and for salaries of the county accounting and farm agent, nonsuit is proper, since levy is then for special purposes with special approval of the legislature under § 108-17, et seq., and § 108-44, et seq., and since, in the absence of evidence to the contrary the resolution, correcting the records will be presumed bona fide. Atlantic Coast Line R. Co. v. Duplin County, 226 N. C. 719, 40 S. E. (2d) 371 (1946).

Levy for Public Welfare in Beaufort.—The board of county commissioners of Beaufort County having levied in the year 1942 a tax rate of fifteen cents on the one hundred dollars property valuation for general purposes, the limit fixed by article V, § 6, of the Constitution, the levy for public welfare or poor relief was limited to a rate of five cents on the one hundred dollars property valuation under provisions of this section. Atlantic Coast Line R. Co. v. Beaufort County, 224 N. C. 115, 29 S. E. (2d) 201 (1944).

Conflict with Other Laws.—Cumberland County is authorized by this section to levy annually five cents only on the one hundred dollar valuation, for maintaining county homes for the aged and infirm and for similar purposes. Conceding that §§ 153-9, subsection 23, and 153-152 constitute special approval of the General Assembly for unlimited levy for a special purpose, they are general acts and conflict with the provisions of this subsection. Atlantic Coast Line R. Co. v. Cumberland County, 223 N. C. 750, 28 S. E. (2d) 238 (1943).

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, 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.)

Editor's Note. — The 1935 amendment added Henderson to the list of counties set out in this subsection; the 1937 amendment added Buncombe and Randolph; the 1939 amendments added Orange and Anson; the 1943 amendment added Sampson, and the 1951 amendment added Cleveland.

Levies Held Unconstitutional. — Ordinarily, the purposes named in this subsection are general rather than special, and a levy of taxes under this subsection is invalid under art. V, § 6 of the Constitution in the absence of circumstances rendering the purpose special rather than general. Natahala Power, etc., Co. v. Clay County, 213 N. C. 698, 197 S. E. 603 (1938); Southern R. Co. v. Cherokee County, 218 N. C. 169, 10 S. E. (2d) 607 (1940).

County Buildings

8. To Erect and Repair County Buildings.—To erect and repair the necessary county buildings, and to raise, by taxation, the moneys therefor. (1868, c. 20, s. 8; Code, s. 707; Rev., s. 1318; C. S., s. 1297.)

Cross References.—As to procedure for letting of public contracts, see §§ 143-129 through 143-135. As to duty to require contractor to execute bond, see § 44-14. As

to separate specifications for building contract, see § 160-280.

Erection and Maintenance of Courthouse.—It is the duty of the county commissioners to provide a sufficient courthouse and keep it in repair. They are cognate duties, and failure as to them is "neglect of duty." State v. Leeper, 146 N. C. 655, 61 S. E. 585 (1908).

Same—Mandamus Does Not Lie to Provide. — A mandamus will not lie against county commissioners to compel them to provide a sufficient courthouse. State v. Leeper, 146 N. C. 655, 61 S. E. 585 (1908).

Same — Remedy by Indictment. — For such neglect of duty the remedy is by indictment. And the indictment need not allege corrupt intent. State v. Leeper, 146 N. C. 655, 61 S. E. 585 (1908).

Discretion of Commissioners. — The board of commissioners has the discretionary power to issue and sell or discount the notes of the county to provide the means to pay for a courthouse, and such discretion will not be interfered with by the courts. Vaughn v. Board, 117 N. C. 432, 23 S. E. 354 (1895).

Cannot Mortgage Courthouse Site. — The county commissioners have no authority to convey the land on which they propose to erect the courthouse by a mortgage deed to secure the bonds issued to build it, and thereby render the site and buildings liable to sale for the satisfaction of the debt. Vaughn v. Commissioners, 118 N. C. 636, 24 S. E. 425 (1896).

Commissioners Not Individually Liable for Failure to Take Contractor's Bond. — The county commissioners are not individually liable for the failure of their ministerial duty to take the bond required from a contractor for the erection of a county home, such not having been expressly declared; and the remedy is by indictment. Fore v. Feimster, 171 N. C. 551, 88 S. E. 877 (1916).

Prior Special Act Does Not Bar Action Hereunder. — The fact that a special act authorizing the county commissioners of Forsyth County to issue bonds for a new courthouse, required the assent of a majority of the qualified voters to such issue, is no bar to the power of the commissioners conferred by a later act to erect necessary public buildings and to raise by taxation the money therefor. Vaughn v. Board, 117 N. C. 432, 23 S. E. 354 (1895).

Necessary Expenses. — The cost of the erection of a courthouse is a necessary expense of a county, and the exercise of the discretionary power of the board of commissioners in providing to meet it is not reviewable by the courts. Vaughn v. Board, 117 N. C. 432, 23 S. E. 354 (1895).

Repairing a courthouse is also a necessary county expense. Burgin v. Smith, 151 N. C. 561, 66 S. E. 607 (1909).

A jail is a necessary county expense, and, in the absence of statutory restrictions, the county commissioners may pledge the credit of the county in order to obtain one. Haskett v. Tyrrell County, 152 N. C. 714, 68 S. E. 202 (1910).

Special Tax to Pay Interest, etc.—While the county commissioners are clothed with the necessary power to erect and repair county buildings, they have no power to levy a special tax out of which to pay the interest and create a sinking fund, unless they have the special authority of the General Assembly, but construing this section with §§ 153-1 and 153-77, it would seem such authority is implied. Harrell v. Board of Com'rs, 206 N. C. 225, 173 S. E. 614 (1934).

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, 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. Such new site 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.)

Editor's Note. — The 1925 amendment struck out the words "the regular December meeting" in the first sentence and in lieu thereof inserted the words "any regular monthly meeting." And in the second sentence "monthly meeting" was substituted for "annual meeting."

When Partial Payments May Be Recovered.—Where the county commissioners and the owner of lands have agreed for the purchase of a new site for its courthouse, conditioned upon the future compliance with the statute relating thereto, which had failed of compliance, and the

county had made certain payments upon the purchase price, the county may recover the partial payments it had so made, with the legal interest thereon, subject to deductions as against the interest for its reasonable rental value, while in possession and control of the county authorities. Hearne v. Stanly County, 188 N. C. 45, 123 S. E. 641 (1924).

Attempt to Validate Former Action.— Pending the continuance of an injunction against the county commissioners purchasing a new site for the county courthouse, the action of the commissioners in attempting to validate their former action is unlawful, and can have no effect; nor can proceedings under a later statute to submit the question of the change to the voters have a different effect, when this proposition has been rejected by them. Hearne v. Stanly County, 188 N. C. 45, 123 S. E. 641 (1924).

County Officers

10. To Require Officers to Report. — To require from any county officer, or other person employed and paid by the county, a report under oath at any time on any matters connected with his duties. (1868, c. 20, s. 8; Code, s. 707; Rev., s. 1318; C. S., s. 1297.)

Cited in Roberts v. McDevitt, 231 N. C. 458, 57 S. E. (2d) 655 (1950).

11. To Approve Bonds of County Officers and Induct into Office.—To qualify and induct into office at the meeting of the board, on the first Monday in the month next succeeding their election or appointment, the following named county officers, to-wit: clerk of the superior court, sheriff, coroner, treasurer, register of deeds, surveyor, and constable; and to take and approve the official bonds of such officers, which the board shall cause to be registered in the office of the register of deeds. The original bonds shall be deposited with the clerk of the superior court, except the bond of the said clerk, which shall be deposited with the register of deeds, for safekeeping.

If the board declares the official bonds of any of said county officers to be insufficient, or declines to receive the same, the officer may appeal to the superior court judge riding the district in which the county is, or to the resident judge of said district, as he may elect, who shall hear said appeal in chambers, at any place in said district he designates, within ten days after notice by him of the same, and if, upon the hearing of the appeal, the judge is of the opinion that the bond is sufficient, he shall issue an order to the board of commissioners to induct the officer into office, or that he shall be retained in office, as the case may be. If, upon the hearing of the appeal, the judge is of the opinion that the bond is insufficient, he shall give the appellant ten days in which to file before him an additional bond, and if the appellant within the ten days files before the judge a good and sufficient bond, in the opinion of the judge, he shall so declare and issue his order to said board directing and requiring them to induct the appellant into office, or retain him, as the case may be. If, in the opinion of the judge, both the original and the additional bonds are insufficient, he shall declare the said office vacant and notify the commissioners, who shall appoint to fill the vacancy and notify the clerk of the superior court. In case of a vacancy in the office of the clerk of the superior court said vacancy shall be filled by the resident judge. The judgment of the superior court judge shall be final. The appeal and the finding and judgment of the superior court judge shall be recorded on the minutes of the board of commissioners. (1868, c. 20, s. 8; 1874-5, c. 237, s. 3; Code, s. 707; 1895, c. 135, s. 3; Rev., s. 1318; C. S., s. 1297.)

Cross References. — As to commissioners' duty as to sheriff's bond, see §§ 162-9 through 162-11. As to approval, acknowledgment and custody of bonds, and commissioners' liability, see § 109-11 et seq. As to duty of commissioners when officer fails to renew bond, see § 109-6. As to criminal liability for approving insufficient bond, see § 153-14. As to suit on official bond when officer fails to account to treasurer, see § 155-18.

This section is mandatory on the county commissioners. Moffitt v. Davis, 205 N. C. 565, 172 S. E. 317 (1934).

But there is no penalty or crime prescribed by this section, for failure of county commissioners to perform the ministerial duty therein imposed upon them of qualifying and inducting into office certain county officers and approving the bonds of such officers, but § 109-13 makes them liable as sureties on bonds which they approve with knowledge, actual or implied, that they are insufficient in penal sum or security. Moffitt v. Davis, 205 N. C. 565, 172 S. E. 317 (1934).

Liable to All Injured Persons.—Public officials entrusted in so important a matter as this mandatory statute, are held individually liable to anyone injured by their willful failure or neglect of duty. To hold otherwise would put a premium on inefficiency and neglect. Moffitt v. Davis, 205 N. C. 565, 172 S. E. 317 (1934).

Commissioners to Induct into Office and Take Bonds.—The commissioners are authorized and required to qualify and induct into office the several officers of the county, and to take and approve their official bonds, which they shall cause to be registered. Fidelity, etc., Co. v. Fleming, 132 N. C. 332, 43 S. E. 899 (1903).

It is the duty of the county commissioners to qualify and induct into office those whose election the county canvassers have ascertained and announced. Swain v. McRea, 80 N. C. 111 (1879).

De Facto Board May Act.—If from any cause the newly elected commissioners of a county fail to qualify at the time prescribed by law, the old board, as de facto officers, have the power to perform the functions prescribed by this section. Buckman v. Commissioners, 80 N. C. 121 (1879); State v. Jones, 80 N. C. 127 (1879).

Right to Examine Officers-Elect.—When a person presents himself before a board of commissioners, with a certificate of election, and asks to be inducted into office, the said commissioners have a right to inquire into his constitutional capacity to exercise the functions of the office to which he may have been chosen. Hannon v. Grizzard, 99 N. C. 161, 6 S. E. 93 (1888).

The general jurisdiction to admit to county offices those who may have been chosen upon the electoral vote as counted and ascertained by the board of county canvassers is given to the board of county commissioners, and this is exercised in an examination into the regularity of the returns of the result of the election, (which, when regular, are conclusive of the election,) the sufficiency of the official bond tendered, and the administration of the required oath. Hannon v. Grizzard, 99 N. C. 161, 6 S. E. 93 (1888).

In the case of a sheriff who has previously held office the board must go further, and see that he is not delinquent in the payment of the taxes of a previous term. Hannon v. Grizzard, 99 N. C. 161, 6 S. E. 93 (1888).

And Exclude Unfit.—If the commissioners refuse to induct one who is plainly ineligible, the courts will not compel them to do so, and thus put one into an office which he cannot constitutionally hold. State v. Somers, 96 N. C. 467, 2 S. E. 161 (1887).

An elected person not competent to hold office under the Constitution has no right to be admitted to office, nor cause of action for being excluded. Hannon v. Grizzard, 99 N. C. 161, 6 S. E. 93 (1888).

Commissioners Not Liable for Error of Judgment. — If, in the exercise of their functions, the commissioners commit an error of judgment in refusing to induct an elected candidate into office they are not responsible, their functions being quasi judicial. Hannon v. Grizzard, 99 N. C. 161, 6 S. E. 93 (1888).

Sheriff's Bonds.—To entitle a sheriff to be inducted into office, it is essential that the required bonds be executed by him and approved by the county commissioners according to the requirements of the statute. Dixon v. Commissioners, 80 N. C. 118 (1879). See §§ 162-8, 162-9, and notes.

While it is irregular to induct a sheriff into office without his giving the required bonds, yet the defect is cured when they are subsequently tendered and accepted. Worley v. Smith, 81 N. C. 304 (1879).

Cannot Release Surety. — A board of county commissioners cannot release a surety from an official bond. Fidelity, etc., Co. v. Fleming, 132 N. C. 332, 43 S. E. 899 (1903). See also, Dockery v. French, 69 N. C. 308 (1873); State v. Clarke, 73 N. C. 255 (1875).

May Declare Office Vacant and Fill It. —The board has the power—all the business before them being disposed of—to adjourn, and, if any officer shall fail to perfect his bond according to law before such adjournment, to declare such office vacant, and to fill it, when the power to fill such vacancy is vested by law in the board. Kilburn v. Latham, 81 N. C. 312 (1879); State v. Patterson, 97 N. C. 360, 2 S. E. 262 (1887).

Term of office of sheriff begins on the first Monday in December after the election. Freeman v. Cook, 217 N. C. 63, 6 S. E. (2d) 894 (1940).

12. To Fill Vacancies.—To fill by appointment a vacancy in the offices of sheriff, constable, coroner, register of deeds, county treasurer, or county surveyor. (1868, c. 4; Code, s. 720; Rev., s. 1321; C. S., s. 1297.)

Cross References.—See also, as to sheriff, § 162-5; as to constable, § 151-6; as to coroner and power of clerk of court to appoint, see § 152-1; as to register of deeds, see § 161-5; as to treasurer, see § 155-2. As to power of commissioners of certain counties to abolish office of treasurer and appoint banks, see § 155-3.

Commissioners Vote and Elect Hereunder. — The commissioners of a county board vote and elect when they exercise the power to fill a vacant office. State v. Bullock, 80 N. C. 132 (1879).

Application of Section.—Upon the failure of public officers, when the statutes so require, to renew annually their official bonds, and of sheriffs to, in addition, produce receipts for the public moneys collected by them, it shall be the duty of the board of county commissioners to declare the office vacant. Bray v. Barnard, 109 N. C. 44, 13 S. E. 729 (1891).

Sheriff's Office.—It is the right and the duty of the commissioners to declare the office of sheriff vacant, and appoint some one for the unexpired term, whenever the incumbent thereof is found to be, on a reelection, in arrears in his settlement of the public taxes; or when he takes no notice whatever of a summons by the commissioners to appear before them on a day certain and justify or renew his official bond. People v. Green, 75 N. C. 329 (1876).

A vacancy in the office of sheriff cannot be declared until the alleged delinquent shall have had due notice and a day in court, if within reach of its process. State v. Pipkin, 77 N. C. 408 (1877).

Office of Treasurer. — When a vacancy exists in the office of treasurer, it can only be filled by the county commissioners. State v. Hampton, 101 N. C. 629, 8 S. E. 219 (1888).

Office of Tax Manager.—Where there is a vacancy in the office of tax manager for a county, the board of county commissioners has the power by analogy to §§ 153-9(12) and 153-9(10) to appoint some qualified person to perform the duties of the office for the remainder of the term. Roberts v. McDevitt, 231 N. C. 458, 57 S. E. (2d) 655 (1950).

Penalty for Failure to Perform Duty.—Only one penalty is given against each commissioner composing the board, if he fails to perform his duty under this section. Bray v. Barnard, 109 N. C. 44, 13 S. E. 729 (1891).

County Property

13. To Make Orders Respecting County Property.—To make such orders respecting the corporate property of the county as may be deemed expedient. (1868, c. 20, s. 8; Code, s. 707; Rev., s. 1318; C. S., s. 1297.)

Extent of Commissioner's Duty Hereunder. — This section imposes upon the commissioners the duty of employing such agents, and raising and appropriating such moneys, as may be sufficient to keep the public buildings in repair, and maintain them in such a condition as to prevent any noxious and offensive exhalations to proceed from any of them put to the private use of the people. Threadgill v. Commissioners, 99 N. C. 352, 6 S. E. 189 (1888), stating the measure and extent of official responsibility for a privy.

14. To Sell or Lease Real Property.—To sell or lease any real property of the county and to make deeds or leases for the same to any purchaser or lessee. (1868, c. 20, s. 8; Code, s. 707; Rev., s. 1318; C. S., s. 1297.)

Cross Reference. — As to execution of warranty deeds and relief from personal liability thereon, see § 160-61.1.

Commissioners Do Not Have Power to Mortgage.—Power to sell is not a power to mortgage, and hence express authority conferred upon county commissioners, to sell real estate of the county, at a fair price, does not imply power to incumber the same by a mortgage. Threadgill v. Commissioners, 99 N. C. 352, 6 S. E. 189 (1888).

Right of Taxpayer to Bring Action to Restrain. — Though a proposed mortgage of county land by the county commissioners to secure bonds issued to build a courthouse would be void, and equity would enjoin foreclosure thereunder, a taxpayer may bring an action to restrain the execution of the mortgage without waiting until foreclosure is threatened. Vaughn v. Commissioners, 118 N. C. 636, 24 S. E. 425 (1896).

County Purchases

15. To Purchase for Public Buildings, and at Execution Sale.—To purchase real property necessary for any public county building, and for the support of the poor, and to determine the site thereof, where it has not already been located; and to purchase land at any execution sale, when it is deemed expedient to do so, to secure a debt due the county. The deed shall be made to the county, and the board may, in its discretion, sell any lands so purchased. (1868, c. 20, s. 8; 1879, c. 144, s. 1; Code, s. 707; Rev., s. 1318; C. S., s. 1297.)

County Bound by Conditions Subsequent.—Where a county, owning a site upon which to build its courthouse, is authorized by statute to buy, sell, and exchange real estate surrounding it upon such terms and conditions as it may deem just and proper, and for the best interest of the county, and in pursuance of this authority, has acquired a conveyance of lands from adjoining owners upon condition that they shall be used as a public square and kept open for that purpose, etc., it is held, that whether the conditions be called conditions subsequent or otherwise, they were within the purview of the authority conferred upon the county; and, coming within the intent of the parties as expressed in the conveyance, and forming a material part of the consideration for the lands, they are valid and binding upon the county. Guilford County v. Porter, 167 N. C. 366, 83 S. E. 564 (1914).

16. To Purchase or Lease a County Farm, and Work Convicts Thereon.—To lease or purchase a county farm, and where proper provisions are made for securing and caring for convicts, such of them as are subject to road duty may be worked on said farm, and, in the discretion of the board, such farms may be made experimental farms. The court, in its discretion, may sentence convicted prisoners either to said farm or to the roads. Where a farm is purchased or leased in those counties having a road system, the board may work the convicts on such farms. (1915, c. 140; C. S., s. 1297.)

Highways and Bridges

17. Roads and Bridges.—To supervise the maintenance of neighborhood public roads or roads not under the supervision and control of the State Highway and Public Works Commission and bridges thereon: Provided, however, county funds may not be expended for such maintenance except to the extent such expenditures are otherwise authorized by law; to exercise such authority with regard to ferries and toll bridges on public roads not under the supervision of the State Highway and Public Works Commission as is granted in § 136-88 of the chapter on Roads and Highways or by other statutes; to provide draws on all bridges not on roads under supervision of the State Highway and Public Works Commission where the same may be necessary for the convenient passage of vessels; to allow and contract for the building of toll bridges on all roads not under the supervision of the State Highway and Public Works Commission and to take bond from the builders thereof. It is the intent of this subsection that the powers and authorities herein granted shall be exercised in accordance with the provisions of the chapter on Roads and Highways.

The boards of commissioners of the several counties likewise have power to close any street or road or portion thereof (except those lying within the limits of municipalities) that is now or may hereafter be opened or dedicated, either by recording of a subdivision plat or otherwise. Any individuals owning property adjoining said street or road who do not join in the request for the closing of said street or road shall be notified by registered letter of the time and place of the meeting of the commissioners at which the closing of said street or road is to be acted upon. Notice of said meeting shall likewise be published once a week for four weeks in some newspaper published in the county, or if no newspaper is so published, by posting a notice for thirty days at the courthouse door and three other public places in the county. No further notice shall be necessary: Provided, that if the street or road has previously been accepted by the

State Highway and Public Works Commission for maintenance, the State Highway and Public Works Commission shall be likewise notified of said meeting by registered letter. If it appears to the satisfaction of the commissioners that the closing of said road is not contrary to the public interest and that no individual owning property in the vicinity of said street or road or in the subdivision in which is located said street or road will thereby be deprived of reasonable means of ingress and egress to his property, the board of commissioners may order the closing of said street or road; provided, that any person aggrieved may appeal within thirty days from the order of the commissioners to the superior court of the county, where the same shall be heard de novo. Upon such an appeal, the superior court shall have full jurisdiction to try said matter upon the issues arising and to order said street or road closed upon proper findings of fact by the jury. A certified copy of said order of the commissioners (or of the judgment of the superior court in the event of an appeal) shall be filed in the office of the register of deeds of said county. Upon the closing of a street or road in accordance with the provisions hereof, all right, title and interest in such portion of such street or road shall be conclusively presumed to be vested in those persons, firms or corporations owning lots or parcels of land adjacent to such portion of such street or road, and the title of each of such persons, firms or corporations shall, for the width of the abutting land owned by such persons, firms or corporations, extend to the center of such street or road.

The board of aldermen or other governing body of any municipality shall have the same power and authority with respect to roads, streets or other public ways which are inside the corporate limits of such municipality as given to the county commissioners by the second paragraph of this subsection with respect to roads, streets or public ways outside the corporate limits of a municipality.

Copies of the registered letters giving the notice required by the second paragraph of this subsection, and the return receipts or other good and sufficient evidence of giving the required notice, shall be recorded in the register of deeds office, together with the resolution of such county or municipal governing body (or with the judgment of the superior court, in cases where an appeal was taken). (1949, c. 1208, ss. 1-3.)

Editor's Note. — The 1949 amendment added the last three paragraphs of this subsection.

The cases treated here were decided under former statutes which authorized counties to lay out, repair, etc., public roads, bridges and ferries and should be considered in that light.

Roads Are a Necessary Expense.—The well ordering and maintenance of the public roads of a county are "necessary expenses" within the meaning of our Constitution and statutes. Bunch v. Commissioners, 159 N. C. 335, 74 S. E. 1048 (1912).

A county is authorized to contract an indebtedness for the maintenance of its public roads, and such indebtedness being for a necessity, under art. VII, § 7, of our Constitution, it is not required that a special act be passed authorizing it under the provisions of our Constitution, art. II, § 14. Pritchard v. Commissioners, 159 N. C. 636, 75 S. E. 849 (1912).

Board of Commissioners May Be Deprived of Power over Roads.—The powers given to county commissioners over public highways, Const., art. VII, § 2, may be taken away from them and conferred by statute upon other political agencies of the State, and such agencies may be deprived of the discretionary powers conferred by this section. Day v. Commissioners, 191 N. C. 780, 133 S. E. 164 (1926).

When Superior Court Not to Grant Injunction. — It is not competent for a superior court to grant an injunction against an order by the county commissioners within the sphere of their general duties, laying out a public road. McArthur v. McEachin, 64 N. C. 454 (1870).

Discretionary Powers of Board over Roads.—The laying out and maintenance of the public roads or highways of a county are matters left largely within the discretion of the county commissioners, and, in the absence of express legislation to the contrary, they are not to be controlled by a vote of the localities affected, either informal or otherwise; and where it is shown that they have officially dealt with a question largely submitted to their judgment, their action may not be controlled or interfered with by the courts, unless it is established that there has been a gross

or manifest abuse of their discretion, or it is made clearly to appear that they have not acted for the public interest, but in promotion of personal or private ends. Edwards v. Commissioners, 170 N. C. 448, 87 S. E. 346 (1915).

The order in which work upon the public highways is to be performed is within the sound discretion of the county commissioners, and a finding by the court that they have exercised this discretion honestly and in a manner which they conceived to be for the best interests of the people of the county, excludes any interference by the courts. Glenn v. Commissioners, 139 N. C. 412, 52 S. E. 58 (1905).

Where the county commissioners have acted within the powers conferred on them by ch. 122, Public Laws of 1913, establishing a scheme for the laying out, establishing and maintenance, etc., of roads for the different townships therein, and have accordingly issued bonds and expended most of the money on the township roads, they may not be enjoined at the suit of the taxpayer from laying out and constructing an additional road, with the use of the money remaining on hand from the sale of the bonds, upon allegation, as to this particular road, that it was not for the public convenience, or that the majority of the voters were not in favor of it. Edwards v. Commissioners, 170 N. C. 448, 87 S. E. 346 (1915).

Failure to Give Notice of Proposed Route to Landowners.—The county commissioners will not be enjoined from building a public road in a township of a county from the proceeds of the sale of bonds, at the suit of taxpayers, because notice had not been given to landowners along the route proposed. Edwards v. Commissioners, 170 N. C. 448, 87 S. E. 346 (1915).

Cannot Bind County by Contract to Perpetually Maintain Road.—A board of commissioners has no power to enter into a contract with a citizen to perpetually maintain and keep in repair a public road or bridge giving to such citizen a cause of action against the county whenever, in the exercise of its discretion in the interest of the public, the same or another board shall deem it proper to discontinue such road or bridge. Glenn v. Commissioners, 139 N. C. 412, 52 S. E. 58 (1905).

Control of Bridges and Ferries. — While county commissioners control public bridges and ferries, it is by virtue of their duties, imposed by law, in regard to public roads. Greenleaf v. Board, 123 N. C. 30, 31 S. E. 264 (1898).

Public bridges and ferries are incidental to public roads and are not to be established or assumed, or maintained, as county charges, unless as parts thereof, in actual existence or in contemplation. Greenleaf v. Board, 123 N. C. 30, 31 S. E. 264 (1898).

Same—Rests Solely with Commissioners. —The county commissioners alone have the power to determine upon the necessity for the construction or repair of bridges and to contract for the same, and such power can not be delegated. McPhail v. Board, 119 N. C. 330, 25 S. E. 958 (1896).

When Injunction Will Be Refused. — A citizen is not entitled to an injunction restraining a board of commissioners from proceeding to erect a bridge across a river at a certain point, though there is no public highway leading to such point, where the court finds that the board has in contemplation the opening of a public road to such point, and that arrangements have been made for that purpose. Glenn v. Commissioners, 139 N. C. 412, 52 S. E. 58, (1905).

When Bridge Not Part of Highway. — It is ultra vires for county commissioners to accept a bridge to be maintained at the county's cost, where it appears it is not a part of a public road, in existence or in contemplation of being made—and they may be enjoined from doing so. Greenleaf v. Board, 123 N. C. 30, 31 S. E. 264 (1898).

Where a citizen, at his own expense, constructed a bridge and opened up the public roads over his lands leading to the bridge on both sides of the river, and the board of commissioners accepted said bridge as a public bridge and have kept it in repair ever since, the fact that the commissioners paid him only a part of the cost of its construction did not change its character as a part of the public highway, subject to the control of the commissioners, as all other bridges in the county. Glenn v. Commissioners, 139 N. C. 412, 52 S. E. 58 (1905).

Liability of Commissioners in Placing Drawbridge.—When county commissioner commits an honest error in placing, or refusing to place, a drawbridge, he is not liable. Staton v. Wimberly, 122 N. C. 107, 29 S. E. 63 (1898).

18. To Appoint Commissioners to Open Rivers and Creeks.—To appoint a commissioner to open and clear the rivers and creeks, in the manner prescribed by law within the county, or where such river or creek forms a county line or a part thereof. (1868, c. 20, s. 8; Code, s. 707; Rev., s. 1318; C. S., s. 1297.)

19. To Grant Right to Bridge Navigable Streams.—To grant, subject to the approval and permission of the War Department, to any person, firm or corporation owning or occupying lands on both sides of any navigable stream or creek lying wholly within the limits of the county, the right to construct and maintain a bridge across the said navigable water between the lands owned or occupied by them upon such terms and conditions and for such time as the said board shall deem advisable and proper. Before any order allowing the construction of the same shall be made, it shall be made to appear to the board that four weeks notice of the application for such right has been given by posting a notice at the courthouse door and four other public places in the county, and also (if there be a newspaper published in the county) by publishing once a week for four consecutive weeks in some newspaper in the county. Any party aggrieved may appeal from the order of the commissioners to the superior court of the county in term time. (Pub. Loc. 1911, c. 227; C. S., s. 1297.)

Inspection and Licenses

20. To License Peddlers.—To license peddlers and retailers of spirituous and other liquors as prescribed by law. No license shall be good for more than one year, nor granted to two or more persons to peddle as partners in trade. (1868, c. 20, s. 8; Code, s. 707; Rev., s. 1318; C. S., s. 1297.)

License to Retail Spirituous and Other Liquors.—As to license to sell beverages at retail under the Beverage Control Act of 1939, see §§ 18-76 and 18-77. And see generally chapter 18 of the General Statutes relating to intoxicating liquors. For cases decided prior to the enactment of the statutes comprising said chapter, see Muller & Co. v. Commissioners, 89 N. C. 171 (1883); State v. Voight, 90 N. C. 741 (1884); Jones v. Commissioners, 106 N. C. 436, 11 S. E. 514 (1890); Board v. Smith, 110 N. C. 417, 14 S. E. 972 (1892).

21. To License Auctioneers.—To license for the term of one year any number of persons to exercise the trade and business of auctioneers in each county, and to take their bonds as prescribed by law. (1868, c. 20, s. 8; Code, s. 707; Rev., s. 1318; C. S., s. 1297.)

Cross Reference.—See § 85-5.

22. To Establish Public Landings and Places of Inspection; Inspectors.—To establish such public landings and places of inspection as the board may think proper; and to appoint such inspectors in any town or city as may be authorized by law. (1868, c. 20, s. 8; Code, s. 707; Rev., s. 1318; C. S., s. 1297.)

Cross Reference.—As to manner of laying out public landings, see § 77-11.

Does Not Bestow Power of Eminent Domain. — This section does not bestow upon the commissioners the power to condemn land under eminent domain; but they are confined to lands already dedicated to a public use sufficient to embrace or include the purpose proposed by them, or they must acquire a site by agreement or purchase. Commissioners v. Bonner, 153 N. C. 66, 68 S. E. 970 (1910).

Poor and Hospitals

23. To Provide for the Maintenance of the Poor.—To provide by tax for the maintenance, comfort and well-ordering of the poor; to employ, biennially, some competent person as overseer of the poor; to institute proceedings by the warrant of the chairman against any person coming into the county who is likely to become chargeable thereto, and cause the removal of such poor person to the county where he was last legally settled; and to recover by action in the superior court from the said county all the charges and expenses incurred for the maintenance or removal of such poor person. (1868, c. 20, s. 8; Code, s. 707; Rev., s. 1318; C. S., s. 1297.)

Cross Reference. — As to county poor generally, see § 153-152 et seq.

Conflict with § 153-9, subsection 6.—Conceding that this subsection and § 153-152

constitute special approval of the General Assembly for an unlimited levy for a special purpose, they are general acts and conflict with the provisions of § 153-9, subsection 6. Atlantic Coast Line R. Co. v. Cumberland County, 223 N. C. 750, 28 S. E. (2d) 238 (1943).

Each County Charged with Support of Its Poor.—It is the manifest purpose of the law to charge each county with the support of its own poor. State v. Elam, 61 N. C. 460 (1868); Commissioners v. Commissioners, 101 N. C. 520, 8 S. E. 176 (1918).

May Place Paupers in Poorhouse. — Where the county commissioners have provided a poorhouse, they have the right to require that all persons who are cared for at their expense shall be placed in the house which they have provided for the purpose. Copple v. Commissioners, 138 N. C. 127, 50 S. E. 574 (1905).

Residence or Settlement Governs.—The liability of a county for the support of a pauper does not depend upon the law of domicile or citizenship but upon that of residence or settlement, as prescribed in § 153-159. Commissioners v. Commissioners, 101 N. C. 520, 8 S. E. 176 (1888).

No Recovery for Officiously Providing for Pauper.—Although a person may be a proper subject of county charge, anyone who officiously provides for such person cannot recover of the county the amount of his outlay. Copple v. Commissioners, 138 N. C. 127, 50 S. E. 574 (1905).

Under the statute imposing the general duty on county commissioners to provide for the poor, in order to make a binding pecuniary obligation on the county, there must be an express contract to that effect, or the service must be done at the express request of the proper county officer or agent. Copple v. Commissioners, 138 N. C. 127, 50 S. E. 574 (1905).

Cited in Palmer v. Haywood County, 212 N. C. 284, 193 S. E. 668, 113 A. L. R. 1195 (1937).

24. To Establish Public Hospitals and Tuberculosis Dispensaries.—To establish public hospitals, establish and maintain homes for indigent orphan children, for the county in cases of necessity, and to establish and maintain wholly or in part one or more tuberculosis dispensaries or sanatoria, and to make rules, regulations and bylaws for preventing the spread of contagious and infectious diseases, and for taking care of those afflicted thereby, the same not being inconsistent with the laws of the State; and to raise by taxation the necessary moneys to defray the charges and expenses so incurred. (1868, c. 20, s. 8; Code, s. 707; Rev., s. 1318; C. S., s. 1297; 1923, c. 81.)

Cross Reference. — As to establishment and maintenance of tuberculosis sanatoria, see §§ 131-29 through 131-33.

Editor's Note. — The 1923 amendment inserted the words "establish and maintain homes for indigent orphan children."

Summary of Powers Granted.—In reference to the powers conferred by law upon boards of county commissioners, by the subsection, they can establish public hospitals for their several counties in cases of necessity, and make rules, regulations and bylaws for preventing the spread of contagious and infectious diseases and for taking care of those afflicted thereby—the same not being inconsistent with the laws of the state. Prichard v. Board, 126 N. C. 908, 36 S. E. 353 (1900).

Cannot Burn Infected Residence. — By no reasonable construction of this subsection can it be held that the board of county commissioners can burn a residence-house to prevent the spread of contagious and infectious diseases. A proper disinfection would be the extent of their powers in respect to property thus tainted or infected. Prichard v. Board, 126 N. C. 908, 36 S. E. 353 (1900).

Liability of Commissioners. — County commissioners are not liable for failure to establish hospitals under this section. Bell v. Commissioners, 127 N. C. 85, 37 S. E. 136 (1900).

Obligation to Quarantine.—The obligation on municipal corporations to quarantine and care for persons afflicted with certain contagious and infectious diseases is created entirely by statute. Board v. Henderson, 163 N. C. 114, 79 S. E. 112 (1913).

Cited in Palmer v. Haywood County, 212 N. C. 284, 193 S. E. 668, 113 A. L. R. 1195 (1937).

Prisons and Prisoners

25. To Provide for a House of Correction.—To make provision for the erection in each county of a house of correction, where vagrants and persons guilty of misdemeanors shall be restrained and usefully employed; to regulate the employment of labor therein; to appoint a superintendent thereof, and such as-

sistants as are deemed necessary, and to fix their compensation. (1868, c. 20, s. 8; Code, s. 707; Rev., s. 1318; C. S., s. 1297.)

26. To Provide for Employment of Prisoners.—To provide for the employment on public works in the county of all persons condemned to imprisonment with hard labor, under § 148-32 and not sent to the penitentiary. All prisoners sentenced to jail for any term less than thirty days may, as a part of such sentence, by the court in which such prisoners are tried and convicted, be sentenced to work at hard labor on the public streets of any city or town, the county farm, or any other public works of the county wherein such prisoners are tried and convicted. (1868, c. 20, s. 8; Code, s. 707; Rev., s. 1318; C. S., s. 1297; 1931, c. 302.)

Cross Reference. — As to authority of counties and towns to hire out certain prisoners, see § 153-191.

Townships

27. To Divide County into Townships.—To divide each county into convenient districts, called townships, and to determine the boundaries and prescribe the names of said townships. A map and survey of said townships shall be filed in the office of the clerk of the board of commissioners, and also in the office of the Secretary of State. (1868, c. 20, s. 8; Code, s. 707; Rev., s. 1318; C. S., s. 1297.)

Cross Reference.—See subsection 28 of this section and note thereto.

28. To Erect, Divide and Alter Townships.—To erect, divide, change the names of, or alter townships in the manner following: In any county, any three freeholders of each township to be affected may, after the notice presently to be mentioned, apply by petition to the board of Commissioners to erect a new township, or divide an existing township, or change the name of or alter the boundaries thereof. Notice of the application shall be posted in one or more public places in each of such townships and published in a newspaper printed in the county, if there is one, for at least four weeks preceding the meeting at which the application is made to the board. No township shall have or exercise any corporate powers whatsoever, unless authorized by an act of the General Assembly, to be exercised under the supervision of the board of commissioners. (1868, c. 20, s. 8; 1876-7, c. 141, ss. 3, 5; Code, s. 707; Rev., s. 1318; C. S., s. 1297.)

Legislative Power to Subdivide and Bestow Corporate Functions. — It is within the power of the legislature to subdivide the territory of the State and invest the inhabitants of such subdivisions with corporate functions. It is not essential that such subdivisions of territory shall be created directly by legislative enactment. Certain agencies may be required by statute to establish them. McCormack v. Commissioners, 90 N. C. 441 (1884).

Townships are within the power and control of the General Assembly, just as are counties, cities, towns and other municipal corporations. It may confer upon them, or any single one of them, corporate powers, with the view to accomplish any lawful purpose. Such powers may be conferred for a single purpose as well as many. Brown v. Commissioners, 100 N. C. 92, 5 S. E. 178 (1885); Jones v. Commissioners, 107 N. C. 248, 12 S. E. 69 (1890).

Former Corporate Powers and Trustees of Townships. — As to former corporate powers of townships and former boards of township trustees, see Mitchell v. Board, 71 N. C. 400 (1874); Wallace v. Board, 84 N. C. 164 (1881); Jones, etc., Co. v. Commissioners, 85 N. C. 278 (1881); Brown v. Commissioners, 100 N. C. 92, 5 S. E. 178 (1885); Jones v. Commissioners, 107 N. C. 248, 12 S. E. 69 (1890). As to liability of trustees for torts, see Price v. Board, 172 N. C. 84, 89 S. E. 1066 (1916).

County Officers May Be Charged with Township Duties.—The townships are constituent parts of the county organization, and the county officers may well be charged with duties and authority in respect to debts they may be allowed by statute to contract. Jones v. Commissioners, 107 N. C. 248, 12 S. E. 69 (1890).

County Bonds Not to Be Issued upon Note of One Township.—While the build-

ing of public roads has been held a necessary expense, the application of the principle may not be extended to instances where a statute requires the county to issue its bonds for road purposes to obtain aid for a township or local taxing district therein, upon the approval of the voters of the particular district alone, and without benefit to the others. Commissioners v. Lacy, 174 N. C. 141, 93 S. E. 482 (1917).

Commissioners' Power to Issue Township Bonds. — The county commissioners are not authorized to issue bonds on the credit of a township for the construction of a railroad. Graves v. Board, 135 N. C. 49, 47 S. E. 134 (1904).

Cited in Atlantic Coast Line R. Co. v. Beaufort County, 224 N. C. 115, 29 S. E. (2d) 201 (1944).

29. To Apportion Funds between Altered Townships.—When a township has been altered, erected, or divided, to apportion, in its discretion, the public funds of such township between the new township divisions or subdivisions, and the warrant of the board upon the treasurer for the apportionment shall constitute a valid voucher for the payment thereof. (Ex. Sess. 1913, c. 44; C. S., s. 1297.)

Miscellaneous

30. To Authorize Chairman to Issue Subpoenas.—To authorize the chairman to issue subpoenas to compel the attendance before the board of persons, and the production of books and papers relating to the affairs of the county, for the purpose of examination on any matter within the jurisdiction of the board. The subpoena shall be served by the sheriff or any constable to whom it is delivered; and upon return of personal service thereof, whoever neglects to comply with the subpoena or refuses to answer any proper question shall be guilty of contempt and punishable therefor by the board. A witness is bound in such cases to answer all the questions which he would be bound to answer in like case in a court of justice; but his testimony given before the board shall not be used against the witness on the trial of any criminal prosecution other than for perjury committed on the examination. The chairman of the board of county commissioners for each county is authorized in his official capacity to administer oaths in any matter coming before either of such boards. Any member of such board while temporarily acting as such chairman has and may exercise like authority. (1868, c. 20, s. 8; Code, s. 707; Rev., s. 1318; C. S., s. 1297.)

31. To Audit Accounts.—To audit accounts against the county, and direct the raising of the moneys necessary to defray them. (1868, c. 20, s. 8; Code, s. 707; Rev., s. 1318; C. S., s. 1297.)

Cross Reference.—See § 153-65 and note.

The board of commissioners must audit and pass upon the validity of claims. If they refuse to audit or act upon a claim, mandamus will lie to compel them to do so. If after the hearing they refuse to allow or issue a warrant for its payment, an action will lie against the commissioners to establish the debt and for such other relief as the party may be entitled to. Martin v. Clark, 135 N. C. 178, 47 S. E. 397 (1904); Reed v. Farmer, 211 N. C. 249, 189 S. E. 882 (1937).

At a Regular Meeting.—A claim against a county must be audited and approved at a regular meeting of the board of commissioners. First Nat. Bank v. Warlick, 125 N. C. 593, 34 S. E. 687 (1899).

Account Must Be Itemized and Verified.—No account shall be audited by a board of county commissioners unless it is itemized and verified. Turner v. McKee, 137 N. C. 251, 49 S. E. 330 (1904).

Court Cannot Interfere with Discretionary Power of Commissioners.—The courts cannot interfere with the exercise of the discretion of the board of county commissioners in ordering an investigation by public accountants of the books of the various departments of the county government. Wilson v. Holding, 170 N. C. 352, 86 S. E. 1043 (1915).

Decision Not Subject to Review.—The board of county commissioners is not such a judicial tribunal, that its decision in passing upon claims against the county can be reviewed on appeal. The proper remedy to test the validity of a rejected claim is by civil action. Jones v. Commissioners, 88 N. C. 56 (1883).

32. To Appoint Proxies.—To appoint proxies to represent in any annual or

other meetings the shares or other interest held by any county in a railroad company, or other corporation, under the charter of such corporation, or under any special acts of the General Assembly, authorizing county subscriptions in such cases. (1868, c. 20, s. 8; Code, s. 707; Rev., s. 1318; C. S., s. 1297.)

33. To Procure Weights and Measures.—To procure for each county sealed weights and measures, according to the standard prescribed by Congress; and to elect a standard keeper, who shall qualify before the board and give bond approved by the board, as prescribed by law. (R. C., c. 117, s. 4; 1868, c. 20, s. 26; Code, s. 707; Rev., s. 1318; C. S., s. 1297.)

34. To Adopt a County Seal.—To adopt a seal for the county, a description and impression of which shall be filed in the office of superior court clerk and of the Secretary of State. (1868, c. 20, s. 8; Code, s. 707; Rev., s. 1318; C. S., s. 1297.)

35. To Promote Farmers' Co-Operative Demonstration Work.—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. (1911, c. 1; C. S., s. 1297.)

Cross Reference. — As to authority of county commissioners to co-operate in cotton grading program, see § 106-427.

36. To Appropriate for the National Guard.—To appropriate such sums of money to the various organizations of the National Guard, and at such times, as the board may deem proper. (1915, c. 259; C. S., s. 1297.)

Cross References.—See § 127-101. As to power of county to support family of members of militia, see § 127-86.

37. To Make Appropriations for Libraries.—Together with the county board of education of any county in which there is a public city or town library, in their discretion, to co-operate with the trustees of said library in extending the service of such library to the rural communities of the county, and to appropriate out of the funds under their control an amount sufficient to pay the expense of such library extension service. (1917, c. 149; C. S., s. 1297.)

Cross Reference. — As to establishment of library and levy of taxes therefor, see § 160-65.

38. Homes for Indigent and Delinquent Children.—To provide for the establishment and maintenance, with the approval of the State Board of Charities and Public Welfare, of such home or homes for indigent and delinquent children in said county, as to them may seem proper or necessary, or to co-operate with the board of county commissioners or other governing authority in any other county or counties in the establishment and maintenance, at some mutually agreeable point, of a district home for such purposes, said district to be established by agreement and said home to be established and maintained upon such terms as may be agreed upon by the boards of county commissioners of the several counties concerned. (1927, c. 248.)

Local Modification. — Anson: 1939, c. 343.

Editor's Note.—The first provision for a home for indigent children was inserted by the 1923 amendment to subsection 24 of this section. However, that provision merely refers to indigent and delinquent orphan children. This subsection, containing a more detailed and broader provision for the establishment and maintenance of a home for indigent and delinquent children, was added by the 1927 amendment.

39. County Fire Departments.—Any county shall have power to provide for the organization, equipment, maintenance and government of fire companies and fire department; and, in its discretion, may provide for a paid fire department,

fix the compensation of the officers and employees thereof, and make rules and regulations for its government. The board of commissioners of the county may make the necessary appropriations for the expenses thereof and levy annually taxes for the payment of same as a special purpose, in addition to any allowed by the Constitution. (1945, c. 244.)

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 not less than three nor more than five persons on said 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. (1945, c. 1040, s. 1.)

Local Modification. — Buncombe, Chatham, Stanly, Vance, Wake: 1945, c. 1040, ss. 2½, 3.

41. Expenditure of Surplus Funds for Library Purposes.—The board of county commissioners of any county is hereby authorized, in its discretion, to expend any surplus funds, which may be available, for the erection and/or purchase of library buildings and equipment. (1949, c. 1222.)

§ 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, giving 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.)

Cross References.—As to provision for photostatic copies of plats, etc., see § 47-32. As to prior provision for photographic or photostatic registration, see § 47-22. For subsequent provisions as to photographic reproduction of records, see §§ 153-15.1 through 153-15.6. As to photographic copies of business and public records as evidence, see §§ 8-45.1 through 8-45.4.

§ 153-9.2. Original instruments and documents constitute temporary recording; return to owners.—The register of deeds of any county, where such photographic recording is contracted for, shall use the original instruments or documents as a temporary recording, and shall keep them in a temporary binder arranged in the chronological order of filing for record, assigning to each page a

number which shall be arranged in a consecutive order, and shall, at all times, keep a temporary index thereto. When the photographic copies are substituted for the originals, the photographic copies shall be set up in a permanent binder and in the same order as to time and page numbers, as in the temporary binder, and permanently indexed. When the photographic copies are substituted for the originals, then the originals shall be returned to the persons entitled thereto, if known, but in no event, where return is to be made, no such return shall be delayed more than sixty days from the date of filing. The same procedure shall apply to the temporary and permanent records of the several classes of instruments or documents, such as wills, judgments, reports, and corporate charters, in the office of the clerk of the superior court of any such county, from and after such contract for photographic recording becomes effective. (1945, c. 286, s. 2.)

§ **153-9.3. Preservation and use of film or sensitized paper.** — Wherever the contract for such photographic recording is for the initial photographing on film or sensitized paper, the board of county commissioners shall provide a fire resisting vault space or lease lockbox space in which to permanently keep such film or sensitized paper, and to permit use of such film or sensitized paper from which to make copies, under such regulations as such board may prescribe. (1945, c. 286, s. 3; 1945, c. 944.)

§ **153-9.4. Removal of originals for photographing.**—The official of any such county so contracting for photographic recording, who is in charge of any instruments or documents left with such official for recording, may permit temporary removal of the originals from the courthouse or other building for photographing, provided such originals are returned to such building within ten hours; provided further, that the board of county commissioners may when it appears necessary to complete the work, extend the time in which said photographing must be completed and returned to the courthouse of the county. (1945, c. 286, s. 4; 1945, c. 944.)

§ **153-9.5. Removal of public records for photographing.**—The official of any county, who is in charge of any public records, may permit temporary removal of such records from the county courthouse or other building for the purpose of photographing a portion or all of such records, provided such records are returned within ten hours and provided, that the board of county commissioners may when it appears necessary to complete work, extend the time in which said photographing must be completed and returned to the courthouse of the county. (1945, c. 286, s. 5; 1945, c. 944.)

§ **153-9.6. Photographic recording of public records; preservation and use of film or sensitized paper.**—The board of county commissioners of any county in North Carolina may also contract for the photographing on film or sensitized paper of any county records, and, if such contract is made, such board of county commissioners shall provide a fire resisting vault space or lease lockbox space in which to keep such film or sensitized paper, and shall have authority to permit copies to be made from such film or sensitized paper, under such regulations as such board may prescribe. (1945, c. 286, s. 6; 1945, c. 944.)

§ **153-9.7. Sections 153-9.1 to 153-9.7 confer additional powers.** —Sections 153-9.1 to 153-9.7 shall not be construed as a limitation on the powers of the several boards of county commissioners; but shall be construed as an enabling act only and in addition to existing powers of such boards. (1945, c. 286, s. 7.)

§ **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, Catawba, Duplin, Edgecombe, Forsyth, Greene, Harnett, Haywood, Iredell, Lee, Madison, Mitchell, Nash, Orange, Pamlico, Pasquotank, Polk, Randolph, Robeson, Scotland, Tyrrell, Washington, Wilkes, Wilson, Yadkin. (1919, c. 164; C. S., s. 1298; 1949, c. 111; 1951, cc. 1071, 1174.)

Local Modification. — Harnett: 1951, c. 809.

Editor's Note. — The 1949 amendment inserted "Harnett" in the list of counties, and the 1951 amendments inserted "Edgecombe" and "Wilkes" therein.

§ 153-11. To settle disputed county lines.—When there is any dispute concerning the dividing line between counties, the board of commissioners of each county interested in the adjustment of said line, a majority of the board consenting thereto, may appoint one or more commissioners, on the part of each county, to settle and fix the line in dispute; and their report, when ratified by a majority of the commissioners in each county, is conclusive of the location of the true line, and shall be recorded in the register's office of each county, and in the office of the Secretary of State. If the board of commissioners of any county refuses upon request of the other county or counties to appoint one or more commissioners pursuant to this section to settle and fix the line or lines in dispute, then, and in such event, the county or counties making such request may file a verified petition before the resident judge of the district in which the said county or counties lie, or the judge holding the courts thereof for the time being, and in the event that said counties shall lie in more than one judicial district, to the resident judge or the judge holding the courts of either district, setting forth briefly the line or lines which are in dispute; the refusal of the other county or counties to settle and fix the line in dispute, pursuant to this section; whereupon, such judge before whom such petition is filed shall issue a notice to the other county or counties, returnable before him within not less than ten nor more than twenty days, and if it appear to such judge upon hearing said notice, and he shall find as a fact that there is bona fide dispute as to the true location of the boundary line or lines referred to in the petition and that the county or counties have refused to settle and fix the line in dispute as provided in this section, such judge shall thereupon appoint three (3) persons, one person from each of the counties and some disinterested person from some adjoining county, who shall go upon the ground, hear such evidence and testimony as shall be offered and make report to the said judge as to the true location of the boundary line or lines in dispute. The judge shall thereupon ratify the report and a copy thereof shall be recorded in the office of the register of deeds of each of the counties and shall be indexed and cross indexed and shall also be recorded in the office of the Secretary of State and the location so fixed shall be conclusive. If it shall appear to the judge that the services of a surveyor are necessary he shall appoint such surveyor and fix his compensation. The cost thereof shall be defrayed by the two counties in proportion to the number of taxable polls in each. (1836, c. 3; R. C., c. 27; Code, s. 721; Rev., s. 1322; C. S., s. 1299; 1925, c. 251.)

Editor's Note.—Prior to the 1925 amendment this section consisted of the first sentence.

§ 153-11.1. Contributions by counties and cities to governmental agencies in war effort.—The several boards of county commissioners in the State of North Carolina and the governing bodies of the municipalities of the

State are authorized, in their discretion, to appropriate from the general fund of their respective counties and municipalities such funds as they may determine to be a necessary and proper contribution to local organizations of official State and federal governmental agencies engaged in the war effort, including defense councils and Office of Price Administration: Provided, that in no event shall any contribution be made in the way of compensation to members of the boards of such agencies, or any panels thereof. The provisions of this section shall not apply to Avery, Buncombe, Clay, Cumberland, Currituck, Davie, Forsyth, Graham, Hyde, Macon, Surry, Swain and Transylvania counties. (1943, c. 711.)

§ 153-12. How commissioners sworn and paid.—Such commissioners, before entering on the duties assigned them, shall be sworn before a justice of the peace; and they, with all others employed, shall be allowed reasonable pay for their labors. (Code, s. 722; Rev., s. 1323; C. S., s. 1300.)

§ 153-13. Compensation of county commissioners. — Except where otherwise provided by law, each county commissioner shall receive for his services and expenses in attending the meetings of the board not exceeding two dollars per day, as a majority of the board may fix upon, and they may be allowed mileage to and from their respective places of meeting, not to exceed five cents per mile. (Code, s. 709; Rev., s. 2785; 1907, c. 500; C. S., s. 3918.)

Local Modification.—Alamance: 1951, c. 112; Cabarrus: 1945, c. 165; Cumberland: 1945, c. 315; Gaston: 1951, c. 115; Richmond: 1947, c. 235, s. 2; Scotland: 1947, c. 641.

Mileage Allowed. — Members of the board of county commissioners are only entitled to mileage for the distance by the usual route traveled to attend such meeting of the board as the statute has prescribed, and returning from such meeting; they cannot charge mileage for each day, although they may actually return to their homes at the close of each day of a meeting. State v. Norris, 111 N. C. 652, 16 S. E. 2 (1892).

When Mileage Allowance Erroneous but Innocent.—Where a board of county commissioners audited in favor of its members for mileage, to which they were not entitled and it was found as a fact that they did so under advice and without any corrupt or fraudulent motive, it was held that the members of the board were not indictable either under § 14-234 or at common law. State v. Norris, 111 N. C. 652, 16 S. E. 2 (1892).

Compensation Not Allowed Commissioner for Inspecting Bridge. — A member of the board of county commissioners who, under the direction of the board, inspected and reported upon a bridge cannot recover in his action for the services rendered or mileage; he is forbidden to do so as a county commissioner under this section, and is indictable if claiming compensation for extra services under either an express or implied contract with the board, under § 14-234. Davidson v. Guilford County, 152 N. C. 436, 67 S. E. 918 (1910).

§ 153-14. Approving insufficient bond misdemeanor.—If any county commissioner shall approve any official bond which he knows or believes to be insufficient in the penal sum, or in the security thereof, he shall be guilty of a misdemeanor, and on conviction shall be removed from office and forever disqualified from holding or enjoying any office of honor, trust or profit under the State. (1869-70, c. 169, s. 70; Code, s. 1880; Rev., s. 3573; C. S., s. 1301.)

Cross References. — As to duty of approving bonds, see § 153-9, subsection 11. As to civil liability of commissioner for approving bond he knows to be insufficient, see § 109-13. As to liability for failure to comply in good faith with provisions for bonding sheriffs, see § 162-11.

§ 153-15. Neglect of duty misdemeanor.—If any county commissioner shall neglect to perform any duty required of him by law as a member of the board, he shall be guilty of a misdemeanor, and shall also be liable to a penalty of two hundred dollars for each offense, to be paid to any person who shall sue for the same. (Code, s. 711; Rev., s. 3590; C. S., s. 1302.)

Cross References.—As to failure to make reports and discharge other duties, see § 14-231. As to willfully failing to discharge duties, see § 14-230.

In General. — See Harrell v. Board of Com'rs, 206 N. C. 225, 173 S. E. 614 (1934) wherein this section is construed with §§ 153-1, 153-9 and 153-49 to show implied legislative authority to levy taxes to keep county buildings in repair.

Remedy by Mandamus. — When the county commissioners have failed in the performance of their duties, as to permit and require an interference of the court by civil process, the remedy is by mandamus. Board v. Commissioners, 150 N. C. 116, 52 S. E. 724 (1909).

Approving Account Not Itemized and Verified.—A complaint before a justice alleging the nonpayment of the penalty accrued under this section for neglect of duty as a member of the board of commissioners for his failure to require an itemized account, fully verified by the oath of the claimant, before he audited and approved such account, as required by § 153-64, states a cause of action. Turner v. McKee, 137 N. C. 251, 49 S. E. 330 (1904).

Error in Honest Exercise of Judgment. —A county commissioner is liable to the penalty imposed when he acts corruptly or grossly, intentionally and willfully neglects or refuses to perform his duty; but where he commits an error in the honest exercise of his judgment he is not liable to the penalty. Staton v. Wimberly, 122 N. C. 107, 29 S. E. 63 (1898).

Failure to Declare Sheriff's Office Vacant. — A member of a board of county commissioners is liable for the penalty prescribed by this section, for failure of the board to declare the office of sheriff vacant and fill the same, when such sheriff has not complied with the requirements of the statutes, in respect to the renewal of his official bonds and accounting for public moneys received by him. Bray v. Creekmore, 109 N. C. 49, 13 S. E. 723 (1891).

Failure to Levy School Taxes.—A failure on the part of the commissioners to levy taxes to finance the public schools for the minimum term of six months is an indictable offense under this section. Board v. Commissioners, 150 N. C. 116, 63 S. E. 724 (1909).

Taking Excessive Mileage.—The essence of the offense created by the section is the "neglect to perform any duty required by law," and an indictment drawn under it cannot be sustained by proof of the act of willfully taking a greater sum as mileage than was due. State v. Norris, 111 N. C. 652, 16 S. E. 2 (1892).

When Defendant to Seek Bill of Particulars.—If a defendant desires further particulars, under an indictment for neglect of duty as a public officer, he should ask for a bill of particulars. State v. Leeper, 146 N. C. 655, 61 S. E. 585 (1908).

Cited in Moffitt v. Davis, 205 N. C. 565, 172 S. E. 317 (1934).

ARTICLE 2A.

Photographic Reproduction of Records.

§ 153-15.1. Authority to acquire equipment, etc., for making reproductions; filing, docketing or recording of reproductions.—Any board of county commissioners in the State of North Carolina is hereby authorized and empowered to purchase, lease, rent, contract for or otherwise acquire the necessary equipment, supplies and service for the photocopying, photographing or microphotographing of instruments, documents, or papers filed for docketing or for record, or which have heretofore been filed, docketed, or recorded in the offices of the clerk of the superior court, the register of deeds, and all other county offices, and the filing, docketing, and recording of such public or official records of photocopying, photographing or microphotographing shall in all respects constitute sufficient filing, docketing and recording of same in the same manner as if such reproductions were originals. (1951, c. 19, s. 1.)

Cross References. — See §§ 153-9.1 through 153-9.7. As to photographic copies of business and public records as evidence, see §§ 8-45.1 through 8-45.4.

§ 153-15.2. Authority to cause reproductions to be made; reproducing material and device; preservation and use of film.—An official, person in charge of, or head of any office, or department, or board of any county government may, with the consent of the board of county commissioners, cause any or all papers, documents, books and records kept by such official person in charge of, or head of any department or board to be photocopied, photographed or microphotographed or reproduced on film or otherwise by the use only of such equip-

ment or system as provided by the board of commissioners. Such film or reproducing material shall be of durable material, and the device used to reproduce such records on such film or material shall be such as to accurately reproduce and perpetuate the original records in all details. The board of Commissioners shall provide for the preservation of such films in conveniently accessible files or vaults, of fire resisting material, in order that the films may be permanently kept, and shall permit the use of such films from which to make copies, as provided by law under such regulations as the board may prescribe. (1951, c. 19, s. 2.)

§ 153-15.3. Reproductions to be deemed originals; facsimiles, etc. —Such photocopy, photograph, microphotograph or photographic film or reproduction of the original papers, documents, books and records kept and on file shall be deemed to be an original file or record for all purposes, and shall be admissible in evidence in all courts or administrative agencies of this State. A facsimile, photocopy, certified or exemplified copy thereof shall, for all purposes recited herein, be deemed to be a photocopy, certified or exemplified copy of the original papers or records as fully as if said papers had been typed or written in longhand in the records. (1951, c. 19, s. 3.)

§ 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. In the event that the Department of Archives and History, or its successors, shall fail to notify said official person of any county government within 90 days after receiving an explanation of the kind and type of papers, documents, books and public records intended to be destroyed or otherwise disposed of, in respect to its action thereon, then such failure to notify said official person, shall in all respects be deemed a consent by the State Department of Archives and History for the destruction or other disposal of said papers, documents, books and public records. (1951, c. 19, s. 4.)

Editor's Note.—It would seem that the legislature probably intended for a comma to appear after "official" in line one of this section in order to conform to the first line of the text of § 153-15.2.

§ 153-15.5. Authority to execute contracts; joint use of facilities by two or more counties.—In order to provide for the services herein set forth, the board of commissioners of any county may execute such contracts or agreements as in its opinion will promote efficiency and economy in the county government, in the carrying out of the purposes of this article. In order to make the benefits of this article available to the counties at the least possible expense, the

several boards of county commissioners are hereby specifically authorized to contract between or among themselves for the use of any facilities or equipment provided by any board of county commissioners for use in the reproduction of records pursuant to this article, for the purpose of enabling two or more counties to utilize the same facilities and equipment; and in order to facilitate the joint use of such facilities and equipment any board of county commissioners is hereby authorized to remove from any of the several county offices any of the records intended to be reproduced pursuant to this article, and whenever necessary for such reproductions, to transport, under the direct control of an agent appointed by the board of county commissioners, any such records into any other county where such facilities and equipment are available; provided, that no such record so removed shall be kept out of the office of its regular legal custodian for a longer period than 24 hours at any one time, except under a formal resolution of the board of county commissioners of the county extending such period. (1951, c. 19, s. 5.)

§ **153-15.6. Duplicate sets or copies.** — In order to further safeguard public records reproduced pursuant to this article, any board of county commissioners is hereby authorized to cause to be prepared duplicate sets or copies of any such reproductions and to contract for the storage and custody of such duplicate sets or copies in some safe and fireproof depository in a building separate and apart from that in which the original records or reproductions are kept. (1951, c. 19, s. 6.)

Article 3.

Forms of County Government.

§ **153-16. Forms of government.**—Two forms of county government are recognized, to be designated as the County Commissioners Form and the Manager Form. (1927, c. 91, s. 1.)

I. County Commissioners Form.

§ **153-17. County Commissioners Form defined.**—The County Commissioners Form of county government shall be that form in which the government is administered by a board of county commissioners, without a county manager. (1927, c. 91, s. 2.)

§ **153-18. Modifications of regular forms.**—There may be modifications of the County Commissioners Form, adopted as hereinafter provided, as follows:

(1) The number of commissioners may be increased from three to five or decreased from five to three.

(2) All commissioners may be elected for two years.

(3) At the first election, if the board is to have three members, one may be elected for two years, one for four years, and one for six years, but if the board is to have five members, two may be elected for two years, two for four years, and one for six years. (1927, c. 91, s. 3.)

§ **153-19. How change may be made.** — Upon a petition filed with the board of county commissioners, signed by voters not less in number than ten per cent of the whole number of voters who voted in the last election at which votes were cast for Governor, asking for the adoption of either of the modifications above set forth, the board of commissioners shall order an election, but may order such election without petition, which election shall be held under the general law governing elections for members of the General Assembly in the county, presenting the question of making the change asked for in the petition. If a majority of the votes cast at such election shall be in favor of the change designated, it shall go into effect at the expiration of the term of office of the then existing board of commissioners. At the general election for county commissioners next pre-

ceding the date when the said change goes into effect, the members of the board shall be elected in accordance with the plan adopted. If the members of the board are to be elected for different terms, the term for which each member is to serve shall be indicated in the election; and the members so elected shall hold office for the terms designated, and at the expiration of the term of each member, his successor shall be elected for a term of six years. (1927, c. 91, s. 4.)

II. Manager Form.

§ 153-20. Manager appointed or designated. — The board of county commissioners may appoint a county manager who shall be the administrative head of the county government, and shall be responsible for the administration of all the departments of the county government which the board of county commissioners has the authority to control. He shall be appointed with regard to merit only, and he need not be a resident of the county at the time of his appointment. In lieu of the appointment of a county manager, the board may impose and confer upon the chairman of the board of county commissioners the duties and powers of a manager, as hereinafter set forth, and under such circumstances said chairman shall be considered a whole-time chairman. Or the board may impose and confer such powers and duties upon any other officer or agent of the county who may be sufficiently qualified to perform such duties, and the compensation paid to such officer or agent may be revised or adjusted in order that it may be adequate compensation for all the duties of his office. The term "manager" herein used shall apply to such chairman, officer, or agent in the performance of such duties. (1927, c. 91, s. 5.)

Adjustment of Compensation. — Under this section adjustment of compensation is limited to such officer or agent as may be designated in lieu of naming a whole-time chairman or county manager, and the term "manager" is used to indicate powers and duties which may be conferred upon a whole-time chairman, other officer or agent who may be acting in lieu of a county manager. Stansbury v. Guilford County, 226 N. C. 41, 36 S. E. (2d) 719 (1946).

Board of commissioners was without legal authority to increase the salary of plaintiff in excess of that expressly fixed by statute, although resolution recited that chairman was performing duties of whole-time chairman in lieu of county manager. Stansbury v. Guilford County, 226 N. C. 41, 36 S. E. (2d) 719 (1946).

§ 153-21. Duties of the manager. — It shall be the duty of the county manager (1) to be the administrative head of the county government for the board of commissioners; (2) to see that all the orders, resolutions, and regulations of the board of commissioners are faithfully executed; (3) to attend all the meetings of the board, and recommend such measures for adoption as he may deem expedient; (4) to make reports to the board from time to time upon the affairs of the county, and to keep the board fully advised as to the financial condition of the county and its future financial needs; (5) to appoint, with the approval of the county commissioners, such subordinate officers, agents, and employees for the general administration of county affairs as the board may consider necessary, except such officers as are required to be elected by popular vote, or whose appointment is otherwise provided by law; (6) to perform such other duties as may be required of him by the board of commissioners. (1927, c. 91, s. 6.)

§ 153-22. Removal of officers and agents.—The county manager may remove such officers, agents, and employees as he may appoint, and upon any appointment or removal he shall report the same to the next meeting of the board of commissioners. (1927, c. 91, s. 7.)

§ 153-23. Compensation. — The county manager shall hold his office at the will of the board of commissioners, and shall be entitled to such reasonable compensation for his services as the board of commissioners may determine. The

board shall also fix the compensation of such subordinate officers, agents and employees as may be appointed by the county manager. (1927, c. 91, s. 8.)

Quoted in Stansbury v. Guilford County, 226 N. C. 41, 36 S. E. (2d) 719 (1946).

§ **153-24. Manager Plan adopted by popular vote.**—If the board of county commissioners does not exercise its discretion to appoint or designate a county manager, as above provided, a petition may be filed with the board, signed by voters not less in number than ten per cent of the whole number of voters who voted in the last election at which votes were cast for Governor, asking for the adoption of the Manager Form of county government. Upon the filing of such petition, the board of commissioners shall order an election to be held under the general laws governing elections for members of the General Assembly in the county, presenting the question of the adoption of the Manager Form of county government. If a majority of the votes cast at such election shall be in favor of such Manager Form, the board of commissioners shall proceed to appoint a county manager as provided in this article. (1927, c. 91, s. 9.)

§ **153-25. How often elections may be held.**—Not more than one election may be held within any period of twenty-three months upon the question of modifying the County Commissioners Plan, nor more than one election in any period of twenty-three months upon the question of adopting the Manager Plan, whether or not any such election resulted in favor of the question submitted or against the same. (1927, c. 91, s. 10.)

III. Certain Powers and Duties of the Board.

§ **153-26. Powers and duties of the board.**—The powers and duties of the board of commissioners under the Manager Form, or the County Commissioners Form, whether modified as herein provided or not modified, shall be the same as now provided by general or local laws for the administration of the county government, and such additional powers and duties as may be given in this article. But whatever form is adopted, or shall be in use in a county, it shall be the duty of the board of county commissioners to provide, so far as possible, consistent with law, for unifying fiscal management of county affairs, for preserving the sources of revenue, for safeguarding the collection of all revenue, for guarding adequately all expenditures, for securing proper accounting of all funds, and for preserving the physical property of the county. (1927, c. 91, s. 11.)

§ **153-27. Purchasing agent.**—It shall be the duty of the board of commissioners to provide for the purchasing of supplies for the different departments of the county government in such manner as may prevent waste and duplication in purchasing, and may obtain the advantage of purchasing in larger quantities. To that end the board may designate some competent person, either a member of the board or some other officer or agent of the county, as purchasing agent, whose duty it shall be to superintend the purchasing of all material and supplies for the county, and the board may prescribe the duties of such purchasing agent. (1927, c. 91, s. 12.)

Cited in Board of Education v. Walter, 198 N. C. 325, 151 S. E. 718 (1930).

§ **153-28. Care of county property.**—It shall be the duty of the board of commissioners to provide for the regular inspection of and care for all the property of the county, including buildings, machinery, and other property used for county purposes, and the board may designate some member of the board or some other officer or agent of the county, whose duties it shall be to make a regular inspection of the county property and report the condition of the same at such times as the board may direct. (1927, c. 91, s. 13.)

IV. Director of Local Government.

§ 153-29. **Director of Local Government to visit local units and offer aid in establishing competent administration.**—The terms, 'unit,' or 'local unit,' as the same are used in this article, shall be construed to mean 'unit' as defined in § 159-2. It shall be the duty of the Director of Local Government to visit the local units of government in the State, and to advise and assist the governing bodies and other officers of said units in providing a competent, economical and efficient administration; to suggest approved methods for levying and collecting taxes and other revenues; to suggest such changes in the organization of local units of government as will best promote the public interests, and to render assistance in carrying the same into effect. (1931, c. 100, s. 1.)

Cross Reference.—As to Local Government Act, see chapter 159.

§ 153-30. **Director to devise uniform accounting and recording systems; regular statements from units to Director.** — The Director of Local Government shall have the power to devise and prepare for use in the local units uniform accounting and recording systems, together with blanks, books, and necessary methods; uniform classifications of revenue and expenditures, and uniform budget blanks and forms; to revise or prescribe, in his discretion, the records of any department or office of the local unit in order to conform to orderly accounting procedure; to transfer all or any part of the financial records of any department or office of the unit, including school records, to the office of the county accountant, municipal accountant, or other similar officer, and to require said county accountant, municipal accountant, or other similar officer to furnish, at any time, monthly or annual statements to the office of the Director of Local Government in Raleigh or to any department, office, or board of the unit, showing financial conditions or budget position at any date, and financial operations covering any period on forms prescribed by said Director of Local Government. The Director shall have the power to require the use of such systems, books, forms, classifications and budgets as provided herein by officers or employees of local units, and to enforce the use of the same. Where the accounting system of any unit shall in part or in whole substantially meet the requirements of uniformity as prescribed by the Director of Local Government, the Director may, in his discretion, approve or modify such system as he may deem necessary. As soon as practicable after March 12, 1931, it shall be the duty of the Director of Local Government to proceed, as rapidly as possible, with the installation of uniform records and systems of accounting in each and every local unit of the State. (1931, c. 100, ss. 1, 3.)

§ 153-31. **Director to inspect and supervise the keeping of records; unlawful not to furnish Director with requested information.**—The Director of Local Government shall have the power to inspect or supervise the keeping of the records of any department or office of any local unit for the purpose of determining that such records are being properly kept and that public money is being properly accounted for, and it shall be unlawful for any officer or employee to fail or refuse to turn over such records or give access to same and give such other information which may be requested of him and relating to the records of his office to the Director or his representative upon request of said Director or representative. (1931, c. 100, s. 1.)

§ 153-32. **Violation of two preceding sections misdemeanor.** — Any officer or employee of any local unit who shall fail or refuse to observe the provisions of §§ 153-30 and 153-31 shall be guilty of a misdemeanor punishable by fine or imprisonment, or both, in the discretion of the court. (1931, c. 100, s. 1.)

V. Miscellaneous.

§ 153-33. **All counties affected by this article.**—The powers and priv-

ileges conferred by this article, and the duties imposed thereby, are conferred and imposed upon every county within the State, whether governed wholly by general laws or governed wholly or in part by local acts. (1927, c. 91, s. 21.)

ARTICLE 4.

State Association of County Commissioners.

§ **153-34. Membership of Association.**—The State Association of County Commissioners consists of the boards of county commissioners of the several counties, and any member of the board of any county may be a member of the Association, but it is not mandatory for any county to become a member. (1909, c. 870, ss. 1, 2; C. S., s. 1303.)

§ **153-35. Purposes of Association.**—The purpose of the Association is to promote and cultivate more intimate association and more friendly relations among the county commissioners of the State; to secure as far as possible a uniform valuation of property for taxation; to promote the cause of good roads; to propose laws for the best interests of county governments; to secure uniformity in the handling of county affairs; to propose laws for the protection of county finances, and preservation of resources and assets; and to promote the general welfare of the State. (1909, c. 870, s. 1; C. S., s. 1304.)

§ **153-36. Powers of Association.**—The Association has power to adopt bylaws, rules and regulations for the government of its members, for the collection of fees and dues, for the number and election of its officers and the duties thereof, for the safekeeping of its property, and the general management of its affairs, and has power to alter, modify or amend such bylaws, rules and regulations, from time to time, as it deems best. (1909, c. 870, s. 3; C. S., s. 1305.)

§ **153-37. Officers of Association.**—The officers shall be a president, a vice president at large and ten other vice presidents, or one from each congressional district, a secretary and treasurer, and an executive committee. The duties of the officers shall be prescribed by the bylaws, rules and regulations. (1909, c. 870, s. 4; C. S., s. 1306.)

§ **153-38. Dues and expenses of members.**—There shall be assessed against each county an annual membership fee of five dollars, which shall be paid by the county treasurer upon the order of the board of county commissioners, but the executive committee of the Association may increase the annual membership fee to a sum not to exceed twenty-five dollars in counties having a population of forty thousand or over according to the last census; twenty dollars in counties having a population between thirty thousand and forty thousand according to said census, fifteen dollars in counties having a population between twenty thousand and thirty thousand according to the said census, and ten dollars in counties having a population less than twenty thousand according to said census. The various boards of commissioners are authorized to pay out of the county treasury the expenses of its members attending the meetings of the Association. (1909, c. 870, ss. 5, 7; C. S., s. 1307; 1945, c. 327.)

Editor's Note.—Prior to the 1945 amendment the executive committee was only authorized to "increase the annual membership fee to a sum not to exceed ten dollars."

§ **153-39. Meetings of Association.**—The annual meeting of the Association shall be held on Wednesday after the second Monday in August of each year, and the place of meeting shall be designated by the executive committee. Upon ten days' notice, the president or a majority of the executive committee may call a called meeting, and the time and place shall be designated, together with a short statement of the object of the meeting. (1909, c. 870, s. 6; C. S., s. 1308.)

Article 5.

Clerk to Board of Commissioners.

§ 153-40. Register clerk ex officio to board; compensation.—The register of deeds is ex officio clerk of, and his compensation shall be fixed by, the board of commissioners. (Const., art. 7, s. 2; Code, s. 710; 1895, c. 135, s. 4; Rev., s. 1324; C. S., s. 1309.)

Cited in O'Neal v. Wake County, 196 N. C. 184, 145 S. E. 28 (1928).

§ 153-41. Duties of clerk.—It is the clerk's duty:

1. To record in a book to be provided for the purpose all the proceedings of the board.
2. To enter every resolution or decision concerning the payment of money.
3. To record the vote of each commissioner on any question submitted to the board, if required by any member present.
4. To preserve and file in alphabetical or other due order all accounts presented or acted on by the board, and to designate upon every account audited the amount allowed and the charges for which it was allowed.
5. To keep the books and papers of the board free for the examination of all persons.
6. To administer oaths to all persons presenting claims against the county, but he shall receive no fee therefor. (Code, s. 712; 1905, c. 530; Rev., s. 1325; C. S., s. 1310.)

Cross References.—See § 161-23. As to duty to report public funds to the county commissioners, see § 2-46. As to duty of clerk to record votes of commissioners on approval of bonds and liability for failure to do so, see § 109-12.

Correction of Record.—The record of a board of county commissioners may be corrected nunc pro tunc to speak the truth by the board itself. Norfolk, etc., R. Co. v. Reid, 187 N. C. 320, 121 S. E. 534 (1924).

Where the county commissioners have exercised their statutory authority to loan county funds to the State Highway Commission, anticipating the allotment of State funds for the building of highways within the county, and have lawfully contracted for that purpose, they may not, after the passage of a later act taking away this power, materially change the contract, but the county commissioners nunc pro tunc may correct the entries on their minutes theretofore duly passed and entered of record so as to make the entry speak the truth as to what had been regularly done, and to this end parol evidence is admissible, the time of the correction so made relating back to the time the entry should have been correctly made. Oliver v. Board of Commissioners, 194 N. C. 380, 139 S. E. 767 (1927).

§ 153-42. Clerk to publish annual statement.—The clerk shall annually, on or within five days next before the first Monday of December, make out and certify, and cause to be posted at the courthouse, and published in a newspaper printed in the county, if there is one, for at least four weeks, a statement for the preceding year, showing:

1. The amount, items and nature of all compensation audited by the board to the members thereof severally.
2. The number of days the board was in session, and the distance traveled by the members respectively in attending the same.
3. Whether any unverified accounts were audited, and if any, how much and for what. (Code, s. 713; Rev., s. 1326; C. S., s. 1311.)

Cross Reference.—As to failure to make reports and discharge other duties, see § 14-231.

Article 6.

Finance Committee.

§ 153-43. Election and duties of finance committee.—The board of

commissioners may elect by ballot three discreet, intelligent tax-paying citizens, to be known as the "finance committee," whose duty it is to inquire into, investigate and report by public advertisement, at the courthouse and one public place in each township of the county, or in a newspaper, at their option, if one is published in the county, a detailed and itemized account of the condition of the county finances, together with any other information appertaining to any funds, misappropriation of county funds, or any malfeasance in office by any county officers. (1838, c. 31, s. 1; R. C., c. 28, s. 17; 1871-2, c. 71, s. 1; Code, s. 758; 1897, c. 513; Rev., s. 1389; C. S., s. 1312.)

Constitutional Power to Create. — The legislature has constitutional power to provide a board of audit and finance for a particular county and to direct that payment of an expert accountant authorized thereunder be made by the county treasurer as a charge against the county's public funds, upon an order made by said board in a certain prescribed manner. Such a power is derived under article VII, § 2, of the State Constitution, providing that the county commissioners shall have control of the county's finances "as may be prescribed by law," taken in connection with § 14 thereof, giving full power to the General Assembly to modify, etc., the provisions of this article and to substitute others, etc. Southern Audit Co. v. McKensie, 147 N. C. 461, 61 S. E. 283 (1908).

Mistake as to Sum Due.—Money paid under protest should be refunded if it should be shown that there has been a mistake in the report of the finance committee and that the sum was not in fact due. Moore v. Commissioners, 87 N. C. 209 (1882).

When Mandamus Will Lie to Enforce Order.—Upon refusal of a county treasurer to pay from the public funds of a county an order made on him by a board of audit and finance for the payment of moneys authorized and prescribed by a legislative enactment, a mandamus will lie. Southern Audit Co. v. McKensie, 147 N. C. 461, 61 S. E. 283 (1908).

§ **153-44. Compensation of finance committee.**—The members of the finance committee shall each receive such compensation for the performance of his duties as the board of commissioners may allow, not exceeding three dollars per day; but they shall not be paid for more than ten days in any one year. (1871-2, c. 71, s. 5; 1873-4, c. 107; Code, s. 763; Rev., s. 2781; C. S., s. 3915.)

§ **153-45. Oath of members.**—The members of the finance committee before entering upon their duties shall, before the clerk of the superior court, subscribe to the following oath or affirmation: I, A. B., do solemnly swear (or affirm) that I will diligently inquire into all matters relating to the receipts and disbursements of county funds and a true report make, without partiality. So help me, God. (1871-2, c. 71, s. 4; Code, s. 762; Rev., s. 1390; C. S., s. 1313.)

§ **153-46. Powers of finance committee.** — The finance committee has power and authority to send for persons and papers, and to administer oaths; and any person failing to obey their summons, or to produce promptly any paper relating or supposed to relate to any matter appertaining to the duties of the finance committee, is guilty of a misdemeanor, and on conviction in the superior court, shall be fined and imprisoned at the discretion of the court. (1831, c. 31; R. C., c. 28, s. 17; 1871-2, c. 71, s. 2; 1883, c. 252; Code, s. 759; Rev., s. 1391; C. S., s. 1314.)

§ **153-47. Penalty on officer failing to settle.** — If any clerk, sheriff, constable, county treasurer, register of deeds, justice of the peace, or other officer or commissioner, who holds any county money, fails duly to account for the same, the finance committee shall give such person ten days previous notice, in writing, of the time and place at which they will attend to make a settlement; and every officer receiving notice and failing to make settlement as required by this chapter shall forfeit the sum of five hundred dollars, to be sued for in the name of the State and prosecuted for the use and at the expense of the county, unless the

court releases the officers from the forfeiture. (1831, c. 31, s. 3; R. C., c. 28, s. 19; Code, s. 760; Rev., s. 1392; C. S., s. 1315.)

Cross Reference.—As to duty of county commissioners to sue upon the official bond when officer fails to settle, see § 155-18.

§ **153-48. Annual report of finance committee.**—It is the duty of the finance committee to make and publish their reports as hereinbefore directed on or before the first Monday of December in each year. (1871-2, c. 71, s. 3; Code, s. 761; Rev., s. 1393; C. S., s. 1316.)

Cross Reference.—As to failure to publish report, see § 14-231.

ARTICLE 7.

Courthouse and Jail Buildings.

§ **153-49. Built and repaired by commissioners.**—There shall be kept and maintained in good and sufficient repair in every county a courthouse and common jail, at the expense of the county wherein the same are situated. The boards of commissioners of the several counties respectively shall lay and collect taxes, from year to year, as long as may be necessary, for the purpose of building, repairing and furnishing their several courthouses and jails, in such manner as they think proper; and from time to time shall order and establish such rules and regulations for the preservation of the courthouse, and for the government and management of the prisons, as may be conducive to the interests of the public and the security and comfort of the persons confined. (1741, c. 33, ss. 1, 2, P. R.; 1795, c. 433, s. 1, P. R.; 1816, c. 911, s. 1, P. R.; R. C., c. 30, s. 1; Code, s. 782; Rev., s. 1335; C. S., s. 1317.)

Constitutionality.—The power of limited taxation for the purpose of erecting and maintaining a county courthouse and its exercise is no invasion of the Bill of Rights. Lockhart v. Harrington, 8 N. C. 408 (1821).

Article XI, § 6, of the Constitution (1868) requires that the structure and superintendence of penal institutions of the State be such as to secure the health and comfort of the prisoners. Lewis v. Raleigh, 77 N. C. 229 (1877).

A Necessary Expense. — The building and repairing of a courthouse by the county is a part of its necessary expense. Burgin v. Smith, 151 N. C. 561, 66 S. E. 607 (1909); Jackson v. Commissioners, 171 N. C. 379, 88 S. E. 521 (1916).

When Legislature Imposes Limit on Expense.—When a special act of the legislature has imposed a limit on the expense of a county to be incurred in improving its courthouse, the commissioners cannot avoid the will of the legislature as therein declared by setting up a general power of contracting debts for necessary expenses, limited only by the constitutional limitation of taxation, and thus under an entire contract made beforehand expend a larger amount for the purpose than that prescribed by the special act. Burgin v. Smith, 151 N. C. 561, 66 S. E. 607 (1909).

Levy of Taxes to Pay Interest on Bonds.—See Harrell v. Board of Com'rs, 206 N. C. 225, 173 S. E. 614 (1934), wherein this section is treated with §§ 153-1, 153-9, 153-15 and 153-77 to show that taxpayers cannot enjoin the levy of taxes necessary to pay the principal and interest on bonds issued for repairs as designated in this section.

But prior to the enactment of § 153-77, it was held that while the county commissioners have the authority to repair the county's jail and courthouse and to erect new ones in its discretion, it is without authority to levy a special tax to provide for the payment of interest on the bonds issued for that purpose, or to create a sinking fund therefor, for this must be provided for by proper legislation, or paid out of the general revenues and income of the county. Jackson v. Commissioners, 171 N. C. 379, 88 S. E. 521 (1916).

Action of Commissioners Not Reviewable in Absence of Mala Fides.—It is within the sound discretion of the county commissioners to have the courthouse or jail of the county repaired or to erect new ones on the same sites as a necessary county expense, which will not be reviewed in the courts in the absence of mala fides; and should a bill of indictment be drawn by the solicitor, at the request of the judge holding the courts of the county, and a true bill be found by the grand jury thereon, it is open to the commissioners to set up any

available defense they may have. Jackson v. Commissioners, 171 N. C. 379, 88 S. E. 521 (1916).

Judge's Request to Solicitor to Draw Indictment Not Duress.—A request from the judge holding court in a county to the solicitor to draw an indictment against the county commissioners for failing in their duty to provide a proper courthouse and jail cannot alone be regarded as a coercion of the commissioners in regard to their discretionary powers, or as duress to invalidate bonds afterwards to be issued by them in pursuance of their resolutions to build a new courthouse and jail upon the sites of the old ones; and the bonds to be so issued will not be restrained either on that ground or the want of jurisdiction of the judge making the request. Jackson v. Commissioners, 171 N. C. 379, 88 S. E. 521 (1916).

Requirements for Prisoner's Comfort.—The least that is required is that persons confined in any public prison shall have a clean place, comfortable bedding, wholesome food and drink, and necessary attendance. Lewis v. Raleigh, 77 N. C. 229 (1877).

Where a sheriff has in an emergency requested a physician to render services to a prisoner in his custody who had been badly wounded resisting arrest, and there is evidence tending to show that under the circumstances he could not have obtained in time an order from the board of county commissioners that would assume responsibility on behalf of the county to pay them, the objection of the commissioners that under such circumstances the county would not pay for them, and the liability would only attach as to those prisoners delivered at the county jail, is untenable. Spicer v. Williamson, 191 N. C. 487, 132 S. E. 291 (1926).

Same—Failure to Provide. — An action cannot be maintained against a county for damages sustained by one while imprisoned in the county jail by reason of the failure of the commissioners to provide adequate means for his health and protection. Manuel v. Commissioners, 98 N. C. 9, 3 S. E. 829 (1887).

Extent of Commissioner's Liability. — "A county is not liable for a nuisance to a citizen in the erection of a jail in the immediate vicinity of his residence, nor for suffering it to become so filthy and disorderly as to be a nuisance to him and his family." The doctrine is that while these corporate agencies must provide the means and employ the men to perform such duties, they are not personally and by their own labor to perform such menial services; and the default to make them liable must be in neglecting to exercise their authority in the use of labor and money for that purpose, and so must it be charged to make a cause of action against them. Threadgill v. Commissioners, 99 N. C. 352, 6 S. E. 189 (1888), quoting Dillon on Municipal Corporations, § 963.

The duty to make proper rules and regulations imposes a discretionary duty on the board of commissioners exercisable only in its corporate capacity, and the commissioners are not liable as individuals unless they corruptly or with malice fail to make proper rules and regulations. Moye v. McLawhorn, 208 N. C. 812, 182 S. E. 493 (1935).

§ 153-49.1. Inspection of jails. — (a) The State Board of Public Welfare is hereby authorized and directed to consult regularly with an advisory committee of sheriffs and police officers regarding the personal safety, welfare, and care of the inmates incarcerated in county and municipal jails and city lock-ups, taking into account variations in the financial ability of cities and counties to maintain up-to-date facilities for prisoners. It shall be the duty of the State Board of Public Welfare through its officers or agents to inspect periodically and regularly each and every county or district jail and all municipal jails or lock-ups in order to safeguard the welfare of the prisoners kept therein and in connection with said inspections to consult with the governing bodies of the local units.

(b) In the event that such inspections of jails and lock-ups disclose inadequate care or mistreatment of prisoners, or disclose that prisoners are being confined therein under conditions in violation of chapter 153, such findings shall be reported in writing to the governing body of the county or municipality concerned, which governing body shall at its next meeting fully consider the report and consult with the person making such report and findings and take such action with reference to the report and findings as may be found proper and necessary.

(c) In the event such governing body fails to take action to correct the conditions reported, it shall be the duty of the State Board of Public Welfare to present such matters to the attention of the judge of the superior court presiding at the

next criminal court in the county in which such jail or lock-up is located to the end that such superior court judge may direct the grand jury of such county to inspect the jail or lock-up described in such report, and present its findings and recommendations to the court at said term.

(d) If conditions in said jail or lock-up continue not to be corrected within a reasonable time after such notice to the grand jury, then the judge of the superior court in his discretion may require immediate compliance with the report of the grand jury. For such purpose the court may convene at any time and place within the judicial circuit in chambers or otherwise. The proceeding shall be without jury and the hearings may be summarily or upon such notice as the court may prescribe.

(e) Pending a substantial compliance with the report and recommendations of the grand jury, the judge of the superior court shall have full power and authority under this section to refuse to allow prisoners to be placed in any jail or lock-up not deemed fit and may direct that any persons coming before him and being convicted of criminal offenses shall be confined only in a jail or lock-up that is deemed a proper place in which to confine prisoners. (1947, c. 915.)

Editor's Note. — For brief comment on section, see 25 N. C. Law Rev. 401.

§ 153-50. Formation of district jail by contiguous counties.—Any two or more counties contiguous to one another or which lie in a continuous group may enter into an agreement for the construction and maintenance of a district jail. Such agreement shall specify the amount of the construction and maintenance cost to be borne by each county and shall fix the terms upon which such jail may thereafter be used by the counties becoming parties to the agreement.

Such counties may also by agreement establish a jail already built, as a district jail, and provide for the improvement, enlargement, maintenance cost and use thereof.

When and if such district jail has been established, all the counties in such district may then sell or dispose of their separate jails upon such terms as the board of county commissioners may decide. (1933, c. 201.)

Editor's Note. — See 11 N. C. Law Rev. 214.

§ 153-51. Jail to have five apartments.—The common jails of the several counties shall be provided with at least five separate and suitable apartments: one for the confinement of white male criminals; one for white female criminals; one for the colored male criminals; one for colored female criminals; and one for other prisoners. (1795, c. 433, s. 4, P. R.; 1816, c. 911, P. R.; R. C., c. 30, s. 2; Code, s. 783; Rev., s. 1336; C. S., s. 1318.)

Cross References.—As to separate apartments for the Cherokee Indians of Robeson County, see § 71-2. As to segregation of county prisoners with tuberculosis, see §§ 130-226 through 130-230. As to confining prisoners to improper apartments, see § 14-261.

§ 153-52. To be heated.—It is the duty of the board of commissioners in every county to have the common jails so heated by furnaces, stoves, or otherwise, as to render them warm and comfortable. A failure to discharge the duty herein specified shall constitute a misdemeanor, punishable by fine or imprisonment, or both, in the discretion of the court. (1879, c. 25; Code, s. 784; Rev., s. 1337; C. S., s. 1319.)

§ 153-53. Bedding to be furnished.—The board of county commissioners, from time to time, as may be necessary, shall order the sheriff of the county to purchase, for the use of their jail, a certain number of good, warm blankets or other suitable bedclothing, which shall be securely preserved by the jailer, and furnished to the prisoners for their use and comfort, as the season or other circumstances may require; and the sheriff, at least once in every year, shall

report to the board of commissioners the condition and number of such blankets and bedclothing. (1822, c. 1136, P. R.; R. C., c. 87, s. 10; Code, s. 3465; Rev., s. 1338; C. S., s. 1320.)

§ 153-54. Prison bounds.—For the preservation of the health of persons committed to jail, the board of commissioners of each county shall mark out such a parcel of the land as they think fit, not exceeding six acres, adjoining the prison, for the rules thereof; and every prisoner not committed for treason or felony, giving bond with good security to the sheriff of the county to keep within the rules, shall have liberty to walk therein, out of the prison, for the preservation of his health; and on keeping continually within the said rules, shall be deemed to be in law a true prisoner. In order that every person may know the true bounds of said rules, they shall be recorded in the county records, and the marks thereof shall be renewed as occasion may require. (1741, c. 33, s. 3, P. R.; R. C., c. 87, s. 11; Code, s. 3466; Rev., s. 1339; C. S., s. 1321.)

Cross Reference.—See note to § 153-178.

Editor's Note. — The first provision for prison bounds in this State was enacted in 1741, and seems to have been based on a known usage and regulation respecting prisons in England. There, by "rules" of the several courts, debtors and misdemeanor prisoners had the liberty of walking in the prison yards, or within such other limits as the courts prescribed for their respective prisoners, at such hours and on such days as "the rules" designated. The "grounds" came in time to be called the "rules of the prison." In our Act of 1741 the court was authorized to mark off the prison bounds, or the "rules of the prison." See Ex parte Bradley, 26 N. C. 543 (1884). This has been changed by making it the duty of the county commissioners to lay off the said bounds.

Purpose of Section.—Both the words and the policy of the section show the purpose to be simply to preserve the health of those who are so unfortunate as to be in prison. Northam v. Terry, 30 N. C. 175 (1847).

Application of Section. — This section does not apply in favor of persons who have been convicted of criminal offenses and sentenced to imprisonment by the judgment of the court. It applies to prisoners who in civil cases are committed to jail on mesne process or on final judgment, and in criminal cases when the prisoner is committed to jail for lack of bail, in order to secure his presence before the appropriate court to answer the criminal charge preferred against him. State v. Pearson, 100 N. C. 414, 6 S. E. 387 (1888).

Sheriff Not Guilty of Escape.—By taking a bond from a prisoner under this section, the sheriff is guilty of no escape in letting him out of the walls of the prison, for he does only what the law requires of him. Northam v. Terry, 30 N. C. 175 (1847).

When Bond Void.—A bond for keeping the prison bounds, taken from a person arrested before he has been committed to close custody, is void. Northam v. Terry, 30 N. C. 175 (1847).

Proof of Bond. — A bond to keep the prison bounds need not be proved by the subscribing witness, for it must be deemed a record, so far as concerns proof of its execution. Wynn v. Buckett, 1 N. C. 93 (1798).

Discharge of Prisoner Discharges Sureties.—When a prisoner was discharged upon taking the insolvent debtor's oath, the sureties upon his bond to keep the prison rules were also thereupon discharged. Howard v. Pasteur, 7 N. C. 270 (1819).

A prisoner's going out of the limits of the rules after he was discharged as an insolvent debtor was lawful, although he was in close jail at the instance of another creditor. The order of liberation extended to discharge him from all imprisonment for debt. Howard v. Pasteur, 7 N. C. 270 (1819).

When Tender of Bond Not Prerequisite to Action.—Where a prisoner, desirous of being admitted to the prison bounds, applies to the sheriff, and offers to prepare a bond with ample security, and the sheriff refuses to admit him to the rules, or to take any bond, such conduct on the part of the sheriff is a waiver of any further act to be done by the prisoner, and renders it unnecessary for the prisoner to prepare and tender a bond written and executed in order to maintain his action. Mann v. Vick, 8 N. C. 427 (1821).

Right to Jury Trial.—In a summary proceeding, by motion for judgment on a bond to keep the prison bounds, if the defendant plead matters of fact in pais, he is entitled to have them tried by a jury. Whitley v. Gaylord, 48 N. C. 286 (1856).

ARTICLE 8.

County Revenue.

§ 153-55. Unlawful for counties not to reduce ad valorem taxes; exceptions; other levies void. — As it was intended by the State Highway Commission Act and the Six Months School Term Act and other acts tending to this result to effect a reduction of ad valorem taxes in the several counties of the State, it is hereby declared to be unlawful for any board of county commissioners, for the fiscal year one thousand nine hundred and thirty-one—one thousand nine hundred and thirty-two and other fiscal years succeeding to make any tax levy, which in the gross does not reflect within three per cent (3%) a reduction in the ad valorem taxes accomplished by these Acts. The tax rate for one thousand nine hundred and thirty—one thousand nine hundred and thirty-one shall be the standard from which the reduction shall be made. To this prohibition there shall be the following exceptions:

A. If there should be a new assessment of the value of property for taxation and that assessment should show a reduction in the value of such taxable property, then said board of county commissioners, or any one of them, if the reduction is local, shall levy, in addition to the rate fixed hereinbefore, a rate increased sufficiently to take care of this decrease in the valuation of property in the particular county involved.

B. To prevent a current deficit and, if an emergency should arise, requiring the levy of an additional rate of taxation in a particular county, greater than that herein provided and there should be existing authority for such levy, then the board of commissioners of any county or counties in which such emergency should arise shall be permitted to increase the rate of taxation sufficiently to meet such emergency, when it is declared and the facts upon which the declaration is made are entered at large upon the minutes of the board and the whole matter is referred to the Local Government Commission of the State of North Carolina, which shall have authority to pass upon the application and if, in the opinion of that Commission, a levy of the additional rate is reasonably necessary, then upon certifying this fact to any board of county commissioners, that board shall have authority to increase the levy to the extent necessary to meet the contingency. Standard form of application shall be prescribed by the Local Government Commission.

C. Levies for debt service on outstanding valid indebtedness heretofore incurred, or hereafter permitted by the Local Government Commission.

Except as herein permitted, any levy made by any board of county commissioners, in excess of the limit herein fixed, shall be absolutely void, for whatever purposes such excess shall be levied. (1931, c. 134.)

Editor's Note.—The meaning of this enactment is not entirely clear, except as an expressed determination to have reduced ad valorem taxes. It seems to mean that, taking the tax rate for the current year as a standard and deducting the road tax and the general school tax, the rate must show an ad valorem reduction of the remainder within three per cent. 9 N. C. Law Rev. 362.

Public Laws 1931, c. 255, empowered the board of commissioners of Guilford County, in their discretion, to levy the full amount of the tax for the maintenance of the county tuberculosis hospital or so much of the amount duly authorized as may be necessary to maintain the hospital adequately, and to provide for as many persons afflicted with tuberculosis as is possible, notwithstanding the provisions of this section.

§ 153-56. Taxes collected by sheriff or tax collector. — The county taxes shall be collected by the sheriff of the county or the tax collector if one is provided by law. (1798, c. 509, s. 2, P. R.; 1811, c. 823, P. R.; R. C., c. 28, s. 2; Code, s. 723; Rev., s. 1376; C. S., s. 1322.)

Local Modification. — Jackson: 1947, c. 17, s. 13.

County Taxes Defined. — The words "county taxes" include all amounts levied by taxation and which are to be used in the counties where they are collected, and

where they are paid to the county treasurer. Board v. Commissioners, 137 N. C. 63, 49 S. E. 47 (1904).

The legislature may change the method and amount of compensation provided by law for a sheriff. It may, within reasonable limits, diminish the emoluments of an office by the transfer of a portion of its duties to another office, or by reducing the salary or the fees, for the incumbent takes the office subject to the power of the legislature to make such changes as the public good may require. Mills v. Deaton, 170 N. C. 386, 87 S. E. 123 (1915).

While the office of sheriff is a constitutional one, the regulation of its fees is within the control of the legislature, and the same may be reduced during the term of the incumbent. Commissioners v. Stedman, 141 N. C. 448, 54 S. E. 269 (1906); Mills v. Deaton, 170 N. C. 386, 87 S. E. 123 (1915).

Change from Fee to Salary Basis.—The legislature, during a sheriff's term of office, may place the sheriff on a salary and provide that the fees for collecting taxes shall go to the county. Mills v. Deaton, 170 N. C. 386, 87 S. E. 123 (1915).

Change from Salary to Fee Basis.—An act of the legislature changing the pay of the sheriff from a salary to a fee basis, where it does not direct the incumbent sheriff to deliver the tax list to his successor, will not be construed so as to deprive the incumbent sheriff of the emoluments of his term by requiring that he deliver the tax lists to his successor. Commissioners v. Bain, 173 N. C. 377, 92 S. E. 176 (1917), distinguishing Mills v. Deaton, 170 N. C. 386, 87 S. E. 123 (1915).

Insanity of Sheriff.—As to collection of taxes upon the official ascertainment of the insanity of a sheriff, see Somers v. Commissioners, 123 N. C. 582, 31 S. E. 873 (1898).

School Taxes.—All the school taxes are included in the accounting to be made between the county treasurer and the sheriff. Tillery v. Candler, 118 N. C. 888, 24 S. E. 709 (1896).

A sheriff is entitled to commissions for the collection of school taxes. Board v. Commissioners, 137 N. C. 63, 49 S. E. 47 (1904).

Overpayment.—The State Auditor is authorized to make deduction of over-payment in the settlement for taxes collected when there is error in the "clerk's abstract of taxables," and the sheriff is "charged with more than the true amount," etc., and though the same deductions and corrections are permitted the county in making settlements under this section, these statutes are inapplicable when the credits claimed are not from either of these causes; and to allow them otherwise would be to permit an offset or counterclaim. Commissioners v. Hall, 177 N. C. 490, 99 S. E. 372 (1919).

Obligation to Settle for Taxes Not Ordinary Debt.—The obligation of a sheriff to settle for county taxes collected in accordance with "the list of taxables" furnished him, is not a debt in the ordinary sense but a charge imposed by the legislature, or under its authority, permitting no offset or counterclaim by the sheriff claiming overpayment in his settlement for previous years, in an action to recover the amount due by him in accordance with the list furnished for him the current year. Commissioners v. Hall, 177 N. C. 490, 99 S. E. 372 (1919).

Liability as Insurer.—The authorities are decidedly in favor of the doctrine that a tax collector is an insurer of the safety of all moneys officially received by him against loss by any means whatever, including such losses as arise from an act of God or the public enemy. In the courts of the United States this absolute liability is put mainly on public policy and the evil consequences which would follow from any less rigid rule. The reasons apply with equal force to State officials who receive public money, and the same doctrine has accordingly been held in Atkinson v. Whitehead, 66 N. C. 286 (1872); Atlantic, etc., R. Co. v. Cowles, 69 N. C. 59 (1873); State v. Clarke, 73 N. C. 255 (1875).

Tax Lists in Sheriff's Hands upon Expiration of Term. — While collecting the county taxes is made a part of the duties of a sheriff, it is a separate function, and exists after his term as such, for the purpose of collecting, from the tax lists in his hands, the taxes for the current year, in the absence of legislation to the contrary. Commissioners v. Bain, 173 N. C. 377, 92 S. E. 176 (1917).

Failure to Pay Breach of Bond.—Where the condition of a sheriff's bond was in these words, "that he shall well and truly account for and pay into the hands of the county trustee, for the time being, all such sum or sums of money as may be or shall come into his hands, or which he ought to collect for the use of the county; and in all things comply with the acts of the General Assembly in such case made and provided," it was held that when the sheriff had received a part of the tax laid for the repairs of public buildings, the condition of his bond was violated upon non-payment

of it to the treasurer of public buildings, to whom, by the Act of 1808, the sheriff was directed to pay it. Cameron v. Campbell, 10 N. C. 285 (1824).

Appeal from Commissioners Not Allowed. — An appeal does not lie from the refusal of the county commissioners to allow credits claimed by a sheriff in his settlement with the county. McMillan v. Commissioners, 90 N. C. 28 (1884).

Commissioners Cannot Release Liability. — The county commissioners have no power to release the sheriff from his liability to account for and pay over the county taxes. State v. Clarke, 73 N. C. 255 (1875).

§ 153-57. Statement of fines kept by clerk. — It is the duty of the clerks of the several courts, and of the several justices of the peace, to enter in a book, to be supplied by the county, an itemized and detailed statement of the respective amounts received by them in the way of fines, penalties, amercements and forfeitures, and said books shall at all times be open to the inspection of the public. (1873-4, c. 116, s. 4; 1879, c. 96, s. 1; Code, s. 725; Rev., s. 1377; C. S., s. 1323.)

Cross Reference.—As to failure to keep proper records, see §§ 14-230 and 14-231.

§ 153-58. Fines paid to treasurer for schools; annual report.—All fines, forfeitures, penalties and amercements collected in the several counties by any court or otherwise shall be accounted for and paid to the county treasurer by the officials receiving them within thirty days after receipt thereof, and shall be faithfully appropriated by the county board of education for the establishment and maintenance of free public schools; and the amounts collected in each county shall be annually reported to the Superintendent of Public Instruction on or before the first Monday in January, by the board of commissioners. (Const., art. 9, s. 5; R. C., c. 28, s. 3; 1879, c. 96, ss. 2, 5; Code, ss. 724, 726; Rev., s. 1378; C. S., s. 1324; 1951, c. 785, s. 2.)

Cross Reference.—As to application of proceeds of dog tax to school funds, see § 67-13.

Editor's Note. — The 1951 amendment substituted "thirty days" for "sixty days."

Constitutional Provision. — The Constitution, art. IX, § 5, appropriates all fines for violation of the criminal laws of the State for establishing and maintaining free public schools in the several counties — whether the fines are for violation of town ordinances made misdemeanors by statute or other criminal statutes. Board v. Henderson, 126 N. C. 689, 36 S. E. 158 (1900).

Fine Defined. — A fine is the sentence pronounced by the court for a violation of the criminal law of the State. Board v. Henderson, 126 N. C. 689, 36 S. E. 158 (1900).

Penalty Defined. — A penalty is the amount prescribed for a violation of the statute law of the State or the ordinance of a town, and is recoverable in a civil action of debt. Board v. Henderson, 126 N. C. 689, 36 S. E. 158 (1900).

Only Clear Proceeds Go to School Fund. —Only the clear proceeds of such penalties as accrue to the State go to the school fund. State v. Maultsby, 139 N. C. 583, 51 S. E. 956 (1905).

Fines, from their nature, being punishment for violation of the criminal law, are imposed in favor of the State and belong to the State. The Legislature cannot appropriate their clear proceeds to any other purpose than the school fund. Katzenstein v. Raleigh, etc., R. Co., 84 N. C. 688 (1881); State v. Marietta, etc., R. Co., 108 N. C. 24, 12 S. E. 1041 (1891); Sutton v. Phillips, 116 N. C. 502, 21 S. E. 968 (1895); Goodwin v. Fertilizer Co., 119 N. C. 120, 25 S. E. 795 (1896); Carter v. Wilmington, etc., R. Co., 126 N. C. 437, 36 S. E. 14 (1900); Board v. Henderson, 126 N. C. 689, 36 S. E. 158 (1900); School Directors v. Asheville, 137 N. C. 503, 50 S. E. 279 (1905); State v. Maultsby, 139 N. C. 583, 51 S. E. 956 (1905).

"Clear Proceeds" Defined. — By "clear proceeds" is meant the total sum less only the sheriff's fees for collection, when the fine and costs are not collected in full. Board v. Henderson, 126 N. C. 689, 36 S. E. 158 (1900); School Directors v. Asheville, 137 N. C. 503, 50 S. E. 279 (1905), State v. Maultsby, 139 N. C. 583, 51 S. E. 956 (1905).

Violation of Municipal Ordinances. — The legislature has no power to appropriate to a town or city all or any part of the fines imposed upon conviction of misdemeanors committed by violating its ordinances, but under article IX, § 5 of the Constitution, such fines belong to the gen-

eral school fund of the county. School Directors v. Asheville, 137 N. C. 503, 50 S. E. 279 (1905).

Where fines are collected through the mayor of a town, by virtue of his authority as justice of the peace, they are to be accounted for to the board of education. It is otherwise as to penalties imposed for the violation of town ordinances, which are to be sued for. Board v. Henderson, 126 N. C. 689, 36 S. E. 158 (1900).

Limitation of Action.—An action by a county board of school directors for fines and penalties collected by a city is barred within three years. School Directors v. Asheville, 128 N. C. 249, 38 S. E. 874 (1901).

Forfeited Bond of Fugitive.—Where the Governor has granted requisition for a fugitive from justice from another state, to be turned over to the agent of that state here, and the prisoner sued out a writ of habeas corpus before a judge of the superior court and pending this proceeding he forfeited his appearance bond, payable to the State of North Carolina, the penalty on the bond falls within the provisions of this section and goes to the benefit of the public schools fund of the county, and not to the agent of the state whose requisition had been honored. In re Wiggins, 171 N. C. 372, 88 S. E. 508 (1916).

§ 153-59. 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. (1777, c. 129, s. 4, P. R.; R. C., c. 28, s. 16; Code, s. 753; Rev., s. 1379; C. S., s. 1325.)

Necessary Expenses Determined by Commissioners.—What is "necessary expense" for a county is to be determined by the sound judgment and discretion of its board of commissioners. Broadnax v. Groom, 64 N. C. 244 (1870); Comrs. v. Comrs., 165 N. C. 632, 81 S. E. 1001 (1914); Hargrave v. Comrs., 168 N. C. 626, 84 S. E. 1044 (1915); Wilson v. Holding, 170 N. C. 352, 86 S. E. 1043 (1915).

As to province of the courts and the legislature, see Burgin v. Smith, 151 N. C. 561, 66 S. E. 607 (1909), citing Cromartie v. Commissioners, 87 N. C. 134 (1882); Hightower v. Raleigh, 150 N. C. 569, 65 S. E. 279 (1909).

Power to Create Necessary Debts.—The legislature may confer upon a county the power to create debts for necessary expenses, without the approval of "a majority of the qualified voters" in the county. Evans v. Commissioners, 89 N. C. 154 (1883).

When Commissioners' Actions Not Subject to Review. — The commissioners' exercise of their discretion will not be reviewed except when mala fides is shown. Jackson v. Commissioners, 171 N. C. 379, 88 S. E. 521 (1916).

Support of Convicts. — The support of the county convicts must be paid out of the general county fund. Chambers v. Walker, 120 N. C. 401, 27 S. E. 77 (1897).

Legislature to Determine Care of Indigent.—It is the exclusive right of the legislature to determine how the indigent of the State entitled to support shall be ascertained, and from what fund and by whom allowances for their support shall be made. Board v. Commissioners, 113 N. C. 379, 18 S. E. 661 (1893).

County May Hire Auditors.—The commissioners of a county have the right to contract with skilled expert accountants for auditing of the books and accounts of the various departments of the county at a price agreed upon, and empowers them to order that the same be paid by the county treasurer out of the county funds. Wilson v. Holding, 170 N. C. 352, 86 S. E. 1043 (1915).

§ 153-60. County officers receiving funds to report annually. — Sheriffs, treasurers, clerks of any court, registers of deeds and all other officers of the several counties, into whose hands any public funds may come by virtue or under color of their office, shall make an annual account and report of the amount and management of the same, on the first Monday of December, or oftener if required, in each year, to the board of commissioners. Such report shall give an itemized and detailed account of the public funds received and disbursed, the amount, date and source from which it was received, and the amount, date and person to whom paid. It shall be addressed to the chairman of the board of commissioners for the county, and shall be subscribed and verified by the oath of the

party making the same, before any person authorized to administer oaths. (1874-5, c. 151, s. 1; 1876-7, c. 276, s. 1; Code, s. 728; Rev., s. 1380; C. S., s. 1326.)

Local Modification. — Halifax: 1949, c. 389.

Cross References.—As to embezzlement of funds by public officers, see § 14-92. As to failure to report and turn over money, see § 14-231.

§ 153-61. Board to enforce duty to report.—If any person required to make any of the reports herein provided for fails to do so, or if, after a report has been made, the board of commissioners disapprove the same, such board may take such legal steps to compel a proper report to be made, either by suit on the bond of such officer failing to comply or otherwise, as said board may deem best. (1874-5, c. 151, s. 3; 1876-7, c. 276, s. 3; Code, s. 730; Rev., s. 1381; C. S., s. 1327.)

§ 153-62. Reports to be recorded in register's office.—If the board of commissioners approves of any of the said reports, it shall cause the same to be registered in the office of the register of deeds in a book to be furnished to the register of deeds by the county, which book shall be marked and styled Record of Official Reports, with a proper index of all reports recorded therein, and each official report shall, if approved, be indorsed by the chairman of the board with the word "approved," with the date of approval, and when recorded by the register of deeds he shall indorse thereon the date of registration, the page of the Record of Official Reports upon which the same is registered, sign the same and file it in his office. (1874-5, c. 151, s. 2; 1876-7, c. 276, s. 2; Code, s. 729; Rev., s. 1382; C. S., s. 1328.)

§ 153-63. Penalty for failure to report.—If any clerk, sheriff, justice of the peace, or other officer, fails or neglects to account for and pay over as required by law any taxes on suits, or any fines, forfeitures and amercements, as required by this chapter, or fails to make the returns herein specified, he shall forfeit and pay five hundred dollars, to be recovered in the name of the board of commissioners for the use of the public schools of the county. (1808, c. 756, P. R.; 1809, c. 769, P. R.; 1813, c. 864, P. R.; 1830, c. 1, ss. 11-13; R. C., c. 28, s. 7; Code, s. 764; Rev., s. 1383; C. S., s. 1329.)

"Account" Defined.—An account is defined to be "a statement in writing of debts and credits, or of receipts and payment; a list of items of debts and credits, with their respective dates." Black's Dictionary, p. 17. In this section the word is used in this sense, and when not only an account, but payment or settlement, is intended, additional words are used to express that idea. State v. Dunn, 134 N. C. 663, 46 S. E. 949 (1904).

Penalty Statute Construed Strictly. — A penalty statute must be strictly construed in accordance with the meaning of the words employed, and must not be extended by implication or construction when the act complained of does not fall clearly within the spirit and letter thereof. Alexander v. Atlantic Coast Line R. Co., 144 N. C. 93, 56 S. E. 697 (1907).

Liability of Clerk for Unauthorized Taxes on Suits.—A superior court clerk, who collects taxes upon suits to an amount unauthorized by law, is nevertheless bound to account for the same to the proper county officer. Hewlett v. Nutt, 79 N. C. 263 (1878).

Same—Limitation of Action.—An action against a clerk for a penalty, if not brought within one year, is barred by the statute of limitations. Hewlett v. Nutt, 79 N. C. 263 (1878).

Same—County Treasurer as Plaintiff. — The county treasurer is the proper plaintiff in an action on the bond of a superior court clerk to recover money collected by him as taxes on suits. Hewlett v. Nutt, 79 N. C. 263 (1878).

§ 153-64. Demand before suit against municipality; complaint. — No person shall sue any city, county, town or other municipal corporation for any debt or demand arising out of contract when the damages are liquidated unless the claimant has made a demand upon the proper municipal authorities. And every such action shall be dismissed unless the complaint is verified and contains the following allegations: (1) That the claimant presented his claim to the

lawful municipal authorities to be audited and allowed, and that they had neglected to act upon it, or had disallowed it; or (2) that he had presented to the treasurer of said municipal corporation the claim sued on, which had been so allowed and audited, and that such treasurer had notwithstanding neglected to pay it. (Code, s. 757; Rev., s. 1384; C. S., s. 1330.)

Editor's Note. — As to notice of tort claims, see 27 N. C. Law Rev. 145.

Purpose of Section.—The purpose of this section was to give the municipality an opportunity to pass upon and pay a claim involving a money demand before it could be subjected to the burden and expense of litigation. It manifestly has no application to suits in equity the object of which is to protect and preserve the rights of complainant as against threatened action by the city or its officers. George v. Asheville, 80 F. (2d) 50, 103 A. L. R. 568 (1935).

Demand Must Be Alleged.—This section expressly requires the demand to be alleged in the complaint. Williams v. Smith, 134 N. C. 249, 46 S. E. 502 (1904). And it is mandatory. R. R. v. Reidsville, 109 N. C. 494, 13 S. E. 865 (1891), citing Love v. Commissioners, 64 N. C. 706 (1870).

Allegation that claimant had made demand for payment of municipal interest coupons upon the city manager of a city operating under Plan D, is insufficient allegation of demand upon the "proper municipal authorities" as required by this section. Nevins v. Lexington, 212 N. C. 616, 194 S. E. 293 (1937).

Same—Failure Taken Advantage of by Demurrer. — It has been uniformly held that failure to allege the demand may be taken advantage of by demurrer. Williams v. Smith, 134 N. C. 249, 46 S. E. 502 (1904), citing Love v. Commissioners, 64 N. C. 706 (1870); Jones v. Commissioners, 73 N. C. 182 (1875).

An action to recover the face value of interest coupons on municipal bonds, payment having been refused except at a lower rate of interest, is an action ex contractu, and this section, requiring as a condition precedent that demand for payment be made upon the proper municipal authorities, is applicable. Nevins v. Lexington, 212 N. C. 616, 194 S. E. 293 (1937).

Verification of Pleading.—When an action against a city on a money demand is instituted in a justice's court the pleading must be written and verified, since this section so requires, and defendant city's motion to nonsuit should be allowed when the action is instituted by summons without written pleadings. Kalte v. Lexington, 213 N. C. 779, 197 S. E. 691 (1938).

The requirement that when one pleading in a court of record is verified, every subsequent pleading in the same proceeding, except a demurrer "must be verified also," is one which may be waived, except in those cases where the form and substance of the verification is made an essential part of the pleading; as in an action for divorce in which a special form of affidavit is required, § 50-8, in a proceeding to restore a lost record, § 98-14, and in an action against a county or municipal corporation, § 153-64. Calaway v. Harris, 229 N. C. 117, 47 S. E. (2d) 796 (1948).

"Audit" only Applies to Actions Ex Contractu.—In Shields v. Durham, 118 N. C. 450, 24 S. E. 794 (1896), the court said: "We find that all the law dictionaries which we have been able to consult define the word 'audit' to apply only to claims ex contractu. Abbott, Bouvier, Rapalje and Lawrence. And these authorities have aided us in coming to the conclusion that this section does not apply to an action for damages like this. Indeed, we do not see how such a claim as this could be audited. It might be compromised by the parties; but this is much more than auditing the same. It is the work of both parties—the agreement of minds, contract and not an ex parte process of auditing." This case was approved and followed in Sheldon v. Asheville, 119 N. C. 606, 25 S. E. 781 (1896).

When Judgment Obtained Notice Unnecessary.—When a judgment has been obtained against a county or other municipal corporation, it is not necessary that notice as required in certain cases by this section should be given before bringing an action for mandamus to compel the payment of the judgment. Nicholson v. Commissioners, 121 N. C. 27, 27 S. E. 996 (1897).

Includes Claims Ex Contractu for Amount Certain.—Claims against county, including claims ex contractu for amount certain, must be filed as required by this and the following section. Efird v. Board of Com'rs, 219 N. C. 96, 12 S. E. (2d) 889 (1941).

Not Applicable to Actions Ex Contractu unless Damages Are Liquidated.—Sugg v. Greenville, 169 N. C. 606, 86 S. E. 695 (1915), citing Frishby v. Marshall, 119 N. C. 570, 26 S. E. 251 (1896); Neal v. Marion, 126 N. C. 412, 35 S. E. 812 (1900).

Recovery of Taxes Illegally Collected.—Where a taxpayer has paid his taxes authorized by an unconstitutional statute under protest, and has complied with the provisions of the statute, which regulates

and controls actions to recover illegal taxes paid under protest, it is unnecessary to the maintenance of his action to recover them that he follow the provisions of this section, requiring that he present his claim and make his demand, etc. Southern Ry. Co. v. Cherokee County, 177 N. C. 86, 97 S. E. 758 (1919).

Cited in Ivester v. Winston-Salem, 215 N. C. 1, 1 S. E. (2d) 88 (1939); Rivers v. Wilson, 233 N. C. 272, 63 S. E. (2d) 544 (1951).

§ 153-65. Accounts to be itemized, verified, and audited. — No account shall be audited by the board for any services or disbursements unless it is first made out in items and has attached to and filed with it the affidavit of the claimant that the services therein charged have been in fact made and rendered, and that no part thereof has been paid or satisfied. Each account shall state the nature of the services, and where no specific compensation is provided by law, it shall also state the time necessarily devoted to the performance thereof. The board may disallow or require further evidence of the account, notwithstanding the verification. (1868, c. 20, s. 10; Code, s. 754; 1905, c. 55; Rev., s. 1385; C. S., s. 1331; 1931, c. 445.)

Cross References.—See § 153-9, subsection 31, and note. As to right to hire auditors, see note to § 153-59.

Duty of Commissioners.—The law commits to the board of commissioners the power and duty of auditing and passing upon the validity of claims. Hughes v. Commissioners, 107 N. C. 598, 12 S. E. 465 (1890); Bennett v. Comrs., 125 N. C. 468, 34 S. E. 632 (1899); Martin v. Clark, 135 N. C. 178, 47 S. E. 397 (1904).

Orders Not Negotiable.—Orders or warrants issued by a municipal corporation are not negotiable and carry with them none of the privileges of negotiable paper except to pass by delivery upon indorsement. Wright v. Kinney, 123 N. C. 618, 31 S. E. 874 (1898).

In Wall v. Monroe, 103 U. S. 74, 26 L. Ed. 430 (1880), it is said: "The warrants, being in form negotiable, are transferable by delivery so far as to authorize the holder to demand payment of them and to maintain in his own name an action upon them." Wright v. Kinney, 123 N. C. 618, 31 S. E. 874 (1898).

Unauthorized Indorsement.—The unauthorized indorsement of "approved" signed by the chairman of the county commissioners of a county order invalid upon its face, will not render him personally liable, in the absence of fraud and misrepresentation. Wright v. Kinney, 123 N. C. 618, 31 S. E. 874 (1898).

What Claims Need Not Be Audited.—While unadjusted claims are required to be audited and ordered to be paid, absolute and unconditional obligations already ascertained and audited are in themselves and upon their face an order and authority in the financial officer, possessing the means not otherwise appropriated, to pay on presentation. Leach v. Commissioners, 84 N. C. 829 (1881).

Presumption as to Warrants.—The presumption is that orders issued by county commissioners are for necessary expenses and valid. McCless v. Meekins, 117 N. C. 34, 23 S. E. 99 (1895).

Same—Prima Facie Evidence. — All the courts agree that municipal warrants are mere prima facie and not conclusive evidence of the validity of the allowed claims against the county by which they were issued. The county is not estopped from questioning the legality of the claims. Merrill v. Monticello, 138 U. S. 673, 11 S. Ct. 441, 34 L. Ed. 1069 (1891), followed in Wright v. Kinney, 123 N. C. 618, 31 S. E. 874 (1898).

The allowance of a claim by a county board of commissioners is not final and conclusive, but is only prima facie evidence of the correctness of the claim. It may be re-examined by the board itself, and on appeal may be examined or disallowed in whole or in part by the court. Abernathy v. Phifer, 84 N. C. 712 (1881).

Remedies of Holder. — The holder of a valid county warrant, who is refused payment, has two remedies against the county treasurer—either to sue him on his bond, or to apply for a mandamus—over neither of which has a justice of peace jurisdiction. Wright v. Kinney, 123 N. C. 618, 31 S. E. 874 (1889).

When County Treasurer Should Refuse to Pay.—If the county treasurer deems the warrant drawn in contravention of a constitutional provision or limitation, he should refuse to pay it. Martin v. Clark, 135 N. C. 178, 47 S. E. 397 (1904).

When a Mandamus Will Lie.—A mandamus will lie to compel a county treasurer to pay a warrant out of a specific fund, the warrant having been drawn by the county commissioners. Martin v. Clark, 135 N. C. 178, 47 S. E. 397 (1904).

Same — Action to Establish Debt. — Where the county commissioners refuse to

audit or act upon a claim, mandamus will lie to compel them to do so. If, after the hearing, they refuse to allow or issue a warrant for its payment, an action will lie against them to establish the debt, and for such other relief as the party may be entitled to. Hughes v. Comrs., 107 N. C. 598, 12 S. E. 465 (1890); Martin v. Clark, 135 N. C. 178, 47 S. E. 397 (1904).

§ 153-66. Accounts to be numbered as presented.—All accounts presented in any year, beginning at each regular meeting in December, shall be numbered from one upwards, in the order in which they are presented, and the time of presentation, the names of the persons in whose favor they are made out, and by whom presented, shall be carefully entered on the minutes of the board; and no such account shall be withdrawn from the custody of the board or its clerk, except to be used as evidence in a judicial proceeding, and after being so used it shall be promptly returned. (1868, c. 20, s. 12; Code, s. 755; Rev., s. 1386; C. S., s. 1332.)

§ 153-67. Claims to be numbered as allowed; copy to board annually.—The clerk of the board of commissioners, if so ordered by the board, shall number all claims, orders and certificates that may be allowed by the board in a book kept for that purpose, and he shall annually, the day before the board proceeds to lay a county tax for the ensuing year, furnish the chairman of the board with a copy of the same. (1793, c. 387, P. R.; R. C., c. 28, s. 12; Code, s. 751; Rev., s. 1387; C. S., s. 1333.)

§ 153-68. Annual statement of claims and revenues to be published.—The board shall cause to be posted at the courthouse within five days after each regular December meeting and for at least four successive weeks, or after each regular monthly meeting, if they deem it advisable, and for one week, the name of every individual whose account has been audited, the amount claimed and the amount allowed; and also at the same time and in the same manner post a full statement of county revenue and charges, showing by items the income from every source and the disbursements on every account for the past year, together with the permanent debt of the county, if any, when contracted, and the interest paid or remaining unpaid thereon. The board shall also publish the said statement in some newspaper in the county. (Code, s. 752; 1901, c. 196; 1905, c. 227; Rev., s. 1388; C. S., s. 1334.)

Local Modification.—Union: 1929, c. 154.

Requirement Applies to Incoming Board.—The statement required to be published "within five days after each regular December meeting" is for the incoming board, and the statute imposing the penalty, under the strict construction required, is not applicable to members of the outgoing board. Shelton v. Moody, 146 N. C. 426, 59 S. E. 994 (1907).

Cited in Jones v. Alamance County, 212 N. C. 603, 194 S. E. 109 (1937).

ARTICLE 9.

County Finance Act.

§ 153-69. Short title. — This article shall be known and may be cited as "The County Finance Act." (1927, c. 81, s. 1.)

Cross References.—As to Local Government Act, see chapter 159. As to validation of bonds, see § 159-50 et seq.

Editor's Note.—For act validating certain notes of counties evidencing refunded loans from the State Literary Fund and special building funds of North Carolina and authorizing the issuance of refunding bonds under this article, see Session Laws 1945, c. 404.

Validity.—The County Finance Act was enacted by the General Assembly in compliance with all pertinent constitutional requirements. Frazier v. Board of Commissioners, 194 N. C. 49, 138 S. E. 433 (1927).

Purpose of Act. — The purpose of the General Assembly in enacting the County Finance Act is manifest. It was to enable the several counties of the State not only to provide for their future needs by issuing bonds for purposes specified therein, but also to fund their valid indebtedness heretofore incurred in good faith, by issuing bonds and thus relieve the taxpayers of

burdensome annual taxation. Hartsfield v. Craven County, 194 N. C. 358, 139 S. E. 698 (1927).

It is the purpose of this article to put the various counties of the State in a position to live within their incomes. Commissioners v. Assell, 194 N. C. 412, 140 S. E. 34 (1927).

The legislature has prescribed in this article the machinery by which a county may issue lawful and valid obligations for public purposes and necessary expenses, and pledge its faith. Jefferson Standard Life Ins. Co. v. Guilford County, 225 N. C. 293, 34 S. E. (2d) 430 (1945).

Liberally Construed.—This article should be liberally construed to effectuate its intent. Hartsfield v. Craven County, 194 N. C. 358, 139 S. E. 698 (1927).

Cited in Waldrop v. Hodges, 230 N. C. 370, 53 S. E. (2d) 263 (1949).

§ **153-70. Meaning of terms.**—In this article, unless the context otherwise requires, the words:

"Governing body" means the board of county commissioners, or the board or body in which the general legislative powers of the entire county are vested.

"Clerk" means the officer acting as clerk of the governing body.

"Necessary expenses" means the necessary expenses referred to in section seven of article seven of the Constitution of North Carolina.

"Published" means printed in a newspaper published in the county, if there be such a newspaper, but otherwise means posted at the courthouse door and in at least three other public places in the county.

"Chief financial officer" means the county accountant, auditor, or other officer designated or appointed by the governing body to supervise the fiscal affairs of the county, unless such officer shall be designated by law. (1927, c. 81, s. 2.)

§ **153-71. Application and construction of article.**—This article shall apply to all counties in the State, except as otherwise provided herein. Every provision of this article shall be construed as being qualified by constitutional provisions whenever such construction shall be necessary in order to sustain the constitutionality of any portion of this article. (1927, c. 81, s. 3.)

§ **153-72. Revenue anticipation loans for ordinary expenses.**—Counties may borrow money for the purpose of paying appropriations made for the current fiscal year in anticipation of the collection of the taxes and other revenues of such fiscal year, payable at such time or times, not later than thirty days after the expiration of the current fiscal year, as the governing board may fix. No such loan shall be made if the amount thereof, together with the amount of similar previous loans remaining unpaid, shall exceed 50 per cent of the amount of uncollected taxes for the fiscal year in which the loan is made, as determined by the chief financial officer and certified in writing by him to the governing body. (1927, c. 81, s. 4.)

Cross Reference.—As to limitations upon the increase of public debt, see N. C. Constitution, Art. V, § 4.

§ **153-73. Revenue anticipation loans for debt service.**—For the purpose of paying the principal or interest of bonds or notes due or to become due within four months, and not otherwise adequately provided for, any county may borrow money in anticipation of the receipt of either the revenues of the fiscal year in which the loan is made, or the revenues of the next succeeding fiscal year, and such loan shall be payable not later than the end of such next succeeding fiscal year.

In addition to the foregoing powers, a county may borrow money for the purpose of refunding or funding the principal or interest of bonds due or to become due within four months and not otherwise adequately provided for, and such loans shall be paid not later than the end of the next succeeding fiscal year following the fiscal year within which they are made: Provided, however, if such loans, or any renewals thereof, shall not be paid within the fiscal year in which the same are made, the governing body shall in the next succeeding fiscal year levy and col-

lect a tax ad valorem upon the taxable property in the county sufficient to pay the principal and interest thereof. (1927, c. 81, s. 5; 1931, c. 60, s. 63; 1931, c. 294; 1933, c. 259, s. 2; 1939, c. 231, s. 2.)

Editor's Note. — The 1933 amendment changed the date in the temporary provisions added by the 1931 amendments. These provisions were omitted from the section when it was brought forward in the General Statutes.

The 1939 amendment added the second paragraph.

§ 153-74. Notes evidencing revenue anticipation loans. — Negotiable notes shall be issued for all moneys borrowed under the two preceding sections, which notes may be renewed from time to time and money may be borrowed upon new notes from time to time for the payment of any indebtedness evidenced thereby; but all such notes and loans shall mature within the time limited by said two sections for the payment of the original loan. No money shall be borrowed under said sections at a rate of interest exceeding the maximum rate permitted by law. All notes herein provided for shall be authorized by a 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 such face amount and rate of interest within the limitations prescribed by such resolution, and the power to dispose of such notes, which shall be executed under the seal of the county by the chairman and clerk of the board, or by any two officers designated by the board for that purpose, and any interest coupons thereto attached shall be signed with the manual or facsimile signature of said clerk or of any other officer designated by the board for that purpose. The resolution authorizing issuance of notes for money borrowed under § 153-73 for the purpose of refunding or funding principal or interest of bonds shall contain a description of the bonds the principal or interest of which is to be so paid, including the respective amounts of such principal or interest and the date or dates on which the same is due and payable. (1927, c. 81, s. 6; 1931, c. 60, s. 59; 1939, c. 231, s. 2(b).)

Cross Reference.—As to certain powers delegated in issuance of notes for temporary loans, see § 159-43.

Editor's Note. — The 1931 amendment changed this section by striking therefrom the words: "If such notes mature not more than six months after their date, they may be disposed of either by public or private negotiations, after five days' notice has been given in some newspaper having a general circulation in the county. If such notes mature more than six months after their date, they shall not be disposed of except in accordance with the provisions of this act governing the disposal of bond anticipation notes maturing more than six months from date."

The 1939 amendment added the last sentence.

§ 153-75. Certification of revenue anticipation notes. — No revenue anticipation notes shall be valid unless there shall be written or printed on the face or the reverse thereof a statement signed by the chief financial officer of the county in the words: "This note and all other revenue anticipation notes of the county amount to less than 50 per cent of the amount of uncollected taxes for the current year": Provided, however, that if such notes are issued under the authority given by § 153-73, said statement may be either in said words or in the words, "This note is issued under § 153-73 of the County Finance Act for the payment of principal or interest of bonds or notes." (1927, c. 81, s. 7.)

§ 153-76. Certain notes of counties validated; proceeds lost in insolvent banks.—All notes heretofore issued by counties pursuant to the provisions of the County Finance Act applicable to notes issued for money borrowed under § 153-73 are hereby validated, notwithstanding that said notes were issued for the purpose of paying the principal or interest of notes evidencing indebtedness incurred under § 153-72: Provided, that this section shall not be construed to validate securities issued to refund or renew notes, the proceeds from which

originally were deposited in banks that have failed, causing the loss of such deposits or making them unavailable to the unit of government. (1931, c. 332.)

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

(a) Erection and purchase of school houses, school garages, physical education and vocational education buildings, teacherages, lunchrooms, and other similar school plant facilities.

(b) Erection and purchase of courthouse and jails, including a public auditorium within as a part of a courthouse.

(c) Erection and purchase of county homes for the indigent and infirm.

(d) Erection and purchase of hospitals; housing or quarters for public health departments or local public health departments; hospital facility as the term is defined in paragraph (c) of § 131-126.18.

(e) Erection and purchase of public auditoriums.

(f) Elimination of grade crossings over railroads and interurban railways, including approaches and damages, when not less than one-half of the cost shall be payable to the county at one time, or from time to time, under contract made with a railroad or interurban railway company, the bonds herein authorized to be for the entire cost or any portion thereof.

(g) Acquisition and improvement of lands for public parks and playgrounds.

(h) Funding or refunding of valid indebtedness if such indebtedness be payable at the time of the passage of the order authorizing the bonds or be payable within one year thereafter, or, although payable more than one year thereafter, is to be cancelled prior to its maturity and simultaneously with the issuance of the funding or refunding bonds, and all debt not evidenced by bonds which was created for necessary expenses of any county and which remains outstanding on March 7, 1927, is hereby validated. The term "indebtedness" as used in this clause (h) includes all valid or enforceable indebtedness of a county, whether incurred for current expenses or for any other purpose, except indebtedness incurred in the name of a county on behalf of a school district or township and not payable by means of taxes authorized to be levied on all taxable property in the county. It also includes indebtedness incurred in the name of a county board of education for the maintenance of schools for the six months' term required by the State Constitution. It includes indebtedness evidenced by bonds, bond anticipation notes, revenue anticipation notes, judgments and unpaid interest on said indebtedness accrued to the date of the bonds issued. It also includes indebtedness assumed by a county as well as indebtedness created by a county. Bond anticipation notes evidencing indebtedness may, at the option of the governing body, be retired either by means of funding bonds issued under this subsection or by means of bonds in anticipation of the sale of which the notes were issued. Furthermore, the said word "debt" as used in this section includes the principal of and accured interest on funding bonds, refunding bonds, and other evidences of indebtedness heretofore or hereafter issued. The above enumeration of particular kinds of debt shall not 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 forty shall be funded or refunded.

(i) A portion to be determined by the governing body of the cost of construction of bridges at county boundaries, when an adjoining county or municipality, within or without the State, shall have agreed to pay the remaining cost of construction.

(j) A portion to be determined by the governing body of the cost of public buildings constructed or acquired in order that a part of such buildings may be used for a purpose hereinabove expressed when a municipality within the county shall agree to pay the remaining cost.

(k) Acquiring, constructing and improving airports or landing fields for the use of airplanes or other aircraft.

(l) Acquisition and improvement of lands and the erection thereon of buildings to be used as a civic center or indoor or out of door stadium and as a living memorial to veterans of World War I and World War II.

(m) Erection and purchase of library buildings and equipment. (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.)

Local Modification. — Guilford: 1933, c. 566; Halifax: 1949, c. 371; Surry: 1947, c. 315.

Editor's Note. — The 1929 amendment added subsection (m), and the 1931 amendment changed the date in the first sentence of subsection (h). The 1933 amendment changed subsection (h) by deleting a provision which related to refunding serial bonds and adding the second sentence to the definition of "indebtedness". The 1935 amendment added the last four sentences of subsection (h) and made other changes. The 1939 amendment changed the date at the end of subsection (h). The 1947 amendments added subsection (l) and rewrote subsection (a). The 1949 amendments added subsection (m) and rewrote subsection (d).

For comment on the 1947 amendments, see 25 N. C. Law Rev. 462.

Constitutionality.—This section is constitutional. Evans v. Mecklenburg County, 205 N. C. 560, 172 S. E. 323 (1934).

Word "Repair" Implied.—The word "repair" although omitted in the rewriting of this section is "necessarily implied by law" when construed in conjunction with §§ 153-1, 153-9 and 153-49. See Harrell v. Board of Com'rs, 206 N. C. 225, 173 S. E. 614 (1934).

Necessity for Submission to Voters.—A bond order passed by the board of commissioners of a county in this State, under the authority and subject to the provisions of this and related sections, is subject to the approval of the voters of the county, when a petition signed by the requisite number of voters has been filed with the board of commissioners. Hemric v. Board of Com'rs, 206 N. C. 845, 175 S. E. 168 (1934).

Authority is given the county under this section and § 115-92 to issue without a vote bonds for sanitary improvements for its schoolhouses necessary to maintain the constitutional school term in the county, when the maturity dates of the bonds are within the limits fixed by § 153-80. Taylor v. Board of Education, 206 N. C. 263, 173 S. E. 608 (1934).

The board of commissioners of any county in the State, upon compliance with the provisions of this and the following sections, has authority to issue bonds or notes of the county for the purpose of erecting and equipping schoolhouses and purchasing land necessary for school purposes, and to levy taxes for the payment of said bonds or notes, with interest on the same, without submitting the question as to whether said bonds or notes shall be issued or said taxes levied, in the first instance, to the voters of the county, where such schoolhouses are required for the establishment or maintenance of the State system of public schools in accordance with the provisions of the Constitution. Bridges v. Charlotte, 221 N. C. 472, 20 S. E. (2d) 825 (1942).

A bond order under § 153-78 must set forth one of the purposes enumerated in this section. Atkins v. McAden, 229 N. C. 752, 51 S. E. (2d) 484 (1949).

Indebtedness Incurred for School Purposes.—Where a county under power conferred by special statute has borrowed money from time to time for the maintenance and equipment of its public schools, its bonds to refund the indebtedness so incurred are valid if issued in conformity with the provisions of this section. Hartsfield v. Craven County, 194 N. C. 358, 139 S. E. 698 (1927).

The counties of the State are authorized by this and the following sections to issue bonds and notes for the erection of schoolhouses and for the purchase of land necessary for school purposes, and to levy taxes

for the payment of the same, principal and interest, not as municipal corporations, organized primarily for purposes of local government, but as administrative agencies of the State, employed by the General Assembly to discharge the duty imposed upon it by the Constitution to provide a State system of public schools. Bridges v. Charlotte, 221 N. C. 472, 20 S. E. (2d) 825 (1942).

Indebtedness for teachers' salaries was held to come within the purview of subsection (h) of this section. Hampton v. Board of Education, 195 N. C. 213, 141 S. E. 744 (1928).

Erection of Consolidated School Instead of Remodeling Old School.—Where a bond issue for the remodeling of the old school buildings in a county administrative unit was duly approved by the voters in an election, it was held that the board of county commissioners had the legal authority to allocate funds from this bond issue to the erection of a proposed consolidated high school since this was not a change which involved any change of purpose for which the bonds were issued but was only a change in the manner or method of accomplishing the original purpose. Feezor v. Siceloff, 232 N. C. 563, 61 S. E. (2d) 714 (1950).

Use of Funds for Hospital "Buildings." —Where the resolution of the county commissioners in submitting to a vote the question of issuing bonds for a public hospital uses the word "buildings," and it is later found that a surplus will remain after the erection and equipment of the main hospital building, such surplus may be used for the purpose of erecting on the hospital grounds a home for nurses, technicians and others engaged in essential employment incidental to the proper operation of the hospital. Worley v. Johnston County, 231 N. C. 592, 58 S. E. (2d) 99 (1950).

Refunding Bonds May Be Issued without Submitting Question to Qualified Voters. — Reasonable and necessary expenses incurred in good faith to effect a refunding of county indebtedness authorized by this section held to be a necessary expense of the county, and bonds may be issued therefor without submitting the question to the qualified voters of the county. Morrow v. Board of Com'rs, 210 N. C. 564, 187 S. E. 752 (1936).

Section Does Not Include Teacherage as Necessary Equipment of School.—To hold as a matter of law that a teacherage is a part of the necessary equipment of a rural consolidated school would be to go farther than the General Assembly has gone, and, perhaps, entail some judicial engraftment. This section is not fraught with any dubiety of meaning. A teacherage, which is to be run for profit and solely for the benefit of the teachers, is not included within its terms. Denny v. Mecklenburg County, 211 N. C. 558, 191 S. E. 26 (1937).

Cited in Palmer v. Haywood County, 212 N. C. 284, 193 S. E. 668, 113 A. L. R. 1195 (1937).

§ **153-78. Order of governing body required.**—Bonds of a county shall be authorized by an order of the governing body, the term "order" being here used to indicate the order, resolution, or measure which declares that bonds shall be issued, in order to differentiate the same from such subsequent resolution as may be passed in respect of details which such order is not required to contain. Such order shall state:

(a) In brief and general terms, the purpose for which the bonds are to be issued, but not more than one purpose of issue shall be stated, the purposes set forth in any one subsection of § 153-77 to be deemed as one purpose, but, in the case of funding or refunding bonds, a brief description of the indebtedness to be funded or refunded sufficient to identify such indebtedness;

(b) The maximum aggregate principal amount of the bonds;

(c) That a tax sufficient to pay the principal and interest of the bonds when due 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;

(d) That a statement of the county debt has been filed with the clerk, and is open to public inspection;

(e) A clause stating the conditions upon which the order will become effective, and the same shall become effective in accordance with such clause, which clause shall be as follows:

1. If the bonds are funding or refunding bonds, that the order shall take effect upon its passage, and shall not be submitted to the voters; or

2. 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 order shall take effect when approved by the voters of the county at an election as provided in this article; or

3. In any other case, that the order shall take effect thirty days after the first publication thereof after final passage, unless in the meantime a petition for its submission to the voters is filed under this article, and that in such event it shall take effect when approved by the voters of the county at an election as provided in this article.

4. No restriction, limitation, or provision contained in any other law, except a law of State-wide application relating to the issuance of bonds, notes or other obligations of a county, shall apply to bonds or notes issued under this article 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 purposes, unless required by the Constitution of this State. The other laws here referred to include all 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 county from issuing bonds or notes under any special or Public-Local law applicable to such county, it being intended that this article shall be cumulative and additional authority for the issuance of bonds and notes. (1927, c. 81, s. 9; 1931, c. 60, s. 55; 1933, c. 259, s. 2; 1935, c. 302, s. 2; 1949, c. 497, s. 1.)

Local Modification. — Guilford: 1933, c. 566.

Cross References. — As to necessity of approval of the bond issue by the Local Government Commission, see § 159-7. As to facts influencing the Local Government Commission in determining the advisability of bond issues, see § 159-8. As to provisions which may be included in the order, see § 159-46.

Editor's Note. — The 1933 amendment added the latter part of subsection (a) relating to description of indebtedness and the proviso to subsection (c). The 1935 amendment made changes in clause 4 of subsection (e). And the 1949 amendment rewrote clause 2 of subsection (e).

A bond order may contain several sections and authorize the issue of bonds for different purposes, and § 153-77 sets out eleven (now twelve) different purposes for which bonds may be issued. Atkins v. McAden, 229 N. C. 752, 51 S. E. (2d) 484 (1949).

It Must Set Forth One of Purposes Enumerated in § 153-77.—A bond order under this section must set forth one of the purposes enumerated in § 153-77, but it is not required that it set out in detail the estimates of cost and descriptions of the particular projects for which the funds are proposed to be used, and their inclusion does not limit the allocation of the proceeds of the bonds under § 153-107, provided the use of the funds falls within the general purpose designated. Atkins v. McAden, 229 N. C. 752, 51 S. E. (2d) 484 (1949).

Courts Cannot Supply Deficiency in Order.—In order to constitute a valid issue of county bonds under this article, to purchase schoolhouses to comply with the mandate of our Constitution for a six months' term of public schools, as a necessary county expense, without submitting the question to the vote of the people of the county, it is required that the resolution passed by the board of county commissioners so declare the fact to be, and the courts are without authority to supply the deficiency in the order. Hall v. Commissioners, 195 N. C. 367, 142 S. E. 315 (1928).

Restraint of Issuance of Bonds.—Where the taxpayers of a county file suit under this section to restrain the issuance of bonds until authorized by the qualified voters of the county, and there is a controversy as to whether the requisite 15% of qualified voters has been obtained to the petition, as set out in § 153-91, a temporary restraining order will be continued until the sufficiency of the petition can be determined. Scruggs v. Rollins, 207 N. C. 235, 177 S. E. 180 (1934).

Board of Commissioners May Reallocate Proceeds of Bonds.—A bond order issued under § 153-78 set out in detail the estimates and projects for which the funds were proposed to be used in discharge of the constitutional requirement of a six months' school term within the municipal administrative unit. It was held that § 153-107 did not preclude the board of county commissioners, upon its finding, after investigation, of changed conditions,

from reallocating the proceeds of the bonds to different projects upon its further finding, after investigation provided for in § 115-83, that such reallocation of the funds was necessary to effectuate the purpose of the bond issue. Atkins v. McAden, 229 N. C. 752, 51 S. E. (2d) 484 (1949).

§ **153-79. Order need not specify details of purpose.**—In stating the purpose of a bond issue, an order need not specify the location of any improvement or property, or the material of construction. (1927, c. 81, s. 10.)

§ **153-80. Maturities of bonds.** — All bonds shall mature as hereinafter provided, and no funding or refunding bonds shall mature after the expiration of the period herein fixed for such bonds, respectively; and no other bond shall mature after the expiration of the period estimated by the governing body as the life of the improvement for which the bonds are issued, each such period to be computed from a day not later than one year after the passage of the order. Such periods shall not exceed the following for the respective classes of bonds:

(a), (b) Funding or refunding bonds, fifty years.

(c) Elimination of grade crossings, thirty years.

(d) Lands for public parks and playgrounds, including improvements, buildings, and equipment, forty years.

(e) Public buildings, if they are:

1. Of fireproof construction, that is, a building the walls of which are constructed of brick, stone, iron, or other hard, incombustible materials, and in which there are no wood beams or lintels, and in which the floors, roofs, stair halls, and public halls are built entirely of brick, stone, iron, or other hard, incombustible materials, and in which no woodwork or other inflammable materials are used in any of the partitions, flooring, or ceiling (but the building shall be deemed to be of fireproof construction notwithstanding that elsewhere than in the stair halls and entrance halls there is wooden flooring supported by wooden sleepers on top of the fireproof floor, and that it contains wooden handrails and treads, made of hardwood, not less than two inches thick), forty years;

2. Of non-fireproof construction, that is, a building the outer walls of which are constructed of brick, stone, iron, or other hard, incombustible materials, but which in any other respect differs from a fireproof building as defined in this section, thirty years;

3. Of other construction, twenty years.

(f) Land for airports or landing fields, including grading and drainage, forty years.

(g) Buildings, equipment and other improvements for airports or landing fields, other than grading and drainage, ten years. (1927, c. 81, s. 11; 1929, c. 171, s. 2; 1931, c. 60, s. 56; 1933, c. 259, s. 2.)

Editor's Note. — The 1929 amendment added subsections (f) and (g) to this section. The 1931 amendment struck out former subsections (a) and (b) and inserted in lieu thereof subsections (a), (b), which was rewritten by the 1933 amendment.

§ **153-81. Accelerating maturity of bonds and notes of counties and municipalities.**—Any municipality or county may provide that its bonds or notes shall become due and payable before maturity at the election of the holders or a majority in amount of the holders or a representative of the holders, upon the happening of such events and upon such conditions and subject to such limitations (which may include a provision for rescission of action taken in the exercise of said election) as may be set forth in a resolution or ordinance passed before the issuance of the bonds or notes: Provided, however, that such a provision, in order to become effective, must either be set forth in the bonds or notes or incorporated therein by reference to such resolution or ordinance. The negotiability of such bonds or notes shall not be affected by the adoption of such provision or by the recital thereof in the bonds or notes. (1931, c. 418; 1933, c. 258, s. 3.)

Editor's Note.—The 1933 amendment inserted the words "or a majority in amount of the holders" in the first sentence and added the second sentence.

Cited in Bryson City Bank v. Bryson City, 213 N. C. 165, 195 S. E. 398 (1938).

§ 153-82. Consolidated bond issues.—It shall be lawful to consolidate into one issue bonds authorized by two or more orders for different purposes, in which event the bonds of such consolidated issue shall mature within the average of the periods estimated as the life of the several improvements, taking into consideration the amount of bonds to be issued on account of each item for which a period shall be estimated. (1927, c. 81, s. 12.)

§ 153-83. Sworn statement of debt before authorization of bonds for school purposes.—After the introduction, and at least ten days before the final passage of an order for the issuance of bonds for school purposes, an officer designated by the governing body for that purpose shall file with the clerk a statement of debt incurred and to be incurred for school purposes under orders either introduced or passed, whether evidenced by bonds, notes, or otherwise, and whether incurred by original creation of the debt or by assumption of debt, including debt incurred by the county board of education, and including debt to the State or any department thereof, but not including obligations incurred to meet appropriations in anticipation of revenues to an amount not exceeding the amount of the last preceding tax levy for school purpose, nor including debt incurred in anticipation of the sale of any kind of bonds except funding and refunding bonds, which statement shall show the following:

(a) The assessed valuation of property as last fixed for county taxation.

(b) Outstanding school debt.

(c) Bonded school debt to be incurred under orders either passed or introduced.

(d) The sum of items "b" and "c".

(e) School sinking funds, being money or investments thereof pledged and held for the payment of principal of outstanding school debt.

(f) School credits, being principal sums owing to the county from school districts which are pledged to and when collected will be used in the retirement of outstanding school debt.

(g) Amount of unissued funding and refunding school bonds included in gross debt.

(h) The sum of items "e" and "f" and "g".

(i) Net school debt, being the sum by which item "d" exceeds item "h".

(j) The percentage that the net school debt bears to said assessed valuation. (1927, c. 81, s. 13.)

Cross Reference.—As to facts influencing the Local Government Commission in determining the advisability of bond issue, see § 159-8.

§ 153-84. Sworn statement of debt before authorization of bonds for other than school purposes.—After the introduction and at least ten days before the final passage of an order for the issuance of bonds for other than school purposes, an officer designated by the governing body for that purpose shall file with the clerk a statement of debt incurred and to be incurred for other than school purposes under orders either introduced or passed, whether evidenced by bonds, notes, or otherwise, and whether incurred by original creation of the debt, or by assumption of the debt, including debt to the State or any department thereof, but not including obligations incurred to meet appropriations in anticipation of revenues to an amount not exceeding the amount of the last preceding tax levy for other than school purposes, or including debt incurred in anticipation of the sale of any kind of bonds except funding and refunding bonds, which statement shall show the following:

(a) The assessed valuation of property as last fixed for county taxation.

(b) Outstanding debt for other than school purposes.

(c) Bonded debt to be incurred for other than school purposes under orders either passed or introduced.

(d) The sum of items "b" and "c".

(e) Sinking funds (except school sinking funds), being money or investments

thereof pledged and held for the payment of principal of debt outstanding for other than school purposes.

(f) Moneys payable to the county by a railroad or interurban railway company, under contract, as all or part of the cost of grade crossing elimination, if such moneys are pledged to and when collected will be used in the retirement of outstanding debt for other than school purposes.

(g) Amount of unissued funding and refunding bonds not for school purposes included in gross debt.

(h) The sum of items "e", "f" and "g".

(i) Net debt for other than school purposes, being the sum by which item "d", exceeds item "h".

(j) The percentage that the net debt for other than school purposes bears to said assessed valuation. (1927, c. 81, s. 14.)

Cross Reference.—As to facts influencing the Local Government Commission in determining the advisability of bond issue, see § 159-8.

Failure to File Statement.—Where taxpayers instituted an action attacking a bond order passed by the board of county commissioners on the ground that the commissioners had failed to comply with this section, requiring the filing of a true statement of the county debt, the attack upon the order is upon statutory as distinguished from constitutional grounds, and an action instituted more than 30 days after the first publication of the order cannot be maintained under § 153-90. Garrell v. Columbus County, 215 N. C. 589, 2 S. E. (2d) 701 (1939).

§ 153-85. Financial statement filed for inspection.—The sworn statement of debt shall remain on file with the clerk and be open to public inspection. In any action or proceeding in any court involving the validity of bonds, said statement shall be deemed to be true and to comply with the provisions of this article, unless it appears, in an action or proceeding commenced within the time limited by this article for actions to set aside bond orders, first, that the representations contained therein could not by any reasonable method of computation be true; or, second, that a true statement would show that the order authorizing the bonds could not be passed. (1927, c. 81, s. 15.)

§ 153-86. Publication of bond order.—As soon as possible after the introduction of the order and the filing of the financial statement hereinabove required, the clerk shall publish the order as introduced. Before publishing the same he shall fix an hour and day for a public hearing upon the order unless the governing body shall itself have fixed such hour and day. The hour and day, if fixed by the clerk, shall be ten o'clock A. M. of the first Monday of the following month, if ten days shall elapse between such publication and the day so fixed, but otherwise shall be ten o'clock A. M. of the first Monday of the next succeeding month. In connection with the publication of the order, and immediately below the same, the clerk shall publish a statement signed by him with blanks properly filled in substantially the following form:

"The foregoing order has been introduced and a sworn statement has been filed under the County Finance Act showing the assessed valuation of the county to be $..... and the net debt for school purposes (substitute net debt for other than school purposes if the proposed bonds are for other than school purposes) including the proposed bonds, to be $..... A tax will be levied for the payment of the proposed bonds and interest, if the same shall be issued. Any citizen or taxpayer may protest against the issuance of such bonds at a meeting of the board of county commissioners to be held at ..... o'clock ..... M. ....., 19.... or an adjournment thereof.

.....

"Clerk of Board of Commissioners."

(1927, c. 81, s. 16.)

Section Is Mandatory.—The proper publication of the notices required by this section is mandatory, and cannot be dispensed with. Frazier v. Board of Commissioners, 194 N. C. 49, 138 S. E. 433 (1927).

Sufficiency of Publication. — The provi-

sions as to notice given to taxpayers, etc., required by this section, of an opportunity to be heard before the county may issue bonds for various purposes, is sufficiently complied with if several orders of the county commissioners are published in the same advertisement and a date and place fixed for passing upon the objections made, if any, separately placed in the publication and distinctly referring to each of the separate purposes. Frazier v. Board of Commissioners, 194 N. C. 49, 138 S. E. 433 (1927).

The publication of one statement in connection with three orders was sufficient as a compliance with this section, a statement for each order not being necessary. Frazier v. Board of Commissioners, 194 N. C. 49, 138 S. E. 433 (1927).

§ 153-87. Hearing; passage of order; debt limitations.—On the day so fixed for the public hearing, but not earlier than ten days after the first publication of the order, the governing body shall hear any and all citizens and taxpayers who may desire to protest against the issuance of the bonds, but such hearing may be adjourned from time to time. After such hearing, the governing body may pass the order in the form of its introduction, or in an amended form but the amount of bonds to be issued shall not be increased by such amendment, nor the purpose of issuance substantially changed, without due notice and hearing as above required. Provided, however, that no order for the issuance of school bonds shall be passed unless it appears from said sworn statements that the net school indebtedness does not exceed five per cent of said assessed valuation, unless the bonds to be issued are funding or refunding bonds; and no order shall be passed for the issuance of bonds other than school bonds unless it appears from said sworn statement that the net indebtedness for other than school purposes does not exceed five per cent as said assessed valuation, unless the bonds to be issued are funding or refunding bonds: Provided, however, that if the net school debt of any county shall, on March 7, 1927, be in excess of four-fifths of the limitation above fixed therefor, such order for the issuance of school bonds may be passed, if the net debt shall not be increased thereby more than two per cent of such assessed valuation; and that if the net debt of any county for other than school purposes shall, on March 7, 1927, be in excess of four-fifths of the limitations above fixed therefor, such order may be passed if the net debt for other than school purposes shall not be increased thereby more than two per cent of such assessed valuation: Provided, further, that if any county shall assume all outstanding indebtedness for school purposes of every city, town school district, school taxing district, township or other political subdivision therein, the limit of the net debt of such county for school purposes, including the debt so assumed, shall be eight per cent (8%) and the privilege of creating or assuming an additional gross debt of two per cent (2%) under certain circumstances shall not be allowed such county. (1927, c. 81, s. 17.)

Local Modification.—Carteret: 1947, c. 32.

Cross Reference.—As to hearings by the Local Government Commission, see § 159-9.

Editor's Note.—For a discussion of this section, see 8 N. C. Law Rev. 471 et seq.

Cited in Castevens v. Stanly County, 209 N. C. 75, 183 S. E. 3 (1935).

§ 153-88. Material of construction and other details.—The statements as to kind and material of construction, so far as the same constitute conditions upon which maturities of bonds are to be determined under this article, as well as all details of bonds not required to be set forth in the order, may be set forth in resolution or resolutions to be passed on or after the passage of the order, and before the issuance of the bonds. (1927, c. 81, s. 18.)

§ 153-89. Publication of bond order.—A bond order after final passage thereof shall be published once in each of two successive weeks after its final passage. A notice substantially in the following form (the blanks being first properly filled in) with the printed or written signature of the clerk appended thereto, shall be published with the order:

"The foregoing order was finally passed 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 days after its first publication.

.....
Clerk."

(1927, c. 81, s. 19.)

§ 153-90. Limitation of action to set aside order.—Any action or proceeding in any court to set aside a bond order, or to obtain any other relief, upon the ground that the order is invalid, must be commenced within thirty days after the first publication of the notice aforesaid and the order or supposed order referred to in the notice. After the expiration of such period of limitations, no right of action or defence upon the validity 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. (1927, c. 81, s. 20.)

Constitutionality.—This section has not been construed by the Supreme Court, but statutes requiring notice to be given and providing that failure to give a notice within the time specified will operate as a bar, have been frequently construed and upheld. Kirby v. Board of Commissioners, 198 N. C. 440, 152 S. E. 165 (1930).

Suit to Restrain Issuance of Bonds. — Where the board of county commissioners, under ordinance duly passed and hearing thereon had, are about to issue bonds for the necessary purpose of erecting a jail, etc., contrary to the restrictions of the County Finance Act limiting the amount of bonds, a suit to restrain the issuance of the bonds is required by the express terms of this section to be commenced within thirty days after the publication of the required notice and order, and a suit instituted after the time prescribed cannot be maintained and the validity of the bonds will be upheld. The question of whether the statute is strictly one of limitation or a condition annexed to the cause of action is immaterial. Kirby v. Board of Commissioners, 198 N. C. 440, 152 S. E. 165 (1930).

When the proposed bond issue contravenes the Constitution, the requirement of this section that actions to restrain issuance of bonds by counties must be instituted within 30 days of the first publication of notice of the adoption of the bond resolution, does not apply. Sessions v. Columbus County, 214 N. C. 634, 200 S. E. 418 (1939).

Where Order Attacked on Statutory Grounds.—Where taxpayers instituted an action attacking a bond order passed by the board of county commissioners on the ground that the commissioners had failed to comply with § 153-84, requiring the filing of a true statement of the county debt, the attack upon the order is upon statutory as distinguished from constitutional grounds, and an action instituted more than 30 days after the first publication of the order cannot be maintained under this section. Garrell v. Columbus County, 215 N. C. 589, 2 S. E. (2d) 701 (1939).

Cited in Waldrop v. Hodges, 230 N. C. 370, 53 S. E. (2d) 263 (1949).

§ 153-91. Petition for referendum on bond order.—A petition demanding that a bond order be submitted to the voters may be filed with the clerk within thirty days after the first publication of the order. The petition shall be in writing and signed by voters of the county equal in number to at least fifteen per centum of the total number of votes cast at the last preceding election for the office of Governor. The residence address of each signer shall be written after his signature. The petition need not contain the text of the order to which it refers. The petition need not be all on one sheet and if on more than one sheet, it shall be verified as to each sheet. The clerk shall investigate the sufficiency of the petition and present it to the governing body, with a certificate stating the result of his investigation. The governing body, after hearing any taxpayer who may request to be heard, shall thereupon determine the sufficiency of the petition, and the determination of the governing body shall be conclusive. (1927, c. 81, s. 21.)

Bond Order Is Valid in Absence of Petition for Referendum.—Where no petition has been filed within the time prescribed by this section, praying that a bond order duly passed by the board of commissioners of a county, be submitted to the voters of

the county, in accordance with the provisions of the County Finance Act, the bond order is valid and effective, without the approval of the voters of the county. Hemric v. Board of Com'rs, 206 N. C. 845, 175 S. E. 168 (1934).

But Approval of Voters Is Required if Petition Filed. — Where a petition is filed in accordance with the provisions of this section, praying that a bond order duly passed by the board of commissioners of a county, authorizing and directing the issuance of bonds of the county for the purpose of procuring money for the purchase, construction, improvement or equipment of schoolhouses required for the maintenance of a school in each of the districts of the county as required by the Constitution of the State, be submitted to the voters of the county, such bond order is not valid or effective, until the same has been approved by the voters of the county as provided. Hemric v. Board of Com'rs, 206 N. C. 845, 175 S. E. 168 (1934).

§ 153-92. What majority required.—If a bond order provides that it shall take effect when approved by the voters of the county, the affirmative vote of a majority of those who shall vote on the bond order shall be required to make it operative. (1927, c. 81, s. 22; 1949, c. 497, s. 2.)

Cross Reference.—See Art. V, § 4 of the Constitution.

Editor's Note. — The 1949 amendment rewrote this section.

For brief comment on amendment, see 27 N. C. Law Rev. 454.

Lands and Equipment for Schools.—The issuance of bonds for school purposes does not require the submission of the question to the voters for the issuance of county bonds for the purchase of additional lands or equipment for established public schools, when the commissioners proceed under this article. The Constitution, Art. VII, § 7 and Art. IX, § 2, does not apply. Frazier v. Board of Commissioners, 194 N. C. 49, 138 S. E. 433 (1927).

Construction of New School Building.—The vote on the question of issuance of bonds by a county for the construction of a new school building, a necessary expense, is not against the registration, and a favorable vote of the majority of those voting in the election is sufficient to validate the bond resolution and authorize the issuance and sale of the proposed bonds. Mason v. Moore County Board of Com'rs, 229 N. C. 626, 51 S. E. (2d) 6 (1948).

Cited in Sessions v. Columbus County, 214 N. C. 634, 200 S. E. 418 (1939).

§ 153-92.1. General application of provision as to majority vote.—All provisions of public, public-local, private and special Acts relating to counties, municipalities, school districts, or other political subdivisions in the State which require that a proposition for the issuance of bonds or levy of taxes of any such county, municipality, school district or other political subdivisions, or that any other proposition be approved by the vote of a majority of the registered voters of such county, municipality, school district or other political subdivision, are hereby amended so as to require that the same be approved by a majority of the qualified voters who shall vote on any such proposition. The provisions of this section shall be applicable to every such election held subsequent to March 22, 1949, notwithstanding the fact that any procedures or acts or actions required or permitted by statute were taken or had with respect to any such election prior to such date. (1949, c. 497, s. 8.)

Cross Reference.—For similar provision relating to school districts, see § 115-15.1.

Cited in Trustees of Watts Hospital v. Board of Com'rs, 231 N. C. 604, 58 S. E. (2d) 696 (1950).

§ 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. (1927, c. 81, s. 23.)

§ **153-94. New registration.**—The governing body of the county in which such election is held may in their discretion, order a new registration of the voters for such election. The books for such new registration shall remain open in each precinct from 9 A. M. to 6 P. M. on each day, except Sundays and holidays, for three weeks, beginning on a Saturday morning and ending on the second Saturday evening before the election. A registrar and two judges of election shall be appointed by the governing body for each precinct: Provided, that the books shall be open at the polling places on each Saturday during the registration period. Sufficient notice shall be deemed to have been given of such new registration and of the appointment of the election officers if a notice thereof be published at least thirty (30) days before the closing of the registration books stating the hours and days for registration. It shall not be necessary to specify in said notice the places for registration. In case any registrar shall fail or refuse for any cause to perform his duties, it shall be lawful for the clerk to appoint another person to perform such duties, and no notice of such appointment shall be necessary. (1927, c. 81, s. 24.)

§ **153-95. Notice of election.**—A notice of the election shall be deemed sufficiently published if published once not later than thirty (30) days before the election, and thereafter twice before the election, at intervals of at least one week between publications. Such notice shall state the date of the election, the maximum amount of the proposed bonds, and the purpose thereof, and the fact that a tax will be levied for the payment thereof. The notice shall state the places at which the election will be held, but without enumeration thereof may state that the election will be held at the same places at which the last preceding election was held for members of the General Assembly, with such changes as may have been ordered by the governing body. (1927, c. 81, s. 25.)

§ **153-96. Ballots.**—The form of the question as stated on the ballot shall be in substantially the words: "For the order authorizing $..... bonds (briefly stating the purpose) and a tax therefor" and "Against the order authorizing $..... bonds (briefly stating the purpose) and a tax therefor." 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). (1927, c. 81, s. 26.)

§ **153-97. Returns canvassed.**—The officers appointed to hold the election, in making return of the result thereof, shall incorporate therein not only the number of votes cast for and against each order submitted but also the number of voters registered and qualified to vote in the election. The governing body shall canvass the returns, and shall include in their canvass the votes cast and the number of voters registered and qualified to vote in the election, and shall determine and declare the result of the election. (1927, c. 81, s. 27.)

§ **153-98. Application of other laws.**—Except as herein otherwise provided, the registration and election shall be conducted in accordance with the laws then governing elections for members of the General Assembly in said county, and governing the registration of electors for such elections. (1927, c. 81, s. 28.)

§ **153-99. Statement of result.**—The governing body shall prepare a statement showing the number of votes cast for and against each order submitted, and the number of voters qualified to vote in the election, and declaring the result of the election, which statement shall be signed by a majority of the members of the governing body and delivered to the clerk, who shall record it in the minutes of the governing body, and file the original in his office and publish it once. (1927, c. 81, s. 29.)

§ **153-100. Limitation as to actions upon elections.**—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 as provided in § 153-99. (1927, c. 81, s. 30.)

Cited in Waldrop v. Hodges, 230 N. C. 370, 53 S. E. (2d) 263 (1949).

§ 153-101. Preparation for issuing bonds.—At any time after the final passage of a bond order, all steps preliminary to the actual issuance of bonds under the order may be taken, but the bonds shall not be actually issued unless and until the order takes effect. (1927, c. 81, s. 31.)

§ 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 three 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, however, that funding or refunding bonds heretofore or hereafter authorized may be issued at any time within five years after the order takes effect.

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, 1950, and which have not been issued by July 1st, 1951, may be issued in accordance with all other provisions of law at any time prior to July 1st, 1953, 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, 1953, 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.)

Local Modification.—Buncombe and municipalities therein: 1943, c. 56, s. 1.

Editor's Note. — The 1939 amendment added the proviso at the end of the first paragraph. The 1947 amendment added the second paragraph, and the 1949 and 1951 amendments changed the dates therein.

For brief comment on the 1947 amendment, see 25 N. C. Law Rev. 453.

Cited in Waldrop v. Hodges, 230 N. C. 370, 53 S. E. (2d) 263 (1949).

§ 153-103. Bonded debt payable in installments.—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 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. 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 § 153-80. 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. (1927, c. 81, s. 33; 1931, c. 60, s. 57; 1933, c. 259, s. 2; 1951, c. 440, s. 3.)

Editor's Note.—Prior to the 1933 amendment this section applied to funding and refunding bonds except in cases where the debt exceeded ten per cent of the value of county property.

The 1951 amendment rewrote the section.

§ **153-104. Medium and place of payment.**—The bonds may be made payable in such kind of money and at such place or places within or without the State of North Carolina as the governing body may by resolution provide. (1927, c. 81, s. 34.)

§ **153-105. Formal execution of bonds.**—The bonds shall be issued in such forms as the officers who execute them shall adopt, except as otherwise provided by the governing body. They shall be signed by two or more officers designated by the governing body, or if the governing body makes no such designation, then by the chairman of the governing body and by the clerk, and the corporate seal of county or of the governing body shall be affixed to the bonds. The bonds may have coupons attached for the interest to be paid thereon, which coupons shall bear a facsimile signature of the clerk in office at the date of the bonds or at the date of delivery thereof. The delivery of bonds so executed shall be valid, notwithstanding any change in officers or in the seal of the county occurring after the signing and sealing of the bonds. (1927, c. 81, s. 35.)

§ **153-106. Registration and transfer of bonds.**—(a) Bonds payable to bearer. Bonds issued under this article shall be payable to the bearer, unless they are registered as provided in this section; and each coupon appertaining to a bond shall be payable to the bearer of the coupon.

(b) Registration and effect. A county may keep in the office of a county officer to be designated by the governing body, or in the office of a bank or trust company appointed by the governing body as bond registrar, a register or registers for the registration and transfer of its bonds, in which it may register any bond at the time of its issue, or, at the request of the holder, thereafter. After such registration the principal and interest of the bond shall be payable to the person in whose name it is registered except in the case of a coupon bond registered as to principal only, in which case the principal shall be payable to such person, unless the bond shall be discharged from registry by being registered as payable to bearer. After registration a bond may be transferred on such register by the registered owner in person or by attorney, upon presentation to the bond registrar, accompanied by delivery of a written instrument of transfer in a form approved by the bond registrar, executed by the registered owner.

(c) Registration and transfer noted on bond. Upon the registration or transfer of a bond as aforesaid, the bond registrar shall note such registration or transfer on the back of the bond. Upon the registration of a coupon bond, as to both principal and interest, he shall also cut off and cancel the coupons, and endorse upon the back of the bond a statement that such coupons have been cancelled.

(d) Agreement for registration. A county may, by recital in its bonds, agree to register the bonds as to principal only, or agree to register them either as to principal only, or as to both principal and interest, at the option of the bondholder. (1927, c. 81, s. 36.)

§ **153-107. Application of funds.** — The proceeds of the sale of bonds and bond anticipation notes under this article shall be used only for the purposes specified in the order authorizing said bonds, and for the payment of the principal and interest of such notes issued in anticipation of the sale of bonds: Provided, however, that if for any reason any part of such proceeds are not applied to or are not necessary for such purposes, such unexpended part of the proceeds shall be applied to the payment of the principal or interest of said bonds. The cost of preparing, issuing, and marketing bonds shall be deemed to be one of the purposes for which the bonds are issued. If any notes issued in anticipation of the sale of bonds shall be outstanding and unpaid when the proceeds of the sale of bonds are received, such proceeds, or an amount thereof sufficient to retire such notes, shall be immediately, upon the receipt thereof, placed in a separate fund, which shall be held and used solely for the payment of such notes. If any member of the governing body or any county officer shall vote to apply or shall apply, or shall par-

ticipate in applying any proceeds of bonds or bond anticipation notes in violation of this section, such member or such officer shall be guilty of a felony, and shall be prosecuted by the solicitor of the district in which the county lies, and shall be fined not more than ten thousand dollars ($10,000) or imprisoned in the State's prison not more than twenty years, or both, at the discretion of the court, and shall forfeit and pay to any taxpayer or any holder of such bonds or notes who sues for the same the sum of two hundred dollars for each such act, and also all damages caused thereby. (1927, c. 81, s. 38.)

Cross Reference. — As to authority to invest proceeds of bonds which cannot be used for purpose of issue, see § 159-49.1.

Right to Transfer and Allocate Funds. —This section does not place a limitation upon the legal right to transfer or allocate funds from one project to another included within the general purpose for which bonds were issued. The inhibition contained in the statute is to prevent funds obtained for one general purpose being transferred and used for another general purpose. For example, the statute prohibits the use of funds derived from the sale of bonds to erect, repair and equip school buildings, from being used to erect or repair a courthouse or a county home, or similar project. This view is in accord with the provisions of § 159-49.1. Atkins v. McAden, 229 N. C. 752, 51 S. E. (2d) 484 (1949).

Effect of Bond Order. — A bond order under § 153-78 must set forth one of the purposes enumerated in § 153-77, but it is not required that it set out in detail the estimates of cost and descriptions of the particular projects for which the funds are proposed to be used, and their inclusion does not limit the allocation of the proceeds of the bonds under this section, provided the use of the funds falls within the general purpose designated. Atkins v. McAden, 229 N. C. 752, 51 S. E. (2d) 484 (1949).

§ 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 three 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, if maturing not more than six months from their date, may be disposed of by public or private negotiations, after five days notice published in some newspaper having a general circulation in the county, but if maturing more than six months from date, they shall be sold after advertisement as provided in this article for advertisement and sale of bonds. 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.)

§ 153-109. Bonds and notes shall recite the authority for issuance.—All bonds and notes authorized by this article shall recite that they are issued under and pursuant to this article. (1927, c. 81, s. 40.)

§ 153-110. Taxes levied for payment of bonds.—The full faith and credit of the county shall be deemed to be pledged for the punctual payment of the principal of and interest on every bond and note issued under this article, including bonds for which special funds are provided. The governing body shall annually levy and collect a tax ad valorem upon all the taxable property in the county sufficient to pay the principal and interest of all bonds issued under this article as such principal and interest become due: Provided, however, that such tax may be reduced by the amount of other moneys appropriated and actually available for such purpose. The powers stated in this section in respect of the levy of taxes for the payment of the principal and interest of bonds and notes shall not be subject to any limitation prescribed by law upon the amount or rate of taxes which a county may levy; the General Assembly does here give its special approval to the levy of taxes in the manner and to the extent provided by this article for the payment of obligations incurred pursuant to this article for the special purposes for which such obligations are in this article authorized. Taxes levied under this section shall be levied and collected in the same manner as other taxes are levied and collected upon property in the county. If any member of the governing body or any county officer shall vote to apply or shall apply or participate in applying any taxes in violation of this section, such member or officer shall be guilty of a felony, and shall be prosecuted by the solicitor of the district in which the county lies, and shall be fined not more than ten thousand dollars ($10,000) or imprisoned in the State prison not more than twenty years, or both, at the discretion of the court, and shall forfeit and pay to any taxpayer or any holder of such bonds or notes who sues for the same the sum of two hundred dollars for each such act and also all damages caused thereby.

Nothing in this section shall be construed as authorizing an unlimited tax for the payment of bonds not issued for a special purpose within the meaning of section six of article five of the Constitution of North Carolina. It is the intention of this article, however, to authorize the issuance of funding and refunding bonds and notes as herein provided in cases where taxation for their payment is limited by the Constitution, as well as in other cases. The General Assembly hereby declares that an emergency exists by reason of the present extraordinary financial condition of the counties of this State, and hereby gives it special approval to the levying of taxes to the fullest extent permitted by the Constitution for the purpose of paying bonds and notes issued hereunder to fund or refund or renew indebtedness outstanding on March 3, 1931, or incurred before July first, nineteen hundred and thirty-three, and hereby declares that the payment of such bonds and notes constitutes a special purpose: Provided, in case of funding or refunding bonds which do not mature in installments as provided in § 153-103, a tax for the payment of the principal of the said bonds need not be levied prior to the fiscal year or years said bonds mature, unless it is so provided for in an order or resolution passed before the issuance of said bonds, in which case such tax shall be levied in accordance with the provisions of such order or resolution. (1927, c. 81, s. 41; 1931, c. 60, s. 60; 1933, c. 259, s. 2.)

Cross Reference.—As to statute authorizing counties, with the approval of the Local Government Commission, to avail themselves of the Federal Bankruptcy Act, see § 23-48.

Editor's Note. — The 1931 amendment added the second paragraph, and the 1933 amendment added the proviso thereto.

§ 153-111. Destruction of surrendered bonds.—All surrendered county bonds may, in the discretion of the board of county commissioners, be destroyed. Before such bonds are destroyed, the county treasurer shall make a correct descriptive list of all bonds of the county surrendered, in a substantially bound book to be kept by him for that purpose, which list shall include the number, date and

amount of each bond and the purpose for which it was issued, when this can be ascertained; and after such list shall be made, the surrendered bonds shall be destroyed by burning in the presence of the chairman of the board of county commissioners, the county accountant or treasurer or auditor, the county attorney, the secretary of the board of county commissioners and the county superintendent of public instruction, who shall each certify under his hand in such book that he saw such described bonds so burned and destroyed. (1941, c. 293.)

§ 153-112. Enforcement of article.—If any boards or officer of a county shall be ordered by a court of competent jurisdiction to levy or collect a tax to pay a judgment or other debt, or to perform any duty required by this article to be performed by such board or officer, and shall fail to carry out such order, the court, in addition to all other remedies, may appoint its own officers and other persons to carry out such order and remove such board or officer who has thus refused to carry out such order. (1927, c. 81, s. 42.)

§ 153-113. Repeals.—All acts and parts of acts, whether general, special, private or local, authorizing or limiting or prohibiting the issuance of bonds or other obligations of a county or counties, are hereby repealed: Provided, further, that the repeal shall not affect the validity of any bonds or obligations issued or incurred prior to March 7, 1927, nor shall such repeal affect the powers, duties or obligations for providing for the payment of such bonds or obligations or interest thereon. Provided, further, that this article shall not affect any local or private act enacted at the 1927 session of the General Assembly, but the powers hereby conferred and the methods of procedure hereby provided shall be deemed to be conferred and provided in addition to and not in substitution for those conferred or provided by any such local or private act enacted at the 1927 session of the General Assembly; and any county may at its option proceed under any such local or private act applicable to it enacted at the 1927 session of the General Assembly, without regard to the restrictions imposed by this article, or may proceed under this article without regard to the restrictions imposed by such local or private act: Provided, further, that any county which prior to March 7, 1927, has entered into a valid contract for permanent improvements for which, prior to March 7, 1927, such county was empowered by law to issue bonds in sufficient amount, is hereby authorized to issue such an amount of bonds as may be necessary to comply with said contract, either in the manner provided by this article or in the manner provided by law at the time such contract for permanent improvements was made: Provided, further, that nothing herein contained shall be applicable to or shall govern the method by which any county board of education may borrow money from the special building fund created by chapter 201, Public Laws of 1925, or from any special building fund of the State created by any law enacted at the regular session of the General Assembly of 1927, or from the State Literary Fund as provided in §§ 115-220 to 115-224, as amended, but the limitations of this article upon the amount of net school debt shall apply to such borrowing.

Provided, further, that except as provided in § 153-78 nothing herein contained shall have the effect of repealing any act in force on March 7, 1927, or enacted by the session of the General Assembly of one thousand nine hundred twenty-seven, requiring the question of issuing bonds by any county to be submitted to a vote of the people. (1927, c. 81, s. 43; 1929, c. 110; 1931, c. 60, s. 61; 1941, c. 266.)

Editor's Note. — The 1931 amendment inserted the reference to § 153-78 in the last proviso. It also struck out the former proviso relating to Rockingham and New Hanover counties. The 1929 amendment had already struck out New Hanover from the proviso.

The 1941 amendment inserted in the next to the last proviso of this section the provisions relating to the State Literary Fund.

Inconsistent Public-Local Law. — This section expressly repeals a public-local law applying to a county when inconsistent with its terms. Hartsfield v. Craven County, 194 N. C. 358, 139 S. E. 698 (1927).

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 meanings:

(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 of bonds and notes as such principal or interest falls due, and the payments of moneys required to be paid into sinking funds.

(c) "Constitutional school maintenance" means the maintenance of schools for the six months term required by the State Constitution.

(d) "Department" means any division of county functions or activities.

(e) "Department head" means the principal officer of any office, board, commission, institution, or branch of the county government in charge of a department.

(f) 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.

(g) "Surplus revenues" means revenues in excess of the estimated revenues against which an appropriation is made, and arises when actual revenues exceed estimated revenues at the end of a fiscal year.

(h) "Unencumbered balance" means the balance of an appropriation after charging thereto all obligations for goods and services and all contracts or agreements payable from the appropriation, and all payments made from the appropriation except payments of such obligations, contracts, or agreements already charged against the appropriation.

(i) "Fund" means the separate fund or account provided for a distinct function of government, as such functions are shown in (j) below.

(j) The funds required by this article are funds for each of the following functions of government:

(1) Current operating expense of the county.

(2) Constitutional school maintenance.

(3) County-wide school expenses over and above constitutional school maintenance.

(4) County debt service.

(5) Each special purpose to which the General Assembly has given its special approval, separately stated.

(6) Debt service of each subdivision, separately stated.

(7) Maintenance of each subdivision, separately stated.

(8) Permanent improvements in each subdivision separately stated. (1927, c. 146, ss. 1, 2.)

Local Modification. — Forsyth: 1945, c. 87.

Cross Reference.—As to application of this article to municipalities, see § 160-409 et seq.

Common Contingent Fund.—A municipality is without authority to make an appropriation and levy a tax for a common contingent fund, and while it may appropriate an additional five per cent for emergency purposes for each fund for which it has authority to levy a tax, which becomes a part of the fund requirement to be covered by a subsequent tax levy, it may not make a transfer from one fund to another except from the general municipal expense fund, under this and following sections. Sing v. Charlotte, 213 N. C. 60, 195 S. E. 271 (1938).

What are necessary municipal expenses for which a tax may be levied without a vote is a question for the courts and the courts determine what class of expenses are necessary expenses of a municipality,

and the governing body of the municipality determines when such expenses are necessary for that particular locality. Sing v. Charlotte, 213 N. C. 60, 195 S. E. 271 (1938).

Accumulation of Surplus School Sinking Fund Not Authorized.—The law does not contemplate or authorize the accumulation of a surplus school sinking fund and the exemption of such surplus from the salutary provisions of the "County Fiscal Control Act." Johnson v. Marrow, 228 N. C. 58, 44 S. E. (2d) 468 (1947).

The board of county commissioners may amend or clarify their records to make them speak the truth in order to list separately tax levies for general and special purposes as required by this section, and while this power exists only to make bona fide corrections, nothing else appearing, resolutions amending the records will be assumed to be what they purport to be, and not original actions. Atlantic Coast Line R. Co. v. Duplin County, 226 N. C. 719, 40 S. E. (2d) 371 (1946).

Quoted in Coe v. Surry County, 226 N. C. 125, 36 S. E. (2d) 910 (1946).

Cited in Martin v. Swain County, 201 N. C. 68, 158 S. E. 843 (1931).

§ **153-115. County accountant.**—It shall be the duty of the board of county commissioners in each county in the State, on or before the first Monday in April one thousand nine hundred and twenty-seven, and biennially thereafter, 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, or until the appointment of his successor; but, in lieu of appointing a county accountant in counties in which there is an auditor, the board shall impose and confer upon the county auditor 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, 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. If such duties and powers are imposed or conferred upon 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 the duties thereof are imposed. (1927, c. 146, s. 3.)

Local Modification. — Brunswick: 1931, c. 34; 1941, c. 71; 1943, c. 327; Harnett: 1933, c. 295; Jackson: 1947, c. 17, s. 13.

Detailed Accounts to Be Kept. — Under the provisions of this article it is the duty of the county accountant to keep detailed accounts of appropriations and disbursements of county funds and to certify on each warrant or order drawn against the county that provision has been made for its payment and appropriation duly made or a bond or note duly authorized as required by this article. Avery County v. Braswell, 215 N. C. 270, 1 S. E. (2d) 864 (1939), followed in 215 N. C. 279, 1 S. E. (2d) 870 (1939).

Cited in Board of Education v. Walter, 198 N. C. 325, 151 S. E. 718 (1930).

§ **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 a record of the date, source, and amount of each item of receipts, and the date, the payee or contractor, the specific purpose, and the amount of every disbursement or contract made.

(c) He shall require every officer and department receiving or disbursing money of the county or its subdivisions to keep a record of the date, source, and amount of each item of receipts, and the date, the payee or contractor, the specific purpose, and the amount of every disbursement or contract made, and shall require the officer or department to keep a copy of such contract.

(d) He shall examine once a month, and at such other times as the board may

direct, all books, accounts, receipts, vouchers, and other records of all county officers and employees and departments of the county administration receiving or expending public money, including the road commission, if there is such commission in the county, the county board of education and other subdivisions.

(e) He shall require all officers and employees in the county whose duty it is to 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 a part of their compensation or are not entitled to the same.

(f) He shall once a year, or 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 subdivisions, showing the receipts and expenditures of the different departments of the county and its subdivisions, including the department of public schools.

(g) He shall advise with the different officers and departments of the county and with State officers as to the best and most convenient method of keeping accounts, and he 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. He shall not allow any bill or claim unless the same be itemized and verified as now required by law.

(h) 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.)

§ 153-117. Heads of departments and officers to file statement before June 1st.—It shall be the duty of all heads of departments and officers in charge of the functions for which county money or money of subdivision is to be expended, to file with the county accountant, before the first day of June of each year (a) a complete statement of the amounts expended and estimated to be expended for each object in his department in the current fiscal year, and (b) beginning in the year one thousand nine hundred and twenty-eight, a statement of the amounts expended for each object in his department in the fiscal year preceding the then current fiscal year, and (c) an estimate of the requirements of his department for each object in the ensuing fiscal year. Such statements and estimates shall list each object of disbursement under the appropriate class of functions as defined in § 153-114. (1927, c. 146, s. 5.)

Local Modification.—Mecklenburg: 1941, cc. 38, 72.

§ 153-118. Estimates necessary for ensuing fiscal year itemized.—Upon receipt of such statements and estimates, the county accountant shall prepare (a) his estimate of the amounts necessary to be appropriated for the next ensuing fiscal year for the different objects of the county and subdivisions, listing each object of disbursement under the appropriate class of functions as defined in § 153-114, which estimate shall include the full amount of any deficit in any fund, and may include an emergency estimate for each fund not greater than five per cent in excess of other estimates for such fund, and (b) an itemized estimate of the revenue to be available during the ensuing fiscal year, separating revenue from taxation from revenue from other sources, classifying the same under proper funds as defined in § 153-114, and (c) an estimate of the amount of unencumbered and surplus revenues of the current fiscal year in each fund. 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. (1927, c. 146, s. 6.)

Local Modification.—Mecklenburg: 1941, cc. 38, 72.

§ **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 appropriation 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) furnish a copy of the budget estimate to each newspaper published in the county, and (c) cause to be published in at least one newspaper published in the county a summary of the budget estimate showing at least the total appropriation recommended for each separate fund or function as defined in § 153-114: Provided, however, that if no newspaper be published in the county, such summary 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 appropriation resolution. (1927, c. 146, s. 7.)

Local Modification.—Mecklenburg: 1941, cc. 38, 72.

§ **153-120. Time for adoption of appropriation resolution.** — It shall be the duty of the board of county commissioners, not later than the fourth Monday in July in each year, to adopt and record on its minutes an appropriation resolution, the form of which shall be prescribed by the county accountant, which resolution shall make appropriations for the several purposes of the county and subdivisions thereof, upon the basis of the estimates and statements submitted by the county accountant, such sums as the board may deem sufficient and proper, whether greater or less than the recommendations of the budget estimates: Provided, however, that (a) no appropriation recommended by the county accountant for debt service shall be reduced, and (b) the powers given by the general law to the county board of education and county commissioners jointly, in respect to the funds to be expended for school purposes shall be observed by the county accountant and by the board of county commissioners, and (c) the board shall appropriate the full amount of all lawful deficits reported in the budget estimate not funded as provided by law, and (d) no appropriation shall be made in excess of the amount which may be raised under any constitutional or statutory limits of taxation. (1927, c. 146, s. 8.)

Local Modification.—Mecklenburg: 1941, cc. 38, 72.

§ **153-121. Copies of resolution filed with county treasurer and county accountant.**—A copy of the appropriation 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.)

§ **153-122. Supplemental budget.**—As soon as practicable after the first Monday in July, and before any levy of taxes is made, the county accountant shall submit to the board a supplemental budget showing: (a) the amount of any increase or decrease in each item of (1) deficits and (2) unencumbered balances and (3) surplus revenues as reported by him in the budget estimate, and (b) the amount of miscellaneous revenues collected in the preceding year from sources other than taxation, this amount to be separately classified as to funds and functions, and (c) an estimate of the amount of taxes for the current fiscal year which will not be collected in the same year. Upon the submission of the figures showing increase or decrease in deficits, the appropriation resolution shall be deemed automatically amended by adding such increase to or subtracting such decrease from the amount appropriated for the fund or function to which such deficit pertains, and it shall be the duty of the clerk to record the amount of increase or decrease on the margin of the recorded appropriation resolution. The figures of the supplemental budget showing increases or decreases in unencumbered balances and surplus revenues, and showing the amount of miscellaneous revenues collected

in the preceding fiscal year from sources other than taxes, and showing the estimate of taxes uncollectible in the current fiscal year, shall not affect the appropriation resolutions, but shall be taken into consideration in the levy of taxes as hereinafter provided. (1927, c. 146, s. 10; 1933, c. 191.)

Local Modification.—Mecklenburg: 1941, cc. 38, 72.

Editor's Note. — The 1933 amendment deleted from the end of the first sentence a clause which required a mathematical computation in determining the estimate mentioned in (c).

§ 153-123. Publication of statement of financial condition of county. —Simultaneously with the submission of the supplemental budget, 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 shall contain the figures showing at least the following items:

(a) The assessed valuation for the current year, unless the same shall not have been finally ascertained, in which case the assessed valuation of the preceding year shall be given.

(b) An itemized statement of the debt of the county and its subdivisions.

(c) The amount and rate of the taxation levied for the preceding fiscal year, whether collected or not.

(d) Amount of taxes, including land sales, for each of the three preceding fiscal years which remained uncollected at the end of such years, respectively, and the average thereof, and the amount of such uncollected taxes which were collected by the close of the preceding fiscal year.

(e) Miscellaneous revenue other than taxation for the preceding fiscal year.

(f) Deficits, if any, in all county funds in the aggregate for the preceding fiscal year.

(g) Such deficits for each subdivision of the county.

(h) Surplus revenues of the county, and separately stated, of each of the subdivisions of the county for the preceding year.

(i) Unencumbered balances of the county and, separately stated, of each of the subdivisions of the county for the preceding year.

(j) The rate of taxation for county purposes and the rate for each subdivision which he estimates it will be necessary to levy in the current fiscal year, these rates to be computed as is provided in § 153-124 for computation of rates by the board of county commissioners. (1927, c. 146, s. 11.)

§ 153-124. Levy of taxes.—As soon as may be practicable after the passage of the appropriation resolution and the automatic amendment thereof, which is hereinabove provided, and after the ascertainment of the assessed valuation of property for taxation, but not later than Wednesday after the third Monday in August of each year, the board of county commissioners, by resolution to be recorded in its minutes, shall levy upon all the taxable property of the county, in the case of county appropriations, and upon all the taxable property of each subdivision in the case of appropriations for subdivisions, such rate of tax as may be necessary to produce (a) the sum appropriated, and (b) the amount of the supplemental budget estimate of taxes which will not be collectible in the current fiscal year, after taking into consideration the figures contained in the budget estimate and supplemental budget showing surplus revenues and unencumbered balances carried over from the preceding fiscal year and the estimated miscellaneous revenues from other sources than taxation; but for the purpose of this computation the board shall not estimate miscellaneous revenues at a

figure greater than ten per cent (10%) more than the actual receipts from miscellaneous revenues in the preceding fiscal year, as reported by the county accountant in the supplemental budget. (1927, c. 146, s. 12.)

Local Modification.—Mecklenburg: 1941, cc. 38, 72.

§ 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 § 153-124, shall be guilty of a misdemeanor, punishable by fine or imprisonment, or both, in the discretion of the court. Provided: that in case of 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 of the tax levy for the current year; provided, further, that where a contingent fund has been provided for in the county budget the Local Government Commission shall not authorize such anticipation in excess of the difference between five per centum and the amount theretofore levied as a contingent fund. (1929, c. 321, s. 1.)

§ 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 execute 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 tax levied for such purpose. (1929, c. 321, s. 2.)

§ 153-127. Appropriations not transferable.—No appropriation made by the appropriation resolution, except an appropriation for general county expenses, shall be transferred from one fund to another fund, and no appropriation for general county expenses shall be transferred to any fund of any subdivision of the county, or vice versa. No appropriation for general county expenses shall be transferred, except upon the passage and recording of a resolution of the board of county commissioners ordering such transfer, and copies of such resolution shall be furnished to the county accountant and to the head of each department to which or from which such transfer shall be made. (1927, c. 146, s. 13.)

§ 153-128. Appropriations bridging interval.—In the interval between the beginning of the fiscal year and the adoption of the annual appropriation resolution, the board may make appropriations for the purpose of paying fixed salaries, the principal and interest of indebtedness, the stated compensation of officers and employees, and for the usual ordinary expenses of the county and its subdivisions, which appropriations so made shall be chargeable to the several appropriations, respectively, thereafter made in the annual appropriation resolution for that year. (1927, c. 146, s. 14.)

§ 153-129. County may create special revolving fund to supplant borrowing on anticipations; withdrawals.—In order to avoid the necessity of borrowing money in anticipation of the receipts of taxes and revenues or the proceeds of the sale of bonds, a county may by resolution create a special revolving fund and with the consent of the Commission, provide for raising the same to be used in anticipation of the receipt of such moneys and to be replenished by means of such moneys when received. Withdrawals of money from said fund shall be made only for the purposes and within the amounts and for the periods and upon the conditions stated in §§ 153-72 and 153-73 in respect to the borrow-

ing of money. Such withdrawals shall not be made unless approved by the Local Government Commission in the same manner as loans made under said sections. No resolutions creating such a fund shall be repealed or amended so as to divert or reduce the amount of the fund without the approval of said Commission as to necessity or expediency. (1931, c. 60, s. 62.)

§ 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 resolution 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 the 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 unencumbered by the amount to be paid on such contract or agreement until the county is discharged therefrom. (1927, c. 146, s. 15.)

Cited in Sherrill v. Graham County, 205 N. C. 178, 170 S. E. 636 (1933).

§ 153-131. False certificate.—If any county auditor or county accountant of any county of the State shall make any certificate as required by § 153-130, when there is not a sufficient unencumbered balance remaining for the payment of the obligation, he shall be guilty of a misdemeanor and punishable by fine or imprisonment, or both, in the discretion of the court except as herein provided. (1929, c. 321, s. 3.)

§ 153-132. Warrants for payment.—No 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, signed by the head of the department for which the expense was incurred, nor unless the bill or claim for which the warrant or order is given shall have been presented to and approved by the county accountant, or in case of his disapproval of such claim or bill, by the board of county commissioners. The board shall not approve any claim or bill 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 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.'" (1927, c. 146, s. 16; 1935, c. 382.)

Editor's Note. — The 1935 amendment inserted in the second sentence the exception as to warrants or orders for payment of claim approved by the board after disallowance by the accountant.

Vouchers to Be Certified by Accountant. —The duties of the county accountant in certifying county vouchers is clearly set forth in the County Fiscal Control Act, which duties are special in character and are in addition to and not in substitution for the duties and functions of other county officers, and even if it be conceded that the signing of the voucher by the chairman of the board was malfeasance, the accountant and his surety may not avoid liability on the ground that some other officer was guilty of negligence or malfeasance. Avery County v. Braswell, 215 N. C. 270, 1 S. E. (2d) 864 (1939), followed in 215 N. C. 279, 1 S. E. (2d) 870 (1939).

§ 153-133. Accounts to be kept by county accountant. — Accounts shall be kept by the county accountant for each object of appropriation, which objects shall be classified under the various funds as defined in § 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; such account shall 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.)

§ 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), 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. (1927, c. 146, s. 18.)

Approval of Bond in Smaller Amount.— See Ellis v. Brown 217 N. C. 787, 9 S. E. (2d) 467 (1940).

§ 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 daily deposit the same with the county treasurer or in some bank, banks, or trust company, designated by the board of commissioners, in the name of the county and of the fund to which it is applied, and shall report the same daily to the county accountant by means of duplicate deposit ticket signed by the depository. If there is no treasurer or designated depository in the county, then the board of commissioners may allow such deposits to be made every three days in some depository outside of the county. If such officer or employee collects or receives such public moneys for a taxing district of which he is not an officer or employee, he shall, during Saturday of each week, pay to the proper officer of such district the amount so collected or received during the current week, and take receipt therefor.

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

It shall be the duty of the board of commissioners to provide by recorded resolution for interest to be paid on public deposits at a rate to be determined by the board of commissioners. It shall be unlawful for any public moneys to be deposited by any officer, employee, or department, 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.)

Editor's Note. — The 1929 and 1939 amendments changed the second paragraph of this section.

Requiring Bonds and Interest of Bank Appointed County Financial Agent. — See note under § 155-3.

Applied in United States Fidelity, etc., Co. v. Hood, 206 N. C. 639, 175 S. E. 135 (1934); Standard Inv. Co. v. Snow Hill, 78 F. (2d) 33 (1935).

§ **153-136. Conduct by county accountant constituting misdemeanor.** —If a county accountant shall knowingly certify any contract, agreement, or warrant in violation of the requirements of this article, or 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) or imprisonment for not less than twenty (20) days, or both fine and imprisonment, in the discretion of the court, and shall be liable on his bond for all damages caused by such violation or failure. (1927, c. 146, s. 20.)

§ **153-137. Liability for damages for violation by officer or person.** —If any county officer or head of a department 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 liable for all damages caused thereby. (1927, c. 146, s. 21.)

§ **153-138. Recovery of damages.**—The recovery of all damages allowed by the 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.)

§ **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 said 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.)

Editor's Note. — The 1939 amendment added the second sentence of this section.

§ **153-140. Purpose of article.**—It is the purpose of this article to provide a uniform system for all counties of the State by which the fiscal affairs of counties and subdivisions thereof may be regulated, to the end that accumulated deficits may be made up, and future deficits prevented, either under the provisions of this article or under the provisions of other laws authorizing the funding of debts and deficits, and to the end that every county in the State may balance its budget and carry out its functions without incurring deficits. (1927, c. 146, s. 24.)

§ **153-141. Construction and application of article.**—All laws and parts of laws, whether general, local or special, which are in conflict with this article, are hereby repealed. Nothing herein contained, however, shall require any county now operating under a budget system provided by any local or special act in force on March 7, 1927, or which may be passed at the regular session of the General Assembly of 1927, to abandon any such operation or to comply with this article, but any such county may, in the discretion of its board

of commissioners, elect to conduct its procedure under any one or more sections of this article as the board may deem best. All such counties 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 § 153-123, (b) the adoption of an appropriation resolution which shall appropriate the full amount of all deficits not funded and the full amount required for debt service as required by § 153-120, (c) the annual levy of taxes sufficient to meet all appropriations and the probable amount of uncollectible taxes computed as required by § 153-124, (d) endorsement by some one county officer, who shall either be the county accountant or an officer designated for that purpose by the board, of all contracts, agreements, requisitions, warrants and orders, substantially as provided by §§ 153-130 and 153-132, (e) compliance with all the provisions of § 153-135, and (f) all the provisions of §§ 153-136 to 153-139, as to penalties, liability for damages and requirements for reporting offenses to the district solicitor shall apply in all such counties so far as such counties are herein required to comply with this article. (1927, c. 146, s. 25.)

§ **153-142. Local units authorized to accept their bonds in payment of certain judgments and claims.**—The governing bodies of the various counties, cities, towns, and other units in the State are hereby authorized in their discretion to accept their own bonds, at par, in settlement of any and all claims which they may have against any person, firm, or corporation, on account of any money of said unit held in any failed bank or on account of any judgment secured against any person, firm, or corporation on account of the funds in said bank.

Upon an order issued by the governing authorities of the county, city, town, or other unit, the treasurer of the county, city, town, or other unit is hereby authorized and empowered to accept the bonds of said unit in settlement of said claim, as set out in the preceding paragraph, and to mark said claim satisfied in full, whether the same has been reduced to judgment or not. (1933, c. 376.)

Article 10A.

Capital Reserve Funds.

§ **153-142.1. Short title.** — This article may be cited as "The County Capital Reserve Act of one thousand nine hundred and forty-three." (1943, c. 593, s. 1.)

Editor's Note. — For comment on this article, see 21 N. C. Law Rev. 357.

§ **153-142.2. Meaning of terms.**—The terms "fiscal year," "surplus revenues," "unencumbered balance," "debt service," and "fund," as used in this article shall have the same meaning as expressed in § 153-114, the same being a part of the County Fiscal Control Act. The terms "governing body," "clerk," "necessary expenses," and "published" as used in this article shall have the same meaning as expressed in § 153-70, being a part of the County Finance Act. The term "financial officer," as used in this article means the officer of a county having charge or custody of the moneys of the county, including moneys of the county board of education. (1943, c. 593, s. 2.)

§ **153-142.3. Powers conferred.**—In addition to all other funds now authorized by law a county is hereby authorized and empowered to establish and maintain a capital reserve fund in the manner hereinafter provided. (1943, c. 593, s. 3.)

§ **153-142.4. Sources of capital reserve fund.**—The capital reserve fund may consist of moneys derived from any one or more of the following sources:

(1) Unappropriated surplus revenues and unencumbered balances itemized as to.

(a) Collections of ad valorem taxes levied on all taxable property in the county separately stated as to purpose for which such taxes were levied;

(b) Proceeds from the sale of county property or property of the county board of education, separately stated;

(c) Proceeds from insurance collected by reason of loss of county property or property of the county board of education, separately stated;

(d) Receipts from revenues derived from sources other than ad valorem taxes which are not pledged or otherwise applicable by law to the payment of existing debt and separately stated as to the fund to which such revenues may lawfully accrue.

(2) Appropriation or appropriations included in the annual appropriation resolution: Provided, however, the sources of revenues from which each such appropriation shall be payable shall be itemized in said appropriation resolution as to amount and class of sources stated in subclauses (b), (c) and (d) of clause (1) of this section;

(3) Proceeds from the sale of county property not included in the estimated revenues appropriated for the current fiscal year;

(4) Proceeds from the sale of property of the county board of education not included in the estimated revenues appropriated for the current fiscal year;

(5) Proceeds from insurance collected by reason of loss of county property which are not included in the estimated revenues appropriated for the current fiscal year;

(6) Proceeds from insurance collected by reason of loss of property of the county board of education which are not included in the estimated revenues appropriated for the current fiscal year;

(7) Collections of revenues from sources other than ad valorem taxes in excess of such revenues estimated and appropriated for the current fiscal year and separately stated as to the fund to which such revenues may lawfully accrue. (1943, c. 593, s. 4; 1945, c. 464, s. 2.)

Editor's Note. — The 1945 amendment deleted from the latter part of the preliminary paragraph the words "except that no money shall be deposited in such capital reserve fund after July tenth, one thousand nine hundred forty-five."

§ 153-142.5. How the capital reserve fund may be established.— When a county elects under this article to establish a capital reserve fund the governing body shall pass an order authorizing and declaring that the same shall be established. Said order shall state such itemized sources provided in § 153-142.4 from which moneys are available for deposit in the capital reserve fund at the time of passage. In said order the governing body shall designate some bank or trust company as depository in which moneys shall be deposited for the capital reserve fund. Said order shall further contain a request to the Local Government Commission that the provisions thereof be approved by said Commission. Upon passage of said order the same shall be spread upon the minutes of the governing body and the clerk shall transmit a certified copy thereof to the Local Government Commission. (1943, c. 593, s. 5.)

§ 153-142.6. When the capital reserve fund shall be deemed established.—The capital reserve fund shall be deemed established when the order passed under the provisions of § 153-142.5 is approved by the Local Government Commission. After action is taken upon the provisions of said order by the Local Government Commission the secretary of said Commission shall notify the clerk in writing of the approval by said Commission or disapproval, if the Commission declines to approve the order, and the reasons therefor. Upon receipt of the notice of such approval the clerk shall thereupon notify the financial officer of the county who shall immediately deposit in the designated depository

the moneys stated as available in said order for the capital reserve fund and simultaneously report said deposit to the Local Government Commission. (1943, c. 593, s. 6; 1945, c. 464, s. 2.)

Editor's Note. — The 1945 amendment struck out the former provision relating to the duty of the financial officer to make deposits and report same to the Local Government Commission.

§ **153-142.6½. Increases to capital reserve fund.**—No increase to a capital reserve fund shall be made except by resolution adopted by the governing body and the provisions thereof approved by the Local Government Commission, which resolution shall state the source or sources of moneys from which such increase is intended to be made and the amount of the money from each such source, but each increase shall be from moneys derived from the identical source or sources as those stated in the order establishing the capital reserve fund or in an amendment thereto. The clerk shall transmit a certified copy of such resolution to the Local Government Commission. After action is taken upon the provisions of said resolution by the Local Government Commission the secretary of such Commission shall notify the clerk in writing of the approval by said Commission or disapproval, if the Commission declines to approve the resolution, and the reasons therefor. Upon receipt of the notice of approval the clerk shall thereupon notify the financial officer of the county who shall immediately deposit in the duly designated depository the moneys stated in said resolution and simultaneously report such deposit to the Local Government Commission. Deposits required in § 153-142.18 shall not be construed as increases of a capital reserve fund within the meaning of this section. (1945, c. 464, s. 2.)

§ **153-142.7. Amendments to order authorizing capital reserve fund.**—At any time or from time to time after the capital reserve fund is established, the governing body may amend the order authorizing the establishment of such fund for the purpose of including additional sources provided in § 153-142.4 or for the purpose of changing the designated depository. Each such amendment shall contain a request to the Local Government Commission that the provisions thereof be approved by said Commission. Each such amendment shall be spread upon the minutes of the governing body and the clerk shall transmit a certified copy thereof to the Local Government Commission. No such amendment shall be effective until the provisions thereof have been approved by said Commission. (1943, c. 593, s. 7.)

§ **153-142.8. Security for protection of deposits.**—Any bank or trust company designated as depository of the capital reserve fund shall furnish such security for deposits made in said fund as is required by law for other funds of the county. (1943, c. 593, s. 8.)

§ **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:

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

(1) Erection and purchase of schoolhouses, erection of additions to schoolhouses, school building equipment, acquisition of lands for school purposes;

(2) 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;

(3) Erection and purchase of county homes for the aged and infirm, erection of additions to county homes, acquisition of lands for county homes;

(4) Erection and purchase of hospitals, erection of additions to hospitals, acquisition of lands for hospitals;

(5) Erection and purchase of public auditoria and acquisition of lands therefor;

(6) Acquisition and improvement of lands for public parks and playgrounds;

(7) Acquiring, constructing and improving airports or landing fields for the use of airplanes or other aircraft;

(8) 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 subclauses (2), (3), (4), (5), (6) and (7) of this clause (a), or supplementing federal or State grants for any one or more of such purposes;

(9) Supplementing proceeds of sale of bonds or bond anticipation notes of the county issued for the purpose stated in subclause (1) of this clause (a), or supplementing loans from the State Literary Fund, or supplementing federal or State grants for such purpose.

(b) 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 are made and no 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;

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

(d) 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.

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

(f) 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.)

Editor's Note. — The 1945 amendment made clause (d) applicable to certificates of indebtedness, and the 1949 amendment added clause (f).

§ 153-142.10. Restrictions upon use of the capital reserve fund.— No part of the capital reserve fund consisting of collections of ad valorem taxes levied for a special purpose within the meaning of the Constitution of North Carolina shall be withdrawn and expended for any purpose except that for which such taxes were levied, but such collections may be used for either of the purposes stated in clauses (b), (d) and (f) of § 153-142.9, except that collections of taxes levied for debt service may be expended for either of the purposes stated in clauses (c) and (e) of said § 153-142.9. Upon written petition of the county board of education to the governing body requesting that any moneys deposited in the capital reserve fund, which prior to such deposit had been in the custody or control of the county board of education, be withdrawn and turned over to the county board of education for expenditure for the purposes stated in subclauses (1) and/or (9) of clause (a) of § 153-142.9, it shall be the duty of the governing body and other officers of the county to do all things necessary within the provisions of law to perfect such withdrawal and such moneys so withdrawn shall be deemed necessary for expenditure by the county as an administrative agency of the State for maintenance of the six months school term required by the Constitution of North Carolina. (1943, c. 593, s. 10; 1945, c. 464, s. 2; 1949, c. 196, s. 2.)

Editor's Note. — The 1945 amendment rewrote the second sentence, and the 1949 amendment inserted the reference to clause (f) in the first sentence.

§ 153-142.11. Authorization of withdrawal from the capital reserve fund.—A withdrawal for any one of the purposes contained in clauses (b), (c),

(d), (e) and (f) of § 153-142.9 shall be authorized by resolution duly adopted by the governing body. Each such resolution shall specify the purpose of the withdrawal, the amount of such withdrawal, the sources of moneys in the capital reserve fund for such withdrawal and the amount to be withdrawn from each such source. Each such resolution shall contain a request to the Local Government Commission for its approval of the provisions thereof, shall be spread upon the minutes of the governing body and the clerk shall transmit a certified copy of such resolution to the Local Government Commission. A resolution authorizing a withdrawal for the purpose stated in clause (b) of § 153-142.9 shall further specify the total appropriations contained in the annual appropriation resolution of the fiscal year in which such withdrawal is authorized and shall state the total amount of such withdrawals previously made in such fiscal year and the date upon which the withdrawal shall be repayable to the capital reserve fund. In any case where all or any part of the capital reserve fund has been withdrawn and invested in bonds, notes or certificates of indebtedness of the United States of America which are about to mature and it is desired to continue investment of like kind, such continuance may be effected by exchange of said maturing bonds, notes or certificates of indebtedness through the Treasury of the United States, or an authorized agent thereof, for bonds, notes or certificates of indebtedness of the United States of America of like principal amount and of later maturity or maturities: Provided, however, each such continuance and exchange shall first be authorized by resolution adopted by the governing body and the provisions thereof approved by the Local Government Commission.

A withdrawal for any one of the improvements or properties contained in clause (a) of § 153-142.9 shall be authorized by order duly passed by the governing body which order shall state:

(a) In brief and general terms the purpose for which the withdrawal is to be made;

(b) The amount of the withdrawal;

(c) The sources of moneys in the capital reserve fund for such withdrawal and the amount to be withdrawn from each such source;

(d) One of the following provisions:

(1) If the purpose of such withdrawal is for necessary expenses and the source of moneys available therefor is in whole or in part ad valorem taxes, or, if such withdrawal is for either necessary expenses or other than necessary expenses and the source of all the moneys available therefor is from other than ad valorem taxes, the order shall take effect thirty days after its first publication unless in the meantime a petition for its submission to the voters is filed under this article, and that in such event it shall take effect when approved by the voters of the county at an election as provided in this article.

(2) If the purpose of such withdrawal is for other than the payment of necessary expenses and the source of moneys available therefor is in whole or in part ad valorem taxes, or, if the governing body, although not required to obtain the assent of the voters to such withdrawal, deems it advisable to obtain such assent, that the order shall take effect when approved by the voters of the county at an election as provided in this article.

Each order authorizing a withdrawal from the capital reserve fund shall be spread upon the minutes of the governing body and the clerk shall submit a certified copy thereof to the Local Government Commission. (1943, c. 593, s. 11; 1945, c. 464, s. 2; 1949, c. 196, s. 3.)

Editor's Note. — The 1945 amendment added the last sentence to the first paragraph, and the 1949 amendment inserted the reference to clause (f) near the beginning of the paragraph.

§ 153-142.12. Approval of order or resolution for withdrawal by the Local Government Commission.—No order passed by the governing body authorizing a withdrawal from the capital reserve fund shall be published as pro-

vided in this article nor shall the question of approval of the provisions thereof be submitted to the voters until said provisions have first been approved by the Local Government Commission. A certified copy of such order filed by the clerk with the Commission shall be deemed a request to the Commission for its approval of the provisions thereof. The Commission shall pass upon the provisions of such order in the same manner as it passes upon an application for approval of the issuance of bonds or notes under the Local Government Act, and may require such information and evidence pertaining to the necessity and expediency and adequacy of amount of the proposed withdrawal as it deems necessary before acting upon said order.

No resolution adopted by the governing body authorizing a withdrawal shall become effective until the provisions thereof have been approved by the Local Government Commission. (1943, c. 593, s. 12.)

§ **153-142.13. Publication of order for withdrawal.**—Upon approval by the Local Government Commission of an order authorizing a withdrawal from the capital reserve fund, the clerk shall cause said order to be published once in each of two consecutive weeks over the following appendage (the blanks being first properly filled in):

The foregoing order was passed 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 days after its first publication.

.....
Clerk.

(1943, c. 593, s. 13.)

§ **153-142.14. Limitation of action setting aside an order for withdrawal.**—Any action or proceeding in any court to set aside an order authorizing a withdrawal from the capital reserve fund, or to obtain any other relief upon the grounds that such order is invalid, must be commenced within thirty days after the first publication made under § 153-142.13. 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 grounds whatever, except in an action or proceeding commenced within such period. (1943, c. 593, s. 14.)

§ **153-142.15. Elections on order authorizing withdrawal.**—The provisions of §§ 153-91 through 153-100 relating to petition for referendum and election on a bond order shall apply to an order authorizing a withdrawal from the capital reserve fund: Provided, however, the majority of the qualified voters of the county, as required by the Constitution of North Carolina, shall be necessary only if the purpose stated in the order authorizing such withdrawal is for other than a necessary expense and the source of moneys in the capital reserve fund for such withdrawal is in whole or in part ad valorem taxes. In all other cases where the provisions of such order may be required to be approved by the voters, the affirmative vote of the majority of the voters voting on such order shall be sufficient to make it operative and in effect: Provided, further, a notice of election required by this article to be published shall state the amount of the proposed withdrawal and the purpose thereof, as well as the date of the election, and: Provided, further, the ballot to be furnished each qualified voter may contain the words, "For the order authorizing $..... withdrawal from the capital reserve fund of ..... County (briefly stating the purpose)" and "Against the order authorizing $..... withdrawal from the capital reserve fund of ..... County (briefly stating the purpose.)" (1943, c. 593, s. 15.)

§ **153-142.16. How a withdrawal may be made.**—No withdrawal from the capital reserve fund shall be made except pursuant to authority of the gov-

erning body by resolution or order which has taken effect. Each withdrawal shall be for the full amount authorized, except a withdrawal for the purpose stated in clause (e) of § 153-142.9 which may be made for all or a part thereof from time to time according to the plan of amortization, and shall be by check drawn on the depository signed by the financial officer of the county and payable to said financial officer, except that a check evidencing withdrawal for the purpose of investment may be made payable to the obligor or to the vendor of such bonds, notes or certificates of indebtedness in which investment has been duly authorized. Each such check shall bear a certificate on the face or reverse thereof signed by the secretary of the Local Government Commission or by his duly designated assistant that the withdrawal evidenced thereby has been approved under the provisions of the County Capital Reserve Act of one thousand nine hundred and forty-three, and such certificate shall be conclusive evidence that such withdrawal has been approved by the Local Government Commission: Provided, however, the State of North Carolina shall not be liable for misapplication of any moneys withdrawn from the capital reserve fund by reason of such certificate. (1943, c. 593, s. 16; 1945, c. 464, s. 2.)

Editor's Note. — The 1945 amendment added the exception clause to the second sentence.

§ **153-142.17. Accounting for the capital reserve fund.**—It is the intention of this article that the deposits in and withdrawals from the capital reserve fund shall be as one account with the depository but it shall be the duty of the financial officer to maintain accounts of each source, entering the credits thereto and withdrawals therefrom, and of the purpose for which each authorized withdrawal is made. (1943, c. 593, s. 17.)

§ **153-142.18. Certain deposits mandatory.**—Each withdrawal shall be used only for the purpose specified in the resolution or order authorizing the same and shall constitute an appropriation duly made for said purpose: Provided, however, that if for any reason any part of such withdrawal is not applied to or is not necessary for such purpose, such unexpended or unused part thereof shall be promptly deposited in the capital reserve fund and credits of such deposit shall be entered to the various sources prorated on the basis upon which the withdrawal was made.

All receipts of earnings from and realizations of investments shall be promptly deposited in the capital reserve fund and credits of such deposits shall be entered to the various sources in said fund prorated on the basis of all withdrawals made for investment.

Receipts for repayment of moneys withdrawn for the purpose of meeting appropriations shall be promptly deposited in the capital reserve fund and credits of such deposits shall be entered to the various sources in said fund prorated on the basis of all such withdrawals made.

All deposits required in this section shall be made in the duly designated depository of the capital reserve fund and it shall be the duty of the financial officer to simultaneously report each such deposit to the Local Government Commission. (1943, c. 593, s. 18; 1945, c. 464, s. 2.)

Editor's Note. — The 1945 amendment added the last paragraph.

§ **153-142.19. Action of Local Government Commission.**—Any action required by this article to be taken by the Local Government Commission may be taken by the executive committee of said Commission. Such action taken by said executive committee shall be subject to review by the Commission in the same manner as action taken upon the issuance of bonds (1943, c. 593, s. 19.)

§ **153-142.20. Provision for sinking funds.**—Before allocating all or any part of unappropriated surplus revenues and unencumbered balances to a capital

reserve fund a county may make allocation thereof to a sinking fund for the retirement of term bonds of the county, but such allocation or allocations, together with all other assets of the sinking fund, shall not exceed the amount of the term bonds outstanding and unpaid. (1943, c. 593, s. 20.)

§ **153-142.21. Termination of power to establish or increase a capital reserve fund.**—No order establishing a capital reserve fund, or amendment thereto for including additional sources, shall be passed nor shall a resolution providing for increase of a capital reserve fund be adopted after July tenth, one thousand nine hundred forty-seven. (1945, c. 464, s. 2.)

Validation of Former Increase.—Session Laws 1945, c. 464, § 3, provides: "Any increase heretofore made to a capital reserve fund with money from the same source or sources stated in the ordinance or order establishing said fund in accordance with the provisions of either the Municipal Capital Reserve Act of one thousand nine hundred forty-three or the County Capital Reserve Act of one thousand nine hundred forty-three, or stated in an amendment to said ordinance or order, is hereby validated."

ARTICLE 11.

Requiring County, Municipal, and Other Officials to Make Contracts for Auditing and Standardizing Bookkeeping Systems.

§ **153-143. Director of Local Government.**—At such time as any board of county commissioners, board of education or other county officials, or the governing body or officials of any city, town, special charter district or other subdivision in the State of North Carolina proposes to employ any certified public accountants or auditors other than the official county auditor, county accountant, municipal accountant or other similar officer for making any statement or for the auditing of any books of the county, city, town, special charter district or other subdivision the Director of Local Government shall be notified of such purpose and it shall be the duty of a representative of the Director of Local Government to advise with the officials with respect to the scope of such audit and the nature of same and to furnish such officials all information available for their guidance in the making and entering into contracts or engagements for said audit or examination. (1929, c. 201, s. 1; 1931, c. 99, s. 1.)

Editor's Note. — The 1931 amendment made this article applicable to cities, towns, special charter districts or other subdivisions, and substituted "Director of Local Government" for "County Government Advisory Commission."

§ **153-144. Contracts must be in writing; approval.**—All contracts or engagements made shall be reduced to writing and shall include all of the terms and conditions of the contract before the same shall become legal and binding upon the county, city, town, special charter district or other subdivision officials and shall be endorsed and approved as to the terms and provisions thereof by the Director of Local Government and such contracts shall be null and void and no payments shall be made on such contracts until the same shall have been reduced to writing and approved as aforesaid by the Director of Local Government. Said contracts when so executed shall be recorded on the minutes of the board of county commissioners, board of education or such governing body of a city, town, special charter district or other subdivision and the original filed in their records. The terms and provisions of said contracts shall not in any way be varied or changed by either party unless and until such changes shall be reduced to writing and approved by the Director of Local Government in the same manner as the original contract and no verbal agreements made between the officials of the county and the auditors aforesaid shall affect in any way to vary the terms and conditions thereof. (1929, c. 201, s. 2; 1931, c. 99, s. 2.)

§ **153-145. Approval of systems of accounting.**—With a view of standardization and simplification of the methods of accounting in the various counties,

cities, towns, special charter districts and other subdivisions of the State, the Director of Local Government is hereby authorized and empowered to advise with said boards as to the proper methods of accounting for such counties, cities, towns, special charter districts and other subdivisions and no system or books shall be installed until same shall have been submitted to the Director of Local Government. (1929, c. 201, s. 3; 1931, c. 99, s. 3.)

§ **153-146. Copy of report filed with Director of Local Government.**—Any certified public accountant or auditor other than the official county auditor, county accountant, municipal accountant or other similar officer employed by any board of county commissioners, board of education, the governing body of any city, town, special charter district or other subdivision, or the officials thereof shall upon completion of all work performed in accordance with the terms of a contract, prepare a report embodying all statements and comments relating to his findings and shall file a copy of said report with the Director of Local Government, said report to be either printed or typewritten. The Director of Local Government shall have the power to prescribe or approve the form of said report. (1929, c. 201, s. 4; 1931, c. 99, s. 4.)

§ **153-147. Claims for auditing to be approved by Director of Local Government.**—All bills or claims presented to the governing body of any county, city, town or special charter district for the payment of any public or certified public accountant or auditor for the performance of any service as may be agreed upon in accordance with the provisions of this article shall be approved by the Director of Local Government, and it shall be unlawful for any of such governing bodies to pay or permit the payment of such bill or claim out of any public funds without first securing the said approval of said Director of Local Government. (1931, c. 99, s. 5.)

Article 12.

Sinking Funds.

§ **153-148. Counties and municipalities authorized to apply sinking funds to purchase of own bonds.**—The county commissioners of the several counties of the State, and all persons or officers having charge of sinking funds and the commissioners and aldermen and governing bodies of all incorporated cities and towns are authorized and directed to apply the sinking funds on hand to the purchase and retirement of the specific bonds, issued by such municipality, for the payment whereof, at maturity, such fund has been provided, notwithstanding any contrary provisions in any act, special or general, under which the said bonds have been issued: Provided, however, that where bonds have been issued and sold to run for a stated term without option of prior payment, nothing herein shall be construed to compel the owners or holders thereof to accept payment or surrender said bonds except at their option. Municipalities shall not be required to purchase such bonds for a greater sum than the face thereof, with accrued interest at the time of purchase. (1931, c. 413, s. 1.)

§ **153-149. Investment of sinking funds.**—County commissioners of the several counties and all persons or officers having charge of sinking funds and the governing bodies of all incorporated towns and cities shall keep such sinking funds as may not be applied to the purchase and retirement of bonds as required in the preceding section safely invested in such bonds or securities as are approved for such investment by the Local Government Act of nineteen hundred and thirty-one (§§ 159-1 et seq.), where such investment will promote the public interest or provide a greater rate of interest therefor. (1931, c. 413, s. 2.)

Cross Reference. — As to investment in bonds guaranteed by the United States government, see § 53-44.

§ 153-150. Petition of taxpayers to have sinking funds applied to purchase of bonds or invested.—Any citizen and taxpayer of a county or municipality, on behalf of himself and other citizens and taxpayers interested, who may or may not join therein, may petition the board of county commissioners or any governing board of a city or town, setting forth in said petition that said county, city or town has an amount of sinking fund provided for the payment of a certain issue or issues of bonds, that the bonds, or a portion of them, may be purchased and retired, and fully setting forth any benefit which would accrue to the county, city or town from purchase and retirement of said bonds, and demanding the application of the sinking fund thereto.

A like petition may be made to require the investment of sinking funds as provided in this article. Such petition shall fully set out the facts regarding the fund in question and the benefit to be derived from its investment. Upon receiving such petition the board of county commissioners or governing body of the city or town to which the same may be addressed, shall ascertain the facts with reference to the matters alleged, and act thereon without delay; and the petition shall be sustained and the relief granted if the facts are such that the provisions of this article are applicable; and such sinking fund shall be applied to the purchase and retirement of such bonds as may be obtainable, of the class or issue to the payment whereof at maturity such fund might be applied, or shall be invested without delay, in the event such bonds are not obtainable, and such investment will be advantageous to the taxpayers interested. (1931, c. 413, s. 3.)

§ 153-151. Appeal to Local Government Commission. — An appeal shall lie from the action of the board of county commissioners or governing body of any town or city to the Local Government Commission, who shall hear the matter de novo and determine the same. The Local Government Commission shall make such order as they may deem best in the premises, and fix therein such time as they may deem reasonable for compliance therewith.

Upon failure or delay to act upon any petition for a period of thirty days after it has been received by any board of county commissioners or governing body of any city or town, direct application may be made to the Local Government Commission, which shall, on such failure or refusal to act, have original jurisdiction in the premises and shall proceed to act, after five days' notice to such board of commissioners or governing body of a town or city to whom the petition was addressed.

The orders of the Local Government Commission may be enforced by writ of mandamus in a proceeding in the Superior Court of Wake County or of the county affected, or in which the town or city concerned, or any part thereof may be located, and such proceeding may be brought by the Local Government Commission or any petitioning taxpayer, in behalf of himself and others like interested. (1931, c. 413, s. 4.)

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, Currituck, 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.)

Cross References.—As to county tuberculosis hospitals, see §§ 131-29 through 131-33. As to conflict between this section and other laws, see notes to § 153-9, subsection 6.

Editor's Note. — The 1935 amendment added the second paragraph. The 1945 amendments added the last sentence of the first paragraph, and struck out "Chowan" from the list of counties appearing at the end of the section. The 1947 amendments struck out "Sampson" and "Haywood" from such list, and the 1951 amendments struck out "Nash" and "Brunswick."

Extent of Relief Vested in Discretion of Commissioners.—The general duty of providing for the poor is here imposed; the place, method and extent of relief being vested in the judgment and discretion of the county commissioners. Copple v. Commissioners, 138 N. C. 127, 50 S. E. 574 (1905).

Express Contract or Express Request for Service Necessary to Bind County.—Under this section in order to make a binding pecuniary obligation on the county, there must be an express contract to that effect, or the service must be done at the express request of the proper county officer or agent. Copple v. Commissioners, 138 N. C. 127, 50 S. E. 574 (1905).

The legislature may delegate authority to the county officials to provide and care for one class of the indigent or unfortunate inhabitants of the State, and to disburse a part of the fund devoted by the Constitution to the support of the poor, by appropriating it more directly to another class, whose wants, in the opinion of the lawmakers, can be best supplied through public agencies of a different kind. Board v. Commissioners, 113 N. C. 379, 18 S. E. 661 (1893).

Ascertainment of Indigent Entitled to Support.—It is the exclusive right of the legislature to determine and declare by

whom and how the indigent of the State entitled to support shall be ascertained, and from what fund and by whom allowances for their support shall be made. Board v. Commissioners, 113 N. C. 379, 18 S. E. 661 (1893).

Wardens of the poor elected by the old county courts, under the provisions of the act of 1846, ch. 64, were not subjected to any penalty for refusing to accept the appointment. Smithwick v. Williams, 30 N. C. 268 (1848).

Tax Not Subject to Limitation on Tax Rate Imposed by Constitution. — The tax contemplated is for a special, necessary purpose, with special approval of the General Assembly, and is not, therefore, subject to the limitation on the tax rate imposed by Art. V, § 6 of the Constitution. Martin v. Board of Com'rs, 208 N. C. 354, 180 S. E. 777 (1935).

Tax for Medical Care May Be Levied without Approval of the Qualified Voters. —The tax to provide funds necessary for the medical care and hospitalization of the indigent sick of a county is for a necessary expense of the county, and may be levied without the approval of the qualified voters of the county. Martin v. Board of Com'rs, 208 N. C. 354, 180 S. E. 777 (1935). See Art. VIII, § 7 of the Constitution.

Contract Not Held Invalid Because of Duration.—Where the General Assembly has authorized a county to enter into a contract with a public hospital for the care of its indigent sick for a period of thirty years, and the board of commissioners of the county, in the exercise of the discretion vested in the board by the statute, has agreed to contract for that period, the contract will not be held invalid because of its duration. Martin v. Board of Com'rs, 208 N. C. 354, 180 S. E. 777 (1935).

Cited in Atlantic Coast Line R. Co. v. Beaufort County, 224 N. C. 115, 29 S. E. (2d) 201 (1944).

§ **153-153. County home for aged and infirm.**—All persons who become chargeable to any county shall be maintained at the county home for the aged and infirm, or at such place or places as the board of commissioners select or agree upon. (Code, s. 3541; 1891, c. 138; Rev., s. 1328; C. S., s. 1336.)

§ **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 Charities and Public Welfare; and give a full and accurate report to the county commissioners and to the State Board of Charities and 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.)

§ **153-155. Support of county home.**—The board of commissioners may provide for the support of the persons admitted by them to the home for the aged and infirm by employing a superintendent at a certain sum, or by paying a specified sum for the support of such persons to anyone who will take charge of the county home for the aged and infirm, as said board may deem for the best interest of the county and the cause of humanity. (1876-7, c. 277, s. 3; Code, s. 3543; Rev., s. 1329; C. S., s. 1338.)

Overseer of Poor Liable to Indictment. —An overseer of the poor is a public officer and liable to indictment at common law for any neglect of his duties or abuse of his powers. State v. Hawkins, 77 N. C. 494 (1877).

Same—Defective Indictment. — Where such officer is indicted for cruel treatment of paupers, and the indictment neither sets out the names of such paupers nor states that their names are unknown, the said indictment is defective, and judgment thereon should be arrested. State v. Hawkins, 77 N. C. 494 (1877).

Evidence. — Upon the trial of an indictment against a public officer for neglect or omission of duty, evidence of acts of positive misfeasance is inadmissible. State v. Hawkins, 77 N. C. 494 (1877).

§ **153-156. Property of indigent to be sold or rented.**—When any in-

digent person who becomes chargeable to a county for maintenance and support in accordance with the provisions of this article, owns any estate, it is the duty of the board of commissioners of any county liable to pay the expenses of such indigent person to cause the same to be sold for its indemnity or reimbursement in the manner provided under article 3 of the chapter entitled Insane Persons and Incompetents, or they may take possession thereof and rent the same out and apply the rent toward the support of such indigent person. When such indigent person has no guardian, or said guardian refuses or neglects to act, then the county maintaining and supporting said indigent person in its county home, or otherwise, may bring an action in its own name against the owner and the parties having an interest in the property sought to be sold, to sell, mortgage or rent the personal property or real estate of such indigent person, which action shall be a special proceeding and conducted as other special proceedings before the clerk of the superior court and said clerk of court shall have power to make all necessary and proper orders therein. (1866, c. 49; Code, s. 3547; Rev., s. 1330; C. S., s. 1339; 1941, c. 24.)

Cross References. — As to manner in which special proceedings are conducted, see § 1-393 et seq. As to sale of estates of insane persons and incompetents, see § 35-10 et seq.

Editor's Note. — The 1941 amendment added the second sentence. For comment on amendment, see 19 N. C. Law Rev. 485.

The three-year statute of limitations applies to an action brought by a county against an inmate of county home to secure reimbursement or indemnity for sums expended for her upkeep in the home. Guilford County v. Hampton, 224 N. C. 817, 32 S. E. (2d) 606 (1945).

§ **153-157. Families of indigent militiamen to be supported.**—When any citizen of the State is absent on service as a militiaman or member of the State Guard, and his family are unable to support themselves during his absence, the board of commissioners of his county, on application, shall make towards their maintenance such allowance as may be deemed reasonable. (1779, c. 152, P. R.; R. C., c. 86, s. 14; Code, s. 3546; Rev., s. 1331; C. S., s. 1340.)

§ **153-158. Paupers not to be hired out at auction.**—No pauper shall be let out at public auction, but the board of commissioners may make such arrangements for the support of paupers with their friends or other persons, when not maintained at the county home for the aged and infirm, as may be deemed best. (1876-7, c. 277, s. 2; Code, s. 3542; Rev., s. 1332; C. S., s. 1341.)

§ **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.

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.)

Editor's Note. — The 1943 amendment struck out the provision relating to settlement of paupers coming into the State which had been added to this section by the 1931 amendment.

Requirement of Year's Residence.—No one shall gain a settlement in a county unless by continuous residence for one year. State v. Elam, 61 N. C. 460 (1868).

Settlement Not Ipso Facto Obtained by Birth.—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. State v. Elam, 61 N. C. 460 (1868).

Settlements Not Governed by Law of Domicile or Citizenship.—The law applicable to pauper settlements is regulated by statute, and is in no way governed by the law of the domicile or citizenship. Commissioners v. Commissioners, 101 N. C. 520, 8 S. E. 176 (1888).

When Domicile and Settlement Different.—Although in most cases the county of domicile and the county of settlement are the same, yet they are sometimes different and in such case the county of settlement is chargeable with the maintenance of a bastard child. State v. Elam, 61 N. C. 460 (1868).

Each County Charged with Support of Its Poor. — It is the manifest purpose of the law in regard to pauper settlements to charge each county with the support of its own poor. Commissioners v. Commissioners, 101 N. C. 520, 8 S. E. 176 (1888).

Legal Settlement Determines Liability. —The legal settlement of the pauper determines the liability. Commissioners v. Commissioners, 121 N. C. 295, 28 S. E. 412 (1897).

Pauper Injured in Another County. — Where a pauper, temporarily absent from the county where he has a "legal settlement," is so disabled as to require immediate medical services and is furnished by the authorities of another county with such attention and board, the latter is entitled to recover the expenses thereof from the county where the pauper has his settlement. Commissioners v. Commissioners, 121 N. C. 295, 28 S. E. 412 (1897).

Liability for Bastard Child Fixed by Mother's Settlement.—The liability of the county for the maintenance of a bastard child is fixed not by its birth but by the settlement of its mother at the time of its birth. State v. Elam, 61 N. C. 460 (1868).

An illegitimate child, who has not gained a new settlement by a year's residence in some other county, is, for the purpose of being apprenticed, subject to the jurisdiction of the court of that county in which its mother was settled at the time of its birth. Ferrell v. Boykin, 61 N. C. 9 (1866).

When Mother of Bastard Child without Settlement.—A bastard, born in this State of a mother who has not resided in it "for twelve months", is chargeable for maintenance upon the county in which it is born. Since our act did not contemplate the case of foreign paupers, the question of settlement is left as at common law. State v. McQuaig, 63 N. C. 550 (1869).

Loans for Care of Paupers Ultra Vires. —Contracts for the loan of money made by the late county courts for the support of the paupers in their respective counties were ultra vires, and therefore void. Daniel v. Board, 74 N. C. 494 (1876).

Duration of Settlement.—A legal settlement continues until a new one is acquired. Commissioners v. Commissioners, 121 N. C. 295, 28 S. E. 412 (1897).

§ 153-160. Removal of indigent to county of settlement; maintenance; penalties.—Upon complaint made by the chairman of the board of county commissioners, before a justice of the peace, that any person has come into the county who is likely to become chargeable thereto, the justice by his warrant shall cause such poor person to be removed to the county where he was last legally settled; but if such poor person is sick or disabled, and cannot be removed without danger of life, the board of commissioners shall provide for his maintenance and cure at the charge of the county; and after his recovery shall cause him to be removed, and pay the charges of his removal. The county wherein he was last legally settled shall repay all charges occasioned by his sickness, maintenance, cure and removal, and all charges and expenses whatever, if such person die before removal. If the board of commissioners of the county to which such poor person belongs refuses to receive and provide for him when removed as aforesaid, every commissioner so refusing shall forfeit and pay forty dollars, for the use of the

county whence the removal was made; moreover, if the board of commissioners of the county where such person was legally settled refuses to pay the charges and expenses aforesaid, they shall be liable for the same. If any housekeeper entertains such poor person without giving notice thereof to the board of commissioners of his county, or one of them, within one month, the person so offending shall forfeit and pay ten dollars. Nothing contained herein shall be construed to prevent any county from rendering assistance to needy persons living within the county even though such persons may not have lived in the county for the length of time required to establish legal settlement and if such needy persons are eligible for old age assistance, aid to dependent children or any type of general assistance in which State and federal funds are involved, assistance may be granted, provided funds are available. (1777, c. 117, s. 17, P. R.; 1834, c. 21; R. C., c. 86, s. 13; Code, s. 3545; Rev., s. 1334; C. S., s. 1343; 1945, c. 562, s. 2.)

Editor's Note. — The 1945 amendment added the last sentence.

Liability of Commissioners. — It is thus provided that the board of commissioners of the county to which such poor person belongs shall receive and provide for him, under a penalty for refusal to do so, and they are made liable if they refuse to pay the expenses mentioned in the section. Commissioners v. Commissioners, 101 N. C. 520, 8 S. E. 176 (1888).

§ 153-161. Burial of indigent veterans of the World War.—The county commissioners of any county in North Carolina are authorized, empowered, and directed to appropriate out of the general fund of the county a sum of not more than twenty-five dollars ($25.00) to provide for the burial of any former member of the army, navy, or marine corps, who served in the recent World War, who shall die within the boundaries of the said county and whose estate or relatives are unable to provide for the burial of said veteran, and whose burial has not otherwise been provided for. (1923, c. 119; C. S., s. 1343(a).)

Editor's Note. — This section was reviewed in 1 N. C. Law Rev. 296.

Article 14.

District Hospital-Home.

§ 153-162. Two or more adjacent counties may establish; trustees. —Any two or more adjacent counties may by action of the county commissioners in said counties, as hereafter provided, establish a district hospital-home for the aged and infirm, to be located at some suitable place within the counties composing the district, location and purchase to be controlled by a board of trustees appointed by the county commissioners of the respective counties owning and controlling said hospital-home, each county to have one representative. Where only two counties enter the district, the commissioners of the counties concerned shall jointly elect one additional trustee. (1931, c. 129, s. 1.)

Editor's Note.—This article was codified from the act of 1931, which is very similar to and takes the place of Public Loc. Laws 1923, c. 611, s. 1, made a public law by Public Laws 1927, c. 192.

§ 153-163. Present properties to be sold; application of proceeds. —The county commissioners of the aforesaid counties are hereby authorized and empowered to sell and convey by deed all properties held by the aforesaid counties for the care and maintenance of their county's poor, and from the proceeds of such sale appropriate so much as may be required to meet said county's proportionate part of the funds necessary to perfect the completion of said community home for the aged and infirm as provided herein. (1931, c. 129, s. 2.)

§ 153-164. Funds raised by taxation.—Should it be deemed wisest not to sell said properties, or should any county not have said properties in its possession, or should any counties have said properties which would not be for sale, the necessary funds shall then be raised by direct taxation within the county

or counties preferring this method of raising their pro rata part. (1931, c. 129, s. 3.)

§ **153-165. Appointment of trustees.** — The several boards of county commissioners shall, as soon as they shall have agreed among themselves to establish a district hospital-home for the aged and infirm for their counties, appoint the members of the board of trustees, which board shall be known as the board of trustees of the district hospital-home for the district comprising ..... counties; the members of said board of trustees shall be appointed every two years by the boards of county commissioners, the term of office for said trustees shall be two years, and until their successors are chosen and qualified; all vacancies shall be filled by the several boards of county commissioners and said commissioners shall provide for the expense and compensation of said board of trustees. (1931, c. 129, s. 4.)

§ **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 Charities and Public Welfare and the State Board of Health. (1931, c. 129, s. 5.)

§ **153-167. Apportionment of cost.**—The several counties constructing, equipping, and operating a district hospital-home shall pay for the site and for the construction and equipment of the plant in proportion to the population of the individual county to the total population of the several counties comprising the district, but each county shall pay for the number of persons maintained at the hospital-home at the actual per capita cost of such maintenance. (1931, c. 129, s. 6.)

§ **153-168. Plans and specifications for hospital-home.** — The State Board of Charities and 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 Charities and Public Welfare. (1931, c. 129, s. 7.)

§ **153-169. Closing of county homes.**—As soon as the district hospital-home is ready for occupancy the several county homes or poorhouses, heretofore owned by the several counties, shall be closed and occupants shall be transferred and located in the district hospital-home for the aged and infirm herein provided for. (1931, c. 129, s. 8.)

§ **153-170. Superintendent and employees.**—The board of trustees of the said district hospital-home shall elect a capable superintendent or matron, preferably a woman who is a trained nurse, and such other employees as it may deem necessary to the efficient management of said district hospital-home, and shall fix their salaries with due regard to number and condition of inmates occupying said district hospital-home. (1931, c. 129, s. 9.)

§ **153-171. Meetings of trustees.**—The board of trustees shall meet at least twice a year for the transaction of such business as the provisions of this article may require. They shall have the general conduct and management of the district hospital-home's affairs. They shall meet at the call of the chairman whenever he shall deem it necessary, or upon call issued by a majority of the board. (1931, c. 129, s. 10.)

§ **153-172. Purpose of special meetings set out in call.**—The matter to be considered at any special meeting shall be set out in the call for the special meeting, but any business may be transacted at special meetings which received a two-thirds' vote of the entire board of trustees, although not mentioned in the call. (1931, c. 129, s. 11.)

§ **153-173. Powers of trustees.** — The board is vested with all powers not already mentioned which are possessed by boards supervising State institutions. (1931, c. 129, s. 12.)

§ **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 aged and infirm in lieu of the county home if it appears to the commissioners and the superintendent of public welfare that such persons need institutional care. (1931, c. 129, s. 13.)

§ **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 Charities and 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.)

§ **153-176. Copies of report to county commissioners.** — A copy of the said report of the said board of trustees shall be furnished the county commissioners of the respective counties interested in and providing said district hospital-home. (1931, c. 129, s. 15.)

ARTICLE 15.

County Prisoners.

§ **153-177. Bonds of prisoner in criminal case returned to court.**—Every bond taken of any person confined for an offense, or otherwise than on process issuing in a civil case, shall be returned to the court by whose order or process such person is confined, or which may be entitled to cognizance of the matter, and shall be of the force and effect of a recognizance. On breach thereof it shall be forfeited and collected as a forfeiture in the name and for the use of the State, and applied as other forfeited recognizances. (R. C., c. 87, s. 12; Code, s. 3467; Rev., s. 1340; C. S., s. 1344.)

Cross References.—As to bonds to keep prison bounds, see § 153-54 and note. And see note to § 153-178.

§ 153-178. Bond of prisoner committed on capias in civil action. —Every bond given by any person committed in arrest and bail, or in custody after final judgment, shall be assigned by the sheriff to the party at whose instance such person was committed to jail, and shall be returned to the office of the clerk of the court where the judgment was rendered, and shall have the force of a judgment. If any person who obtains the rules of any prison, as aforesaid, escapes out of the same before he has paid the debt or damages and costs according to the condition of his bond, the court where the bond is filed, upon motion of the assignee thereof, shall award execution against such person and his sureties for the debt or damages and costs, with interest from the time of escape till payment, and no person committed to jail on such execution shall be allowed the rules of prison: Provided, the obligors have ten days previous notice of such motion, in writing; but they shall not be admitted to deny the making of the bond in their answer, unless by affidavit they prove the truth of the plea. (1759, c. 65, ss. 2, 3, P. R.; R. C., c. 87, s. 14; Code, s. 3469; Rev., s. 1341; C. S., s. 1345.)

Cross Reference.—See note to § 153-54.

Bond Has Force of Judgment. — This section gives to the bond the force of a judgment, and authorizes the party to have execution sued out thereon, upon mere motion, and the plaintiff cannot elect to treat it as a common deed. Brown v. Frazier, 5 N. C. 421 (1810).

When Action Not Maintainable. — An action cannot be maintained upon a bond given by a person arrested upon a capias ad satisfaciendum, to keep within the limits of the rules of the prison. Brown v. Frazier, 5 N. C. 421 (1810).

§ 153-179. Jailer to cleanse jail, furnish food and water.—The sheriff or keeper of any jail shall, every day, cleanse the room of the prison in which any prisoner is confined, and cause all filth to be removed therefrom; and shall also furnish the prisoner plenty of good and wholesome water, three times in every day; and shall furnish each prisoner fuel, not less than one pound of wholesome bread, one pound of good roasted or boiled flesh, and every necessary attendance. (1816, c. 911, s. 2, P. R.; R. C., c. 87, s. 9; Code, s. 3464; Rev., s. 1343; C. S., s. 1346.)

Editor's Note. — See 11 N. C. Law Rev. 172 for comment involving this section.

Action for Wrongful Death.—This section is not applicable in an action against a municipality for wrongful death allegedly caused by the chief of police and jailer. Gentry v. Hot Springs, 227 N. C. 665, 44 S. E. (2d) 85 (1947).

§ 153-180. Fees of jailers.—Jailers shall receive, for furnishing prisoner with fuel, one pound of wholesome bread, one pound of good roasted or boiled flesh, and a sufficient quantity of water, with every necessary attendance, a sum not exceeding fifty cents per day, unless the board of commissioners of the county shall deem it expedient to increase the fees, which it may do provided such increase shall not exceed fifty per cent on the above sum. (R. C., c. 102, s. 38; 1878, c. 87; Code, s. 3746; Rev., s. 2799; 1919, c. 118; C. S., s. 3919.)

Local Modification. — Avery: 1947, c. 409; Caldwell: 1951, c. 412; Davie: 1951, c. 627; Guilford: 1947, c. 78, s. 1; McDowell: 1949, c. 325; 1951, c. 830; Randolph: 1951, c. 133, s. 6; Scotland: 1949, c. 80; Wake: 1951, c. 867; Yadkin: 1951, cc. 298, 1173.

§ 153-181. Prisoner to pay charges and prison fees.—Every person committed by lawful authority, for any criminal offense or misdemeanor, shall bear all reasonable charges for guarding and carrying him to jail, and also for his support therein until released; and all the estate which such person possessed at the time of committing the offense shall be subjected to the payment of such charges and other prison fees, in preference to all other debts and demands. If there is no visible estate whereon to levy such fees and charges, the amount shall be paid by the county. (1795, c. 433, s. 7, P. R.; R. C., c. 87, s. 6; Code, s. 3461; Rev., s. 1346; C. S., s. 1347.)

§ 153-182. Prisoner may furnish necessaries. — Prisoners shall be allowed to purchase and procure such necessaries, in addition to the diet furnished

by the jailer, as they may think proper; and to provide their own bedding, linen and clothing, without paying any perquisite to the jailer for such indulgence. (1795, c. 433, s. 6, P. R.; R. C., c. 87, s. 8; Code, s. 3463; Rev., s. 1344; C. S., s. 1348.)

Prisoners May Procure Additional Comforts.—This section permits prisoners to procure such additional comforts as their circumstances allow. Wilkes v. Slaughter, 10 N. C. 211 (1824).

§ 153-183. United States prisoners to be kept.—When a prisoner is delivered to the keeper of any jail by the authority of the United States, such keeper shall receive the prisoner, and commit him accordingly; and every keeper of a jail refusing or neglecting to take possession of a prisoner delivered to him by the authority aforesaid shall be subject to the same pains and penalties as for neglect or refusal to commit any prisoner delivered to him under the authority of the State. The allowance for the maintenance of any prisoner committed as aforesaid shall be equal to that made for prisoners committed under the authority of the State. (1790, c. 322, ss. 1, 2, P. R.; R. C., c. 87, s. 1; Code, s. 3456; Rev., s. 1342; C. S., s. 1349.)

Local Modification.—Guilford: 1947, c. 78, s. 2.

Authority of United States Commissioners. — By virtue of this section United States commissioners have authority to commit prisoners to county jails. United States v. Harden, 10 F. 802 (1881).

Jailer Should Have Written Authority.—A jailer ought never to receive a prisoner into his custody without some written authority to detain him, issued by a person having power to grant such authority, except under the order of a court in session. United States v. Harden, 10 F. 802 (1881).

Commitment Not Absolute.—The commitment of a prisoner to a county jail by a United States commissioner is not an absolute commitment, as the marshal can take the prisoner out of the custody of the jailer when it becomes necessary for him to complete the service of the capias by producing the body of the prisoner at the ensuing term of court. United States v. Harden, 10 F. 802 (1881).

The Mittimus.—The mittimus issued by the United States commissioner must be directed to the marshal commanding him to convey the prisoner into the custody of the jailer, and it must also direct and command the jailer to receive the prisoner and keep him in close custody until discharged, or taken from his custody by some proper process of law. United States v. Harden, 10 F. 802 (1881).

The marshal must deliver a copy of such mittimus to the jailer as his authority to hold the prisoner. United States v. Harden, 10 F. 802 (1881).

§ 153-184. Arrest of escaped persons from penal institutions.—Upon information received from the superintendent of any correctional or any penal institution, established by the laws of the State, that any person confined in such institution or assigned thereto by juvenile or other court under authority of law, has escaped therefrom and is still at large, it shall be the duty of sheriffs of the respective counties of the State, and of any peace officer in whose jurisdiction such person may be found, to take into his custody such escaped person, if to be found in his county, and to cause his return to the custody of the proper officer of the institution from which he has escaped. (1933, c. 105, s. 1.)

Cross Reference. — As to recapture of persons escaped from the State prison, see §§ 148-4, 148-40 and 148-41.

§ 153-185. Military guard when escape imminent; compensation.—When the sheriff of the county, or keeper of the jail, apprehends that there is danger of a prisoner escaping, through the insufficiency of the jail or other cause, it is his duty, without delay, to make information thereof to a judge of the superior court, the Attorney General, or a solicitor, if any of those officers is in the county, and if not, then to three justices of the peace, and they are authorized, if they deem it advisable, to furnish the sheriff or keeper of the jail with an order in

writing, addressed to the commanding officer of the militia of the county, setting forth the danger, and requiring him forthwith to furnish such guard as to him may appear to be suitable for the occasion. For which service the persons ordered on guard shall receive such compensation as militiamen in actual service for defense of the State; and on application for pay, the letter to the commanding officer, on which the guard was ordered, and the certificate of such officer, countersigned by the sheriff or jailer, together with the deposition of the officer of the guard, stating the time of service, and that it was faithfully performed, shall be sufficient to authorize the payment of the same. (1795, c. 433, s. 8, P. R.; R. C., c. 87, s. 5; Code, s. 3460; Rev., s. 1345; C. S., s. 1350.)

§ 153-186. What counties liable for guarding and removing prisoners.—The expense for guarding prisons shall be paid by the county where the prison is situated; and for conveying prisoners, as also the expense attending such prisoners while in jail, when the same may be chargeable on the county, shall be paid by the county from which the prisoner is removed. (1808, c. 757, s. 2, P. R.; R. C., c. 87, s. 7; Code, s. 3462; Rev., s. 1347; C. S., s. 1351.)

Expense of County from Which Prisoners Removed. — When upon proper application, the commanding officer of a county was required to furnish the jailer with a guard for the safekeeping of prisoners, the expenses of the guard so incurred were to be paid by the county from which the prisoners were removed. Board v. Board, 75 N. C. 240 (1876).

§ 153-187. Transfer of prisoners to succeeding sheriff.—The delivery of prisoners, by indenture between the late and present sheriff, or the entering on record in court the names of the several prisoners, and the causes of their commitment, delivered over to the present sheriff, shall be sufficient to discharge the late sheriff from all liability for any escape that shall happen. (1777, c. 118, s. 12, P. R.; R. C., c. 87, s. 15; Code, s. 3470; Rev., s. 1348; C. S., s. 1352.)

§ 153-188. Where no jail, sheriff may imprison in jail of adjoining county.—The sheriffs, constables, and other ministerial officers of any county in which there is no jail have authority to confine any prisoner arrested on process, civil or criminal, and held in custody for want of bail, in the jail of any adjoining county, until bail be given or tendered. And any sheriff or jailer having a prisoner in his custody, by virtue of any mode of commitment provided in this article, shall be liable, civilly and criminally, for his escape, in the same manner as if such prisoner had been confined in the prison of his proper county. (1835, c. 2, s. 3; R. C., c. 87, s. 4; Code, s. 3459; Rev., s. 1349; C. S., s. 1353.)

§ 153-189. Where no jail, courts may commit to jail of adjoining county.—Whenever there happens to be no jail, or when there is an unfit or insecure jail, in any county, the superior court judges, justices of the peace, and all judicial officers of such county may commit all persons brought before them, whether in a criminal or civil proceeding, to the jail of any adjoining county, for the same causes and under the like regulations that they might have ordered commitments to the usual jail; and the sheriffs, constables, and other officers of such county in which there is no jail, or an unfit one, and the sheriffs or keepers of the jails of the adjoining counties, shall obey any order of commitment so made. Any officer failing to obey such order shall be guilty of a misdemeanor. (1835, c. 2, s. 2; R. C., c. 87, s. 3; Code, s. 3458; Rev., s. 1350; C. S., s. 1354.)

§ 153-190. When jail destroyed, transfer of prisoners provided for.—When the jail of any county is destroyed by fire or other accident, any justice of the peace of such county may cause all prisoners then confined therein to be brought before him; and upon the production of the process under which any prisoner was confined shall order his commitment to the jail of any adjacent county; and the sheriff, constable, or other officer of the county deputed for that

purpose, shall obey the order; and the sheriff or keeper of the common jail of such adjacent county shall receive such prisoners upon the order aforesaid. Any officer failing to obey such order of commitment shall be guilty of a misdemeanor. (1835, c. 2, s. 1; R. C., c. 87, s. 2; Code, s. 3457; Rev., s. 1351; C. S., s. 1355.)

§ 153-191. Counties and towns may hire out certain prisoners.—The board of commissioners of the several counties, within their respective jurisdictions, or such other county authorities therein as may be established, and the mayor and intendant of the several cities and towns of the State, have power to provide under such rules and regulations as they may deem best for the employment on the public streets, public highways, public works, or other labor for individuals or corporations, of all persons imprisoned in the jails of their respective counties, cities and towns, upon conviction of any crime or misdemeanor, or who may be committed to jail for failure to enter into bond for keeping the peace or for good behavior, and who fail to pay all the costs which they are adjudged to pay, or to give good and sufficient security therefor: Provided, such prisoner or convict shall not be detained beyond the time fixed by the judgment of the court. The amount realized from hiring out such persons shall be credited to them for the fine and bill of costs in all cases of conviction. It is unlawful to farm out any such convicted person who may be imprisoned for the nonpayment of a fine, or as punishment imposed for the offense of which he may have been convicted, unless the court before whom the trial is had shall in its judgment so authorize. (1866-7, c. 30; 1872-3, c. 174, s. 10; 1874-5, c. 113; 1876-7, c. 196, s. 1; 1879, c. 218; Code, s. 3448; Rev., s. 1352; C. S., s. 1356.)

Cross Reference.—See §§ 23-24 and 153-194.

Editor's Note.—Before the enactment of this section, if one in jail in default of payment of fine and costs was not provided with some mode of discharge, he would remain therein indefinitely, or take the insolvent debtor's oath. It was felt that some other mode of discharge should be provided, and the legislature passed an act in 1866-67, which, after being several times amended, is now this section. See dissenting opinion of Clark, J., in State v. White, 125 N. C. 674, 34 S. E. 532 (1899). The amendment of 1876-7 was without the concluding sentence of this section, which leaves it at the discretion of the trial court as to whether or not a convict shall be farmed out. The opinion in State v. Shaft, 78 N. C. 464, (1878), pointed out the possibilities of mischief of a provision, unrestrained in its terms, which authorizes the employment of convict labor by individuals or corporations, and suggested that the legislature might see fit to amend the law. The legislature complied with this suggestion by passing the amendment of 1879, which added the last sentence of this section. See State v. Shaft, 78 N. C. 464 (1878); State v. Sneed, 94 N. C. 806 (1886).

Constitutionality. — The section is constitutional. State v. Palin, 63 N. C. 471 (1869); State v. Weathers, 98 N. C. 685, 4 S. E. 512 (1887); State v. Young, 138 N. C. 571, 50 S. E. 213 (1905).

Construed with §§ 23-24 and 153-194.—This section must be construed with §§ 23-24 and 153-194. State v. Morgan, 141 N. C. 726, 53 S. E. 142 (1906).

When Prisoner Released. — A prisoner cannot be held beyond the time fixed by the court. State v. Williams, 97 N. C. 414, 2 S. E. 370 (1887).

A prisoner may be discharged from commitment for the fine and cost by taking the pauper's oath though he has been farmed out under the provisions of this section. State v. Williams, 97 N. C. 414, 2 S. E. 270 (1887).

Does Not Apply to Employment on Public Works.—The provisions of this section forbidding the hiring out of convicts, unless the court before which such prisoner was convicted shall so authorize in its judgment, only applies to farming out convict labor to individuals and corporations, and does not extend to cases of convicts employed on public works, and under the supervision and control of public agents. State v. Sneed, 94 N. C. 806 (1886).

Prisoner Hired to Wife.—A man imprisoned in the county jail upon a conviction for fornication and adultery, may be hired out to his wife, under this section, upon her giving bond with sureties for the price. State v. Shaft, 78 N. C. 464 (1878).

Court Not to Designate Kind or Place of Employment. — The section does not authorize the court to designate the employment, or where it shall be performed. That matter is left to the discretion of the county commissioners, under rules and regulations prescribed by them. State v. Norwood, 93 N. C. 578 (1885).

§ **153-192. Person hiring may prevent escape.** — The party in whose service said convicts may be may use the necessary means to hold and keep them in custody and to prevent their escape. (1876-7, c. 196, s. 3; Code, s. 3454; Rev., s. 1353; C. S., s. 1357.)

Cross Reference.—As to allowing hired out prisoners to escape, see § 14-257.

§ **153-193. Sheriff to have control of prisoners hired out.**—All convicts hired or farmed out by the county or other municipal authorities shall at all times be under the supervision and control, as to their government and discipline, of the sheriff, or his deputy, of the county in which they were convicted and imprisoned, and the sheriff, or his deputy, shall be deemed a State officer for the purpose of this section. (1876-7, c. 196, s. 2; Code, s. 3453; Rev., s. 1354; C. S., s. 1358.)

§ **153-194. Convicts who may be sentenced to or worked on roads and public works.**—It is lawful for and the duty of the judge holding court to sentence to imprisonment at hard labor on the public roads, in accordance with §§ 148-28, 148-30 and 148-32 for such terms of thirty days or more as are now prescribed by law for their imprisonment in the county jail or in the State's prison, the following classes of convicts: First, all persons convicted of offenses the punishment whereof would otherwise be wholly, or in part, imprisonment in the common jail; second, all persons convicted of crimes the punishment whereof would otherwise, wholly or in part, be imprisonment in the State's prison.

There may also be worked on the public works, in like manner, all persons sentenced to imprisonment in jail for less than 30 days by any magistrate; and also, all insolvents imprisoned by any court in said counties for nonpayment of costs in criminal causes may be retained in imprisonment and worked on the public works until they repay the county to the extent of the half fees charged up against the county for each person taking the insolvent oath. The rate of compensation to be allowed each insolvent for work on the public works shall be fixed by the county commissioners at a just and fair compensation, regard being had to the amount of work of which each insolvent is capable. (1887, c. 355; 1889, c. 419; Rev., s. 1355; C. S., s. 1359.)

Cross References.—See §§ 23-24 and 153-191. As to prisoners sentenced for less than thirty days, see § 153-9, subsection 26.

Editor's Note.—The first paragraph of this section was derived from the act of 1887, and the second paragraph was added by the amendment of 1889.

Public Laws of 1931, c. 145, s. 30, codified as § 148-32, also provided for the surrender on July 1, 1931 of county prisoners assigned to work on the county roads to the State Highway Commission to be worked on the State highways. It was further provided that in the future, in lieu of being sentenced to work on the county roads, prisoners should be assigned to the State Highway Commission to work on the roads of the State. The 1931 law provided that all other laws were amended to conform to its provisions. A proviso permitted the retention and sentencing of prisoners to work on county farms, and Public Laws 1939, c. 243, amended this proviso to permit the working of county prisoners on "parks or other public grounds." For a statute substantially to the same effect as the 1931 law, see Public Laws 1933, c. 172, s. 8, codified as § 148-30.

The cases cited below should be read in the light of the changed conditions in working the public roads, now under the jurisdiction of the State Highway and Public Works Commission.

Construed with §§ 23-24 and 153-191.—This section must be construed with §§ 23-24 and 153-191. State v. Morgan, 141 N. C. 726, 53 S. E. 142 (1906).

Validity of Sentence to Work Public Roads. — A sentence to work the public roads is constitutional and valid. State v. Weathers, 98 N. C. 685, 4 S. E. 512 (1887); State v. Haynie, 118 N. C. 1265, 24 S. E. 536 (1896); State v. Smith, 126 N. C. 1057, 35 S. E. 615 (1900).

A sentence of a defendant convicted of a misdemeanor to thirty days' imprisonment and that he be assigned to the commissioners to be "worked on the public roads of the county" during said term is valid. State v. Young, 138 N. C. 571, 50 S. E. 213 (1905).

Judge's Duty.—When county has made

provision for working convicts upon the public roads, it is the duty of the judge holding court in such county to sentence to imprisonment at hard labor on the public roads for such terms as are prescribed by law for imprisonment in the county jail. State v. Saunders, 146 N. C. 597, 59 S. E. 695 (1907).

Presumption as to Enforcement.—Where a prisoner was sentenced to work on the public roads it was presumed that the county authorities had made the proper provisions for its enforcement. State v. Hicks, 101 N. C. 747, 7 S. E. 707 (1888).

An Incident of Sentence Proper. — The order of the commissioners directing the employment of a convict upon the public roads, and committing him to the custody of a superintendent of such public works, is not an additional sentence or judgment pronounced by the commissioners, but an incident to the sentence properly imposed by the court in contemplation of which the prisoner committed the offense. State v. Yandle, 119 N. C. 874, 25 S. E. 796 (1896).

A sentence to work the public roads of another county is valid when authorized by statute. State v. Hamby, 126 N. C. 1066, 35 S. E. 614 (1900).

Half Fees Charged against County. — Where persons are imprisoned for nonpayment of cost, they are to be detained only until they repay the county to the extent of the "half fees charged up against it," thus showing that the legislature recognized the liability of the county in such cases only for half fees. State v. Saunders, 146 N. C. 597, 59 S. E. 695 (1907).

Liability for Allowing Prisoner to Escape.—Where a prisoner confined in the public jail was used by the county authorities to work on the public roads, the person in charge of him was guilty of an escape for negligently allowing such person to make his escape. State v. Sneed, 94 N. C. 806 (1886).

Classes of Prisoners Not Within Section.—This section does not include among those authorized to be worked upon the roads those "sentenced to the house of correction," nor does it include those who fail "to give bond for maintenance of a bastard," nor for "failure to pay costs," except "those imprisoned for nonpayment of costs in criminal causes." State v. Morgan, 141 N. C. 726, 53 S. E. 142 (1906).

Husband Convicted of Abandonment. — A husband convicted of abandonment under § 14-322, and other offenses of like kind, may be assigned to work on the roads during his term. State v. Faulkner, 185 N. C. 635, 116 S. E. 168 (1923).

Conviction of Affray and Assault. — In State v. Weathers, 98 N. C. 685, 4 S. E. 512 (1887), upon conviction for an affray and mutual assault, the court pronounced judgment that "the convicted defendants be put to work on the public roads by the county commissioners," and the judgment was affirmed. State v. Young, 138 N. C. 571, 50 S. E. 213 (1905). To the same effect is State v. Pearson, 100 N. C. 414, 6 S. E. 387 (1888); State v. Haynie, 118 N. C. 1265, 24 S. E. 536 (1896).

Conviction of Assault and Battery with Deadly Weapon.—State v. Yandle, 119 N. C. 874, 25 S. E. 796 (1896), was a conviction for an assault and battery with a deadly weapon, and the Supreme Court held that one legally convicted of any crime or misdemeanor may be, under the authority of this section, sentenced to work upon the public roads. See Herring v. Dixon, 122 N. C. 420, 29 S. E. 368 (1898); State v. Young, 138 N. C. 571, 50 S. E. 213 (1905).

Conviction of Bastardy. — In Myers v. Stafford, 114 N. C. 234, 19 S. E. 764 (1894), it was held that bastardy having become a "petty misdemeanor," a defendant convicted of that offense may, under the authority of § 60-42, be put to work on the public roads until the fine and costs are paid. State v. Young, 138 N. C. 571, 50 S. E. 213 (1905).

§ 153-195. Deductions from sentence allowed for good behavior.— When a convict has been sentenced to work upon the public works of a county, and has faithfully performed the duties assigned to him during his term of sentence, he is entitled to a deduction from the time of his sentence of five days for each month, and he shall be discharged from the county works when he has served his sentence, less the number of days he may be entitled to have deducted. The authorities having him in charge shall be the sole judges as to the faithful performance of the duties assigned to him. Should he escape or attempt to escape he shall forfeit and lose any deduction he may have been entitled to prior to that time. This section shall apply also to women sentenced to a county farm or county home. (1913, c. 167, s. 1; C. S., s. 1360.)

§ 153-196. Convicts sentenced to public works to be under county

control.—The convicts sentenced to hard labor upon the public works, under the second paragraph of § 153-194, shall be under the control of the county authorities, and the county authorities have power to enact all needful rules and regulations for the successful working of convicts upon the public works. The county commissioners may work such convicts in canaling the main drains and swamps or on other public work of the county. (1887, c. 355, s. 2; 1891, c. 164; Rev., s. 1356; C. S., s. 1361.)

Unauthorized Whipping. — In the absence of rules and regulations made and promulgated by the county commissioners permitting it, a guard has no legal right or authority to whip convicts in his care or custody. State v. Morris, 166 N. C. 441, 81 S. E. 462 (1914).

§ **153-197. Taxes may be levied for expenses of convicts.**—The board of county commissioners of the several counties in the State taking advantage of this article shall levy a special tax annually as other taxes are levied for the purpose of paying the expenses of said convicts, building of stockades, etc., and the expenses shall be paid by the counties. (1887, c. 355, s. 6; Rev., s. 1359; C. S., s. 1364.)

§ **153-198. Use of county prisoners in maintaining roads not within State system.**—The State Highway and Public Works Commission may, on official request from a board of county commissioners authorize such board of county commissioners to use any county prisoners, upon such terms as may be agreed upon, to maintain and grade any neighborhood road within the county not at such time within the system of the State Highway Commission, but this authorization shall not authorize the levying of any tax for support of local roads; and like authority is extended to the boards of drainage commissioners for public drainage districts for the maintenance and upkeep of such districts. (1937, c. 297, s. 3½.)

Local Modification. — New Hanover: 1941, c. 75.

ARTICLE 16.

District Prison Farm.

§ **153-199. Two or more adjacent counties may establish; trustees.**—Any two or more adjacent counties may, by action of said commissioners in said counties, as hereinafter provided, establish a district prison farm, to be located at some suitable place in the counties composing the district, location and purchase to be controlled by a board of trustees appointed by the county commissioners of the respective counties owning and controlling said district prison farm, each county to have one trustee. Where only two counties enter the district, the commissioners of the counties concerned shall jointly elect one additional trustee. (1931, c. 142, s. 1.)

§ **153-200. Appointment of trustees; vacancies; expenses and compensation.**—The several boards of county commissioners shall, as soon as they shall have agreed among themselves to establish a district prison farm for their counties, appoint the members of the board of trustees, which board shall be known as the board of trustees of the district prison farm for the district comprising ....., ..., ... counties; the members of said boards of trustees shall be appointed every two years, and until their successors are chosen and qualified; all vacancies shall be filled by the several boards of county commissioners and said commissioners shall provide for the expense and compensation of said board of trustees. (1931, c. 142, s. 2.)

§ **153-201. Organization meeting; purchase of site; equipment; separation of races and sexes.**—The board of trustees shall, as soon as possible, and not later than sixty days after appointment, meet and organize by electing

a chairman and secretary. They shall proceed promptly with the purchase of a farm of suitable size, location and fertility, giving due consideration to sanitary surroundings and transportation facilities. They shall provide for the necessary stock, tools, and farm equipment, and shall cause to be erected suitable buildings for the housing, detention and keeping the prisoners assigned to said district farm, due regard being given to the separation of the sexes and races and such other plans for segregation as their judgment and existing conditions may suggest. (1931, c. 142, s. 3.)

§ **153-202. Proportion of payment among counties.** — The several counties shall pay for the site and for the construction and equipment of the prison farm in proportion to the taxable property of the several counties, and shall own the same in the same proportion, but the operating expense shall be borne by the said counties in proportion to the population of the several counties. (1931, c. 142, s. 4.)

§ **153-203. Election of superintendent and employees; regulations for working prisoners.**—The said board of trustees of said district prison farm shall elect a capable superintendent and such other employees as it may deem necessary for the efficient management of said farm and shall make rules and regulations for the working of all prisoners sentenced to said farm to the end that the said district prison farm shall be as near self-supporting as practicable. (1931, c. 142, s. 5.)

§ **153-204. Meetings of trustees.**—The board of trustees of said district prison farm shall meet at said farm at least twice each year for the transaction of such business as may come before them. They shall meet at other times on the call of the chairman or on a call by a majority of the board of trustees. (1931, c. 142, s. 6.)

§ **153-205. Notification to boards of commissioners and courts of readiness of farm.**—As soon as said prison farm is purchased and the necessary building erected thereon and the farm equipped with stock, tools, etc., the board of trustees of said district prison farm shall notify the boards of commissioners of the several counties, and the said boards of commissioners, upon receipt of said notice, shall promptly notify each and every court in the several counties, including superior courts, recorders' courts and all other courts which are now operating or may hereafter be established in said counties that the prison farm is ready. (1931, c. 142, s. 7.)

§ **153-206. Assignment of prisoners to work on farm.**—From and after receipt of the information set out above, it shall be the duty of the judges, recorders and other presiding officers of the several courts in said counties, to assign all prisoners sentenced by them to the county jails to the said district prison farm. (1931, c. 142, s. 8.)

§ **153-207. Bonds and notes for payment for farm; maximum levy.** —The several counties of said district are hereby authorized to provide for the payment of their proportionate part of said farm and equipment by the sale of notes or bonds as provided in the County Finance Act and to provide for payment of said bonds and notes by the levy of such tax as may be necessary for said purpose: Provided, not more than a levy of ten cents on the one hundred dollars valuation shall be levied any one year in any county. (1931, c. 142, s. 9.)

§ **153-208. Yearly report of operations.** — The said board of trustees shall cause to be made a detailed report of the operations of said district prison farm each year not later than January tenth each year and shall send a copy of said report to the several boards of county commissioners. (1931, c. 142, s. 10.)

Article 17.

Houses of Correction.

§ 153-209. Commissioners may establish houses of correction.—The board of commissioners may, when they deem it necessary, establish within their respective counties one or more convenient institutions to be known as houses of correction, or, in the discretion of the board of commissioners, as training schools, municipal farms, or juvenile farms, with workshops and other suitable buildings for the safekeeping, correcting, governing, and employing of offenders legally committed thereto. They may also, to that end, procure machinery and material suitable for such employment in said institutions, or on the premises; and moreover attach thereto a farm or farms; and all lands purchased for the purposes aforesaid shall vest in the directors hereinafter provided for, and their successors in office. The said board also has power to make, from time to time, such rules and regulations as it may deem proper for the kind and mode of labor and the general management of the said institutions. (1866, c. 35, s. 1; Code, s. 786; Rev., s. 1360; 1919, c. 273, s. 1; C. S., s. 1365.)

Cited in State v. Garrell, 82 N. C. 581 (1880); State v. Williams, 97 N. C. 414, 2 S. E. 370 (1887).

§ 153-210. Who must or may be committed to such institutions.—It shall be the duty of the judges of the criminal courts and other committing magistrates of such county or counties to sentence or commit thereto all youthful offenders of the age of sixteen years and under, convicted of any crime or misdemeanor whereof the punishment by statute prescribes a fine or sentence of imprisonment or working the roads. Said judges and committing magistrates may also sentence thereto any female prisoners and such other offenders convicted of misdemeanors who by reason of physical infirmities or mental deficiencies ought not to be imprisoned in the county jail or worked on the public roads. Nothing herein shall be construed to prevent the working at light labor of any partially disabled or infirm convict, or female prisoner, on or about any of the public works, buildings, or grounds in any such county, at and upon the request of the board of county commissioners, with the approval of the court or committing magistrate. (1919, c. 273, s. 1; C. S., s. 1366.)

Cross Reference. — As to juvenile courts and child offenders, see § 110-21 et seq.

§ 153-211. Levy of taxes authorized; to be paid to manager.—The board of commissioners, in addition to the ordinary county taxes, shall also, at the time said taxes are laid, lay such tax as may be necessary to carry into effect this article, which shall be collected and paid to the manager at the same time as other county taxes are to be paid; for which, and such other funds as may come into his hands as manager, he shall be accountable; and he shall disburse the same under the authority of the directors. (1866, c. 35, s. 5; Code, s. 790; Rev., s. 1361; C. S., s. 1367.)

§ 153-212. Bonds may be issued.—The board of commissioners may, if deemed advisable by them, issue county bonds to raise money to establish the institutions herein provided for. (1866, c. 35, s. 11; Code, s. 796; Rev., s. 1362; C. S., s. 1368.)

§ 153-213. Governor to be notified of establishment.—When any institution is established in pursuance of this article, it is the duty of the chairman of the board of commissioners of the county wherein the same is established to certify the fact to the Governor, who shall cause it to be noted in a book kept for that purpose. (1866, c. 35, s. 12; Code, s. 797; Rev., s. 1363; C. S., s. 1369.)

§ 153-214. Directors to be appointed; duties.—The board of commis-

sioners shall annually appoint not less than five nor more than nine directors for each such institution hereunder established, whose duty it is to superintend and direct the manager hereinafter named in the discharge of his duties; to visit said houses at least once in every three months; to see that the laws, rules and regulations relating thereto are duly executed and enforced, and that the persons committed to his charge are properly cared for, and not abused or oppressed. The directors shall keep a journal of their proceedings, and publish annually an account of the receipts and expenditures. They shall further make a quarterly report to their respective county commissioners of the general condition of their charge, and of the receipts and expenditures of the institution. They shall also make such bylaws and regulations for the government thereof as shall be necessary, which shall be reported to, and approved by, the said commissioners. The directors shall be paid for the services rendered, by the county treasurer, each director first making it appear to the satisfaction of the board of county commissioners, by his oath, the character and extent of the services rendered for which he claims compensation; and such payment shall be made by the county treasurer out of any funds in his hands not otherwise appropriated. (1866, c. 35, s. 2; Code, s. 787; Rev., s. 1364; C. S., s. 1370.)

§ **153-215. Term of office of directors.**—The directors shall continue in office until others are appointed; and if any vacancy happens among them, it shall be filled by the residue of the directors. (1866, c. 35, s. 10; Code, s. 795; Rev., s. 1365; C. S., s. 1371.)

§ **153-216. Manager to be appointed; bond; duties.**—The board of commissioners shall appoint a manager for each house or establishment, who shall give a bond, with two or more solvent sureties, in such sum as may be required, payable to the State of North Carolina, conditioned for the faithful discharge of his duties. He shall hold his office during the pleasure of the board, and be at all times under the supervision of the directors; and in case of his misconduct, of which they shall be the sole judges, he may be forthwith removed by them and a successor appointed, who shall discharge the duties of the office until another manager is appointed by the board of commissioners. It is the duty of the manager to receive all persons sent to the house of correction, to keep them during the time of their sentence, and to employ and control them according to the rules and regulations established therefor. He shall have the direction and control over the subordinate officers, assistants and servants, who may be appointed by the directors. He shall make monthly reports to the directors of his management of the institution and his receipts and expenditures. (1866, c. 35, s. 3; Code, s. 788; Rev., s. 1366; C. S., s. 1372.)

§ **153-217. Manager to assign employment to inmates.**—The manager shall assign to each person sent to such institution the kind of work in which such person is to be employed. (1866, c. 35, s. 9; Code, s. 794; Rev., s. 1367; C. S., s. 1373.)

§ **153-218. Compensation of officers.**—The said board of commissioners shall direct what compensation the manager and such subordinate officers, assistants and servants, as shall be appointed, shall receive, and shall provide for the payment thereof. (1866, c. 35, s. 4; Code, s. 789; Rev., s. 1368; C. S., s. 1374.)

§ **153-219. Sheriff to convey persons committed.**—When a person is sentenced to such institution he shall forthwith be committed by the court to the custody of the sheriff, to whom the clerk shall immediately furnish a certified copy of the sentence, in which it shall be stated (if the fact be so) that the offender is committed as a vagrant. The sheriff shall convey the offender to the institution, and deliver him to the manager with the certified copy aforesaid, and take the manager's receipt for the body; which receipt the sheriff shall return to the clerk

of the board of commissioners, with his indorsement of the time when the offender was committed to him and delivered to the manager, and the clerk shall record the same in a book kept for that purpose, and file the original with the papers in the case. (1866, c. 35, s. 8; Code, s. 793; Rev., s. 1369; C. S., s. 1375.)

§ **153-220. Absconding offenders punished.**—If any offender absconds, escapes, or departs from any such institution without license, the manager has power to pursue, retake and bring him back, and to require all necessary aid for that purpose; and when brought back, the manager may confine him to his work in such manner as he may judge necessary, or may put him in close confinement in the county jail or elsewhere, until he submits to the regulations of such institution; and for every escape each offender shall be held to labor in such institution for the term of one month in addition to the time for which he was first committed. (1866, c. 35, s. 6; Code, s. 791; Rev., s. 1370; 1919, c. 273, s. 2; C. S., s. 1376.)

§ **153-221. Release of vagrants.**—If a person committed as a vagrant behaves well and reforms, he may, on the certificate of the manager, be released by the directors. But if otherwise committed, he may be released by the committing authority, upon the certificate of the manager and directors upon such conditions as they may deem proper. (1866, c. 35, s. 7; Code, s. 792; Rev., s. 1371; C. S., s. 1377.)

§ **153-222. Suits in name of county.**—All suits brought on behalf of the institution shall, unless it be otherwise prescribed, be brought in the name of the county, to the use of the directors of the institution, without designating such directors by name. (1866, c. 35, s. 13; Code, s. 798; Rev., s. 1372; C. S., s. 1378.)

§ **153-223. Counties may establish joint houses of correction.**—Any two or more counties, acting through their respective boards of commissioners, may jointly establish one or more convenient houses of correction, as is provided in the preceding sections, for the joint use of the counties so agreeing together; and the same may be established at such place or places, and be in all respects managed under such bylaws, rules and regulations as a majority of the general board of directors, to be appointed as hereinafter directed, shall determine. (1866-7, c. 130, s. 1; Code, s. 799; Rev., s. 1373; C. S., s. 1379.)

§ **153-224. Directors of joint houses of correction.**—The board of commissioners of each of the respective counties agreeing as aforesaid to the establishment of one or more houses of correction for use jointly with any other county or counties shall annually appoint not less than three nor more than five directors in behalf of their several counties, and the directors so appointed by each of such counties shall together constitute the general board of directors of any such joint establishment. (1866-7, c. 130, s. 2; Code, s. 800; Rev., s. 1374; 1919, c. 273, s. 3; C. S., s. 1380.)

§ **153-225. Directors to appoint manager; bond; term; duties.**—Said general board of directors shall appoint a manager or superintendent for every such joint establishment, and such assistants and servants as they may deem necessary. The manager shall give bond with two or more able sureties, to be approved by said board, in such sum as may be required, payable to the State of North Carolina, and conditioned for the faithful performance of his duties. He shall hold his office during the pleasure of the general board of directors, and be, at all times, under their supervision; and of his misconduct they shall be the sole judges, and they may at any time remove him. He shall perform all such duties as may be prescribed by such general board of directors, and all such as may be incident to the office of manager by virtue of this chapter. (1866-7, c. 130, s. 3; Code, s. 801; Rev., s. 1375; C. S., s. 1381.)

§ 153-226. Compensation of manager and other officers.—The compensation of the manager and such subordinate officers, assistants and servants as may be appointed by the general board shall be fixed by said general board. (1866-7, c. 130, s. 3; Code, s. 801; Rev., s. 1375; C. S., s. 1382.)

ARTICLE 18.

Consolidation, Annexation and Joint Administration of Counties.

§ 153-227. Contiguous counties may consolidate into one.—Any two or more counties which are contiguous, or which lie in a continuous boundary may, in the manner herein prescribed, consolidate so as to form a single county. Where any group of counties so situated desires to effect such consolidation, a uniform resolution to this effect, setting forth the name of the proposed new county, shall be adopted by the governing bodies thereof, which resolution shall call a special election to be held on a specified date which shall be the same in all of said counties but not less than sixty nor more than ninety days from the last date of the adoption of such resolution in any of said counties. Said resolution shall also specify what group of counties it is proposed to consolidate, the name of the new county thus to be formed, and the county seat thereof. The governing body of each of said counties shall cause said resolution to be printed in some newspaper published therein, once a week for a period of six weeks prior to the date of said election. (1933, c. 193, s. 1.)

Editor's Note. — See 11 N. C. Law Rev. 213.

§ 153-228. Election laws applicable.—The election thus called shall be held in each of said counties and shall be conducted pursuant to the general election laws governing elections for members of the General Assembly. The registration books shall be kept open in each of said counties for a period of twenty consecutive days prior to said election, and notice of such registration shall be advertised and registrars appointed in the manner now prescribed by law governing elections for members of the General Assembly. Citizens of said counties who are registered and are otherwise qualified to vote shall be entitled to vote in said election in their respective counties for the purpose of determining whether it is the will of such voters that the proposed consolidation be effected. For use in said election the county board of elections in each of said counties shall cause to be printed and provided at each polling place a sufficient number of ballots on which shall be printed the following:

☐ For Consolidation
☐ Against Consolidation

Place a cross (X) mark in the square preceding the proposition for which you desire to vote.

All such ballots shall have printed on the back thereof the facsimile of the signatures of the members of the county board of elections of the county in which they are being used, and none other than such official ballots shall be valid for use in said election. As soon as practicable the county board of elections in each of said counties shall certify the result of said election to the governing bodies of all of the counties in said group, and each governing body shall cause the complete results of said election to be spread of record upon their respective minutes. If it appear that a majority of those voting in each of said counties voted in favor of the proposed consolidation, then said consolidation shall be declared to be in effect, and thereupon, the several counties shall stand abolished except as hereinafter provided, and the new county thus created shall for all purposes be constituted one of the counties of this State with all the rights, powers, and functions incident thereto under the general laws. If it appear that a majority in any one of said counties

voted against the proposed consolidation, then said consolidation shall be declared to have failed for all purposes. (1933, c. 193, s. 2.)

§ **153-229. New county board of elections.**—In case such consolidation be effected, the county boards of elections of the counties thus consolidated, acting together as one board, shall for the time being serve as a temporary county board of elections for the new county thus created, until the expiration of the terms for which they were appointed by the State Board of Elections. Thereafter the State Board of Elections shall appoint for such new county a county board of elections consisting of three members, in the manner and for the term now prescribed by law. (1933, c. 193, s. 3.)

Cross Reference. — As to appointment and term of county board of elections, see § 163-11.

§ **153-230. Special election for new county officers.**—In case such consolidation be effected, then said temporary county board of elections shall immediately call and shall hold a special election in such new county, on a date not less than forty-five nor more than sixty days after the date on which said consolidation was voted into effect, for the purpose of electing for said new county all constitutional and other county and township officers, except justices of the peace as now provided by law for counties throughout the State, including a board of county commissioners consisting of five members. No elections shall be held to fill any office theretofore existing in one or more of the group of counties thus consolidated if such office did not exist in each of said counties, but all of such offices peculiar to only a part of the counties brought into said consolidation shall be deemed abolished in respect to the new county. All constitutional county and township offices, all offices created for counties and townships by general laws, and all other offices in the group of counties thus consolidated, provided they existed in each of said counties, are hereby created for the new county effected by such consolidation, with the same rights, powers, duties and functions pertaining to such offices under the existing law. In order that elections by townships may be conducted, the various township lines and names as they existed before consolidation shall continue in effect, and townships of the several counties shall be deemed townships of the new county until thereafter altered in the manner prescribed by law. (1933, c. 193, s. 4.)

§ **153-231. Term of new officers; salaries.**—All officers elected for the new county at said special election shall hold office until the next general election at which time their successors shall be elected for the regular term prescribed by law. The salaries of all officers elected for the new county at said special election shall be the same as those now fixed by law for such offices. In case the salaries of any officers in the counties thus consolidated were not uniform, then any officer elected for the new county at such special election shall be entitled to a salary equal to the highest salary paid for that particular office in any of said counties before such consolidation was effected. (1933, c. 193, s. 5.)

§ **153-232. Retention of old officers till qualification of new.**—Notwithstanding such consolidation is voted upon favorably, all the existing officers in each of said counties shall continue to function as theretofore and shall have full authority to carry on the regular business of their respective counties, receiving their regular compensation therefor, until the officers for said new county shall have been elected and are qualified, as provided in § 153-230; and pending said election and the organization of the government of the new county, the several counties thus consolidated shall, for the purpose of carrying on their regular business, continue to exist and to function as separate county governments as fully as if said consolidation had never been voted upon. As soon as the officers for said new county are elected and qualified, then all public offices in the separate

counties thus consolidated shall stand abolished and said separate counties shall stand dissolved and shall cease to exist for any and all purposes. (1933, c. 193, s. 6.)

§ 153-233. Powers and duties of new officers.—All officers elected for the new county shall become vested with all the rights, powers, duties, and functions which pertained to their respective offices in any one of the counties thus consolidated. It shall be the duty of all public officers theretofore serving in each of said counties forthwith to surrender and turn over to the corresponding officers of the new county all books, records, funds, and other property held by them in their respective offices. Said new county shall become vested with title to all property of every kind and character, real, personal and mixed, theretofore belonging to each of said counties and shall have full power to collect and disburse any and all taxes, penalties, and other charges which had been assessed by or had become due to said counties prior to such consolidation. (1933, c. 193, s. 7.)

Cross Reference.—As to criminal liability of officer for failure to deliver records, etc., to successor, see § 14-231.

§ 153-234. Transfer of books, records, etc.—All records, papers, files, funds, and the like held by the clerks of courts in any of said counties shall forthwith be turned over to corresponding officials in the new county, who shall docket all suits and proceedings in order that the same may be carried on under the regular legal procedure. Wherever counties thus consolidated lie in different judicial districts, the new county thus established shall become a part of that judicial district in which the larger portion of its territory lies. (1933, c. 193, s. 8.)

§ 153-235. Liability for bonded indebtedness.—Any such new county thus established shall be liable for all of the bonded and other indebtedness of the separate counties so consolidated, and any and all rights which might have been enforced against any of said counties may be enforced against said new county as fully as though the proceeding were against the county originally liable. (1933, c. 193, s. 9.)

§ 153-236. Justices of the peace and constables.—All justices of the peace and constables holding office at the time of such consolidation shall continue to serve as such in and for the new county thus established until the expiration of the terms for which they were elected or appointed, at which time, justices of the peace and constables may be elected and appointed for said new county in the manner now provided by law. Such consolidation shall in no wise affect the validity of any proceeding pending in the court of any justice of the peace in said counties. (1933, c. 193, s. 10.)

§ 153-237. Representation in General Assembly.—In the event such consolidation be thus effected, the consolidated county thereafter shall be entitled to the same representation in the House of Representatives theretofore had by the several counties so consolidated until the next re-apportionment of the membership of the House of Representatives by the General Assembly. Nor shall such consolidation affect the existing lines of State senatorial or congressional districts or the representation therein. (1933, c. 193, s. 10½.)

§ 153-238. Merging of one contiguous county with another authorized.—Wherever two counties are contiguous, and it is their mutual desire that one of said counties shall be annexed to and merged in the other, such annexation may be effected in the manner herein prescribed. The governing body of each of said counties shall adopt a uniform resolution setting forth the willingness of one of said counties to become annexed to and merged in the other pursuant to the authority of §§ 153-238 to 153-246. Said resolution shall also call for a special election to be held on a specified date which shall be the same in both counties but

not less than sixty nor more than ninety days from the last date on which said resolution was adopted in either of said counties. The governing body of each of said counties shall cause said resolution to be printed in some newspaper published therein once a week for a period of six weeks prior to the date of said election. (1933, c. 194, s. 1.)

Liability for County Indebtedness.—The proceeding for annexation is the same as in consolidation, but when it is complete, the county annexed ceases to exist and becomes a part of the other county. The liability of the annexing county for the indebtedness of the annexed county is to be determined in the beginning, when the plan of annexation is submitted. 11 N. C. Law Rev. 213.

§ **153-239. Election laws applicable.**—The election thus called shall be held in each of said counties and shall be conducted pursuant to the general election laws governing elections for members of the General Assembly. The registration books shall be kept open in each of said counties for a period of twenty consecutive days prior to said election, and notice of such registration shall be advertised and registrars appointed, in the manner now prescribed by law governing elections for members of the General Assembly. Citizens of said counties who are registered and are otherwise qualified to vote shall be entitled to vote in said election in their respective counties for the purpose of determining whether it is the will of such voters that the proposed annexation be effected. For use in said election the county board of elections in each of said counties shall cause to be printed and provided at each polling place a sufficient number of ballots on which shall be printed the following:

☐ For Annexation
☐ Against Annexation

Place a cross (X) mark in the square preceding the proposition for which you desire to vote.

All such ballots shall have printed on the back thereof the facsimile of the signatures of the members of the county board of elections of the county in which they are being used, and none other than such official ballots shall be valid for use in said election. As soon as practicable the county board of elections in each of said counties shall certify the results of said election to the governing body of both counties, and thereupon, the governing body of each county shall cause the results of the said election in both counties to be spread of record upon their respective minutes. If it appear that a majority of those voting in each of said counties voted in favor of the proposed annexation, then said annexation shall be declared to be in effect. If it appear that a majority of those voting in either of said counties voted against the proposed annexation, then said annexation shall be declared to have failed for all purposes. (1933, c. 194, s. 2.)

§ **153-240. Dissolution of county merged.**—In the event such annexation shall be voted upon favorably in each of said counties, then the county which was voted to be annexed to the other shall thereupon stand dissolved and abolished, and its territory thereby shall be transferred to and for all purposes shall become a part of the annexing county, and townships of the annexed county shall be deemed townships of the annexing county until thereafter altered in the manner prescribed by law. (1933, c. 194, s. 3.)

§ **153-241. Abolition of offices in merged county; transfer of books, records, etc.**—In the event such annexation be thus effected, all public offices except those of justice of the peace and constable, in the county so annexed, shall stand abolished, and it shall be the duty of those who held such offices before annexation to turn over to the corresponding officers of the annexing county all books, records, funds, and other property theretofore held by them in their official capacity, and said corresponding officers of the annexing county shall be vested with all the rights of said offices thus abolished, and shall be entitled to the custody and

control of all books, records, funds, and other property formerly held by the incumbents of such abolished offices. (1933, c. 194, s. 4.)

§ 153-242. Court records transferred; justices of the peace and constables hold over.—In the event such annexation be thus effected, all records, papers, files, funds, and the like held by clerks of courts in the annexed county shall forthwith be turned over to corresponding clerks in the annexing county, who shall docket all suits and proceedings in order that the same may be carried on under the regular legal procedure. All justices of the peace and constables holding office in the annexed county at the time of such annexation shall continue to serve as justices of the peace and constables of the annexing county in and for the new township, until the expiration of the terms for which they were elected or appointed, in as full a measure as if such annexation had not occurred, and the validity of proceedings pending before such justices of the peace at the time of annexation shall in no wise be affected thereby. Upon the expiration of their terms, justices of the peace and constables shall be elected or appointed in such annexed territory in the manner prescribed by law. Any other officers provided by the general law for a township shall be elected in the new territory at the next general election following such annexation. (1933, c. 194, s. 5.)

§ 153-243. Rights of annexing county.—In the event such annexation be thus effected, the annexing county shall forthwith:

(a) Become vested with title to all property of every kind and character, real, personal and mixed, theretofore belonging to the annexed county, and shall have full power to collect and disburse any and all taxes, penalties and other charges which had been assessed by or had become due to the annexed county prior to such annexation. Said annexing county shall also be liable for all bonded and other indebtedness of the annexed county, and any and all rights which might have been enforced against said annexed county may be enforced against the annexing county as fully as though the proceeding had been against the county thus annexed;

(b) Said annexing county shall treat said annexed county as a township or division of said annexing county, and said annexing county shall forthwith be vested with title to all property of every kind and character, real, personal and mixed, belonging to said annexed county, and have full power to collect any and all taxes, penalties and other charges which have been assessed by or become due to the annexed county prior to the annexation, and shall disburse the same for the payment of obligations of said annexed county; and the bonded indebtedness of said annexed county shall be a charge only on the property of the township or division of said annexing county which was comprised in the annexed county, and taxes for the payment of same shall be levied only on property within said township or division. And the property in said township or division constituting the property in the annexed county shall not be liable for any of the bonded or other indebtedness of the county annexing it, existing prior to said annexation, and no taxes shall be levied on the property of said township for the payment of same. (1933, c. 194, s. 6.)

§ 153-244. Plan of government.—At the time of entering the resolutions as set out in § 153-238, the counties in said resolution shall specifically provide whether plan A or plan B, as set out in § 153-243, shall govern the two counties as to the bonded indebtedness. (1933, c. 194, s. 7.)

§ 153-245. Membership in General Assembly.—In the event such annexation be thus effected, the annexing county thereafter shall be entitled to the same representation in the House of Representatives theretofore had by the annexed and annexing counties until the next reapportionment of the membership of the House of Representatives by the General Assembly. Nor shall such annexation affect the existing lines of State Senatorial or Congressional Districts or the representation therein. (1933, c. 194, s. 7½.)

§ 153-246. Joint administrative functions of contiguous counties.— Any two or more counties which are contiguous or which lie in a continuous boundary are authorized, whenever it is deemed for their best interests, to enter into written agreements for the joint performance of any and all similar administrative functions and activities of their local governments through consolidated agencies, or by means of institutions or buildings jointly constructed, owned and operated.

Such written agreement shall set forth what functions or activities of local government shall thus be jointly carried on, and shall specify definitely the manner in which the expenses thereof shall be apportioned and how any fees or revenue derived therefrom shall be apportioned. Upon such agreement being ratified by the governing bodies of the counties subscribing thereto, it shall be spread upon their respective minutes.

Whenever any such agreement has been entered into, then the consolidated agency or institution set up to function jointly for the counties which are parties thereto, shall be vested with all the powers, rights, duties and functions theretofore existing by law in the separate agencies so consolidated.

No such agreement shall be entered into for a period of more than two years from the date thereof, but such agreements may be renewed for a period not exceeding two years at any one time.

In the same manner and subject to the same provisions as herein set out, any municipality may enter into such an agreement with the county in which it is situated, or may join with other municipalities in the same county in making such an agreement with said county, to the end that the functions of local government may, as far as practicable, be consolidated.

It is the purpose of this section to bring about efficiency and economy in local government through a consolidation of administrative agencies thereof, and to effectuate this purpose this section shall be liberally construed. (1933, c. 195.)

Local Modification. — Guilford: 1933, c. 195, s. 5.

Editor's Note. — For brief summary of section, see 11 N. C. Law Rev. 213.

Chapter 154.

County Surveyor.

§ 154-1. Election and term of office.—There shall be elected in each county, by the qualified voters thereof, as provided for the election of members of the General Assembly, a county surveyor, who shall hold office for the term of two years. (Const., art. 7, s. 1; Rev., s. 4296; C. S., s. 1383.)

Cross References.—As to induction into office by county commissioners, see § 153-9, subsection 11. As to power of county commissioners to fill vacancy, see 153-9, subsection 12. As to time of election, see § 163-4.

§ 154-2: Repealed by Session Laws 1951, c. 21.

§ 154-3. May appoint deputies.—Every surveyor may appoint deputies, who shall, previous to entering on the duties of their office, be qualified in a similar manner with the surveyor; and the surveyor making such appointment shall be liable for the conduct of such deputies, as for his own conduct in office. (1779, c. 140, s. 5, P. R.; R. C., c. 42, s. 6; Code, s. 2763; Rev., s. 1720; C. S., s. 1385.)

Deputy Cannot Survey Own Land.—A deputy surveyor cannot survey his own land. Avery v. Walker, 8 N. C. 140 (1820).

Deputies Must Take Oath. — Surveyors are authorized to appoint deputies; but, before entering on the duties of office, they also must take an oath of office, which may be administered by the surveyor. Avery v. Walker, 8 N. C. 140 (1820).

Oath of Chain Carriers. — As to early statute relating to oath of chain carriers, see Avery v. Walker, 8 N. C. 140 (1820).

§ 154-4. Power to administer oaths.—The county surveyors of the several counties are empowered to administer oaths to all such persons as are required by law to be sworn in making partition of real estate, in laying off widows' dower, in establishing boundaries and in surveying vacant lands under warrants. (1881, c. 144; Code, s. 3314; Rev., s. 2361; C. S., s. 1386.)

Cross Reference. — As to form of oath, see § 11-11.

Surveyor May Administer Oath to Deputies.—The surveyor is authorized to administer the required oath to his deputies. Avery v. Walker, 8 N. C. 140 (1820).

Chapter 155.

County Treasurer.

§ 155-1. Election of county treasurer.—In each county there shall be elected biennially by the qualified voters thereof, as provided for the election of members of the General Assembly, a treasurer. (Const., art. 7, s. 1; Rev., s. 1394; C. S., s. 1387.)

Local Modification.—Buncombe: 1937, c. 103; Caswell: Pub. Loc. 1941, c. 157; Chowan: 1941, c. 350; Cumberland: 1947, c. 702; Mitchell: 1931, c. 53; 1941, c. 168.

Cross Reference.—As to duty of county commissioners to fill vacancy in office of county treasurer, see § 153-9, subsection 12.

Editor's Note. — The legislature in 1875, under authority conferred by § 14 of Article VII, of the Constitution of 1868, amended § 1, of said Article VII, by providing that the boards of justices of the peace of the several counties might abolish the office of the county treasurer at will. The Code of 1883, § 768, conferred a like power upon the said boards of justices. When the justices chose to abolish the office, the duties and liabilities attaching thereunto devolved upon the sheriff, who became ex officio county treasurer. This was carried forward as § 1395 of the Revisal of 1905. However, the legislature, by Public Laws 1919, ch. 141, repealed the provision empowering the justices to abolish the office.

In certain counties the board of county commissioners is authorized to abolish the office of county treasurer and appoint one or more banks or trust companies in lieu thereof. See § 155-3. As to sheriff acting as treasurer, see § 155-6.

Ministerial Officer.—The county treasurer is a ministerial officer. Martin v. Clark, 135 N. C. 178, 47 S. E. 397 (1904).

Elected for Statutory Term.—The term of office of the county treasurer is two years. State v. McKee, 65 N. C. 257 (1871).

The term of a treasurer appointed to fill a vacancy is only that of the unoccupied term of his predecessor. State v. McKee, 65 N. C. 257 (1871).

When Election a Nullity.—The election of a person to the office of county treasurer, which has been abolished, or when there is no vacancy, is a nullity. Rhodes v. Hampton, 101 N. C. 629, 8 S. E. 219 (1888).

§ 155-2. Bond; penalty; when renewed.—The county treasurer, before entering upon the duties of his office, shall give bond with three or more sufficient sureties, to be approved by the board of commissioners, payable to the State, conditioned that he will faithfully execute the duties of his office, and pay according to law, and on the warrant of the chairman of the board of commissioners, all moneys which shall come into his hands as treasurer, and render a just and true account thereof to the board when required by law or by the board of Commissioners. The penalty of his bond shall be a sum not exceeding the amount

of the county and local taxes assessed during the previous year, and the board of commissioners at any time, by an order, may require him to renew, increase or strengthen his bond. A failure to do so within ten days after the service of such an order shall vacate his office, and the board shall appoint a successor. (1868-9, c. 157, s. 4; Code, s. 766; 1895, c. 270, s. 2; 1899, c. 54, s. 52; 1899, c. 132; 1899, c. 207, s. 4; 1901, c. 536; 1903, c. 12, s. 2; Rev., s. 297; C. S., s. 1388.)

Local Modification. — Craven, Forsyth: C. S. 1388.

Cross References. — As to limitation of actions upon bond, see § 1-50. As to approval of bond by county commissioners, see § 153-9, subsection 11. As to right of action on official bond, see § 109-34.

Time to File Bond.—It was the duty of a county treasurer elected in August, 1878, to appear before the board of county commissioners on the first Monday in the month next succeeding his election and file his official bond; and on his failure to do so, it was competent for the board of commissioners to declare the office vacant and fill it. Kilburn v. Latham, 81 N. C. 312 (1879).

Settlement of Retiring Treasurer Does Not Discharge Bond. — A settlement had between a county and its out-going treasurer, does not operate as a discharge of liability upon his bond; nor is it conclusive evidence of a proper accounting, but is open to proof that a mistake was made. Commissioners v. MacRae, 89 N. C. 95 (1883).

Actual Payment of Funds Alone Discharges Bond.—The actual payment of the funds remaining in a treasurer's hands will alone relieve the bond from liability, and it is his duty to know to what fund the money in hand belonged. Commissioners v. MacRae, 89 N. C. 95 (1883).

Demand Unnecessary. — Where the county treasurer collects and retains county moneys or fails to pay over to his successor, no demand is necessary before suit is brought. Commissioners v. Magnin, 86 N. C. 286 (1882).

Proper Parties Relator. — The commissioners of a county are proper parties relator to sue upon the official bond of a county treasurer to recover county school funds. Commissioners v. Magnin, 86 N. C. 286 (1882), approving Commissioners v. Magnin, 78 N. C. 181 (1878). See § 155-17.

Limitation of Actions upon Bonds.—An action upon the official bonds of a county treasurer may be brought within six years after a breach thereof. The statute does not begin to run from the date, but only from the breach of the bond. Commissioners v. MacRae, 89 N. C. 95 (1883).

Protection of School Fund. — The bond of a county treasurer, conditioned "that whereas he has been appointed treasurer and become disburser of the school money, now therefore, if he shall well and truly disburse the money coming into his hands, under the requirements of law," etc., covers an illegal defalcation from the school fund. Commissioners v. Magnin, 86 N. C. 286 (1882).

Where Bond Required as Treasurer of Board of Education.—See Koonce v. Commissioners, 106 N. C. 192, 10 S. E. 1038 (1890), citing State v. Bateman, 102 N. C. 52, 8 S. E. 882 (1889).

§ 155-3. Local: Commissioners may abolish office and appoint bank. —In the counties of Bladen, Carteret, Chatham, Cherokee, Chowan, Craven, Edgecombe, Granville, Hyde, Madison, Mitchell, Montgomery, Martin, Moore, Onslow, Perquimans, Polk, Rowan, Stanly, Transylvania, Tyrell, 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. When the office is so abolished, the board is authorized, in lieu of a county treasurer, to appoint one or more solvent banks or trust companies located in its county as financial agent for the county, which bank or trust company shall perform the duties now performed by the treasurer or the sheriff as ex officio treasurer of the county. Such bank or trust company shall not charge nor receive any compensation for its services, other than such advantages and benefit as may accrue from the deposit of the county funds in the regular course of banking, or such sum as may be agreed upon as compensation between said board of county commissioners of Transylvania County and Chatham County and such bank or banks as may be designated by said board of

county commissioners. This alternative shall apply only to Chatham and Transylvania counties: Provided, in said county of Chatham the county commissioners of said county shall fix the compensation to be allowed said bank designated as said financial agent of said county which compensation shall not exceed the sum of five hundred dollars per annum and said bank is to furnish, without cost to the county, a good and sufficient bond as such financial agent.

The bank or trust company, appointed and acting as the financial agent of its county, shall be appointed for a term of two years, and shall be required to execute the same bonds for the safekeeping and proper accounting of such funds as may come into its possession and belonging to such county and for the faithful discharge of its duties, as are now required by law of county treasurers. (1913, c. 142; Ex. Sess. 1913, c. 35; 1915, cc. 67, 268, 458, 481; 1919, c. 48; C. S., s. 1389; 1925, c. 46; 1933, c. 63.)

Editor's Note. — The 1925 amendment inserted "Transylvania" in the list of counties and added provisions relating to the county. The 1933 amendment inserted provisions as to Chatham County.

Constitutionality. — A mandamus proceeding was brought to compel an ex-treasurer, whose office had been abolished, under the provision of this section, to pay over county funds in his possession to his successor, the bank designated by the commissioners. It was objected that the section was unconstitutional as an unwarranted delegation of legislative power. The court held, however, that the section was constitutional and valid. Tyrrell County v. Holloway, 182 N. C. 64, 108 S. E. 377 (1921). A wide discretionary power of local self-government may be vested in municipal subdivisions of the State, without infringement upon the familiar rule that the substance of legislative power cannot be delegated. Thompson v. Floyd, 47 N. C. 313 (1855); Manly v. Raleigh, 57 N. C. 370 (1859); 1 N. C. Law Rev. 53.

Mandamus against Treasurer Seeking to Hold Over.—Where, under the power of this section, the county commissioners have abolished the office of county treasurer, and have vested the duties of the office in certain banks and trust companies which have qualified thereunder, mandamus will lie to compel the treasurer, seeking to hold over and denying the validity of the statute, to turn over to the proper party the moneys that he has received and attempts to hold by virtue of his former office. Tyrrell County v. Holloway, 182 N. C. 64, 108 S. E. 337 (1921).

Officers of Bank as Sureties. — Where the officers of a bank acting without personal gain sign as sureties on an obligation of the bank executed to the commissioners of a county in the manner and form required by the section to secure a deposit for county and road purposes, the transaction is valid when unaffected by fraud, and binding upon the receiver afterwards appointed by the court for the bank, subsequently becoming insolvent. Page Trust Co. v. Rose, 192 N. C. 673, 135 S. E. 795 (1926).

Same—Directors Need Not Authorize. —Where the officers of a bank acting in good faith and without personal profit execute a bond of indemnity for the deposit of county funds, it is not required for the validity of the bond that the directors authorize the same by a resolution duly passed in order to protect the rights of the sureties, officers of the bank. Page Trust Co. v. Rose, 192 N. C. 673, 135 S. E. 795 (1926).

Same—Consideration Moving to Bank. — The consideration moving to a bank when its officers without individual benefit become sureties on its indemnity bond given for a county deposit, under the requirements of the statute, is the deposit so obtained. Page Trust Co. v. Rose, 192 N. C. 673, 135 S. E. 795 (1926).

Sureties Entitled to Collateral. — The sureties on an indemnity bond, given by a bank to secure a deposit of county funds required by the section, are entitled to the collateral given them by the bank for their protection in becoming sureties, and such collateral is available to them in preference to a receiver of the bank, thereafter appointed by the court, claiming the proceeds for distribution among the general creditors of the bank, when the transaction has been made by the sureties in good faith and without personal advantage to them. Page Trust Co. v. Rose, 192 N. C. 673, 135 S. E. 795 (1926).

Bank Entitled to All County Funds. — Under Public Local Laws 1917, ch. 46, § 1, for Robeson County, the bank selected by the commissioners, upon the abolishment of the office of county treasurer, was held entitled to receive all county moneys, including those derived from assessments of a drainage district. Commissioners v. Lewis, 174 N. C. 528, 94 S. E. 8 (1917).

Changing Terms of Appointment as Im-

pairing Obligation of Contracts.—Where a bank has been appointed under this section to perform the duties of treasurer of Edgecombe County, and receive as compensation the profits of the moneys deposited by the county arising in the course of the bank's business as such, the arrangement is not a contract contemplated by the provision of the Constitution prohibiting the impairment of the obligations of a contract, but the obligations arise by statutory provisions relating to public matters within legislative control. The county may at a later date, under authority of § 153-135 require the bank to give bonds for the protection of the public funds, or to pay interest on the daily average balance. Farmers Banking, etc., Co. v. County, 196 N. C. 48, 144 S. E. 519 (1928). See note under § 155-7.

§ 155-4. Office includes person acting as treasurer.—The office of county treasurer shall always be construed to refer to, and include, the person authorized by law to perform the duties of that office in any county, if there is no county treasurer therein. (Code, s. 770; Rev., s. 1396; C. S., s. 1390.)

§ 155-5. Ex officio treasurer of county board of education.—The county treasurer is ex officio treasurer of the county board of education. (Code, s. 770; Rev., s. 1396; C. S., s. 1391.)

Cross Reference.—As to powers, duties, and responsibilities of the county treasurer in disbursing school funds, see § 115-165 et seq.

Sheriff as Treasurer of Board of Education.—Where one was ex officio treasurer of a county by virtue of his election to the office of sheriff, he became, in the same way, treasurer of the county board of education. Koonce v. Commissioners, 106 N. C. 192, 10 S. E. 1038 (1890).

§ 155-6. Sheriff acting as treasurer; bond liable.—In counties where the office of county treasurer is abolished, and where the sheriff is authorized to perform the duties of county treasurer, the bond he gives as sheriff shall be construed to include his liabilities and duties as such county treasurer, and may be increased to such amount by the board of commissioners as may be deemed necessary to cover the trust funds coming to his hands. (1879, c. 202; Code, s. 769; Rev., s. 1397; C. S., s. 1392.)

Cross Reference.—As to duty of county commissioners to take and approve bond, see § 153-9, subsection 11, and § 162-9.

§ 155-7. Duties of county treasurer.—It is the duty of the treasurer:

1. To Keep County Moneys.—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.

2. To Keep True Accounts.—To keep a true account of the receipts and expenditures of all such moneys, taking proper vouchers in every case in books provided for that purpose at the expense of the county; which said books shall at all times show the date, amount, and from whom he has received such moneys; the date, amount, and to whom he has paid out any of the said moneys; the total amount received and the total amount paid out during the current fiscal year for school purposes, for general county purposes, for jury fund, and for each special purpose, all separately kept, so that at all times his said books shall correctly and accurately show the condition of the said several accounts. His account of expenditures for general county purposes shall also show separately the amounts expended each year on account of the county home, indigent persons, jails, workhouses, courthouse, bridges, insolvent fees, courts, and such other special accounts as the board of commissioners of the county require, the total of said accounts being the aggregate amount expended during the fiscal year for general county purposes. He shall post at the courthouse door on the first Monday in each month a correct statement of such receipts and expenditures, showing the amount received, and from what source, and the amounts paid out, and to whom, and for what purpose, and the balance in his hands belonging to the county.

3. To Call on County Officers for Funds in Their Hands.—To call on the sheriff, or the clerk of the superior court, or other officer having county moneys in his hands, at least once in each month, or oftener if necessary, to pay over to him, and to account for all such moneys.

4. To Keep Accounts of Fines, etc.—To enter in a book to be kept by him the exact amount of any fine, penalty or forfeiture paid over to him, giving the date of payment, the name of the clerk or other person so paying the same, the name of the party from whom such fine, penalty or forfeiture was collected, and in what case.

5. To Exhibit to the Board of Commissioners His Books and Accounts as Treasurer for Examination.—To exhibit his books and accounts and moneys once every three months, or oftener, if the board of commissioners of his county deem it necessary, to a committee to be composed of the chairman of the board of commissioners and one other person to be selected by the board of commissioners, who shall be an expert accountant. It is the duty of this committee to examine the books and accounts of his office, and to see that the accounts are correctly and properly kept, and to count the money in the hands of the treasurer, and to see that it corresponds with the amount shown by the books to be in his hands. At every such examination of the books and accounts of his office the county treasurer shall exhibit a full, perfect and itemized statement to said committee of the use he has made of every dollar of public funds in his hands since the last exhibition of his books to said committee; and if any part of said funds has been loaned out, this statement shall state to whom loaned and on what security and the amount of interest paid on said loan, and such interest shall be covered into the county treasury by the treasurer. This statement shall be sworn to and published in a county newspaper or at the courthouse door. Nothing herein contained shall be construed to authorize the county treasurer to lend any public funds.

If at any time there is a deficit in the amount of money in the hands of the treasurer, the committee shall so report to the board of commissioners, whose duty it is to institute proceedings in the superior court against said treasurer for violation of his official duties. (Code, ss. 96, 773; 1889, c. 242; Rev., s. 1398; C. S., s. 1393.)

Cross References.—As to duties with respect to school funds, see § 115-165 et seq. As to limitation of actions on official bond of public officers, see § 1-50. As to right of action on official bonds, see § 109-34.

Treasurer Receives and Disburses County Funds. —It is the duty of the county treasurer to receive all moneys belonging to the county. Lewis v. Commissioners, 192 N. C. 456, 135 S. E. 347 (1926).

The county treasurer disburses all public funds. Clifton v. Wynne, 80 N. C. 146 (1879).

Warrant on Specific Fund. — It is the duty of the county treasurer to pay a warrant drawn on a specific fund by the county commissioners. Martin v. Clark, 135 N. C. 178, 47 S. E. 397 (1904).

Proceeds from Highway Bonds.—Where a county has issued bonds for the purpose of lending their proceeds to the State Highway Commission, to be used for the construction of certain highways within the county, and the county commissioners have such proceeds on hand, mandamus by the county treasurer will not lie for control of the funds as a part of the general county funds coming within her control, under the provisions of the statute. Lewis v. Commissioners, 192 N. C. 456, 135 S. E. 347 (1926).

Liability for Interest.—A local bank acting under a valid appointment to perform the duties of a county treasurer, as the fiscal agent of the county, is not required by subsection 5 of this section to pay interest on the deposits of county funds thus received by it, and the surety on its bond is not liable for the failure of the special depository to charge itself interest on the deposits except when the bank has loaned the funds out to third parties. Green County v. First Nat. Bank, 194 N. C. 436, 140 S. E. 38 (1927). See note under § 155-3.

§ **155-8. Compensation of county treasurer.**—The county treasurer shall receive as compensation in full for all services required of him such a sum, not

exceeding one-half of one per cent on moneys received and not exceeding two and a half per cent on moneys disbursed by him, as the board of commissioners of the county may allow. As treasurer of the county school fund he shall receive such sum as the board of education may allow him not exceeding two per cent on disbursements; and the said commissions shall be paid only upon the order of the county board of education, signed by the chairman and secretary, and the county board of education is hereby forbidden to sign any such order until the treasurer shall have made all reports and kept all such accounts required by law in the form and manner prescribed: Provided, that said treasurer shall be allowed no commission or compensation for receipts and disbursements of any loan or loans made to the county by the State Board of Education out of the State Literary Fund, the Special Building Fund, nor from funds derived from county or district bond issues for the building of schoolhouses: Provided, that in counties where the treasurer's total compensation cannot exceed two hundred and fifty dollars per annum the treasurer may be allowed, in the discretion of the board of county commissioners and of the board of education, as to the school fund, a sum not exceeding two and one-half per cent on his receipts and not exceeding two and one-half per cent on his disbursements of all funds handled by him; but the compensation allowed by virtue of the provisions of this last proviso shall not be operative to give a total compensation in excess of two hundred and fifty dollars per annum to such treasurers. (Code, s. 770; 1899, c. 233; Rev., s. 2778; 1909, c. 577; 1913, c. 144; 1919, c. 254, s. 9; C. S., s. 3910; 1924, c. 121, s. 6.)

Cross Reference. — As to compensation for disbursing funds of a drainage district, see § 156-113.

Editor's Note. — The 1924 amendment inserted in the first proviso the words "the special building fund, nor from funds derived from county or district bond issues."

Statutes Construed Together.—The relevant sections of the various statutes upon the subject of the collection of assessments on lands in drainage districts by sheriffs and tax collectors, and their compensation therefor, being in pari materia, should be construed together by the courts in ascertaining the legislative intent. Drainage Com'rs v. Davis, 182 N. C. 140, 108 S. E. 506 (1921).

Compensation.—Every county treasurer is entitled to compensation for his labor and responsibility, and in no case less than two and a half per cent per annum on the amount collected, where it cannot exceed two hundred and fifty dollars. Koonce v. Commissioners, 106 N. C. 192, 10 S. E. 1038 (1890).

Commission for Drainage Assessments. —This section cannot be construed to allow additional compensation to the county treasurer for receiving and disbursing money of a drainage district under § 36, ch. 442, Laws of 1909, the acts being unrelated; but if otherwise, the county treasurer must bring himself within the provisions of this section by showing the amount claimed was allowed to him in the discretion of the county commissioners, within the limit fixed by the statute, and that the regular procedure was followed as to the drawing of the warrants by the drainage commission upon funds on hand derived from collections for the benefit of the drainage district. Board v. Credle, 182 N. C. 442, 109 S. E. 88 (1921).

May Enforce Claim by Mandamus.—In the event that the county commissioners refuse to consider the treasurer's claim for his fees, the proper remedy is a mandamus proceeding. Koonce v. Commissioners, 106 N. C. 192, 10 S. E. 1038 (1890).

§ **155-9. Committee to examine treasurer's books; compensation.**— The board of commissioners shall allow to the committee who examine the books and moneys of the treasurer the same pay per diem that is received by a member of the board, not to exceed pay for one day's service for each examination. (1879, c. 33; Code, s. 774; Rev., s. 2779; C. S., s. 3916.)

§ **155-10. Treasurer not to speculate in county claims; penalty.**—No county treasurer purchasing a claim against the county at less than its face value is entitled to charge the county a greater sum than what he actually paid for the same; and the board of commissioners may examine him as well as any other person on oath concerning the matter. Any county treasurer who is concerned

or interested in any such speculation shall forfeit his office. (1868-9, c. 157, s. 8; Code, s. 772; Rev., s. 1399; C. S., s. 1394.)

§ 155-11. Treasurer administers property held in trust for county. —All real and personal property held by deed, will or otherwise by any person or officer in trust for any county, or for any charitable use to be administered in and for the benefit of such county or the citizens thereof, shall be transferred to and vest in the county treasurer, to be administered and applied by him under the direction of the board of commissioners, upon the same uses, purposes and trusts as declared by the grantor, testator or other person in the original deed, devise or other instrument of donation. (1869-70, c. 85; Code, s. 778; Rev., s. 1400; C. S., s. 1395.)

§ 155-12. Treasurer to take charge of county trust funds; additional bonds. — It is the duty of the county treasurer to take charge of all such trust funds and property; but he shall not do so without giving a bond payable to the State, in a penalty double the estimated value of said property or funds, with three or more sureties, each of whom is worth at least the amount of the penalty of the bond over and above all his liabilities and property exempt from execution, which bond shall be taken by the board of commissioners, and recorded and otherwise treated and dealt with as the official bond of the treasurer. (1869-70, c. 85, s. 2; Code, s. 779; Rev., s. 1401; C. S., s. 1396.)

§ 155-13. Commissioners to keep record of trust funds.—The board of commissioners shall keep a proper record of all such trust property or charitable funds, and when necessary shall institute proceedings to recover for the treasurer all such as may be unjustly withheld. (1869-70, c. 85, s. 3; Code, s. 780; Rev., s. 1402; C. S., s. 1397.)

§ 155-14. Treasurer to exhibit separate statement as to trust funds. —The county treasurer, whenever he is required to exhibit to the board of commissioners the financial condition of the county, shall exhibit also distinctly and separately the amount and condition of all such trust funds and property, how invested, secured, used, and other particulars concerning the same. (1869-70, c. 85, s. 4; Code, s. 781; Rev., s. 1403; C. S., s. 1398.)

§ 155-15. Treasurer to pay no claim unless audited.—It is unlawful for the county treasurer to pay a claim against the county, unless the same has been audited and allowed by the board of commissioners. (1868, c. 19; Code, s. 777; Rev., s. 1404; C. S., s. 1399.)

Claims Audited and Allowed by Commissioners. — It is the treasurer's duty to pay claims audited and allowed by the commissioners. Jones v. Commissioners, 73 N. C. 182 (1875); State v. Wilkerson, 98 N. C. 696, 3 S. E. 683 (1887).

Warrant or Order Drawn by Commissioners. — An order or warrant drawn by the commissioners upon the county treasurer is the appropriate method of disbursing the public moneys. State v. Wilkerson, 98 N. C. 696, 3 S. E. 683 (1887).

Cannot Refuse Claim Allowed by Commissioners. — It is not within the power or duty of the treasurer of the county to refuse to pay a county order issued by the board of commissioners, because he does not think it a just or lawful claim, or for any other reason, when the order has been passed upon by the board acting within its power. Martin v. Clark, 135 N. C. 178, 47 S. E. 399 (1904).

§ 155-16. Treasurer to deliver books, etc., to successor.—When the right of any county treasurer to his office expires, the books and papers belonging to his office, and all moneys in his hands by virtue of his office, shall, upon his oath, or, in case of his death, upon the oath of his personal representative, be delivered to his successor. (1868-9, c. 157; Code, s. 767; Rev., s. 1405; C. S., s. 1400.)

Cross Reference.—As to criminal liability for failure to deliver books, etc., to successor, see § 14-231.

A county treasurer going out of office is

bound in contemplation of law to know what moneys he has on hand, and to what specified funds they belong, and to pay over all of the fund he has. Commissioners v. MacRae, 89 N. C. 95 (1883).

§ 155-17. Action on treasurer's bond to be by commissioners.—The board of commissioners shall bring an action on the treasurer's bond whenever they have knowledge or a reasonable belief of any breach of the bond. (1868-9, c. 157; Code, s. 771; Rev., s. 1406; C. S., s. 1401.)

Cross References.—As to limitation of action on bond, see § 1-50. As to action on bond generally, see § 109-34.

§ 155-18. Officers failing to account to treasurer sued by commissioners.—In case of the failure or refusal of a sheriff, clerk, or other officer to account and pay over, when called on as directed in this article, the treasurer shall report the facts to the board of commissioners, who may forthwith bring suit on the official bond of such delinquent officer, and the said board is also allowed to bring suit on the official bond of the clerk of the superior court of any adjoining county. (1868-9, c. 157, s. 10; Code, s. 775; Rev., s. 1407; C. S., s. 1402.)

Cross References. — As to liability of sheriff upon his official bond, see § 162-8; of clerk, see § 2-4; of constable, see § 151-3; of register of deeds, see § 161-4. As to limitations of actions on bonds, see § 1-50. As to duty of county commissioners to approve bonds, see § 153-9, subsection 11.

Commissioners May, but Need Not, Necessarily, Bring Suit.—The section does not make it the imperative duty of the board of commissioners to "bring suit on the official bond of the sheriff or other officer," but merely provides that they "may forthwith" do so. It is then left to their sound discretion whether they will or not. There might be substantial reasons why they would not, and, they might be content to leave it to the county treasurer to bring suit, especially as he is the proper officer to do so. Hewlett v. Nutt, 79 N. C. 263 (1878); Bray v. Barnard, 109 N. C. 44, 13 S. E. 729 (1891).

Liable as Insurer.—It is settled in this State that the bond of a public officer is liable for money that comes into his hands as an insurer, and not merely for the exercise of good faith. Commissioners v. Clarke, 73 N. C. 255 (1875); Havens v. Lathene, 75 N. C. 505 (1876); State v. Smith, 95 N. C. 396 (1886); State v. Bateman, 102 N. C. 52, 8 S. E. 882, 11 Am. St. Rep. 708 (1889); Presson v. Boone, 108 N. C. 78, 12 S. E. 897 (1891). Bonds of administrators, executors, guardians, etc., only guarantee good faith. Atkinson v. Whitehead, 66 N. C. 296 (1872); Moore v. Eure, 101 N. C. 11, 7 S. E. 471, 9 Am. St. Rep. 17 (1888); Smith v. Patton, 131 N. C. 396, 42 S. E. 849 (1902).

Taxpayer May Prosecute Suit.—A taxpayer has the right to prosecute a suit against the register of deeds of the county to enforce payment of taxes collected and wrongfully withheld by him when the county commissioners have refused to institute action to recover them; and when such right of action exists, usually appertaining to the exercise of the equitable jurisdiction of the courts, this jurisdiction is not necessarily withdrawn because the legislature has provided a legal remedy, unless the statute itself shall so direct. Waddill v. Masten, 172 N. C. 582, 90 S. E. 694 (1916).

Same—Parties. — While a taxpayer, in his suit independent of the statute, should make the proper county officials parties to his action against a register of deeds for unlawfully withholding fees collected by him, so they may be heard on the question presented, and that the funds, if recovered, should be in proper custody or control, this matter affects the remedy, and may be cured by amendment. Waddill v. Masten, 172 N. C. 582, 90 S. E. 694 (1916).

Bonds Subject to Subsequent Legislation.—See State v. Bradshaw, 32 N. C. 229 (1849); Prairie v. Worth, 78 N. C. 169 (1878); Daniel v. Grizzard, 117 N. C. 105, 23 S. E. 93 (1895).

Cited in Johnson v. Marrow, 228 N. C. 58, 44 S. E. (2d) 468 (1947).

Chapter 156.

Drainage.

SUBCHAPTER I. DRAINAGE BY INDIVIDUAL OWNERS.

Article 1.

Jurisdiction in Clerk of Superior Court.

Part 1. Petition by Individual Owner.

Sec.

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Sec.

Article 2.

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SUBCHAPTER II. DRAINAGE BY CORPORATION.

Article 3.

Manner of Organization.

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Article 5.

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Article 8.

Assessments and Bond Issue.

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.—The proceeding under this subchapter shall be the same as prescribed in the chapter Eminent Domain, article 2, Condemnation Proceedings. (Code, s. 1324; Rev., s. 4028; C. S., s. 5260.)

Local Modification. — Alexander, Little River Drainage District: Pub. Loc. 1927, c. 484; Iredell: Pub. Loc. 1937, c. 591; Pasquotank: Pub. Loc. 1923, c. 181; Pub. Loc. 1927, c. 264; Pub. Loc. 1929, c. 471; Robeson; Pub. Loc. 1927, c. 197; Rowan: Pub. Loc. 1937, cc. 591, 592; Tyrrell: Pub. Loc. 1927, c. 336; City of Washington: Pr. 1921, c. 149.

Cross Reference.—As to condemnation proceedings, see § 40-11 et seq.

Constitutionality. — The laws, enacted under this and the following sections of this chapter, are constitutional. Sanderlin v. Luken, 152 N. C. 738, 68 S. E. 225 (1910); Forehand v. Taylor, 155 N. C. 353, 71 S. E. 433 (1911). They come within the power of the State for police regulations. Winslow v. Winslow, 95 N. C. 24 (1886). See Porter v. Armstrong, 139 N. C. 179, 51 S. E. 926 (1905).

Various Statutes Harmonized.—While the various statutes for the drainage of swamp lands in Eastern North Carolina have not the same provisions in all respects, they have been collected and are to be found in this chapter and should be construed to harmonize, and constitute, with such variations, a system of drainage laws for the State. Adams v. Joyner, 147 N. C. 77, 60 S. E. 725 (1908).

Statutes Provide Flexible Procedure. —

The statutes authorizing the creation, maintenance and improvements of drainage districts provide flexible procedure which may be modified and molded by decrees from time to time to promote the beneficial objects sought by the creation of the district, subject to the restrictions that there should be no material change nor any change that would impose additional costs upon landowners except to the extent of benefits to them. In re Lyon Swamp Drainage, etc., Dist., 228 N. C. 248, 45 S. E. (2d) 130 (1947).

Commissioners May Issue Bonds and Make Assessments Applicable Only to Section Benefited.—Where proposed improvements and repairs will primarily benefit lands embraced in one section of a drainage district and would be of no substantial benefit to landowners in another section thereof, the drainage commissioners have power under statutory authority to issue bonds and make assessments applicable only to the section benefited. In re Lyon Swamp Drainage, etc., Dist., 228 N. C. 248, 45 S. E. (2d) 130 (1947).

The correct procedure to secure additional authority for proper maintenance and improvements in a drainage district is by motion or petition in the original cause. In re Lyon Swamp Drainage, etc., Dist., 228 N. C. 248, 45 S. E. (2d) 130 (1947).

Right to Condemn.—The right of the State to condemn land for drains rests on the same foundation as its right in cases of public roads, mills, railroads, schoolhouses, etc. Norfleet v. Cromwell, 70 N. C. 634 (1874).

The right to drain through the banks of a natural watercourse is exactly similar in character to the right to construct dykes or levees to keep their excessive waters from overflowing the adjacent lands, a right which has been recognized in the legislation of all countries from the most ancient times. Sanderlin v. Luken, 152 N. C. 738, 68 S. E. 225 (1910).

Stated in Sawyer Canal Co. v. Keys, 232 N. C. 664, 62 S. E. (2d) 67 (1950).

§ 156-2. Petition filed; commissioners appointed.—Any person owning pocosin, swamp, or flat lands, or owning lowlands subject to inundation, which cannot be conveniently drained or embanked so as to drain off or dam out the water from such lands, except by cutting a canal or ditch, or erecting a dam through or upon the lands of other persons, may by petition apply to the superior court of the county in which the lands sought to be drained or embanked or some part of such lands lie, setting forth the particular circumstances of the case, the situation of the land to be drained or embanked, to what outlet and through whose lands he desires to drain, or on what lands he would erect his dam, and who are the proprietors of such lands; whereupon a summons shall be served on each of the proprietors, and, on the hearing of the petition the court shall appoint three persons as commissioners, who shall be duly sworn to do justice between the parties. (1795, c. 436, P. R.; 1852, c. 57, ss. 1, 2; R. C., c. 40, s. 1; Code, s. 1297; Rev., s. 3983; C. S., s. 5261.)

The clerk of the superior court has jurisdiction of a proceeding to obtain a right of drainage over the land of an adjoining landowner, and to assess damages, etc. Durden v. Simmons, 84 N. C. 555 (1881).

Formerly the law required the appointment of disinterested freeholders as commissioners in a proceeding to obtain a right of drainage over the lands of an adjoining landowner. Durden v. Simmons, 84 N. C. 555 (1881).

This chapter, and the amendments thereto, are the charts which should guide the commissioners, and their decisions, findings and report should conform thereto. Porter v. Armstrong, 139 N. C. 179, 51 S. E. 926 (1905).

Appeal.—An order in a drainage proceeding directing matters proper for the determination of the commissioners to be referred to a jury is appealable. Porter v. Armstrong, 134 N. C. 447, 46 S. E. 997 (1904).

Artificial Outlets.—This chapter applies only to artificial outlets made over the land of another to reach a natural watercourse. Mizell v. McGowan, 129 N. C. 93, 39 S. E. 729 (1901).

Readjustment.—When the rights and duties of adjoining landowners as to drainage in a certain canal have been determined under this chapter, and judgment entered, proceedings subsequently brought for the purpose of readjustment, owing to change of ownership and partition, etc., are in effect a motion in the cause, in which the judgment, unlike a final judgment, is not conclusive; and the cause can be brought forward from time to time, upon notice to the parties, and further decrees made to conform to the exigencies and changes which may arise. Staton v. Staton, 148 N. C. 490, 62 S. E. 596 (1908).

Jury Question.—See Collins v. Haughton, 26 N. C. 420 (1844).

Joint Petition.—Two or more separate proprietors cannot sustain a joint petition for a ditch to drain their lands, without alleging that a common ditch would drain the lands of all the petitioners. Shaw v. Burfoot, 53 N. C. 344 (1861).

Diversion of Water.—Water cannot be diverted from its natural course so as to damage another, but it may be increased and accelerated. Hocutt v. Wilmington, etc., R. Co., 124 N. C. 214, 32 S. E. 681 (1899); Mizell v. McGowan, 125 N. C. 439, 34 S. E. 538 (1899); Lassiter v. Norfolk, etc., R. Co., 126 N. C. 509, 36 S. E. 49 (1900); Mizell v. McGowan, 129 N. C. 93, 39 S. E. 729 (1901); Bardiff v. Norfolk Southern R. Co., 168 N. C. 268, 84 S. E. 290 (1915).

The owners of swamps, whose waters naturally flow into natural watercourses, can make such canals as are necessary to drain them of the water naturally flowing therein, although in doing so the flow of water in the natural watercourse is increased and accelerated so that the water is discharged on the land of an abutting owner. Mizell v. McGowan, 120 N. C. 134, 26 S. E. 783 (1897).

Same—Liability for Damages. — Where a person diverts water from a stream by cutting a channel from it, and at a point lower down the stream turns it back into the old channel, and by its own momentum it is carried on to the lands of an adjoining owner, he is liable for damages. Briscoe v. Young, 131 N. C. 386, 42 S. E. 893 (1902).

One is liable for damages caused to the lands of another by his diverting the natural flow of surface water thereto. Roberts v. Baldwin, 151 N. C. 407, 66 S. E. 346 (1909).

Surface waters should be drained so as to be carried off in the due course of nature. The upper proprietor is liable in damages to the land of the lower proprietor caused by water diverted by his ditches and not carried to a natural waterway. Briscoe v. Parker, 145 N. C. 14, 58 S. E. 443 (1907).

Same—Landowner's Remedy. — When the lands of the lower proprietor are damaged by the improper drainage of the upper proprietor, he may elect to bring an action for damages or proceed under this and the following sections. Briscoe v. Parker, 145 N. C. 14, 58 S. E. 443 (1907).

Former Judgment—Setting Aside.—If a former judgment in a similar proceeding has not been pleaded in an action for drainage of lands, as an estoppel or res adjudicata, before final judgment, the party relying thereon must move the court within one year to set the judgment aside for excusable mistake or inadvertence. Adams v. Joyner, 147 N. C. 77, 60 S. E. 725 (1908).

Landowner Must Be Made Party.—An order by county commissioners (now superior court) appointing appraisers to assess the value of the benefits and damages which would accrue to the owner of land on account of a certain canal sought to be cut through his land, upon the petition of other parties, filed under the provisions of this chapter, is void, unless said landowner be made a party to the petition. Gamble v. McCrady, 75 N. C. 509 (1876).

Liability to Maintain Artificial Waterway Constructed for Temporary Purposes. —When an upper proprietor of lands constructs and maintains for his own use and advantage an artificial waterway or structure affecting the flow of water, without invading the rights of the lower proprietor, for a temporary purpose or a specific purpose which he may at any time abandon, the upper proprietor comes under no obligation to maintain the structure, though the incidental effect has been to confer a benefit on the lower tenant. Lake Drummond Canal, etc., Co. v. Burnham, 147 N. C. 41, 60 S. E. 650 (1908).

Where separate owners have derived their lands subject to a drainage system placed upon the entire tract by the original owner, each one using the system must bear the costs of maintenance and repair required by the portion of the system on his own premises. Lamb v. Lamb, 177 N. C. 150, 98 S. E. 307 (1919).

Quoted in Sawyer Canal Co. v. Keys, 232 N. C. 664, 62 S. E. (2d) 67 (1950).

Cited in In re Atkinson-Clark Canal Co., 231 N. C. 131, 56 S. E. (2d) 442 (1949).

§ **156-3. Duty of commissioners.**—The commissioners, or a majority of them, on a day of which each proprietor of land aforesaid is to be notified at least five days, shall meet on the premises and view the lands to be drained or embanked, and the lands through or on which the drain is to pass or the embankment to be erected, and shall determine and report whether the lands of the petitioner can be conveniently drained or embanked except through or on the lands of the defendants or some of them; and if they are of opinion that the same

cannot be conveniently done except through or on such lands, they shall decide and determine the route of the canal, ditch, or embankment, the width thereof, and the depth or height, as the case may be, and the manner in which the same shall be cut or thrown up, considering all the circumstances of the case, and providing as far as possible for the effectual drainage or embankment of the water from the petitioner's land, and also securing the defendant's lands from inundation, and every other injury to which the same may be probably subjected by such canal, ditch, or embankment; and they shall assess, for each of the defendants, such damage as in their judgment will fully indemnify him for the use of his land in the mode proposed; but in assessing such damages, benefits shall be deducted. (1795, c. 436, P. R.; 1852, c. 57, ss. 1, 2; R. C., c. 40, s. 2; Code, s. 1298; Rev., s. 3984; C. S., s. 5262.)

Section Not Repealed.—Section 156-16, concerning the drainage of lowlands, does not expressly repeal this section, but leaves in operation such of the provisions as are not repugnant to such section. Worthington v. Coward, 114 N. C. 289, 19 S. E. 154 (1894).

Stated in Sawyer Canal Co. v. Keys, 232 N. C. 664, 62 S. E. (2d) 67 (1950).

Cited in Porter v. Armstrong, 134 N. C. 447, 46 S. E. 997 (1904); In re Atkinson-Clark Canal Co., 231 N. C. 131, 56 S. E. (2d) 442 (1949).

§ 156-4. Report and confirmation; easement acquired; exceptions.—The commissioners shall report in writing, under their hands, the whole matter to the court, which shall confirm the same, unless good cause be shown to the contrary; and on payment of the damages and cost of the proceedings the court shall order and decree that the petitioner may cut the canal or ditch, or raise the embankment in the manner reported and determined by the commissioners; and thereupon the petitioner shall be seized in fee simple of the easement aforesaid: Provided, that, without the consent of the proprietor, such canal, ditch, or embankment shall not be cut or raised through or on his yard or curtilage, nor be allowed when the same shall injure any mill, by cutting off or stopping the water flowing thereto; nor shall such dam be allowed so as to create a nuisance by stagnant water, or cut off the flow of useful springs or necessary streams of water, or stop any ditches of such proprietor when there is no freshet. (1795, c. 436, s. 2, P. R.; 1835, c. 7; 1852, c. 57, ss. 1, 2; R. C., c. 40, s. 3; Code, s. 1299; Rev., s. 3985; C. S., s. 5263.)

Report of Commissioners Conclusive.—The report of commissioners appointed to condemn lands and assess damages for the purpose of drainage is, like the verdict of a jury, conclusive of the facts therein ascertained, until set aside. Norfolk Southern R. Co. v. Ely, 101 N. C. 8, 7 S. E. 476 (1888).

Commissioners' Report Set Aside.—Where judge set aside report of commissioners because it did not comply with the statute, and further found as a fact in his order that two of the commissioners had been guilty of gross indiscretion, the Supreme Court would not reverse his order, whether the report conformed to the statute or not. Porter v. Armstrong, 139 N. C. 179, 51 S. E. 926 (1905).

Jury to Settle Issues of Fact.—Upon an application to condemn lands for the purpose of drainage, the issue of fact raised by the pleadings should be framed and settled by a jury; they cannot be raised or considered upon exceptions to the report of the commissioners appointed to assess damages. Norfolk Southern R. Co. v. Ely, 101 N. C. 8, 7 S. E. 476 (1888).

Title in Lands Condemned.—When, upon the petition of one or more parties, under this section, leave was granted by the county court to cut a canal across the land of another for the purposes of drainage, the petitioners and their assignees, upon the report of the jury provided for in the statute being confirmed, acquire not merely an easement, but title in fee to the land condemned. Norfleet v. Cromwell, 70 N. C. 634 (1874).

Appeal from Judgment of Clerk.—On appeal from the judgment of the clerk upon the report of commissioners appointed to lay off ditch for drainage of lowlands the judge could set aside the report either for cause or in his discretion, if in his opinion the ends of justice could be subserved by that course. Worthington v. Coward, 114 N. C. 289, 19 S. E. 154 (1894).

Quoted in In re Atkinson-Clark Canal

Co., 231 N. C. 131, 56 S. E. (2d) 442 (1949).

Stated in Sawyer Canal Co. v. Keys, 232 N. C. 664, 62 S. E. (2d) 67 (1950).

§ **156-5. Width of right of way for repairs.**—The commissioners, when they may deem it necessary, shall designate the width of the land to be left on each side of the canal, ditch, or dam, to be used for the protection and reparation thereof, which land shall be altogether under the control and dominion of the owner of the canal, ditch, or dam, except as aforesaid: Provided, that in no case shall a greater width of land on both sides, inclusive of a dam, be taken than five times the base of such dam. (R. C., c. 40, s. 6; Code, s. 1302; Rev., s. 3985a; C. S., s. 5264.)

When Unnecessary Amount of Land Condemned.—Where, upon an appeal from the report of the commissioners, the jury found that the amount of land condemned by them for the purpose of the protection and reparation of the ditches was unnecessary, it was proper for the court to remand the cause, with directions to constitute another commission. Winslow v. Winslow, 95 N. C. 24 (1886).

§ **156-6. Right of owner to fence; entry for repairs.**—Any proprietor, through or on whose land such canal or ditch may be cut or embankment raised, may put a fence or make paths across the same, provided the usefulness thereof be not impaired; and the owner of the canal, ditch, or dam, his heirs and assigns, shall at all times have free access to the same for the purpose of making and repairing them; doing thereby no unnecessary damage to the lands of the proprietors. (1795, c. 436, s. 2, P. R.; 1835, c. 7; 1852, c. 57, ss. 1, 2; R. C., c. 40, s. 4; Code, s. 1300; Rev., s. 3986; C. S., s. 5265.)

§ **156-7. Earth for construction of dam; removal of dam.**—The earth necessary for the erection of a dam may be taken from either side of it, or wherever else the commissioners may designate and allow. And such dam may be removed by the proprietor of the land, his heirs or assigns, to any other part of his lands, and he may adjoin any dam of his own thereto, if allowed by the court on a petition and such proceedings therein as are provided in this chapter, as far as the same may apply to his case: Provided always, that the usefulness of the dam will not be thereby impaired or endangered. (R. C., c. 40, s. 5; Code, s. 1301; Rev., s. 3987; C. S., s. 5266.)

§ **156-8. Earth from canal removed or leveled.**—The earth excavated from the canal or ditch shall be removed away or leveled as nearly as may be with the surface of the adjacent land, unless the commissioners shall otherwise specially allow. (R. C., c. 40, s. 7; Code, s. 1303; Rev., s. 3988; C. S., s. 5267.)

§ **156-9. No drain opened within thirty feet.**—The proprietor of any swamp or flat lands through which a canal or ditch passes shall not have a right to open or cut any drain within thirty feet thereof but by the consent of the owner. Such proprietor, however, and other persons may cut into such canal or ditch in the manner hereinafter provided. (R. C., c. 40, s. 8; Code, s. 1304; Rev., s. 3989; C. S., s. 5268.)

§ **156-10. Right to drain into canal.**—Any person desirous of draining into the canal or ditch of another person as an outlet may do so in the manner hereinbefore provided, and in addition to the persons directed to be made parties, all others shall be parties through whose lands, canals, or ditches the water to be drained may pass till it shall have reached the furthest artificial outlet. And the privilege of cutting into such canal or ditch may be granted under the same rules and upon the same conditions and restrictions as are provided in respect to cutting the first canal or ditch: Provided, that no canal or ditch shall be allowed to be cut into another if thereby the safety or utility of the latter shall be impaired or endangered: Provided, further, that if such impairing and danger can be avoided by imposing on the petitioner duties or labor in the

enlarging or deepening of such canal or ditch, or otherwise, the same may be done; but no absolute decree for cutting such second canal or ditch shall pass till the duties or work so imposed shall be performed and the effect thereof is seen, so as to enable the commissioners to determine the matter whether such second canal or ditch ought to be allowed or not: Provided, that any party to the proceeding may appeal from the judgment of the court rendered under this section to the superior court of the county at termtime, where a trial and determination of all issues raised in the pleadings shall be had as in other cases before a judge and jury. (R. C., c. 40, s. 9; Code, s. 1305; 1887, c. 222; Rev., s. 3990; C. S., s. 5269.)

Adjudication of Rights of Parties.—In a proceeding by drainage corporation to levy assessments against the lands of respondents for the proportionate part of the expense for making necessary improvements upon allegations that such lands drained into the corporations' canals and would be greatly benefited by the improvements, it appeared that respondents' predecessor in title cut a large canal through his lands draining into the lands of the corporation. It was held that it would be presumed that respondents' predecessor in title acquired the right to cut into the canal of plaintiff pursuant to the provisions of this section and the petition should be considered as a motion in that cause for the proper adjudication of the rights of the parties. Sawyer Canal Co. v. Keys, 232 N. C. 664, 62 S. E. (2d) 67 (1950).

Cited in Brooks v. Tucker, 61 N. C. 309 (1867); In re Atkinson-Clark Canal Co., 231 N. C. 131, 56 S. E. (2d) 442 (1949).

§ 156-11. Expense of repairs apportioned.—Besides the damages which the commissioners may assess against the petitioner for the privilege of cutting into such canal or ditch, they shall assess and apportion the labor which the petitioner and defendants shall severally contribute towards repairing the canal or ditch into or through which the petitioner drains the water from his lands, and report the same to court; which, when confirmed, shall stand as a judgment of the court against each of the parties, his executors and administrators, heirs and assigns. (R. C., c. 40, s. 10; Code, s. 1306; Rev., s. 3991; C. S., s. 5270.)

When Report Fatally Defective.—A report of commissioners under this section, which fails to assess and apportion that part of the labor which is to be contributed by the defendants, is fatally defective. Brooks v. Tucker, 61 N. C. 309 (1867).

Applied in Worthington v. Coward, 114 N. C. 289, 19 S. E. 154 (1894).

Quoted in Sawyer Canal Co. v. Keys, 232 N. C. 664, 62 S. E. (2d) 67 (1950).

§ 156-12. Notice of making repairs.—Whenever the canals or ditches for the reparation of which more than one person shall be bound under the provisions of § 156-11 shall need to be repaired, any of the persons so bound may notify the others thereof, and of the time he proposes to repair the same; and thereupon each of the persons shall jointly work on the same and contribute his proportion of labor till the same be repaired or the work cease by consent. (R. C., c. 40, s. 11; Code, s. 1307; Rev., s. 3992; C. S., s. 5271.)

Stated in Sawyer Canal Co. v. Keys, 232 N. C. 664, 62 S. E. (2d) 67 (1950).

§ 156-13. Judgment against owner in default; lien.—In case the person so notified shall make default, any of the others may perform his share of labor and recover against him the value thereof, on a notice to be issued for such default, in which shall be stated on oath made before the clerk the value of such labor, and unless good cause to the contrary be shown on the return of the notice, the court shall render judgment for the same with interest and costs; which judgment shall be a lien upon the lands from the date of the performance of the work. (R. C., c. 40, s. 12; Code, s. 1308; 1899, c. 396; Rev., s. 3993; C. S., s. 5272.)

Notice to Landowner.—Before any specific amount may be adjudged against a landowner as a lien on his land he is entitled to be heard, after notice, as to

whether the assessment made by the commissioners was unjust or oppressive. Adams v. Joyner, 147 N. C. 77, 60 S. E. 725 (1908).

Quoted in Sawyer Canal Co. v. Keys, 232 N. C. 664, 62 S. E. (2d) 67 (1950).

Cited in Craft & Co. v. Roper Lumber Co., 181 N. C. 29, 106 S. E. 138 (1921).

§ 156-14. Subsequent owners bound.—All persons to whom may descend, or who may otherwise own or occupy lands drained by any canal or ditch, for the privilege of cutting which any labor for repairing is assessed, shall contribute the same, and shall be bound therefor to all intents and purposes, and in the same manner and by the same judgment as the original party himself would be if he occupied the land. (R. C., c. 40, s. 13; Code, s. 1309; Rev., s. 3994; C. S., s. 5273.)

Applied in Norfleet v. Cromwell, 70 N. C. 634 (1874); Craft & Co. v. Roper Lumber Co., 181 N. C. 29, 106 S. E. 138 (1921).

Quoted in Sawyer Canal Co. v. Keys, 232 N. C. 664, 62 S. E. (2d) 67 (1950).

§ 156-15. Amount of contribution for repair ascertained.—Whenever there shall be a dam, canal, or ditch, in the repairing and keeping up of which two or more persons shall be interested and receive actual benefit therefrom, and the duties and proportion of labor which each one ought to do and perform therefor shall not be fixed by agreement or by the mode already in this subchapter provided for assessing and apportioning such labor, any of the parties may have the same assessed and apportioned by applying to a justice of the peace, who shall give all parties at least three days' notice, and shall summon two disinterested freeholders who, together with the justice, shall meet on the premises and assess the damages sustained by the applicant, whereupon the justice shall enter judgment in favor of the applicant for damages or for work done on such ditch or lands. The costs of this proceeding shall be in the discretion of the justice. (R. C., c. 40, s. 14; Code, s. 1310; 1889, c. 101; Rev., s. 3995; C. S., s. 5274.)

Constitutionality.—This section is constitutional and valid. Forehand v. Taylor, 155 N. C. 353, 71 S. E. 433 (1911).

Proceeding under this section is in effect a motion in the cause which can be brought forward from time to time, upon notice to all the parties to be affected, for orders in the cause, to promote the objects of the proceeding, the whole matter remaining in the control of the court. Staton v. Staton, 148 N. C. 490, 62 S. E. 596 (1908).

Action Dismissed for Noncompliance with Statute—Not Bar to Second Action.—When damages have been sought in an action before a justice of the peace, relating to drainage districts, etc., and the action was dismissed because there had been no contract or agreement between the parties and the requirements of the statute had not been met, the plaintiff is not thereby barred from proceeding under the act to have the damages assessed and from bringing another action therefor as the former judgment does not bar the second one. Forehand v. Taylor, 155 N. C. 353, 71 S. E. 433 (1911).

Enlarging or Deepening Canal.—The method by which the user of a canal by prescriptive right may enlarge or deepen it with an apportionment of the costs, is provided by this section. Armstrong v. Spruill, 182 N. C. 1, 108 S. E. 300 (1921).

Same—Liability for Damages.—Where the users of a canal by prescriptive right enlarge the same, and thereby place water upon the lower proprietor to his damage, they are liable therefor, and, upon conflicting evidence, the issue should be submitted to the jury. Armstrong v. Spruill, 182 N. C. 1, 108 S. E. 300 (1921).

Applied in Porter v. Durham, 98 N. C. 320, 3 S. E. 832 (1887).

Cited in Craft & Co. v. Roper Lumber Co., 181 N. C. 29, 106 S. E. 138 (1921).

§ 156-16. Petition by servient owner against dominant owner.—Any person owning lands lying upon any creek, swamp, or other stream not navigable, which are subject to inundation and which cannot be conveniently drained or embanked on account of the volume of water flowing over the same from lands lying above, and by draining the same the lands above will be benefited and better drained, such person may by petition apply to the superior court of the county

in which the lands sought to be drained or embanked, or some part of such lands, lie, setting forth the particular circumstances of the case, the valuation of the lands to be drained or embanked, and what other lands above would be benefited, and who are the proprietors of such lands; whereupon a summons shall be served upon each of the proprietors, who are not petitioners, requiring them to appear before the court at a time to be named in the summons, which shall not be less than ten days from the service thereof, and upon such day the petition shall be heard and the court shall appoint three persons as commissioners, who shall, before entering upon the discharge of their duties, be sworn to do justice between the parties. (1889, c. 253; Rev., s. 4016; C. S., s. 5275.)

Local Modification.—Lenoir: 1891, c. 73; Rev., s. 4016.

This section does not repeal § 156-3, but leaves in operation such of the provisions as are not repugnant to it. Worthington v. Coward, 114 N. C. 289, 19 S. E. 154 (1894).

Analogy to Drainage Law.—The procedure under this and the following sections is analogous to the general drainage law, and its provisions are applicable, and the proceedings are regarded as kept alive for further orders without being retained on the docket, and in this case the original assessment did not constitute a bar to the motion to vacate, and the assessment was properly set aside on the facts found. Spence v. Granger, 204 N. C. 247, 167 S. E. 805 (1933).

Judgment—Setting Aside.—In an action brought for the drainage of lands under this and the following sections, the judgment upon motion thereafter will not be set aside merely upon the ground that a similar proceeding had been prosecuted to judgment between several of the parties. Adams v. Joyner, 147 N. C. 77, 60 S. E. 725 (1908).

§ 156-17. Commissioners to examine lands and make report. — The commissioners, or a majority of them, on a day of which each proprietor is to be notified at least five days, shall meet on the premises and view the land to be drained and the lands affected thereby, and shall determine and report whether the lands of the petitioner or petitioners ought to be drained exclusively by him or them, and if they are of the opinion that the same ought not to be drained exclusively at the expense of the petitioner or petitioners, they shall decide and determine the route of the canal, ditch, or embankment, the width thereof, and the depth and height, as the case may be, and the manner in which the same shall be cut or thrown up, considering all the circumstances of the case, and providing as far as possible for the effectual drainage of the petitioner's land, and the protection and benefit of the defendant's lands; and they shall apportion the labor to be done or assess the amount to be paid by each of the owners of the lands affected by such canal, ditch, or embankment, towards the construction and keeping the same in repair, and report the same to the court, which, when confirmed, shall stand as a judgment of the court against each of the parties, his executors, administrators, heirs and assigns. (1889, c. 253, s. 2; Rev., s. 4017; C. S., s. 5276.)

Local Modification.—Beaufort, Lenoir: 1891, c. 73, s. 2; Rev., s. 4017; Pub. Loc. 1911, c. 545.

Cost of Work Not Required in Report.—The cost of the work to be done in the drainage of lands is not required under this section, and cannot, for its uncertainty of amount, be set out in the report of the commissioners appointed. It is a compliance with the statutes when the portion of the work to be done by the landowners is set out. Adams v. Joyner, 147 N. C. 77, 60 S. E. 725 (1908).

§ 156-18. Cost of repairs enforced by judgment.—Whenever any such ditch, canal, or embankment shall need repairs or cleaning out, and any of the parties interested therein refuse to perform the labor apportioned to them, or refuse to contribute the amount assessed against them, the same shall be enforced in the manner hereinbefore provided for the joint repair of canals and ditches. (1889, c. 253, s. 3; Rev., s. 4018; C. S., s. 5277.)

Editor's Note.—See § 156-13 and note thereto.

§ 156-19. Obstructing canal or ditch dug under agreement.—Where

two or more persons have dug a canal or ditch along any natural drain or waterway under parol agreement, or otherwise, wherein all the parties shall have contributed to the digging thereof, if any servient or lower owner shall fill up or obstruct said canal or ditch without the consent of the higher owners and without providing other drainage for the higher lands, he shall be guilty of a misdemeanor and be fined not exceeding fifty dollars or imprisoned not more than thirty days. (1899, c. 255; Rev., s. 3375; C. S., s. 5278.)

This section applies only where all the parties contributed under a valid agreement to the lawful digging of a ditch or canal. Porter v. Armstrong, 129 N. C. 101, 39 S. E. 799 (1901).

§ **156-20. Right of dominant owner to repair.**—In the absence of any agreement for maintaining the efficiency of such ditch or canal, or should the servient owner neglect or refuse to clean out or aid in cleaning out the same through his lands, it shall be lawful for the dominant or higher owner, after giving three days' notice to the servient owner, to enter along such canal and not more than twelve feet therefrom and clean out or remove obstructions or accumulated debris therefrom at his own personal expense or without cost to the servient owner. (1899, c. 255, s. 2; Rev., s. 4025; C. S., s. 5279.)

Editor's Note.—See note to § 156-19.

Where a person enlarges a canal on the lands of another, under a void proceeding, he is a trespasser, and cannot claim credit for money spent thereon. Porter v. Armstrong, 129 N. C. 101, 39 S. E. 799 (1901).

Cited in Elder v. Barnes, 219 N. C. 411, 14 S. E. (2d) 249 (1941).

§ **156-21. Canal maintained for seven years presumed a necessity; drainage assessments declared liens.**—After a canal has been dug along any natural depression or waterway and maintained for seven years, it shall be prima facie evidence of its necessity, and upon application to the clerk of the superior court of any landowner who is interested in maintaining the same, it shall be the duty of the clerk of the superior court to appoint and cause to be summoned three disinterested and discreet freeholders, who, after being duly sworn, shall go upon the lands drained or intended to be drained by such canal, and after carefully examining the same and hearing such testimony as may be introduced touching the question of cost of canal, the amount paid, and the advantages and disadvantages to be shared by each of the parties to the action, shall make their report in writing to the clerk of the superior court stating the facts and apportioning the cost of maintaining such canal among the parties to the action, and the cost of the action shall be divided in the same ratio; and their report when approved shall be properly registered by the clerk and the said report or reports shall, when filed in the office of the clerk of the superior court, be a lien upon each tract of land embraced in said report or reports to the extent of the proportionate part of the costs stipulated in said report or reports as a charge against same, and shall have the effect and force of a judgment thereon, and such judgments shall be subject to execution and collection as in cases of other judgments. (1899, c. 255, s. 3; Rev., s. 4026; 1917, c. 248, s. 1; C. S., s. 5280; 1931, c. 227, s. 1.)

Editor's Note.—The 1931 amendment added the latter part of this section relating to drainage assessments as liens.

Interpretation of Section.—The provisions of this section are necessary for the cultivation and improvements of lowlands required to be drained, and should be construed to carry into effect its beneficent purposes, when practicable. Forest v. Atlantic Coast Line R. Co., 159 N. C. 547, 75 S. E. 796 (1912).

This section should be construed in connection with the other sections of the chapter relating to the drainage of lowlands. Forest v. Atlantic Coast Line R. Co., 159 N. C. 547, 75 S. E. 796 (1912).

"Ditch"—"Canal."—In the chapter relating to the drainage of lowlands the terms "ditch" and "canal" are used indiscriminately to designate an artificial drain. Forest v. Atlantic Coast Line R. Co., 159 N. C. 547, 75 S. E. 796 (1912).

An artificial drain in some places from 3 to 5 feet wide and from 2 to 5 feet deep, made for the purpose of cultivating and improving lowlands by draining them is

a canal within the meaning of this section. Forest v. Atlantic Coast Line R. Co., 159 N. C. 547, 75 S. E. 796 (1912).

Contribution to Original Construction.—It is not necessary that the owner of lands lying along a drainage canal, within the meaning of this section shall have contributed to its original construction to make him liable to assessments for its maintenance under the provisions of the statute. Forest v. Atlantic Coast Line R. Co., 159 N. C. 547, 75 S. E. 796 (1912).

Railroads.—While a railroad company may not be the absolute owner of lands in fee, they have the proprietorship and control of those constituting its rights of way; and when these lands are benefited by a canal which comes within the meaning of this section, the provision of the statute relative to the maintenance of the canal apply. Forest v. Atlantic Coast Line R. Co., 159 N. C. 547, 75 S. E. 796 (1912).

Applied in Craft & Co. v. Roper Lumber Co., 181 N. C. 29, 106 S. E. 138 (1921).

§ 156-22. Supplemental assessments to make up deficiency; vacancy appointments of assessment jurors. — The freeholders, commissioners or jurors, appointed in any application or proceeding filed or instituted under § 156-21 or any other section of article 1 of this chapter, are authorized and empowered during the establishment of and providing for the construction, maintenance and payment therefor, of such ditch, canal or drain, to make other and further assessments for the costs of establishment, construction and expense, when it shall be determined by the clerk of the court that the provisions in the former report for the payment thereof are insufficient, and that such supplementary reports shall be made on the same basis of an equitable and just proportion, as made in the former report, which report or reports shall be filed with the clerk of the superior court and have the same force and effect as the former or original report.

In case of death, resignation, removal or for any other cause there becomes a vacancy as to the freeholders, commissioners or jurors, appointed to carry out the provisions of the sections contained in this chapter, the clerk of the superior court is authorized to fill such vacancy by the appointment of some disinterested freeholder in the county, and the said person so appointed to fill such vacancy shall qualify before the clerk of the superior court before entering upon his duties. (1931, c. 227, s. 2.)

Local Modification. — Duplin: 1931, c. 227, s. 2.

Interested Parties Entitled to Notice.—Where drainage assessments are levied against lands under this and related sections, either original assessments or additional assessments to cover unforeseen expenses in the construction of the drainage ditch, the parties whose lands are assessed are entitled to notice and an opportunity to be heard. Spence v. Granger, 207 N. C. 19, 175 S. E. 824 (1934).

§ 156-23. Easement of drainage surrendered.—If any persons, or those claiming through or under them, who have cut any ditch or canal into which any other person has been permitted to drain land under any proceeding authorized in this subchapter, shall desire to surrender their easement or right in such ditch or canal and be discharged from any judgment rendered and existing under such proceedings, such persons may on motion have such proceeding reinstated for hearing and file a petition therein setting forth such fact or any other grounds for relief thereunder, and upon proof satisfactory to the court that such petitioners have cut another ditch or canal which drains their lands formerly drained by the first ditch or canal, and have abandoned the use of it for any purpose of drainage, the court shall adjudge the easement or right of the petitioners surrendered and determined, and from that time the petitioners and their land shall forever be discharged and released from the judgment heretofore rendered in such former proceedings: Provided, however, that all parties then having an easement or right in such ditch or canal shall be served with notice of such petition twenty days before the hearing thereof. (1887, c. 222, s. 3; Rev., s. 4027; C. S., s. 5281.)

§ 156-24. Obstructing drain cut by consent.—If any person shall stop or in any way obstruct the passage of the water in any ditch or canal having been cut through lands of any person by consent of the owner of said land, before

giving the interested parties a reasonable time to comply with the mode of proceedings provided for the drainage of lowlands, he shall be guilty of a misdemeanor, and upon conviction shall be fined not exceeding fifty dollars or imprisoned not exceeding thirty days. (1891, c. 434; Rev., s. 3376; C. S., s. 5282.)

§ **156-25. Protection of canals, ditches, and natural drains.**—If any person shall fell any tree in any ditch, canal, or natural drainway of any farm, unless he shall remove the same and put such ditch, canal, or natural drainway in as good condition as it was before such tree was so felled; or if any person shall stop up or fill in such ditch, canal, or drainway and thereby obstruct the free passage of water along the said ditch, canal, or drainway, unless the said person shall first secure the written consent of the landowner, and those damaged by such obstruction in said ditch, canal, or drainway, or unless such person so filling in and stopping up such ditch, canal, or drainway shall, upon the demand of the person so damaged, clean out and put the said ditch, canal, or drainway in as good condition as the same was before such filling in and stopping up of the said ditch, canal, or drainway happened, he shall be guilty of a misdemeanor, and upon conviction shall be fined not less than ten nor more than fifty dollars, or imprisoned not less than ten nor more than thirty days. (1901, c. 478; Rev., s. 3382; C. S., s. 5283.)

Local Modification.—Tyrrell: 1907, c. 438.

Part 2. Petition under Agreement for Construction.

§ **156-26. Procedure upon agreement.**—1. Agreement; Names Filed.—Whenever a majority of the landowners or the persons owning three-fifths of all the lands in any well-defined swamp or lowlands shall, by a written agreement, agree to give a part of the land situated in such swamp or lowlands as compensation to any person, firm, or corporation who may propose to cut or dig any main drainway through such swamp or lowlands, then the person, firm, or corporation so proposing to cut or dig such main drainway shall file with the clerk of the superior court of the county, or, if there be two or more counties, with the clerk of the superior court of either county in or through which the proposed canal or drainway is to pass, the names of the landowners, with the approximate number of acres owned by each to be affected by the proposed drainway who have entered into the written agreement with the person, firm, or corporation, together with a brief outline of the proposed improvement, and in addition thereto shall file with the clerk the names and addresses, as far as can be ascertained, of the landowners, with the number of acres owned by each of them to be affected by the proposed drainway, who have not made any agreement with the person, firm, or corporation proposing to do the improvement.

2. Notice.—Upon the filing of such names, it shall be the duty of the clerk to forthwith issue a notice which shall be served by the sheriff to all landowners who have not made any agreement to appear before him at a certain date, which date shall be not less than ten and not more than twenty days from the service of such notice, or, in lieu of the personal service hereinabove required, it shall be sufficient for the clerk to publish in a newspaper published in the county once a week for four weeks a notice to all landowners who have not made any agreement to appear before him at a certain date, which date shall be not less than thirty days and not more than forty days from the first publication of notice, at which time and place the landowners shall state their objections to the proposed improvement, and in addition thereto make an estimate of the amount of damage that might be done to the land owned by each of them on account of the proposed drainway.

3. Hearing; Viewers.—Upon the hearing it shall be the duty of the clerk of the superior court to forthwith appoint three disinterested persons, none of whom shall own land to be affected by such drainway, if requested by the person, firm,

or corporation proposing to do the improvement, whose duty it shall be to familiarize themselves with the proposed improvement, view the premises of the landowners, estimating damages, and make an estimate themselves of the amount of damages that might accrue to the lands of each landowner filing objections on account of the proposed improvement, and report the same to the clerk of the superior court within fifteen days from the date of their appointment.

4. Report; Bond.—Immediately upon the filing of the reports the clerk of the superior court shall forthwith notify the person, firm, or corporation proposing to dig the drainway or canal of the estimated damages contained in the reports, and the person, firm, or corporation shall execute and deliver a bond in a surety company authorized to do business in the State of North Carolina in twice the sum total of the estimated amount of damages, which bond shall be payable to the clerk of the superior court and conditioned upon the payment to the landowners of the amount of damages that may be assessed in the manner hereinafter provided.

5. Construction Authorized.—Upon the execution and delivery to the clerk of the said bond, the person, firm, or corporation so proposing to cut or dig such main drainway shall be and they are hereby authorized to proceed with the cutting or digging of the drainway through any lands in its proposed course, whether the owners of the land may have consented thereto or not, and the person, firm, or corporation so proposing to cut or dig the drainway shall have the proper and necessary right of way for that purpose and for all things incident thereto through any lands or timbers situated in such swamp or lowlands. (1917, c. 273, s. 1; C. S., s. 5284.)

Editor's Note.—The provisions of this and the following sections under this article supplant those of the act of 1915, ch. 141, which was held unconstitutional and void in Lang v. Carolina Land, etc., Co., 169 N. C. 662, 86 S. E. 599 (1915), as a taking of private property without providing for just compensation to the private owners of lands, whose consent has not been given.

Withdrawal of Petitioners.—Upon the return day set by the clerk of the court for the hearing of the landowners in a proposed drainage district, it may be shown by those opposed to the petition that some of those who signed it desired to withdraw, and that eliminating their names the petitioners would not represent a majority of the landowners in the district, or such owning three-fourths of the lands, as the statute requires. Armstrong v. Beaman, 181 N. C. 11, 105 S. E. 879 (1921).

§ 156-27. Recovery for benefits; payment of damages. — After the drainway herein provided for shall be completed the person, firm, or corporation cutting or digging the same shall be entitled to recover of the landowners owning that part of the land with reference to which no contract for compensating those cutting or digging the drainway may have been made, an amount equal to the benefits to accrue to such lands by reason of the drainway, and shall be required by the clerk of the superior court to pay to any landowner the amount of damages in excess of benefits which may be done to the land to be determined in the manner hereinafter provided: Provided, that the recovery from any owner of the land shall be limited to the benefits to accrue to that land owned by such person, and situated in such swamp or lowlands or adjacent thereto; and provided further, that the amount to be so recovered as herein provided for until fully paid shall be and constitute a lien upon such land, the lien to be in force regardless of who may own the land at the time the amount to be recovered as compensation for digging or cutting the drainway shall be determined. (1917, c. 273, s. 2; C. S., s. 5285.)

§ 156-28. Notice to landowners; assessments made by viewers. — After the completion of the main drainway, upon the application of the person, firm, or corporation, or their heirs or assigns, digging or cutting the same, the clerk of the superior court of the county in which any land through which the drainway may pass is situated shall issue a notice to be served by the sheriff

upon any person who may have failed to agree with the person, firm, or corporation digging or cutting such drainway, upon a compensation to be paid by the landowner for the digging or cutting of such drainway, notifying the landowner that on a certain day, which shall be named in the notice and not less than twenty days from the date of the issuing of the notice, the clerk of the superior court will appoint three competent and disinterested persons, one of whom may be a surveyor, and none of whom shall own land to be affected by the drainway, to view the land so drained and for which no compensation for the drainage may have been agreed upon as aforesaid, and report to the clerk of the superior court what amount shall be paid therefor by the various landowners who may have failed to arrange for and agree upon the compensation for the drainage as aforesaid, and the amount of damages in cases where the damages have exceeded the benefits, which shall be paid to the landowners by the person, firm, or corporation cutting or digging such canal or drainway. In making the appointment of the viewers the clerk of the superior court shall hear any objections which may be advanced by those interested to any of the persons the clerk may consider to be appointed as viewers, but the clerk shall name those whom he considers best qualified. (1917, c. 273, s. 3; C. S., s. 5286.)

§ **156-29. Report filed; appeal and jury trial.**—A report signed by two of the persons appointed as viewers shall be entered by the clerk as the report of the viewers, and from the report any landowner affected thereby and the person, firm, or corporation digging or cutting such drainway shall have the right of appeal and the right to have any issue arising upon the report tried by a jury, provided exceptions shall be filed to the report within twenty days after the filing of the report with the clerk, in which exceptions so filed may be a demand for a jury trial. If a jury trial be demanded, the clerk shall transfer the proceedings to the civil-issue docket and it shall be heard as other civil actions. If no jury trial be demanded, the clerk shall hear the parties upon the exceptions filed, and appeal may be had as in special proceedings, but no jury trial shall be had unless demanded as herein provided for. (1917, c. 273, s. 4; C. S., s. 5287.)

Cross Reference.—As to appeal in special proceedings, see §§ 1-272 and 1-276.

Jurisdiction of Superior Court.—The superior court, upon certification of the opinion of the Supreme Court, has jurisdiction to retain the cause for hearing upon the appeal from the clerk's order, this section providing that appeals from the clerk in drainage assessment proceedings shall be the same as in special proceedings, and § 1-276, giving the superior court jurisdiction to hear and determine all matters in controversy upon appeal from the clerk in special proceedings. Spence v. Granger, 207 N. C. 19, 175 S. E. 824 (1934). See Flat Swamp, etc., Canal Co. v. McAlister, 74 N. C. 159 (1876).

§ **156-30. Confirmation of report.**—Unless an appeal shall be taken by any person affected by the report, or by the person, firm, or corporation cutting or digging the drainway, and a jury trial demanded within twenty days after the report shall be filed with the clerk, in all of which appeals exceptions shall be filed, the clerk of the superior court shall confirm the report of the jury; if exceptions shall be filed and no demand for a jury trial shall be made, the clerk shall hear the exceptions as in other cases of special proceedings, and judgment entered accordingly. If the report of the viewers be confirmed by the clerk because no exceptions or demand for a jury trial were filed within twenty days, the judgment of confirmation shall be the judgment of the court, and any judgment herein entered against the person, firm, or corporation cutting or digging the drainway shall be a judgment against the person, firm, or corporation and the surety on its bond given as hereinabove provided. (1917, c. 273, s. 5; C. S., s. 5288.)

§ **156-31. Payment in installments.**—The amount to be recovered from any person as compensation for digging or cutting the drainway after the amount

shall be definitely determined as herein provided for, shall be payable in five equal annual installments, the first payable one year from the filing of the report of the viewers with the clerk of the superior court, and one payment on the same day of each year thereafter until the full amount be paid. The amount to be recovered from the person, firm, or corporation cutting or digging the drainway, on account of any damages in excess of benefits to the lands of any landowner, shall be payable in one installment which shall be due and payable one year from the filing of the report of the viewers with the clerk of the superior court. (1917, c. 273, s. 6; C. S., s. 5289.)

Article 2.

Jurisdiction in County Commissioners.

§ 156-32. Petition filed; board appointed; refusal to serve misdemeanor.—Upon the petition of three citizens in any county to the county commissioners, petitioning for the draining of any creek, swamp, or branch, either upon the plea of health or to promote and advance the agricultural interests of the farmers who may own lands lying on such creek, swamp, or branch petitioned to be drained, the county commissioners shall within ten days after the filing of such petition order the county surveyor to summon three disinterested freeholders, good and lawful men of intelligence and discretion, who shall constitute a board, and the county surveyor shall be the chairman of such board; and the chairman shall give all persons who may be interested in having such creek, swamp, or branch drained three days' notice of the time and place of the meeting of the board: Provided, the petitioners shall deposit with the county treasurer the sum of twenty-five dollars for the payment of current expenses not otherwise provided for in this article. Any person duly summoned by the county surveyor to act as a commissioner for the drainage of any such creek, swamp, or branch, who shall refuse to serve, shall be guilty of a misdemeanor and be fined not exceeding fifty dollars or imprisoned not exceeding thirty days. (1887, c. 267; Rev., ss. 3379, 4011; C. S., s. 5290.)

Local Modification.—Hyde: 1901, c. 166.

§ 156-33. Duty of board; refusal to comply with their requirements misdemeanor.—The board provided for in § 156-32 shall meet at the call of the chairman and shall proceed to inspect and examine the lands as described in the petition to be drained, and the board shall have power to summon witnesses, administer oaths, and take testimony, and if the board decides that the lands specified in the petition shall be drained, either upon the plea of health or for the benefit of the farms lying on or contiguous to such watercourse, then the board shall select a place at which the ditch shall be begun. They shall also decide the depth and width of the ditch to be dug, and shall proceed to survey, locate, lay off, and mark the course of the ditch, and the board shall assign to the landowners the amount of the labor to be performed and the amount of money to be paid for the purpose of defraying the necessary expenses by each landowner in proportion to the amount of lands drained or pro rata benefits received by the drainage of such lands, and the board shall specify the time in which the work so assigned shall be completed: Provided, no one shall be required to commence on the work assigned to him until the person next below him shall have completed his work in accordance with the specifications of the board. If any person shall refuse to comply with any of the requirements of the board he shall be guilty of a misdemeanor and fined not exceeding two hundred dollars, or imprisoned not exceeding two years. (1887, c. 267, ss. 2, 7; Rev., ss. 3377, 4012; C. S., s. 5291.)

§ 156-34. Report filed. — The board shall make a written report to the county commissioners showing all the acts and decisions of the board as to the length, depth, and width of the ditch, the names of all the owners of the lands that will be drained, and the amount of work to be performed and the amount of

money to be paid by each person benefited by such drainage. But in case the board determines that the lands described in the petition shall not be drained, then the expenses of the board shall be paid out of the funds deposited with the county treasurer by the petitioners. (1887, c. 267, s. 3; Rev., s. 4013; C. S., s. 5292.)

§ **156-35. Owners to keep ditch open.**—All persons whose lands shall be drained under the provisions of this article shall keep the ditch on their lands clear of all rafts of logs, brush, or any trash that will obstruct the flow of water through the ditch. (1887, c. 267, s. 4; Rev., s. 4014; C. S., s. 5293.)

§ **156-36. Compensation of board.**—The compensation of the board shall be as follows: The county surveyor shall receive three dollars per day and the other members shall receive one dollar and fifty cents per day while engaged in the duties imposed in this chapter. (1887, c. 267, s. 5; Rev., s. 4015; C. S., s. 5294.)

SUBCHAPTER II. DRAINAGE BY CORPORATION.

Article 3.

Manner of Organization.

§ **156-37. Petition filed in superior court.**—Any proprietor in fee of swamp lands, which cannot be drained except by cutting a canal through the lands of another or other proprietor in fee, situated at a lower level and which would also be materially benefited by the cutting of such canal, who desires that such canal be cut on the terms on which it is hereinafter allowed, may apply by petition, setting forth the facts, to the superior court of the county in which any of the lands through which the canal will pass may lie. (1868-9, c. 164, s. 2; Code, s. 1311; Rev., s. 3996; C. S., s. 5295.)

Cross References.—As to constitutionality of, and general procedure under, this chapter, see notes to §§ 156-1 and 156-2. As to prerequisites to establishment of drainage corporation, see note to § 156-40.

Evidence Insufficient to Show Establishment of Drainage Corporation.—Where petitioners show only the granting of an easement in response to a petition by an individual to be allowed to drain into an existing canal on the lands of another under the provisions of §§ 156-2, 156-3 and 156-10, such evidence is insufficient to show the establishment of a drainage corporation under the provisions of this section. In re Atkinson-Clark Canal Co., 231 N. C. 131, 56 S. E. (2d) 442 (1949).

Burden of Proof Where Drainage Assessment Challenged.—When the validity of a drainage assessment is challenged the burden is upon the drainage district or corporation to show that it was created in substantial compliance with the applicable statutes and that the assessments were levied pursuant to and in compliance with the statutory provisions. In re Atkinson-Clark Canal Co., 231 N. C. 131, 56 S. E. (2d) 442 (1949).

Stated in Sawyer Canal Co. v. Keys, 232 N. C. 664, 62 S. E. (2d) 67 (1950).

§ **156-38. Commissioners appointed; report required.**—On the establishment by the petitioner of his allegations, the court shall appoint three persons as commissioners who, having been duly sworn, shall examine the premises and inquire and report:

1. Whether the lands of the petitioner can be conveniently drained otherwise than through those of some other person.

2. Through the lands of what other persons a canal to drain the lands of the petitioner should properly pass, considering the interests of all concerned.

3. A description of the several pieces of lands through which the canal would pass, and the present values of such portions of the pieces of lands as would be benefited by it, and the reasons for arriving at the conclusion as to the benefit.

4. The route and plan of the canal, including its breadth, depth, and slope, as nearly as they can be calculated, with all other particulars necessary for calculating its cost.

5. The probable cost of the canal and of a road on its bank, and of such other work, if any, as may be necessary for its profitable use.

6. The proportion of the benefit (after a deduction of all damages) which each proprietor would receive by the proposed canal and a road on its bank if deemed necessary and in which each ought, in equity and justice, to pay toward their construction and permanent support.

7. With their report they shall return a map explaining, as accurately as may be, the various matters required to be stated in their report. (1868-9, c. 164, s. 3; Code, s. 1312; Rev., s. 3997; C. S., s. 5296.)

Prerequisites to Establishment of Corporation.—See note to § 156-40.

Validity of Assessment.—An assessment made under the provisions of this subchapter is constitutional and valid. Middle Canal Co. v. Whitley, 172 N. C. 100, 90 S. E. 1 (1916).

Collateral Attack on Assessment. — When an assessment does not appear to be void on its face, it may not be collaterally attacked by a defendant owner of lands embraced in the district, in an action to enforce its payment. Middle Canal Co. v. Whitley, 172 N. C. 100, 90 S. E. 1 (1916).

When Report of Commissioners Confirmed.—The report of the commissioners, assessing persons for benefits accruing to their lands from the operations of the plaintiff canal company, should have been confirmed by the court, as to those defendants who did not object; but as to those who did, the court should have proceeded to try the issues involved in the controversy. Locks Creek Canal Co. v. McKeithan, 89 N. C. 52 (1883).

Notice to Landowners. — Landowners, whose interests might be affected under proceedings under the provisions of this chapter, are entitled to notice. Gamble v. McCrady, 75 N. C. 509 (1876).

It is immaterial whether the owner of lands had notice of a meeting at which a committee had been appointed to assess the lands in the district and determine the amount of each assessment, when the assessment has been accordingly made, and duly ratified and confirmed at a subsequent meeting regularly called and held in accordance with the statute, of which he had notice. Middle Canal Co. v. Whitley, 172 N. C. 100, 90 S. E. 1 (1916).

Cited in In re Atkinson-Clark Canal Co., 231 N. C. 131, 56 S. E. (2d) 442 (1949).

§ **156-39. Surveyor employed.**—The commissioners may employ a surveyor to prepare the map required to accompany their report. (1868-9, c. 164, s. 4; Code, s. 1313; Rev., s. 3998; C. S., s. 5297.)

§ **156-40. Confirmation of report.**—If it appear that the lands on the lower level will be increased in value twenty-five per cent or upwards by the proposed improvement, within one year after the completion thereof, and that the cost of making such improvement will not exceed three-fourths of the present estimated value of the land to be benefited, and that the proprietors of at least one-half in value of the land to be affected consent to the improvement, the court may confirm such report, either in full or with such modifications therein as shall be just and equitable. (1868-9, c. 164, s. 5; Code, s. 1314; Rev., s. 3999; C. S., s. 5298.)

Prerequisites to Establishment of Drainage Corporation.—In order to establish a drainage corporation it is necessary that a petition in conformity with § 156-37 be filed, and that commissioners be appointed and that they file a report in conformity with § 156-38 and that there be an adjudication and confirmation of the report. It is only after such confirmation that the corporation may be declared to exist and may proceed to organize and levy assessments. In re Atkinson-Clark Canal Co., 231 N. C. 131, 56 S. E. (2d) 442 (1949).

§ **156-41. Proprietors become a corporation.**—Upon a final adjudication, confirming the report, the proprietors of the several pieces of land adjudged to be benefited by the improvement shall be declared a corporation, of which the capital stock shall be double the estimated cost of the improvements, and in which the several owners of the land adjudged to be benefited shall be corporators, holding shares of stock in the proportions in which they are adjudged liable for the

expense of making and keeping up the improvement. (1868-9, c. 164, s. 6; Code, s. 1315; Rev., s. 4000; C. S., s. 5299.)

Cited in In re Atkinson-Clark Canal Co., 231 N. C. 131, 56 S. E. (2d) 442 (1949).

§ 156-42. Organization; corporate name, officers and powers.—The clerk of the court of the county in which the proceeding is pending or any corporator, who is a petitioner, may call a meeting of the corporators, at which meeting the corporators shall choose a name for the corporation, unless the commissioners selected the name, elect a president, vice-president, secretary and treasurer, but said officers shall be chosen or elected from the corporators who are petitioners in the proceeding; and they shall also choose or elect a board of directors and they shall be chosen or elected from the corporators who are petitioners in the proceeding. The corporators shall also make all bylaws and regulations, not contrary to law, which may be necessary and proper for effecting the purpose of the corporation, but said duty may be delegated to the board of directors. They shall fix the number of shares of stock, and assign to each proprietor or corporator his proper number, but this duty and right may be delegated to and done by the board of directors. The board of directors shall have such powers as are generally given to directors under the corporation law of the State; and they shall assess the sums or amount which shall be paid by each proprietor or corporator in conformity with and in compliance with the report of the commissioners on which the corporation is based. When said assessments against said proprietors or corporators and their lands affected are duly certified to the clerk of the superior court of the county in which such proceeding was instituted, the same shall be passed upon by the clerk of court and when approved by the clerk, said assessments shall become judgments against the several proprietors, corporators and owners so assessed, and the same shall be liens on the lands of the owners or corporators against whom said assessments were made and judgments entered, subject only to taxes, but said judgments shall be judgments in rem only. The board of directors will also have power, if they deem it proper, to fix and prescribe the time, mode and manner of payment; and do such other things as are necessary for the construction, enlargement and keeping up or maintaining said canal and improvement. In every meeting of the corporators or stockholders, each proprietor or corporator shall have one vote for each share of stock owned by him. (1868-9, c. 164, s. 7; Code, s. 1316; Rev., s. 4001; C. S., s. 5300; 1939, c. 180, s. 1.)

Editor's Note.—The 1939 amendment rewrote this section.

Cited in In re Atkinson-Clark Canal Co., 231 N. C. 131, 56 S. E. (2d) 442 (1949).

§ 156-43. Incorporation of canal already constructed; commissioners; reports.—Whenever the proprietors of any canal already cut shall desire to become incorporated, any number of the proprietors, not less than one-third in number, may file their petition before the clerk of the superior court of the county in which the canal is located, or in either county, where the canal may be located in more than one county, setting forth the names of the proprietors, the length and size of the canal, the names of the owners of land draining in such canal, and the quantity of land tributary thereto. And upon filing the petition, summons shall issue to all parties having an easement in the canal, returnable as in other special proceedings; upon the return thereof, or upon a day fixed by the clerk for hearing same, all owners of the canal may become corporators therein, and upon failure of any to avail themselves of that right, they shall not be entitled to become corporators, except under such bylaws and regulations as such corporation shall make and declare. But those who fail to avail themselves of the benefit of this subchapter shall not be deprived of their easement in

the canal, but shall enjoy the same upon payment to the corporation of the assessment made upon them pro rata with the corporators; such assessment shall be made on the land tributary to the canal and apportioned pro rata to each owner thereof; it shall be made by the corporation on ten days' notice to each owner of the land, under such rules and regulations as the bylaws may prescribe; but any person dissatisfied therewith shall have the right to appeal to a jury at the regular term of the superior court of the county, and the amount of damages assessed shall be a first lien on the land of the owner against whom judgment shall be rendered.

Upon the return date of the summons or on the hearing by the clerk as provided in this section, the clerk of the court may appoint three persons as commissioners, who having been duly sworn shall examine the premises and inquire and report:

1. The route and plan of the canal, including the breadth, depth and slope as nearly as they can be calculated, with all other particulars necessary for calculating the cost of enlarging and improving said canal.

2. The probable cost of the improvement and enlargement of said canal.

3. The proportion which each proprietor or corporator ought in equity and justice to pay toward the enlargement, improvement and permanent support and upkeep of said canal.

4. With their report they shall return a map explaining as accurately as may be, the various matters required and necessary in aid or explanation of their report.

5. The said report shall be heard and determined as other reports in special proceedings, and if approved by the clerk, such proprietors shall become a body corporate or a corporation.

6. A meeting of the corporators may be called by the clerk of court or by any corporator or proprietor who is a petitioner in the proceeding, and at such meeting a president, vice-president, secretary and treasurer shall be elected from the proprietors or corporators who are petitioners; and also a board of directors shall be elected from the proprietors or corporators who are petitioners in the proceeding.

7. The board of directors shall assess the sum or amount which shall be paid by each proprietor or corporator in conformity and compliance with the report of the commissioners on which the corporation was based. When said assessments against said proprietors or corporators and their lands affected are duly certified to the clerk of the superior court of the county in which said proceeding was pending and instituted, the same shall be passed upon by the clerk of court, and when approved by the clerk, said assessments shall become judgments against the several proprietors or corporators so assessed, and the same shall be liens on the lands of the owners or corporators against whom said assessments were made and judgments entered, subject only to taxes, but said judgments shall be judgments in rem only. The board of directors will also, if they deem it proper, fix and prescribe the time, manner and mode of payment. (1889, c. 380; 1901, c. 670; Rev., s. 4008; C. S., s. 5301; 1939, c. 180, s. 2.)

Editor's Note.—The 1939 amendment struck out a former proviso to the first paragraph and added the remainder of the section.

Assessment Can Be Levied Only on Property Benefited.—The general rule is well settled that a special assessment for a purpose of drainage can be levied only upon property benefited by the improvement. It is said that the legal theory underlying drainage assessments is one of benefit increasing the value of the land and justifying its assessment. In re Westover Canal, 230 N. C. 91, 52 S. E. (2d) 225 (1949).

Where it clearly appears that the canal will neither drain a particular tract of land nor render it more accessible, there is no valid reason for including it in the district, and if it is nevertheless arbitrarily made a part thereof, the owner may obtain relief. In re Westover Canal, 230 N. C. 91, 52 S. E. (2d) 225 (1949).

The statutory provisions determine the property liable to drainage assessment. Hence to constitute a valid assessment the particular land against which it is levied must come within the meaning of this

section. In re Westover Canal, 230 N. C. 91, 52 S. E. (2d) 225 (1949).

"Land Tributary to the Canal."—As here used the phrases "land tributary thereto" and "land tributary to the canal" mean land from which water drains or flows into the canal. In re Westover Canal, 230 N. C. 91, 52 S. E. (2d) 225 (1949).

Burden of Proof on Appeal.—This section gives to any person dissatisfied with an assessment the right to appeal to a jury at a regular term of the superior court of the county. In such event, it would seem that the authority undertaking to establish the assessment would still have the burden of proving the provisions of the statute essential to the creation of a valid assessment. It may be that the order of the clerk of the superior court approving and confirming the assessment as proposed by the commissioners and the board of directors of the corporation creates a prima facie case. But a prima facie case, or prima facie evidence, does not change the burden of proof. In re Westover Canal, 230 N. C. 91, 52 S. E. (2d) 225 (1949).

In order to constitute a valid drainage assessment it is necessary that the land assessed drain or flow into the canal, and therefore on appeal to the superior court on a landowner's exceptions to the order of the clerk confirming assessments as proposed by the commissioners, the drainage district has the burden of proving the number of acres of land the exceptor owns which drain into the canal and what amount said land should be assessed per acre. The fact that exceptor first introduced evidence, presumably on the theory that the order of the clerk made out a prima facie case, does not alter the rule as to the burden of proof. In re Westover Canal, 230 N. C. 91, 52 S. E. (2d) 225 (1949).

Article 4.

Rights and Liabilities in the Corporation.

§ 156-44. Shares of stock annexed to land. — The ownership of the shares of stock is indissolubly annexed to the ownership of the pieces of land adjudged to be benefited by the improvement; and such shares, or a part thereof proportionate to the area of such land that may descend or be conveyed for any longer time than three years, shall, upon such descent or conveyance, descend and pass with the land, even although such shares be not mentioned in the deed of conveyance, and although their transfer be forbidden by such deed so that every owner of such land in possession, except a tenant for a term of years, not exceeding three, and every owner in reversion or remainder after a term not exceeding three years, shall, during his ownership, be entitled to all the rights and privileges and be subject to all the obligations and burdens of a corporator. Every attempted sale of shares otherwise than as annexed to the land shall be void. (1868-9, c. 164, s. 8; Code, s. 1317; Rev., s. 4002; C. S., s. 5302.)

Stated in Sawyer Canal Co. v. Keys, 232 N. C. 664, 62 S. E. (2d) 67 (1950).

§ 156-45. Shareholders to pay assessments.—Every corporator shall be bound to obey the lawful bylaws of the company, and pay all dues lawfully assessed on him: Provided, he shall in no case pay more than his proportion of the expenses as fixed by this subchapter; and such dues may be collected in the corporate name in any court having jurisdiction; and every assessment duly docketed in the county where the land to be affected lies shall be a lien on the lands of the debtor which are connected with the corporation from the date of such docketing. (1868-9, c. 164, s. 9; Code, s. 1318; Rev., s. 4003; C. S., s. 5303.)

Cross Reference.—As to collection of assessments out of other property of delinquent, see § 156-106.

Assessments—Lien upon Land.—An assessment made upon owners of lands constitutes a lien upon the lands therein and is enforceable by proceedings in rem in a court having equitable jurisdiction. Personal judgment against the defendant may not be had, as in actions arising ex contractu. Middle Canal Co. v. Whitley, 172 N. C. 100, 90 S. E. 1 (1916); Long Creek Drainage Dist. v. Huffstetler, 173 N. C. 523, 92 S. E. 368 (1917).

Same—Enforcement by Justice of Peace.—Therefore, a justice of the peace has no jurisdiction over actions to enforce the payment of such assessments, and they

will be dismissed upon motion to nonsuit when brought in that court. Middle Canal Co. v. Whitley, 172 N. C. 100, 90 S. E. 1 (1916); Long Creek Drainage Dist. v. Huffstetler, 173 N. C. 523, 92 S. E. 368 (1917).

Same—Execution.—Assessments, made in accordance with the statute, become liens on the lands when properly certified by the officers of the corporation and docketed in the office of the superior court of the proper county; and executions may issue directing that such lands be sold to pay the assessments and the costs. Middle Canal Co. v. Whitley, 172 N. C. 100, 90 S. E. 1 (1916).

Same — Review by Certiorari. — The courts will review by writ of certiorari the action of the drainage corporation in making illegal assessments and enjoin such assessments that are absolutely void upon their face. Middle Canal Co. v. Whitley, 172 N. C. 100, 90 S. E. 1 (1916).

Same — Collateral Attack. — An assessment, that does not appear to be void on its face, cannot be attacked collaterally. Middle Canal Co. v. Whitley, 172 N. C. 100, 90 S. E. 1 (1916).

§ **156-46. Payment of dues entitles to use of canal.**—Every corporator paying his dues legally assessed without regard to the number of his shares, shall be entitled to the full and free use of the canal for drainage and navigation, and of the road for passage and transportation. Bylaws may be made to regulate these rights, but not so as to produce an inequality. (1868-9, c. 164, s. 10; Code, s. 1319; Rev., s. 4004; C. S., s. 5304.)

§ **156-47. Rights of infant owners protected.**—If any proprietor whose lands are adjudged to be benefited by a canal shall be an infant, no process shall be issued against him during his minority, or within twelve months thereafter, to enforce payment of any assessment, and he may, at any time within such twelve months, apply to have any order, judgment, or decree made against him set aside as to him. If the infant or his guardian shall, during his minority, and the twelve months next thereafter, pay the dues assessed on him, he shall have all the rights and privileges of corporator, to be exercised through his guardian. If the infant shall fail to pay, he shall not have any such rights, but if no action to set aside the judgment of the court creating the corporation shall have been brought by him as aforesaid, or upon the decision of such action against him, he shall be entitled to receive his proper share of stock and to possess all the rights and be bound by all the liabilities of a corporator, including a liability for assessments made during his minority, but not for interest on such, nor for any penalty for their prior nonpayment. (1868-9, c. 164, s. 11; Code, s. 1320; Rev., s. 4005; C. S., s. 5305.)

§ **156-48. Compensation for damage to lands.**—If any proprietor of lands shall be damaged by any improvement proposed, the commissioners shall so report, and he shall be entitled to be compensated as may be just by the proprietor whose lands are benefited in proportion to the benefit to them respectively; but in estimating such damages the benefit shall be deducted, and such proprietor shall be entitled to all the rights and privileges of a corporator as respects the use of the improvement, but shall not be entitled to a vote, or be bound for the assessment. (1868-9, c. 164, s. 12; Code, s. 1321; Rev., s. 4006; C. S., s. 5306.)

§ **156-49. Dissolution of corporation.**—If, from any cause, the canal or other improvement shall become or shall prove to be valueless, any corporator may apply as is provided in other cases of special proceedings, and the court may dissolve the corporation created in connection with it. (1868-9, c. 164, s. 13; Code, s. 1322; Rev., s. 4007; C. S., s. 5307.)

§ **156-50. Laborer's lien for work on canal.**—Whenever work or repair shall be done on such canal and any of the parties owning lands liable to be assessed for such work or repairs shall fail or refuse to pay the amount assessed upon their land, then and in that event the laborers performing such work shall have a lien upon such land to the extent of the amount assessed against the same by the corporation, and such lien may be enforced in the same manner as provided

by the laws of this State for the enforcement of laborers' liens. (1899, c. 600, s. 2; Rev., s. 4009; C. S., s. 5308.)

§ 156-51. Penalty for nonpayment of assessments. — Whenever any person whose lands have been adjudged liable to contribute to the maintenance or repair of such canal shall fail or refuse to pay the amount assessed against his land for such maintenance or repair for thirty days after such payment has been demanded by the company, then the company may give such person notice in writing of its intention to cut off his right of drainage into the canal, and if such person shall still neglect and refuse to pay such assessment for thirty days after such notice, then the company may proceed to so obstruct and dam up the ditches of such delinquent as will effectually prevent his draining in the canal. (1899, c. 600, s. 3; Rev., s. 4010; C. S., s. 5309.)

Applicability of Section.—The provisions of this section providing for a penalty for nonpayment of assessments relate only to the remedy available where incorporators fail and refuse to pay assessments duly levied. Sawyer Canal Co. v. Keys, 232 N. C. 664, 62 S. E. (2d) 67 (1950).

In a proceeding by drainage corporations to have lands of respondents assessed for improvements upon allegations that respondents are not members of the corporation but that nevertheless their lands drain into the canals and would be materially benefited by the improvements, it was held that respondents' contention that the sole remedy of petitioners is under the provisions of this section to construct dams to prevent water draining from respondents' lands into the canals is untenable, since the provisions of this section are inapplicable to such proceeding, being applicable solely as a remedy where incorporators fail and refuse to pay assessments duly levied. Sawyer Canal Co. v. Keys, 232 N. C. 664, 62 S. E. (2d) 67 (1950).

§ 156-52. Corporation authorized to issue bonds.—The corporations organized under this subchapter are authorized to issue bonds to such an amount and in such denomination as they may elect, payable at such times as may be provided, and to sell the same at not less than par, the proceeds of the sale of such bonds to be used for the payment of the costs of survey and construction and maintenance of the canal. The bonds shall constitute a lien upon the lands drained or improved by the canal as described in the reports of the commissioners. (1908, c. 75, s. 1; C. S., s. 5310.)

§ 156-53. Payment of bonds enforced.—Upon default of the payment of the interest or principal of such bonds, the holders of the bonds of the corporations organized under this subchapter shall have a right to enforce the lien created by § 156-52 by civil actions in the superior courts of the State. (1908, c. 75, s. 2; C. S., s. 5311.)

SUBCHAPTER III. DRAINAGE DISTRICTS.

Article 5.

Establishment of Districts.

§ 156-54. Jurisdiction to establish districts.—The clerk of the superior court of any county in the State of North Carolina shall have jurisdiction, power and authority to establish levee or drainage districts either wholly or partly located in his county, and which shall constitute a political subdivision of the State, and to locate and establish levees, drains or canals, and cause to be constructed, straightened, widened or deepened, any ditch, drain or watercourse, and to build levees or embankments and erect tidal gates and pumping plants for the purpose of draining and reclaiming wet, swamp or overflowed land; and it is hereby declared that the drainage of swamp lands and the drainage of surface water from agricultural lands and the reclamation of tidal marshes shall be considered a public use and benefit and conducive to the public health, convenience and welfare, and that the districts heretofore and hereafter created under the law shall be and constitute political subdivisions of the State, with authority to provide by law

to levy taxes and assessments for the construction and maintenance of said public works. (1909, c. 442, s. 1; C. S., s. 5312; 1921, c. 7.)

Cross References.—As to provision that county prisoners may be used to maintain and keep up public drainage districts, see § 153-198. As to construction of this subchapter, see § 156-135.

Editor's Note.—Prior to the 1921 amendment the authority of the clerk of the superior court to establish levee or drainage districts was limited to his county alone. The amendment made drainage districts political subdivisions of the State with authority to levy taxes and assessments.

For act relating to Scuppernong Drainage District in Washington County, see Session Laws 1947, c. 934. As to construction of drainage act for Mattamuskeet Lake, see Carter v. Commissioners, 156 N. C. 183, 72 S. E. 380 (1911).

Constitutionality.—This and the following sections of the subchapter are constitutional. Sanderlin v. Luken, 152 N. C. 738, 68 S. E. 225 (1910); In re Drainage District, 162 N. C. 127, 78 S. E. 14 (1913); Shelton v. White, 163 N. C. 90, 79 S. E. 427 (1913); Banks v. Lane, 170 N. C. 14, 86 S. E. 713 (1915); Drainage Com'rs v. Mitchell, 170 N. C. 324, 87 S. E. 112 (1915); Lumber Co. v. Drainage Commissioners, 174 N. C. 647, 94 S. E. 457 (1917).

Vested Rights Not Affected.—The proceedings in forming a drainage district under the original act was judicial and not administrative, and the 1921 amendment could not affect vested rights of landowners acquired under orders, judgments, or decrees made in pursuance of the powers conferred by the original act. Broadhurst v. Board of Commissioners, 195 N. C. 439, 142 S. E. 477 (1928).

The rights of landowners in the Mattamuskeet Drainage District having been determined in a court having jurisdiction as to assessments in proportion to the benefits conferred, was not affected by the subsequent amendment of 1921, for such would be to impair the vested rights of those whose property had been assessed by the final judgment. O'Neal v. Mann, 193 N. C. 153, 136 S. E. 379 (1927).

State-Wide Public Statute.—The drainage act, with its various amendments, is a State-wide public statute. Nesbit v. Kafer, 222 N. C. 48, 21 S. E. (2d) 903 (1942).

Purpose and Nature—Scheme or System of Drainage.—This subchapter authorizing the establishment of certain levee or drainage districts, is to present a scheme for the drainage of lowlands in which the public of the locality is generally interested, is at once comprehensive, adequate and efficient, in which the rights of all persons to be affected have been fully considered and protected, and is not objectionable on the ground that it is for the benefit of private landowners and not for public purposes. Sanderlin v. Luken, 152 N. C. 738, 68 S. E. 225 (1910).

This subchapter adopts a system for the co-operation of landowners in the drainage of lands by forming drainage districts, which are to become quasi-public corporations, for the purpose of improving the health of the district and the fertility of the lands, under which the lands are assessed in proportion to the benefits derived and an organization is effected in each district, to execute and maintain a system of drainage. In re Drainage District, 162 N. C. 127, 78 S. E. 14 (1913).

Basis of Legislative Authority.—The authority of the legislature to provide for the creation of levee and drainage districts is based upon the police power, the right of eminent domain, and the taxing power. Shelton v. White, 163 N. C. 90, 79 S. E. 427 (1913).

The drainage of swamps and of surface water from agricultural lands in a drainage district is of public benefit and conducive to the public health, etc., thus falling within the police power; and proceedings thereunder are in the exercise of the right of eminent domain. Taylor v. Commissioners, 176 N. C. 217, 96 S. E. 1027 (1918).

Clerk's Authority Not a Delegation of Legislative Power.—The authority and powers conferred by this subchapter upon the clerk of the court is not a delegation of legislative power and duty to the judicial department of the State prohibited by the Constitution, the powers and duties conferred being of a judicial nature in relation to the prescribed proceedings to be instituted for the establishment of drainage districts. Sanderlin v. Luken, 152 N. C. 738, 68 S. E. 225 (1910).

Lands in Several Counties.—Where, in a proceeding in Beaufort county, a drainage district, comprising lands in both Beaufort and Craven counties, is duly created and organized under this and the following sections, and assessment rolls, showing assessments against each tract of land in the district, have been made and filed in each county, such assessments, as they become due, are liens upon the lands within the district to which they relate, and it is error for the court to dismiss an action in the nature of a mortgage foreclosure, for the collection of such drain-

age assessments against lands in Craven County, even where the assessment rolls for Craven County have been removed and there is left in that county no other record relating to the drainage district, except a map on which are shown the boundaries of the several tracts of land within the district in Craven County—the map itself being sufficient notice to a subsequent purchaser of the proceedings, including the assessment rolls filed in Beaufort County. Nesbit v. Kafer, 222 N. C. 48, 21 S. E. (2d) 903 (1942).

Collateral Attack on District.—The validity of a district laid off according to the drainage acts cannot be collaterally attacked. Newby v. Drainage District, 163 N. C. 24, 79 S. E. 266 (1913); Banks v. Lane, 170 N. C. 14, 86 S. E. 713 (1915).

Proceedings Not Defective for Delay.—Proceedings for the establishment of a drainage district, under this and the following section of this article, and bonds to be issued therefor, will not be held as defective because further steps were not taken for several years after they had been commenced, the court holding, they were still pending, and because of the fact that the engineer and viewers did not file a profile map showing the surface of the ground, bottom grades, etc., at the time of the final report, as required by § 156-69, it appearing that this was later done upon order of the board of drainage commissioners, and otherwise the provisions of the statutes had been strictly followed. Oden v. Bell, 185 N. C. 403, 117 S. E. 340 (1923).

Right of Receiver to Intervene and Become Party to Suit in Federal Court.—See Board of Drainage Com'rs v. Lafayette Southside Bank, 27 F. (2d) 286 (1928).

Pendency of Proceedings Is Notice as to All Lands Embraced.—The pendency of a proceeding to lay off a drainage district under the provisions of the act is notice as to all the lands embraced in the district. Newby v. Drainage District, 163 N. C. 24, 79 S. E. 266 (1913).

§ 156-55. Venue; special proceeding.—When the lands proposed to be drained and created into a drainage district are located in two or more counties, the clerk of the superior court of either county shall have and exercise the jurisdiction herein conferred, and the venue shall be in that county in which the petition is first filed. The law and the rules regulating special proceedings shall be applicable in this proceeding, so far as may be practicable; and the proceedings hereunder may be ex parte or adversary. (1909, c. 442, ss. 2, 38; C. S., s. 5313.)

Proceedings in Rem.—Proceedings to form drainage district under this subchapter are regarded as proceedings in rem. Staton v. Staton, 148 N. C. 490, 62 S. E. 596 (1908); Banks v. Lane, 170 N. C. 14, 86 S. E. 713 (1915); Taylor v. Commissioners, 176 N. C. 217, 96 S. E. 1027 (1918).

§ 156-56. Petition filed.—A petition signed by a majority of the resident landowners in a proposed drainage district or by the owners of three-fifths of all the land which will be affected or assessed for the expense of the proposed improvements may be filed in the office of the clerk of the superior court of any county in which a part of the lands is located, setting forth that any specific body or district of land in the county and adjoining counties, described in such a way as to convey an intelligent idea as to the location of such land, is subject to overflow or too wet for cultivation, and the public benefit or utility or the public health, convenience or welfare will be promoted by draining, ditching, or leveeing the same or by changing or improving the natural watercourses, and setting forth therein, as far as practicable, the starting point, route, and terminus and lateral branches, if necessary, of the proposed improvement.

The petition will also show whether or not the proposed drainage is for the reclamation of lands not then fit for cultivation or for the improvement of land already under cultivation. It shall also state that, if a reclamation district is proposed to be established, such lands so reclaimed will be of such value as to justify the reclamation. (1909, c. 442, s. 2; C. S., s. 5314; 1921, c. 76; Pub. Loc. 1923, c. 88, s. 2; 1925, c. 85; 1927, c. 98.)

Local Modification.—Edgecombe: 1937, c. 278; 1939, c. 7; Halifax: 1939, c. 227; Hertford: 1939, c. 371; Iredell: 1925, c. 144; Nash: 1939, c. 376; Northampton: 1939, c. 227; Pitt: 1925, c. 205; Robeson: 1925, c. 144; Rowan: 1925, c. 144.

Editor's Note.—The 1921 amendment was repealed by Public Local Laws 1923,

c. 88, inapplicable to Franklin, Hyde, Nash and Wilson counties, and also by Public Laws 1925, ch. 85. The 1923 amendment added a proviso to this section which was also repealed by the 1925 amendment. The second paragraph of the section was added by the 1927 amendment. For the distinction between the reclamation districts and improvement districts, see § 156-62, par. 5.

This is a flexible proceeding, and is to be modified and molded by decrees from time to time to promote the objects of the proceeding. Adams v. Joyner, 147 N. C. 77, 60 S. E. 725 (1908); Staton v. Staton, 148 N. C. 490, 62 S. E. 596 (1908); In re Lyon Swamp Drainage District, 175 N. C. 270, 95 S. E. 485 (1918).

Assent of Statutory Number of Owners Sufficient.—It is not necessary that every owner of land within a drainage district should have assented to its formation when the statutory number thereof have done so. Taylor v. Commissioners, 176 N. C. 217, 96 S. E. 1027 (1918).

Property Must Be Described.—One of the essentials of the proceeding is that the property sought to be charged shall be identified by description in the proceedings. Dover Lumber Co. v. Board, 173 N. C. 117, 91 S. E. 714, 845 (1917).

§ **156-57. Bond filed and summons issued.**—Upon filing with the petition a bond for the amount of fifty dollars per mile for each mile of the ditch or proposed improvement, signed by two or more sureties or by some lawful and authorized surety company, to be approved by the clerk of superior court, conditioned for the payment of all costs and expenses incurred in the proceeding in case the court does not grant the prayer of the petition, the clerk shall issue a summons to be served on all the defendant landowners who have not joined in the petition and whose lands are included in the proposed drainage district. The summons may be served by publication as to any defendants who cannot be personally served as provided by law. (1909, c. 442, s. 2; C. S., s. 5315.)

Cross Reference.—See Local Modification under § 156-56.

In General. — The drainage laws of North Carolina have been largely copied from the acts in Indiana and Illinois, and following the construction of these acts for the long period of time the acts have been in force, it is essential that notice of summons in all such proceedings be given to all parties who will be affected thereby. Dover Lumber Co. v. Board of Commissioners, 173 N. C. 117, 91 S. E. 714, 845 (1917).

Summons on All Landowners. — This section is mandatory in requiring a "summons to be served on all the defendant landowners who have not joined in the petition and whose lands are included in the proposed drainage district." Dover Lumber Co. v. Board of Commissioners, 173 N. C. 117, 91 S. E. 714, 845 (1917). "But the statute requires only landowners to be made parties in such drainage proceedings." Dover Lumber Co. v. Board of Commissioners, 173 N. C. 117, 91 S. E. 714, 845 (1917).

Same—Mortgagee Not Included.—It would interfere with a much-needed public development if, as a prerequisite thereto, and before a final order can be made, all defects of title and mortgages or liens that may be claimed must be looked up and adjudicated. It is sufficient that summons shall be served upon the parties in possession under an apparent legal title, and that before final adjudication notice shall be given in the manner prescribed in order that parties claiming liens by mortgage or otherwise, or title to the land adversely to those in possession, shall have opportunity to come in and oppose confirmation of the final report. Banks v. Lane, 170 N. C. 14, 86 S. E. 713 (1915). See Drainage Commissioners v. Eastern Home, etc., Ass'n, 165 N. C. 697, 81 S. E. 947 (1914).

Effect of Failure to Serve Summons.—Where a landowner having an interest within the meaning of the statute, has not been served, and it does not appear that he was an apparent party, an order laying an assessment on his property is void, and the proceedings as they relate to him are a nullity, and the assessment may be restrained. Banks v. Lane, 170 N. C. 14 (1915), holding a mortgagee not a necessary party, cited and distinguished. Dover Lumber Co. v. Board of Commissioners, 173 N. C. 117, 91 S. E. 714, 845 (1917).

Same—Subsequent Notification. — The proceedings for forming a drainage district are in rem; and where a valid statute has been complied with therein, and it appears that an owner has not been served with process, it is admissible to notify him, in possession, nunc pro tunc, and have the lands therein assessed. Taylor v. Commissioners, 176 N. C. 217, 96 S. E. 1027 (1918).

§ **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 owners of the whole or any share of any tracts of land, whose names 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.)

Editor's Note.—It would seem that the probable meaning of this section would be made clearer by the deletion of the word "and" in line four.

Owners Bound if Section Is Followed.—By virtue of the notice required by this section the owners of land have opportunity to intervene and assert any right they might have to oppose the proceeding, if deemed contrary to their interest. Not having done so, they are bound by the judgment under which bonds were issued. Banks v. Lane, 170 N. C. 14, 86 S. E. 713 (1915).

Judgment Presumed Regular.—Where publication in accordance with this section has been made, every presumption is in favor of the regularity of the judgment. Taylor v. Commissioners, 176 N. C. 217, 96 S. E. 1027 (1918).

Mortgagee Must Assert Rights.—In proceedings to form a drainage district under this statute, notice by publication is given of the filing of the report in the office of the clerk of the superior court, which is open to inspection to the landowner or other person interested, and a mortgagee of lands who does not intervene and assert his rights to oppose the proceedings is bound by the final judgment. Banks v. Lane, 170 N. C. 14, 86 S. E. 713 (1915).

§ **156-59. Board of viewers appointed by clerk.**—Upon the return day the clerk shall 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 Board of Conservation and Development; 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.)

Cross Reference.—See Local Modification under § 156-56.

§ **156-60. Attorney for petitioners.**—The petitioners shall select some learned attorney or attorneys to represent them, who shall prosecute the drainage proceeding and advise with the petitioners and board of viewers, and shall agree upon the compensation for his professional services up to the time when the district shall be established and the board of drainage commissioners elected, or as nearly so as the same may be approximated. If the petitioners are unable to agree upon the selection of an attorney or attorneys, the selection may be made by the clerk of the court. The foregoing provision shall not interfere with the right of any individual petitioner in the selection of an attorney to represent his individual interests if he shall deem the same desirable or necessary. (1917, c. 152, s. 1; C. S., s. 5318.)

§ **156-61. Estimate of expense and manner of payment.**—The clerk shall 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. (1917, c. 152, s. 1; C. S., s. 5319; 1941, c. 342.)

Editor's Note.—The third sentence of this section was added by the 1941 amendment.

§ **156-62. Examination of lands and preliminary report.**—The board of

viewers shall proceed to examine the land described in the petition, and other land if necessary to locate properly such improvement or improvements as are petitioned for, along the route described in the petition, or any other route answering the same purpose if found more practicable or feasible, and may make surveys such as may be necessary to determine the boundaries and elevation of the several parts of the district, and shall make and return to the clerk of the superior court within thirty days, unless the time shall be extended by the court, a written report, which shall set forth:

1. Whether the proposed drainage is practicable or not.

2. Whether it will benefit the public health or any public highway or be conducive to the general welfare of the community.

3. Whether the improvement proposed will benefit the lands sought to be benefited.

4. Whether or not all the lands that are benefited are included in the proposed drainage district.

5. Whether or not the district proposed to be formed is to be a reclamation district or an improvement district. A reclamation district is defined to be a district organized principally for reclaiming lands not already under cultivation. An improvement district is defined to be a district organized principally for the improvement of lands then under cultivation. The board of viewers shall further report, if the district is a reclamation district within the above definition, whether or not the proposed drainage would be justified by the additional value for agricultural purposes given to land so drained.

They shall also file with this report a map of the proposed drainage district, showing the location of the ditch or ditches or other improvement to be constructed and the lands that will be affected thereby, and such other information as they may have collected that will tend to show the correctness of their findings. (1909, c. 442, s. 3; C. S., s. 5320; 1927, c. 98, s. 2.)

Editor's Note.—Paragraph 5, distinguishing between reclamation districts and improvement districts, was added by the 1927 amendment.

§ **156-63. First hearing of preliminary report.**—The clerk of the superior court shall consider this report. If the viewers report that the drainage is not practicable or that it will not benefit the public health or any public highway or be conducive to the general welfare of the community, and the court shall approve such findings, the petition shall be dismissed at the cost of the petitioners, and such petition shall likewise be dismissed at the cost of the petitioners if it is sought to set up a reclamation district and the viewers report that the cost of reclaiming the land would be so great as not to justify the expense of draining it. Such petition or proceeding may again be instituted by the same or additional landowners at any time after six months, upon proper allegations that conditions have changed or that material facts were omitted or overlooked. If the viewers report that the drainage is practicable and that it will benefit the public health or any public highway or be conducive to the general welfare of the community, and the court shall so find, then the court shall fix a day when the report will be further heard and considered. (1909, c. 442, s. 4; C. S., s. 5321; 1927, c. 98, s. 3.)

Editor's Note.—The last part of the second sentence of this section, providing that the petition be dismissed where it is sought to set up a reclamation district and the viewers report unfavorably as to the cost, was added by the 1927 amendment.

Date for Objections Set by Clerk.—See Shelton v. White, 163 N. C. 90, 79 S. E. 427 (1913).

§ **156-64. Notice of further hearing.**—If the petition is entertained by the court, notice shall be given by publication for two 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 dis-

trict, 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.)

§ **156-65. Further hearing, and district established.**—At the date appointed for the hearing the court shall hear and determine any objections that may be offered to the report of the viewers. If it appear that there is any land within the proposed levee or drainage district that will not be affected by the leveeing or drainage thereof, such lands shall be excluded and the names of the owners withdrawn from such proceeding; and if it shall be shown that there is any land not within the proposed district that will be affected by the construction of the proposed levee or drain, the boundary of the district shall be so changed as to include such land, and such additional landowners shall be made parties plaintiff or defendant, respectively, and summons shall issue accordingly, as hereinbefore provided. After such change in the boundary is made, the sufficiency of the petition shall be verified, to determine whether or not it conforms to the requirements hereinbefore provided. The efficiency of the drainage or levees may also be determined, and if it appears that the location of any levee or drain can be changed so as to make it more effective, or that other branches or spurs should be constructed, or that any branch or spur projected may be eliminated or other changes made that will tend to increase the benefits of the proposed work, such modification and changes shall be made by the board. The engineer and the other two viewers may attend this meeting and give any information or evidence that may be sought to verify and substantiate their report. If necessary, the petition, as amended, shall be referred by the court to the engineer and two viewers for further report. The above facts having been determined to the satisfaction of the court, and the boundaries of the proposed district so determined, it shall declare the establishment of the drainage or levee district, which shall be designated by a name or number, for the object and purpose as herein set forth.

If any lands shall be excluded from the district because of the court having found that such lands will not be affected or benefited, and the names of the owners of such lands have been withdrawn from such proceeding, but such lands are so situated as necessarily to be located within the outer boundaries of the district, such fact shall not prevent the establishment of the district, and such lands shall not be assessed for any drainage tax; but this shall not prevent the district from acquiring a right of way across such lands for constructing a canal or ditch or for any other necessary purpose authorized by law.

The court shall further determine, if it is sought to establish a reclamation district, whether or not the increased value of the particular land should be so great as to justify the cost and expenses of its reclaiming. (1909, c. 442, s. 6; 1911, c. 67, s. 2; C. S., s. 5323; 1927, c. 98, s. 4.)

Editor's Note.—The 1927 amendment added the second paragraph, which applies when the proposed district is a reclamation district. The distinction between reclamation and improvement districts was introduced by amendment and references to it will be found in §§ 156-56, 156-62, 156-63 and 156-98. The two classes of districts are defined in § 156-62, par. 5.

Public Benefits Govern.—It is because of the benefits which accrue to the public from the establishment of a drainage district under the statute, that power conferred thereby upon the court to include lands of owners who are unwilling to sign the petition, or who oppose the establishment of the district, is sustained. O'Neal v. Mann, 193 N. C. 153, 136 S. E. 379 (1927).

Minority Landowner Cannot Contest Formation of District.—A minority landowner included in a proposed drainage district to be laid out may not contest the formation of the district, but can raise only the issue as to his benefits therefrom. Shelton v. White, 163 N. C. 90, 79 S. E. 427 (1913).

Signer of Original Petition Can Object.—Upon report of the viewers at the final hearing in proceedings to lay off a

drainage district, one who signed the original petition may have ascertained from the information contained in the report, contrary to his previous opinion, that the cost of the improvements and damages will amount to more than the benefits to his land, and hence he may then file his objections, and the same procedure is then open to him as if he had not signed the petition. Shelton v. White, 163 N. C. 90, 79 S. E. 427 (1913).

A smaller drainage district may be laid off within the boundaries of a larger one, theretofore organized, the purposes of each harmonizing with the purposes of the other. Drainage Commissioners v. Eastern Home, etc., Ass'n, 165 N. C. 697, 81 S. E. 947 (1914).

§ **156-66. Right of appeal.**—Any person owning lands within the drainage or levee district which he thinks will not be benefited by the improvement and should not be included in the district may appeal from the decision of the court to the superior court of such county, in termtime, by filing an appeal, accompanied by a bond conditioned for the payment of the costs if the appeal should be decided against him, for such sum as the court may require, not exceeding two hundred dollars, signed by two or more solvent sureties or in some approved surety company to be approved by the court. (1909, c. 442, s. 8; C. S., s. 5324.)

Cross References.—As to appeal from final hearing, see § 156-75 and note. As to power to change route, see note to § 136-45.

Proceedings upon Appeal.—A petition for the establishment of a drainage district of a majority of the resident landowners or of the owners of three-fifths of the land therein, approved by the report of the viewers and affirmed by the clerk, permits a majority owner to raise only the issue of fact for the jury to determine as to the benefit to his lands; and should the jury find in favor of the objector, he is not entitled as a matter of right to have his land excluded, but it is for the judge to decide whether this may be done without injury to the district, and if not, he may order that such land be retained, upon payment of the damages to be awarded by the jury, as in condemnation of lands; all other matters embodied in the report are subject to approval by the clerk, and reviewal by the judge without the intervention of a jury, being questions of fact. Shelton v. White, 163 N. C. 90, 79 S. E. 427 (1913).

Proper Appeal Is Notice to Purchaser of Bond.—Where the owner of land in a drainage district has duly excepted under this section and again under § 156-75 and has appealed, the purchaser of bonds issued by the district takes with notice of the rights of the complaining party so excepting, and acquires the bonds subject thereto. Drainage District v. Parks, 170 N. C. 435, 87 S. E. 229 (1917).

Effect of Failure to Appeal.—Appeals are separately provided for under this section when the drainage district has been laid off, and under § 156-75 when the final act is passed upon; and where the complaining owner of land in the district has not entered an exception under either of these two sections as the statute provides, and bonds have been duly issued on the lands of the district for drainage purposes, and thereafter application has been made by the commissioners for the issuance of additional bonds, in the further proceedings he may not be permitted to go back and change the formation of the district and the classification and assessments already made, by attacking the reports of the engineers and viewers, and withdraw a large part of his lands from the district theretofore formed. Drainage District v. Parks, 170 N. C. 435, 87 S. E. 229 (1917).

§ **156-67. Condemnation of land.**—If it shall be necessary to acquire a right of way or an outlet over and through lands not affected by the drainage, and the same cannot be acquired by purchase, then and in such event the power of eminent domain is hereby conferred, and the same may be condemned. The owners of the land proposed to be condemned may be made parties defendant in the manner of an ancillary proceeding, and the procedure shall be substantially as provided by law for the condemnation of rights of way for railroads so far as the same may be applicable, and such damages as may be awarded as compensation shall be paid by the board of drainage commissioners out of the first funds which shall be available from the proceeds of sale of bonds or otherwise. (1909, c. 442, s. 7; C. S., s. 5325.)

§ **156-68. Complete survey ordered.** — After the district is established

the court shall refer the report of the engineer and viewers back to them to make a complete survey, plans, and specifications for the drains or levees or other improvements, and fix a time when the engineer and viewers shall complete and file their report, not exceeding sixty days. (1909, c. 442, s. 9; C. S., s. 5326.)

§ **156-69. Nature of the survey.**—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 along 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. (1909, c. 442, s. 10; C. S., s. 5327.)

§ **156-70. Assessment of damages.**—It shall be the further duty of the engineer and viewers to assess the damages claimed by anyone that are justly right and due to him for land taken or for inconvenience imposed because of the construction of the improvement, or for any other legal damages sustained. Such damages shall be considered separate and apart from any benefit the land would receive because of the proposed work, and shall be paid by the board of drainage commissioners when funds shall come into their hands. (1909, c. 442, s. 11; 1915, c. 238; 1917, c. 152, s. 16; C. S., s. 5328.)

Independent Action for Damages.—The principles that conclude parties to proceedings in the formation of drainage districts under the statute by final judgment, from a recovery of damages to their lands, applies to such as may have accrued in the laying out and the establishment of the district under the procedure prescribed, and does not prevent an injured proprietor, within or without the district, from maintaining his independent action to recover damages caused by an unauthorized and substantial departure from the scheme and plan established by the decrees and orders in the cause, nor where the damage complained of is attributable to the negligence of the company, or its officers or agents in carrying out the proposed work. Spencer v. Wills, 179 N. C. 175, 102 S. E. 275 (1920).

Same — Permanent Damages Recoverable.—The whole of plaintiff's land was originally included in a drainage district to be established under the statutory provisions, but the final judgment so restricted and modified the survey, plat and boundaries as to exclude all except a comparatively small portion of the land, the preliminary survey showing that a canal would go through the land included as well as through the land, or a large part thereof, excluded by the final judgment. There was no evidence that ancillary proceedings for this outside land by condemnation had been resorted to and it was held, that the plaintiff, in his independent action, may elect to recover the permanent damages caused to his land. Sawyer v. Drainage Dist., 179 N. C. 182, 102 S. E. 273 (1920).

Pendency of Proceedings as Notice to Landowners and Grantees.—The pendency

of a proceeding to lay off a drainage district under the provisions of the act is notice as to all the lands embraced in the district. And the grantees thereof are bound by the statutory requirements as to the procedure to recover damages to the lands, as were their grantors who were parties to the proceedings and who owned the lands at that time. Newby v. Drainage District, 163 N. C. 24, 79 S. E. 266 (1913).

Damage to Timber Included.—While under the drainage acts no assessments for benefits can be made against the owner of timber interests, only the land itself being liable, the owner of the land and of timber within the district, by the provision of the statute, when made a party to the proceedings and duly notified, is required to present his claim for the entire injury, inclusive of that to his timber, and the damages to the timber should thus be included and allowed in the final judgment in the proceedings. Lumber Co. v. Drainage Com'rs, 174 N. C. 647, 94 S. E. 457 (1917). And if this is not done, grantees of the landowner cannot recover damages for the loss of the timber in an action against the commissioners.

§ **156-71. Classification of lands.**—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. (1909, c. 442, s. 12; C. S., s. 5329; 1923, c. 217, s. 1.)

Cross Reference.—See § 156-104 as to application of this section.

Editor's Note.—The 1923 amendment added the last three sentences.

Classification Discretionary in Local Act.—The legislature, in authorizing the

establishment of a drainage district, may very largely commit to the commissioners the exercise of their judgment as to what should be done in carrying out the general provisions specified by the statute; and the special act of the legislature creating the Gaston County Drainage Commission, ch. 427, Public-Local Laws of 1911, thus construed, does not relieve a landowner therein from paying his authorized assessments for benefits solely because the commission failed to strictly and literally divide the lands into the number of classes therein set out. Mitchem v. Drainage Comm., 182 N. C. 511, 109 S. E. 551 (1921).

§ 156-72. Extension of time for report.—In case the work is delayed by high water, sickness, or any other good cause, and the report is not completed at the time fixed by the court, the engineer and viewers shall appear before the court and state in writing the cause of such failure and ask for sufficient time in which to complete the work, and the court shall set another date by which the report shall be completed and filed. (1909, c. 442, s. 14; C. S., s. 5330.)

§ 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 for at least two 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 person interested within the district. (1909, c. 442, s. 15; C. S., s. 5331.)

When Publication Unnecessary.—It is not necessary to the validity of bonds issued by a drainage district, that the notice of the time of hearing objections to the final report was not published in some newspaper of general circulation in the county, when it appears that no newspaper was published therein, or elsewhere, which has a general circulation in the county, and that the landowners affected had actual and ample notice of such time and raised no objection. Board v. Brett Engineering Co., 165 N. C. 37, 80 S. E. 897 (1914).

§ 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 Board of Conservation and Development 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. (1909, c. 442, s. 16; 1915, c. 238, s. 2; 1917, c. 152, s. 16; C. S., s. 5332; 1925, c. 122, s. 4.)

Effect of Final Decree.—A final decree in proceedings to lay off a statutory drainage district is an adjudication that the benefits derived to the land within the dis-

trict are more than the burdens assessed against it for such purpose. Banks v. Lane, 170 N. C. 14, 86 S. E. 713 (1915).

Failure to Object Is Waiver. — The question as to whether an owner of land within a drainage district has realized the benefits anticipated is eliminated when there is the establishment of the district upon the report; and where such owner remains silent or makes no objection or exception at the proper time as to the proceedings of the board, his silence is a waiver of any right he may have therein had, and the independent remedy by injunction is not open to him. Mitchem v. Drainage Comm., 182 N. C. 511, 109 S. E. 551 (1921).

Where a drainage district has been duly laid off in conformity with the statute, and a landowner therein has not excepted to either the preliminary or final report, he may not after the appointment of the commissioners, be heard to complain that the benefits he is to receive are not as great as those he had contemplated. Griffin v. Board, 169 N. C. 642, 86 S. E. 575 (1915).

§ **156-75. Appeal from final hearing.**—Any party aggrieved may, within ten days after the confirmation of the assessor's report, appeal to the superior court in termtime. Such appeal shall be taken and prosecuted as now provided in special proceedings. Such appeal shall be based and heard only upon the exceptions theretofore filed by the complaining party, either as to issues of law or fact, and no additional exceptions shall be considered by the court upon the hearing of the appeal. In any appeal to the superior court in termtime or in chambers taken under this section or any other section or provision of the drainage laws of the State, general or local, the same shall have precedence in consideration and trial by the court. If other issues also have precedence in the superior court under existing law, the order in which the same shall be heard shall be determined by the court in the exercise of a sound discretion. (1909, c. 442, s. 17; 1911, c. 67, s. 3; C. S., s. 5333; 1923, c. 217, s. 2.)

Cross References.—See § 156-104 as to application of this section. See also note to § 156-66.

Editor's Note.—The last two sentences were added by the 1923 amendment.

In General.—This section providing for an appeal upon exception to the final report by an owner of lands in a drainage district laid off under the provisions of the statute necessarily refers to the formation of the district and the assessments of the lands embraced in it. Drainage District v. Parks, 170 N. C. 435, 87 S. E. 229 (1917).

Authority of Referee.—Where, by consent of the parties to an action, the court has ordered a referee for hearing and determining "all matters in controversy," and the controversy has arisen upon exceptions taken by a landowner to the final report on the plan and assessments made in forming a drainage district, by this section, the complaining party may not successfully except to the authority of the referee in passing upon questions therein arising which have been referred to him. Drainage District v. Parks, 170 N. C. 435, 87 S. E. 229 (1917).

Appeal Only upon Exceptions Filed Below.—An appeal from the final order of the clerk in establishing a drainage district under the provisions of this section is heard only upon the exceptions thereto filed as to issues of law or fact. In re Drainage District, 162 N. C. 127, 78 S. E. 14 (1913). Shelton v. White, 163 N. C. 90, 79 S. E. 427 (1913). And it is sufficient that the clerk has found as a fact that the allegations set out in the petition are true, if these allegations are sufficient, and distinctly and clearly made. In re Drainage District, 162 N. C. 127, 78 S. E. 14 (1913).

§ **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 Board of Conservation and Development and with the petitioners. The compensation to be paid the two members of the board of viewers, other than the engineer, shall not exceed four dollars per day 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.)

§ 156-77. Account of expenses filed.—The engineer and viewers shall keep an accurate account and report to the court the name and number of days each person was employed on the survey and the kind of work he was doing, and any expenses that may have been incurred in going to and from the work, and the cost of any supplies or material that may have been used in making the survey. (1909, c. 442, s. 13; C. S., s. 5335.)

§ 156-78. Drainage record.—The clerk of the superior court shall provide a suitable book, to be known as the "Drainage Record," in which he shall transcribe every petition, motion, order, report, judgment, or finding of the board in every drainage transaction that may come before it, in such a manner as to make a complete and continuous record of the case. Copies of all the maps and profiles are to be furnished by the engineer and marked by the clerk "official copies," which shall be kept on file by him in his office, and one other copy shall be pasted or otherwise attached to his record book. (1909, c. 442, s. 18; C. S., s. 5336.)

Purpose of Record Book.—Upon the filing of the final report by the viewers, etc., in a proceeding to establish a drainage district under the provisions of the statute, a record is required by the statute to be kept in a book for the purpose, giving all interested in the proceedings notice of all that has been done materially affecting them; and when they have failed to make objection within three years, semble, they have lost their right to object, by the delay. Griffin v. Board, 169 N. C. 642, 86 S. E. 575 (1915).

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. The treasurer of the county in which the proceeding was instituted shall be ex officio treasurer of such drainage commissioners. 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.)

Local Modification.—Columbus, Chadburn Drainage District: 1939, c. 70; Hyde, Mattamuskeet Lake District: 1909, c. 509; Pub. Loc. 1927, c. 407; Iredell, Davidson Creek Drainage District: 1933, c. 466.

See also, Local Modification under § 156-56.

Editor's Note.—The 1947 amendment substituted in the fifth sentence the words "by the clerk of the superior court" for the words "in like manner."

Individual Acts of Officials Do Not Bind District.—A drainage district is a corporation and as any other corporation, public or private, cannot be bound by the acts of its officials or agents acting sep-

arately or individually. Davenport v. Pitt County Drainage Dist., 220 N. C. 237, 17 S. E. (2d) 1 (1941).

Conferring Special Rights on One Landowner.—The board of drainage commissioners, being a quasi-public corporation, created for the "public benefit", the powers usually pertaining to such corporations would not authorize a drainage district to enter into a contract that would give special or particular rights or claims to one landowner in the drainage district that is not enjoyed by all landowners similarly situated. Davenport v. Pitt County Drainage Dist., 220 N. C. 237, 17 S. E. (2d) 1 (1941).

Appointment of Commissioners under Special Act.—As to appointment of commissioners for particular drainage district established under special act, see State v. Gibbs, 156 N. C. 44, 72 S. E. 82 (1911).

§ **156-80. Name of districts.**—The name of such drainage district shall constitute a part of its corporate name; for illustration, the board of drainage commissioners of Mecklenburg Drainage District, No. 1. In the naming of a drainage district the clerk of the court, notwithstanding the name given in the petition, shall so change the name as to make it conform to the county within which the district, or the main portion of the district, is located, and such district shall also be designated by number, the number to indicate the number of districts petitioned for in the county. For illustration, the first district organized in Mecklenburg County would be Mecklenburg County Drainage District, No. 1; the name of the second would be Mecklenburg County Drainage District, No. 2; the fifth one organized would be Mecklenburg County Drainage District, No. 5: Provided, that so much of this section as provides for numbering the districts in each county shall not apply to districts in which bonds have been issued and sold prior to the fifth day of March, one thousand nine hundred and seventeen. (1909, c. 442, s. 19; 1917, c. 152, s. 17; C. S., s. 5338.)

§ **156-81. Election and organization under amended act.**—1. Method of Election.—In the election of drainage commissioners by the owners of land, each landowner shall be entitled to cast the number of votes equaling the number of acres of land owned by him and benefited, as appears by the final report of the viewers. Each landowner may vote for the names of three persons for commissioners. If any person or persons in any district shall own land in any district containing an area greater than one-half of the total area in the district, such owner shall only be permitted to elect two of the drainage commissioners, and a separate election shall be held under the direction of the clerk by the minority landowners, who shall elect one member of the drainage commissioners.

In lieu of the above method of election of drainage commissioners, the clerk of the superior court may, in his discretion, appoint such drainage commissioners and such drainage commissioners so appointed by the clerk shall have the same authority as if they had been elected by the method above described.

2. Organization.—Immediately after the election of the board of drainage commissioners, and after the members of the board shall be appointed by the clerk, the clerk of the court shall notify each of them in writing to appear at a certain time and place within the county and organize. The clerk of the superior court shall appoint one of the three members as chairman of the board of drainage commissioners, and in doing so he shall consider carefully and impartially the respective qualifications of each of the members for the position.

3. Term of Office.—The term of service of the members of the board of drainage commissioners so elected and appointed shall begin immediately after their organization. One commissioner shall serve for one year, one for two years, and the other for three years, the term to be computed from the first day of October following their organization. The members so serving for one, two, and three years, respectively, shall be designated by the clerk of the court or designated by lot among the members, in the discretion of the clerk. Thereafter each member shall be elected for three years. In the year when the term of any member or members shall expire the clerk of the court shall provide for an election of

their successors to be held on the second Monday in August preceding the expiration of their term on the thirtieth day of September. The clerk of the court shall record in the drainage record the date of election, the members elected, and the beginning and expiration of their term of office.

4. Vacancies Filled.—If a vacancy shall occur in the office of any commissioner by death, resignation, or otherwise, the remaining two members are to discharge the necessary duties of the board until the vacancy shall be filled; and if the vacancy shall be in the office of chairman or secretary, the two remaining members may elect a secretary, and the clerk shall appoint one of the two remaining members to act as chairman to hold until the vacancy in the board shall be filled. The clerk shall keep a similar record of any election to fill vacancies, and the member or members shall be elected in like manner as the original members, and shall serve until the expiration of the term of his predecessor. The secretary of the board of drainage commissioners shall promptly notify the clerk of the superior court of any vacancy in the board.

5. Failure to Elect.—If for any reason the clerk of the court shall fail to provide for an election of drainage commissioners on the second Monday in August to succeed those whose terms will expire on the thirtieth day of September, the clerk shall have authority at the most convenient date thereafter to provide for such election, and in the meantime the incumbents shall continue to hold their office as commissioners until their successors are elected and qualified. The term of office of boards of drainage commissioners heretofore elected and appointed shall expire on the thirtieth day of September, nineteen hundred and seventeen, and their successors shall be elected on the second Monday in August, nineteen hundred and seventeen, in the manner provided by law.

6. Meetings.—The board shall meet once each month at a stated time and place during the progress of drainage construction, and more often if necessary. After the drainage work is completed, or at any time, the chairman shall have the power to call special meetings of the board at a certain time and place. The chairman shall also call a meeting at any time upon the written request of the owner of a majority in area of the land in the district.

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 five dollars ($5.00) 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.

8. Application of Section.—The provisions of this section shall apply to all drainage districts now or hereafter existing in this State, without regard to the date of organization, whether before or after April 14, 1949.

9. Appointment by Clerk of Superior Court as Alternative to Election.—In lieu of the methods of election and filling of vacancies in the position of drainage commissioner as provided in § 156-79 and this section, the clerk of the superior court may, in his discretion, appoint such drainage commissioners and fill such vacancies, and such drainage commissioners so appointed by the clerk shall have the same authority and responsibility as if they had been elected or appointed

as provided under § 156-79 or this section. (1917, c. 152, s. 5; 1919, cc. 109, 217; C. S., s. 5339; 1947, c. 935; 1949, c. 956, ss. 1-3.)

Local Modification.—Hyde, Mattamuskeet Drainage District: C. S. 5339; Pitt: 1935, c. 469, s. (4a); 1939, c. 350.

Editor's Note. — The 1947 amendment added the second paragraph of subsection 1. The 1949 amendment rewrote subsections 7 and 8 and added subsection 9.

Where one of three drainage commissioners dies, the two surviving have authority, until the election and qualification of their successors, to levy an additional assessment against the lands of the district necessary to discharge the obligations of the district. Peoples Loan, etc., Bank v. King, 212 N. C. 349, 193 S. E. 663 (1937).

§ 156-82. Validation of election of members of drainage commission. —All irregularities caused by failure of any officer whose duty it was to provide for the election of a member or members of board of drainage commissioners of any drainage district, or the failure of any candidate to make a deposit as may be required by law, shall not invalidate such election where the following facts appear affirmatively:

(a) That said election was held at the time and place prescribed by law.

(b) That a ballot box was provided for the ballots cast for drainage commissioner.

(c) That the ballots were canvassed and the results declared by the judge of the general election.

(d) That the candidate receiving the greatest number of votes was declared elected.

(e) That no candidate for election as a member of board of drainage commissioners made any deposit as prescribed by law.

(f) That the candidate receiving the majority votes at said election has already qualified and is acting as such drainage commissioner.

This section shall not apply to any election contested before March 9, 1921. (1921, c. 210; C. S., s. 5339(a).)

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, by and with the approval and recommendation of the Board of Conservation and Development. Such superintendent of construction shall furnish a copy of his monthly and final estimates to the Board of Conservation and Development, 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. (1909, c. 442, s. 20; C. S., s. 5340; 1923, c. 217, s. 3; 1925, c. 122, s. 4.)

Cross Reference.—See § 156-104 as to application of this section.

§ 156-84. Letting contracts.—The board of drainage commissioners shall cause notice to be given for two consecutive weeks 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 twenty-five 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.)

Power of Commissioners Is Discretionary.—This section directs that the levee or drainage commissioners shall convene with the superintendent of construction and let the work contemplated to the "lowest responsible bidder", thereby conferring a discretionary power in adjudging the responsibility of the bidder, in all respects, with which the courts will not interfere in the absence of undue influence or a procurement by fraud. Sanderlin v. Luken, 152 N. C. 738, 68 S. E. 225 (1910).

Acceptance of Work by Commissioners.—The acceptance of the work of the contractors as a compliance on their part with the contract is a judicial act of the board of commissioners and cannot be questioned except for fraud or collusion, and then only to make the commissioners personally and individually liable. Craven v. Board, 176 N. C. 531, 97 S. E. 470 (1918).

Section Authorizes Only Minor Changes in Report.—The authority given by this section to correct errors and modify the details of the report contemplates only such minor changes of detail as may occur in carrying out the plans, etc., specified in the final report and not a substantial departure therefrom. Griffin v. Board, 169 N. C. 642, 86 S. E. 575 (1915).

§ **156-85. Monthly estimates for work and payments thereon; final payment.**—The superintendent in charge of construction shall make monthly estimates of the amount of work done, and furnish one copy to the contractor and file the other with the secretary of the board of drainage commissioners; and the commissioners shall, within five days after the filing of such estimate, meet and direct the secretary to draw a warrant in favor of such contractor for ninety per centum of the work done, according to the specifications and contracts; and upon the presentation of such warrant, properly signed by the chairman and secretary, to the treasurer of the drainage fund, he shall pay the amount due thereon. When the work is fully completed and accepted by the superintendent he shall make an estimate for the whole amount due, including the amounts withheld on the previous monthly estimates, which shall be paid from the drainage fund as before provided. (1909, c. 442, s. 22; C. S., s. 5342.)

§ **156-86. Failure of contractors; reletting.**—If any contractor to whom such work has been let shall fail to perform the same according to the terms specified in his contract, action may be had in behalf of the board of drainage commissioners against such contractor and his bond in the superior court for damages sustained by the levee or drainage district, and recovery made against such contractor and his sureties. In such an event the work shall be advertised

and relet in the same manner as the original letting. (1909, c. 442, s. 23; 1911, c. 67, s. 5; C. S., s. 5343.)

§ **156-87. Right to enter upon lands; removal of timber.**—In the construction of the work the contractor shall have the right to enter upon the lands necessary for this purpose and the right to remove private or public bridges or fences and to cross private lands in going to or from the work. In case the right of way of the improvement is through timber the owner thereof shall have the right to remove it, if he so desires, before the work of construction begins, and in case it is not removed by the landowner it shall become the property of the contractor and may be removed by him. (1909, c. 442, s. 24; C. S., s. 5344.)

Cross Reference.—As to recovery of damages for timber, see note to § 156-70.

Purpose of Section.—The drainage acts contemplate that all damages to the owner of lands shall be assessed, including the taking of his timber necessary to carry out its plans, this section being designed to give the owner of the timber the privilege of taking such timber if he so elects. Lumber Co. v. Drainage Com'rs, 174 N. C. 647, 94 S. E. 457 (1917).

Not an Unlawful Taking.—The objection that this section is an unconstitutional taking of the owner's timber and giving it to the contractor, without compensation, cannot be maintained. Lumber Co. v. Drainage Com'rs, 174 N. C. 647, 94 S. E. 457 (1917).

§ **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 and Public Works 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 and Public Works 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 and Public Works Commission, by reason of enlarging any watercourse, or of ex-

cavating any canal intersecting such highway, such bridge shall thereafter be maintained by and at the expense of the official board of 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 and Public Works 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.)

Editor's Note. — The 1947 amendment inserted the first two paragraphs and made changes in the third paragraph. The word "of" in the phrase "official board of authority" near the end of the third paragraph was probably intended to read "or," as it does in the Consolidated Statutes, although in the 1947 act it appears as "of."

§ 156-89. Drainage across railroads; procedure.—Whenever the engineer and the viewers in charge shall make a survey for the purpose of locating a public levee or drainage district or changing a natural watercourse, and the same would cross the right of way of any railroad company, it shall be the duty of the owner in charge of the work to notify the railroad company, by serving written notice upon the agent of such company or its lessee or receiver, that they will meet the company at the place where the proposed ditch, drain, or watercourse crosses the right of way of such company, the notice fixing the time of such meeting, which shall not be less than ten days after the service of the same, for the purpose of conferring with the railroad company with relation to the place where and the manner in which such improvement shall cross such right of way. When the time fixed for such conference shall arrive, unless for good cause more time is agreed upon, it shall be the duty of the viewers in charge and the railroad company to agree, if possible, upon the place where and the manner and method in which such improvement shall cross such right of way. If the viewers in charge and the railroad company cannot agree, or if the railroad company shall fail, neglect, or refuse to confer with the viewers, they shall determine the place and manner of crossing the right of way of the railroad company, and shall specify the number and size of openings required, and the damages, if any, to the railroad company, and so specify in their report. The fact that the railroad company is required by the construction of the improvement to build a new bridge or culvert or to enlarge or strengthen an old one shall not be considered as damages to the railroad company. The engineer and viewers shall also assess the benefits that will accrue to the right of way, roadbed, and other property of the company by affording better drainage or a better outlet for drainage, but no benefits shall be assessed because of the increase in business that may come to the road because of the construction of the improvement. The benefits shall be assessed as a fixed sum, determined solely by the physical benefit that its property will receive by the construction of the improvement, and it shall be reported by the viewers as a special assessment, due personally from the railroad company as a special assessment; it may be collected in the manner of an ordinary debt in any court having jurisdiction. (1909, c. 442, s. 26; C. S., s. 5346.)

Mandamus against County Commissioners.—A judgment in proceedings for mandamus against the county commissioners to compel them to pay an assessment of a drainage district for benefit to the public roads therein, that the defendants pay the same, with interest and cost, out of the first moneys coming into their hands and not otherwise appropriated, is valid and not in violation of the Constitution or statutes relating to taxation. Drainage District v. Board, 174 N. C. 738, 94 S. E. 530 (1917).

§ **156-90. Notice to railroad.**—The clerk of the superior court shall have notice served upon the railroad company of the time and place of the meeting to hear and determine the final report of the engineer and viewers, and the railroad company shall have the right to file objections to the report and to appeal from the findings of the board of commissioners in the same manner as any landowner. But such an appeal shall not delay or defeat the construction of the improvement. (1909, c. 442, s. 27; C. S., s. 5347.)

§ **156-91. Manner of construction across railroad.**—1. Duty of Railroad.—After the contract is let and the actual construction is commenced, if the work is being done with a floating dredge, the superintendent in charge of construction shall notify the railroad company of the probable time at which the contractor will be ready to enter upon the right of way of such railroad and construct the work thereon. It shall be the duty of the railroad to send a representative to view the ground with the superintendent of construction and arrange the exact time at which such work can be most conveniently done. At the time agreed upon the railroad company shall remove its rails, ties, stringers, and such other obstructions as may be necessary to permit the dredge to excavate the channel across its right of way. The work shall be so planned and conducted as to interfere in the least possible manner with the business of the railroad.

2. Utilities Commission to Settle.—If the superintendent of construction and the railroad company shall not be able to agree as to the exact time at which such work can be done, including the time of beginning and the time to be consumed in such work, either party may give written notice thereof to the chairman of the Utilities Commission of the State, and thereupon the Utilities Commission shall cause an investigation to be made, and, after hearing both parties, shall fix the time of beginning such work and the time to be consumed in the work of construction, and the final determination of the Utilities Commission thereon shall be binding upon the superintendent of construction representing the district and the railroad company, and the work shall be done in such time as may be fixed by the Utilities Commission.

3. Penalty for Delay.—In case the railroad company refuses and fails to remove its track and allow the dredge to construct the work on its right of way, it shall be held as delaying the construction of the improvement, and such company shall be liable to a penalty of twenty-five dollars per day for each day of delay, to be collected by the board of drainage commissioners for the benefit of the drainage district as in the case of other penalties. Such a penalty may be collected in any court having jurisdiction, and shall inure to the benefit of the drainage district.

4. Payment of Expense.—Within thirty days after the work is completed an itemized bill for actual expenses incurred by the railroad company for opening its tracks shall be made and presented to the superintendent of construction of the drainage improvement. Such bill, however, shall not include the cost of putting in a new bridge or strengthening or enlarging an old one. The superintendent of construction shall audit this bill and, if found correct, approve the same and file it with the secretary of the board of drainage commissioners. The commissioners shall deduct from this bill the cost of the excavation done by the dredge on the right of way of the railroad company at the contract price, and pay the difference, if any, to the railroad company. (1909, c. 442, s. 28; 1911, c. 67, s. 7; C. S., s. 5348; 1933, c. 134, s. 8; 1941, c. 97, s. 1.)

§ **156-92. Control and repairs by drainage commissioners.**—Whenever any improvement constructed under this subchapter is completed it shall be under the control and supervision of the board of drainage commissioners. It shall be the duty of the board to keep the levee, ditch, drain, or watercourse in good repair, and for this purpose they may levy an assessment on the lands benefited by the maintenance or repair of such improvement in the same manner

and in the same proportion as the original assessments were made, and the fund that is collected shall be used for repairing and maintaining the ditch, drain, or watercourse in perfect order: Provided, however, that if any repairs are made necessary by the act or negligence of the owner of any land through which such improvement is constructed or by the act or negligence of his agent or employee, or if the same is caused by the cattle, hogs, or other stock of such owner, employee, or agent, then the cost thereof shall be assessed and levied against the lands of the owner alone, to be collected by proper suit instituted by the drainage commissioners. It shall be unlawful for any person to injure or damage or obstruct or build any bridge, fence, or floodgate in such a way as to injure or damage any levee, ditch, drain, or watercourse constructed or improved under the provisions of this subchapter, and any person causing such injury shall be guilty of a misdemeanor, and upon conviction thereof may be fined in any sum not exceeding twice the damage or injury done or caused. (1909, c. 442, s. 29; C. S., s. 5349; 1947, c. 982, s. 1.)

Editor's Note.—Sections 156-118 and 156-123 were added by Public Laws 1923, ch. 231 and have the effect of amending this section. This section authorizes the drainage commissioners to levy an assessment upon the lands in the district for the purpose of keeping up the drainage. The amending statutes provide that the commissioners may issue bonds instead of levying an assessment. In order to do so, they must file a petition with the clerk of the superior court showing the nature of the work to be done, that the expense will be more than one dollar per acre for the lands in the district, and to raise the money by one assessment would be an unreasonable burden upon the land. Upon filing such petition, the proceeding is somewhat similar to the original organization of the district, requiring the appointment of a board of viewers, and their report as to whether the bonds should be issued, the filing of maps and profiles, with a reclassification of the lands if found to be necessary. If the commissioners think it would help the sale of the bonds, they may, with the approval of the clerk of the superior court, add to the amount so to be secured an amount sufficient to cover all the obligations of the district, so as to have only one bond issue. See 1 N. C. Law Rev. 288.

The 1947 amendment substituted "maintenance or repair" for "construction" in the second sentence.

Provision Limiting Assessments. — A provision in the petition limiting the amount of assessments to be made on lands within a drainage district being formed under the provisions of the statute, which was not inserted in the final judgment rendered in due course, may not at a subsequent term be supplied by amendment, being also contrary to the statutory provisions and invalid. Mann v. Mann, 176 N. C. 353, 97 S. E. 175 (1918).

Meaning of Original Assessments.—Under the provisions of the statute creating the Mattamuskeet Drainage District the control thereof, after its completion, is continued in the board of drainage commissioners for the purpose of its maintenance, and authority is given it to levy assessments therefor on the lands benefited in the same manner and in the same proportion as the "original assessments" were made, and collected by the same officers as those by whom the State and county taxes are collected: It was held that the term "original assessments" refers to those made for construction work on bonds issued therefor, and the assessments for maintenance should be collected by the sheriff of the county for the purpose of maintenance, as taxes for general county purposes are to be collected by him. Drainage Com'rs v. Davis, 182 N. C. 140, 108 S. E. 506 (1921).

Cited in Robeson County Drainage Dist. v. Bullard, 229 N. C. 633, 50 S. E. (2d) 742 (1948).

§ **156-93. Construction of lateral drains.**—The owner of any land that has been assessed for the cost of the construction of any ditch, drain, or watercourse, as herein provided, shall have the right to use the ditch, drain, or watercourse as an outlet for lateral drains from such land; and if the land be of such elevation that the owner cannot secure proper drainage through and over his own land, or if the land is separated from the ditch, drain, or watercourse by the land of another or others, and the owner thereof shall be unable to agree with such others as to the terms and conditions on which he may enter their lands and

construct the drain or ditch, he may file his ancillary petition in such pending proceeding to the court, and the procedure shall be as now provided by law. (1909, c. 442, s. 30; 1915, c. 43, s. 1; 1917, c. 152, s. 3; C. S., s. 5350.)

Article 7A.

Maintenance.

§ 156-93.1. Maintenance assessments and contracts; engineering assistance, construction equipment, etc.; joint or consolidated maintenance operations.—(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 commissioners and shall not exceed an average of one dollar ($1.00) per acre per year and the amount of these assessments shall 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.

(2) The board of drainage commissioners of a drainage district may join with the commissioners of one or more districts for the purpose of employing engineering assistance, equipment, superintendents and equipment operators for the maintenance of the canals in the several districts desiring to co-ordinate their maintenance operations and the drainage districts desiring to co-ordinate a common maintenance force may have a common office with the necessary employees for the furtherance of the joint operations for maintenance. The districts may co-ordinate their work without regard to county lines.

(3) The board of commissioners of a drainage district may, individually or jointly with the commissioners of other drainage districts, purchase, lease, rent, sell, or otherwise dispose of at public or private sale, equipment for the original construction or maintenance of the canals in the individual or joint districts or the said drainage districts may make contracts with private construction firms for the maintenance and construction of their canals. Contracts made with private construction companies are to be advertised as provided for the contract for the original construction of the canals.

The drainage districts may use the equipment owned by them for the purpose of maintenance of the canals and the construction of extensions to the system of canals in the individual or several drainage districts.

(4) The drainage districts desiring to consolidate their maintenance services and equipment may set up a board composed of one member from each district for the purpose of control and use of the personnel and equipment employed on a joint basis, and in all matters coming before the joint board, the representative of each district shall have a voting strength equal to the proportionate acreage of his drainage district as compared with the total acreage of the combined districts.

(5) The collection of the annual maintenance assessments shall be made by the county tax collector. The board of county commissioners of the county in which a drainage district is located shall upon the request of the board of drainage commissioners of the said district cause to be shown on the tax statement or notice issued by the county to its taxpayers the amount due the drainage district by the landowners in the same manner as other special assessments are shown thereon. This amount shall be collected by the county tax collector in the same manner as county taxes and deposited to the credit of the district in which the land is located. (1949, c. 1216.)

Article 8.

Assessments and Bond Issue.

§ 156-94. Total cost for three years ascertained.—After the classification of lands and the ratio of assessments of the different classes to be made thereon has been confirmed by the court, the board of drainage commissioners shall ascertain the total cost of the improvement, including damages awarded to be paid to owners of land, all costs and incidental expenses, and also including an amount sufficient to pay the necessary expenses of maintaining the improvement for a period of three years after the completion of the work of construction, not exceeding ten per centum of the estimated actual cost of constructing the drainage works or the contract price thereof if such contract has not been awarded, and after deducting therefrom any special assessments made against any railroad or highway, and, thereupon, the board of drainage commissioners, under the hand of the chairman and secretary of the board, shall certify to the clerk of the superior court the total cost, ascertained as aforesaid; and the certificate shall be forthwith recorded in the drainage record and open to inspection of any landowner in the district. (1909, c. 442, s. 31; 1911, c. 67, s. 8; C. S., s. 5351; 1923, c. 217, s. 4.)

Cross Reference.—See § 156-104 as to application of this section.

Editor's Note.—This section which requires an estimate of the expense necessary for maintaining for three years the improvement constructed, was changed by the 1923 amendment by adding a limitation, "not exceeding ten per centum of the estimated actual cost of constructing the drainage works or the contract price thereof." See 1 N. C. Law Rev. 287.

§ 156-95. Assessment and payment; notice of bond issue. — If the total cost of the improvement is less than an average of twenty-five cents per acre on all the land in the district, the board of drainage commissioners shall forthwith assess the lands in the district therefor, in accordance with their classification, and said assessment shall be collected in one installment, by the same officer and in the same manner as State and county taxes are collected, and payable at the same time. In case the total cost exceeds an average of twenty-five cents per acre on all lands in the district, the board of drainage commissioners shall give notice for three weeks by publication in some newspaper published in a county in which the district, or some part thereof, is situated, if there be any such newspaper, and also by posting a written or printed notice at the door of the courthouse and at five conspicuous places in the district, reciting that they propose to issue bonds for the payment of the total cost of the improvement, giving the amount of bonds to be issued, the rate of interest that they are to bear, and the time when payable. Any landowner in the district not wanting to pay interest on the bonds may, within fifteen days after the publication of such notice, pay to the county treasurer the full amount for which his land is liable, to be ascertained from the classification sheet and the certificate of the board showing the total cost of the improvement, and have his lands released from liability to be assessed for the improvement; but such land shall continue liable for any future assessment for maintenance or for any increased assessment authorized under the law. (1909, c. 442, s. 32; 1911, c. 67, s. 9; C. S., s. 5352.)

Assessments Not "Taxes." — Assessments made for the maintenance of a drainage district, incorporated under the provisions of the statute, are not "taxes," though they may be so incorrectly denominated therein; they are only assessments made for the special benefits to the land within the district and not imposed for the purpose of general revenue. Drainage Com'rs v. Davis, 182 N. C. 140, 108 S. E. 506 (1921).

Assessments Are Liens in Rem.—Assessments upon lands in a drainage district are liens in rem, resting upon the lands, into whosever hands it may be at the time they accrue, and do not come within the terms of a warranty against encumbrances by deed. Taylor v. Commissioners, 176 N. C. 217, 96 S. E. 1027 (1918).

Timber Interest Not Liable.—A conveyance of the timber, under the usual deed,

providing for its cutting and removal from the land within a stated period, is regarded as a severance thereof from the land, and the grantee in the deed is not liable for an assessment for drainage purposes laid thereon. Dover Lumber Co. v. Board of Commissioners, 173 N. C. 117, 91 S. E. 714, 845 (1917).

One Owner Not Liable for Failure of Others.—No owner is responsible for other owners by reason of their failure to pay, except through the method of assessment provided by the statute. Carter v. Drainage Commissioners, 156 N. C. 183, 72 S. E. 380 (1911).

Owner Liable for Additional Assessments.—The land of the owner who has paid his assessments, as provided by this section, is subject to additional assessments, the lands in the district being liable until the original bond issue for making the improvements or indebtedness incurred therefor is paid in full. Virginia-Carolina Joint Stock Land Bank v. Watt, 207 N. C. 577, 178 S. E. 228 (1935).

Courts Can Enjoin Collection of Assessments.—The courts, in proper instances, have the power to interfere and stay amounts assessed against the owner of lands within an established drainage district, when it appears that the commissioners, in carrying out the ministerial duties imposed on them, endeavor to collect from him a sum in excess of their own assessment, or that they had made out these rolls in utter disregard to the classifications and ratio of assessments established by the final report, or they had made such changes in the plans and specifications thereof as to exceed their powers and work substantial wrong and hardship upon a landowner, if he is not guilty of laches and has not unduly delayed asserting his rights. Griffin v. Board, 169 N. C. 642, 86 S. E. 575 (1915).

But where a drainage district has been fully and lawfully established in accordance with the statute, and the commissioners duly appointed and bonds issued in furtherance of the scheme, an injunction restraining the collection of the assessment against the landowners therein, at the suit of one of them, will not issue, as against the interest of the holder of the bonds, unless it clearly appears that the commissioners have substantially departed, to the injury of the claimant, from the scheme set forth in the final report of the viewers, etc.; and it appearing in this case that such has not been done, the restraining order is properly dissolved, and the further order that the plaintiff may proceed in his action against the commissioners is approved. Griffin v. Board, 169 N. C. 642, 86 S. E. 575 (1915).

Purchaser Takes with Notice of Assessments.—The purchaser of lands within a drainage district formed under the provisions of this chapter is fixed by the statute with notice of the assessments and the time thereof, whether a resident of another state or not. Pate v. Banks, 178 N. C. 139, 100 S. E. 251 (1919).

Presumption as to Notice.—The presumption is in favor of the regularity of the official proceedings of the commissioners of a drainage district, and applies as to the sufficiency of notice to a landowner within the district of a meeting duly had to assess such owners according to benefits received from the improvements therein. Mitchem v. Drainage Comm., 182 N. C. 511, 109 S. E. 551 (1921).

Waiver of Notice.—Where the owner of land in a drainage district, formed under the provisions of the statute, appears at a meeting of the commissioners held for the purpose, and is silent, making no objection or exception to the assessment imposed upon his land, the question as to whether he had been sufficiently served with notice of the meeting becomes immaterial, his appearance being construed as a waiver thereof, or rather as dispensing with formal notice. And he cannot collaterally, by injunction, restrain the collection of these assessments by sheriff's sale; and this applies to his grantee who knew that the lands were situate within the district and subject to the assessments. Mitchem v. Drainage Comm., 182 N. C. 511, 109 S. E. 551 (1921).

Cited in Board of Drainage Com'rs v. Jarvis, 211 N. C. 690, 191 S. E. 514 (1937).

§ **156-96. Failure to pay deemed consent to bond issue.**—Every person owning land in the district who shall fail to pay to the county 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 hereinbe-

fore 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.)

Cited in Board of Drainage Com'rs v. Jarvis, 211 N. C. 690, 191 S. E. 514 (1937).

§ **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 county treasurer. It shall be optional with the board of drainage commissioners in the issuing of bonds to issue serial bonds in denominations of not less than one hundred dollars nor more than one thousand dollars, bearing not more than six per cent interest from date of issue, payable semiannually. The first annual installment of principal shall fall due not less than three years nor more than six years after date thereof, and each annual installment of principal shall not be less than five per cent nor more than ten per cent of the total bonds authorized and issued. (1909, c. 442, s. 34; 1911, c. 67, s. 11; 1917, c. 152, s. 12; C. S., s. 5354; 1923, c. 217, s. 5.)

Cross Reference.—See § 156-104 as to application of this section.

Editor's Note.—As to effect of the 1923 amendment, see 1 N. C. Law Rev. 287.

Effect of Interest of Clerk Appointing Commissioners.—An issue of bonds by a drainage commission, is not void by reason that the clerk of the court who appointed the commissioners owned an interest in a tract of land within the drainage district, as such an interest is too minute, and not directly the subject matter of the litigation. White v. Lane, 153 N. C. 14, 68 S. E. 895 (1910).

Cited in Board of Com'rs v. Gaines, 221 N. C. 324, 20 S. E. (2d) 377 (1942).

§ **156-98. Form of bonds; excess assessment.** — All bonds 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 provided 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.)

Cross Reference.—See § 156-104 as to application of this section.

Editor's Note.—As to effect of 1923 amendment, see 1 N. C. Law Rev. 288.

The 1927 amendment inserted the second paragraph distinguishing between reclamation and improvement districts.

Cited in Robeson County Drainage Dist. v. Bullard, 229 N. C. 633, 50 S. E. (2d) 742 (1948).

§ **156-99. Application of funds; holder's remedy.**—The commissioners may sell these bonds at not less than par and devote the proceeds to the payment for the work as it progresses and to the payment of the other expenses of the district provided for in this subchapter. The proceeds from such bonds shall be for the exclusive use of the levee or drainage district specified on their face, and shall be numbered by the board of drainage commissioners and recorded in the drainage record, which record shall set out specifically the lands embraced in the district on which the tax has not been paid in full, which land is to be assessed as hereinafter provided. If any installment of principal or interest represented by the bonds 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 months, the holders of such bonds 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, wherein the court may issue a writ of mandamus against the drainage 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 in default as may be authorized by law; and the right of action is hereby vested in the holders of such bonds 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 bonds of the tax collector and county treasurer shall be liable for the faithful performance of the duties herein assigned them. Such bonds may be increased by the board of county commissioners. (1909, c. 442, s. 34; 1911, c. 67, s. 11; 1911, c. 205; C. S., s. 5356; 1923, c. 217, s. 7.)

Local Modification. — Brunswick, Columbus: 1929, c. 299.

Cross Reference.—See § 156-104 as to application of this section.

Editor's Note.—The 1923 amendment struck out in the first sentence the words, "and to the payment of the interest on the bonds for the three years next following the date of issue." This payment is taken care of by the amendment to the preceding section and by the amendment to § 156-103. See 1 N. C. Law Rev. 288.

Auction against Landowner Is Unauthorized.—The remedy provided by statute to the holders of drainage bonds to enforce payment of their obligations is by action against the drainage district and its commissioners and the tax collector and treasurer to compel these officers to perform their legal duties in pursuing the statutory procedure for the collection and application of drainage assessments, which remedy is adequate and exclusive, and the holder of past-due bonds may not maintain an action against the owner of land within the district to enforce the lien of delinquent drainage assessments against the land. Wilkinson v. Boomer, 217 N. C. 217, 7 S. E. (2d) 491 (1940).

Effect of Foreclosure of Tax Liens under § 105-414.—Where, in an action to foreclose a tax lien under § 105-414 service of process on "bondholders, lien holders or other persons having or claiming some interest in the land" was had by publication, but the publication made no reference to any drainage district, drainage assessment, liens or bonds or bondholders of any drainage district, the publication was held insufficient to give the court jurisdiction of the holders of bonds of the drainage district in which the lands or any part of them lay, and the judgment therein could not preclude the bondholders from exercising their remedy under prescribed conditions to have the drainage district levy additional assessments against the lands for the purpose of paying the drainage bonds. Board of Com'rs v. Gaines, 221 N. C. 324, 20 S. E. (2d) 377 (1942).

§ 156-100. Sale of bonds.—In making the sale of drainage bonds the board of drainage commissioners shall prepare a notice of such sale containing the usual and appropriate information regarding the terms and provisions of the bonds, and shall publish the same for at least a period of two weeks in at least one paper of general circulation published within the State and in at least one other newspaper of large circulation among the buyers of bonds, in which they shall invite sealed bids from prospective purchasers to be opened on a certain day, and may require a cash deposit to accompany all bids, and shall reserve the right to reject any and all bids. In such notice the commissioners may hold in reserve information as to the date when the first installment of principal shall fall due, the annual installments of principal to be paid, the number of years within which the serial bonds are to be paid, the form of the bonds, and the name of the bank or trust company at which the interest coupons and the installments of principal are to be made payable, and shall state that the information and data so withheld may subsequently be agreed upon between the drainage commissioners and the purchaser of the bonds; or the board of drainage commissioners in their advertisement asking bids may make optional propositions in the respects above recited, inviting bids as to each kind of bond so proposed. The board of drainage commissioners shall accept the highest bona fide bid for such bonds and issue and sell the same accordingly, provided the highest bid shall equal or exceed the par value of the bonds with any accrued interest thereon. If no satisfactory bid shall be received, the board of drainage commissioners may readvertise the bonds for sale in the manner above provided, or they may accept any private bid for the bonds at not less than their par value, with any accrued interest thereon. The board of drainage commissioners shall in good faith make diligent effort to sell the bonds at a price not less than their par value, with accrued interest. Bonds of any drainage district heretofore sold or contracted to

be sold by the Local Government Commission in the manner provided by the Local Government Act, either alone or in conjunction with the board of drainage commissioners, shall be deemed to have been lawfully sold or contracted to be sold. (1909, c. 442, s. 34; 1911, c. 67, s. 11; 1917, c. 152, s. 15; C. S., s. 5357; 1941, c. 142.)

Editor's Note. — The 1941 amendment added the provision relative to bonds sold by the Local Government Commission.

§ **156-101. Refunding bonds issued.** — In any case where the board of drainage commissioners of any drainage district have issued or may issue bonds for the purpose of constructing or completing the drainage works in such district, the payment of which at maturity would in the judgment of the board of drainage commissioners be an unreasonable burden on the owners of the lands in such district assessed for the payment of such bonds and interest, or if it shall appear for other good and substantial reasons that the welfare of the district and the owners of lands therein would be promoted thereby, the board of drainage commissioners shall have the power to refund such bonds, or any part thereof, and issue new bonds equal to the amount of bonds outstanding and unpaid, or any part thereof. The new or refunding bonds shall bear a rate of interest not exceeding six per cent, payable semiannually, and shall be divided into such annual installments not exceeding ten per cent and not less than five per cent of the outstanding bonds so refunded. The new assessments shall be levied and collected with which to pay the principal and interest on the bonds in the manner provided by law. The first installment of principal on the bonds so refunded may be made payable at a certain date in the future not exceeding six years from the date of the refunding bonds, and in the meantime annual assessments shall be levied and collected for the payment of the interest. (1917, c. 152, s. 14; C. S., s. 5358.)

§ **156-102. Drainage bonds received as deposits.**—The State Treasurer is authorized to receive drainage bonds issued by drainage districts in North Carolina as deposits from banks, insurance companies, and other corporations required by law to make deposits with the State Treasurer: Provided, that the Attorney General shall have approved the form of such bonds. (1917, c. 152, s. 7; C. S., s. 5359.)

Local Modification. — Edgecombe, Pitt: 1937, c. 334.

§ **156-103. Assessment rolls prepared.** — The board of drainage commissioners shall immediately prepare the assessment rolls or drainage tax lists, giving thereon the names of the owners of land in the district and a brief description of the several tracts of land assessed and the amount of assessment against each tract of land. The first of these assessment rolls shall be due and payable on the first Monday in September following the date of such bonds, and shall provide funds sufficient for the payment of interest on such bonds for one year. The second assessment roll shall make like provision for the payment of the interest for one year. Annual assessment rolls shall thereafter provide funds sufficient to meet the interest for one year on the issue of bonds outstanding. During the year previous to maturity of any annual installment due upon the principal of said bonds there shall be an assessment roll sufficient to provide funds for the payment of both the interest for one year and for the payment of the annual installment due upon the principal of the bonds. Such annual assessments shall be made from year to year to provide funds to meet the interest for one year and the annual installment of the principal due upon the bonds outstanding, until the whole principal due upon the outstanding bonds and the interest thereon shall be fully paid. In making up such assessment rolls there shall be included ten per cent additional as provided in § 156-98. Each of

the assessment rolls shall specify the time when collectible and be numbered in their order, and the amounts assessed against the several tracts of land shall be in accordance with the benefits received, as shown by the classification and ratio of assessments made by the viewers. These assessment rolls shall be signed by the chairman of the board of drainage commissioners and by the secretary of the board. There shall be four copies of each of the assessment rolls, one of which shall be filed with the drainage record, one shall be filed with the chairman of the board of drainage commissioners, who shall carefully preserve the same, one shall be preserved by the clerk of the court, without change or mutilation, for the purposes of reference or comparison, and one shall be delivered to the sheriff, or other county tax collector, after the clerk of the superior court has appended thereto an order directing the collection of such assessments, and the assessments, shall thereupon have the force and effect of a judgment as in the case of State and county taxes. If the drainage commission which has assessed the lands of a drainage district prior to March 11th, 1919, shall file the aforesaid four copies of assessment rolls within six months from April 1st, 1919, the filing of such assessment rolls shall have the same legal effect as if filed strictly in accordance with this section immediately after the preparation of such assessment rolls. The State having authorized the creation of drainage districts and having delegated thereto the power to levy a valid tax in furtherance of the public purposes thereof, it is hereby declared that drainage districts heretofore or hereafter organized under existing law or any subsequent amendments thereto are created for a public use and are political subdivisions of the State. (1911, c. 67, s. 12; 1917, c. 152, s. 9; 1919, c. 282, s. 1; C. S., s. 5360; 1921, c. 7; 1923, c. 217, s. 8.)

Cross Reference.—See § 156-104 as to application of this section.

Editor's Note.—As to effect of 1923 amendment, see 1 N. C. Law Rev. 288.

Completion of Rolls.—The assessment arises upon the completion of the assessment rolls. Nesbit v. Kafer, 222 N. C. 48, 21 S. E. (2d) 903 (1942).

Cited in Board of Com'rs v. Gaines, 221 N. C. 324, 20 S. E. (2d) 377 (1942); Robeson County Drainage Dist. v. Bullard, 229 N. C. 633, 50 S. E. (2d) 742 (1948).

§ 156-104. Application of amendatory provisions of certain sections; amendment or reformation of proceedings.—All the provisions of chapter 217 of the Public Laws of 1923 amendatory of §§ 156-71, 156-75, 156-83, 156-94, 156-97, 156-98, 156-99 and 156-103 shall apply to all drainage districts which shall hereafter be organized, and also to all districts where proceedings for the organization thereof have been instituted and are now pending and where the bonds have not been actually issued, sold, and delivered to the purchaser thereof. If it shall be necessary to amend or reform any of the pleadings or orders made by the court or any action taken by the board of drainage commissioners in any drainage proceedings instituted and pending before March 6, 1923, full authority is granted to make any such amendments, to the end that the said drainage proceedings shall conform with the provisions hereof. (1923, c. 217, s. 9; C. S., s. 5360(a).)

Local Modification.—Hyde: 1923, c. 217, s. 10; C. S. 5360(a).

§ 156-105. Assessment lien; collection; sale of land.—The assessments shall constitute a first and paramount lien, second only to State and county taxes, upon the lands assessed for the payment of the bonds and interest thereon as they become due, and shall be collected in the same manner and by the same officers as the State and county taxes are collected. The assessments shall be due and payable on the first Monday in September each year, and if the same shall not be paid in full by the thirty-first day of December following, it shall be the duty of the sheriff or tax collector to sell the lands so delinquent. The sale of lands for failure to pay such assessments shall be made at the courthouse door of the county in which the lands are situated, between the hours of ten

o'clock in the forenoon and four o'clock in the afternoon of any date except Sunday or another legal holiday, which may be designated by the board of drainage commissioners. After any such sale date has been designated by the board of drainage commissioners, if for any necessary cause the sale cannot be made on that date, the sale may be continued from day to day for not exceeding four days, or the lands may be re-advertised and sold on any day which the board of drainage commissioners may or shall designate during the same hours and without any order being obtained therefor during the same calendar year. Nothing in this section shall be construed to require any order from any court for any sale or resale held hereunder. The existing general tax law in force when sales are made for delinquent assessments shall have application in redeeming lands so sold; and in all other respects, except as herein or otherwise modified or amended, the existing law as to the collection of State and county taxes shall apply to the collection of such drainage assessments. No bid at any sale shall be received unless sufficient in amount to discharge all the drainage assessments and other charges due by the delinquent lands or owner thereof, together with all costs and expenses of sale. If no sufficient bid be received, the board of drainage commissioners of the district shall be deemed the purchaser in its corporate capacity at a sum sufficient to pay all assessments which are due and costs as above stated, and shall be entitled to receive a certificate of purchase and deed in the manner provided by law for purchasers at tax sales. The board of drainage commissioners shall only be required to pay to the sheriff the costs and expenses of sale before receiving a certificate of purchase. The board of drainage commissioners of the district in their corporate capacity shall be in like position and have the same rights and be subject to the same duties as the purchaser of lands at any tax sale under the general law. If the board of drainage commissioners shall have been the purchaser of lands so sold, the amount paid in redemption by the owner, or any person having an estate therein or lien thereon, shall include the sum bid therefor plus the penalty. The board of drainage commissioners shall pay to the sheriff or tax collector the amount representing their bid at the sale of said lands before they shall be entitled to receive a deed therefor, which the sheriff shall pay to the treasurer of the drainage district in the same manner as other funds received by him. The board of drainage commissioners, after acquiring a deed for said lands, may hold the same as an asset of the district, and shall be liable for the payment of all drainage assessments and State and county taxes accruing after the sale at which the district was a bidder, and in all respects be deemed the owner of said lands and subject to the same privileges and liabilities as any other landowner, including the right to convey the said lands for a consideration and pay the proceeds of said sale to the treasurer of the district, which may be distributed by the drainage commissioners for the benefit of the district in the same manner as other district funds.

If any sheriff or tax collector failed for any reason to collect drainage assessments upon lands in any drainage districts due in one thousand nine hundred and seventeen, or any subsequent years, and further failed to make valid sales of the lands so delinquent in the payment of such assessments, then and in such event the existing sheriff or tax collector is hereby authorized and directed to proceed to collect such unpaid drainage assessments, with interest thereon from the dates when such assessments respectively became due, and in default of payment being made he is further authorized to make sales of such lands as may be in default at any time hereafter, at the times and in the manner authorized by law as amended herein; and the purchaser at said sales shall acquire title to such lands in the manner provided by law. If the sheriff or tax collector in office at the time such assessments were in default has since died or gone out of office, the powers herein given shall be exercised by the existing sheriff or tax collector.

The one thousand nine hundred and thirty-one amendment to this section shall have the same force and effect from and after April thirteenth, one thousand nine hundred and thirty-one, as if it had been ratified and enacted prior to the first day of January, one thousand nine hundred and twenty-nine, and no sale of drainage lands held under the provisions of section five thousand three hundred sixty-one shall be deemed or declared void by reason of the fact that they may not have been held on the day specified in section five thousand three hundred sixty-one of the Consolidated Statutes prior to this amendment. (1911, c. 67, s. 12; 1917, c. 152, s. 9; C. S., s. 5361; Pub. Loc. 1923, c. 88, ss. 3, 4, 5; 1931, c. 273.)

Local Modification. — Franklin, Hyde, Nash, Wilson: Pub. Loc. 1923, c. 88.

Editor's Note.—The 1931 amendment struck out the third sentence of the former section and inserted in lieu thereof the third, fourth and fifth sentences above. The original section authorized the sale to be made on the first Monday in February in each year, and if for any cause the sale could not be made on that day, it might be continued from day to day for four days, or readvertised and sold on the first Monday in March, without any order therefor. See 9 N. C. Law Rev. 368.

The assessments upon lands in a drainage district are a lien in rem on the lands of the owner for the payment of the bonds issued by the district in accordance with the statute, the district being a geographical quasi-public corporation, and the benefits annually accruing to the advantage of successive owners, such assessments are due and payable at stated intervals. Pate v. Banks, 178 N. C. 139, 100 S. E. 251 (1919).

The legislature intended that the assessments as shown on the assessment rolls which the board of drainage commissioners is required to prepare immediately upon the sale of the bonds, become liens as they become due, affecting all of the lands on the assessment rolls, which relate to the entire district for the entire period over which the payment of the assessments is spread. Nesbit v. Kafer, 222 N. C. 48, 21 S. E. (2d) 903 (1942).

Not Debt of Owner; Incumbrance. — "The lien of the charges for drainage is not a debt of the owner of the land therein, but is a charge solely upon the land and accrues, pari passu, with the benefits as they shall accrue thereafter. They are not liens until they successfully fall due, and are presumed to be paid out of the increased productiveness and other benefits as they accrue from time to time. These assessments are to be levied from time to time to pay, not the indebtedness of the owner of any tract, but to pay the bonded indebtedness of the district, in that they are exactly like bonds issued by the township, county or State for public benefits and which become liens on property in futuro only to the extent of the taxes falling due each year to pay the interest, and such part of the principal as may become due. One who purchases land in a township, county or State cannot complain that these successive tax liens will, from time to time, be collectible out of his realty. Whether he knew of the existence of such indebtedness or not makes no difference. They are not incumbrances within the sense of the warranty clause of a deed. The assessments in a drainage district to take the water off the land is simply an annual tax for that purpose." Pate v. Banks, 178 N. C. 139, 100 S. E. 251 (1919).

Liens on lands within a statutory drainage district for assessment charges for its maintenance and upkeep do not fall within a warranty or covenant against encumbrances contained in a deed until they are due and payable. Branch v. Saunders, 195 N. C. 176, 141 S. E. 583 (1928).

Remedy for Collection Is Adequate.—It is provided by this section that drainage assessments shall be collected in the same manner as taxes are collected, and such liens may be collected by sale of the land by the sheriff, with issue of certificates of sale, with right in the holder of the certificates to foreclose in due time; or by foreclosure of the lien in a suit instituted by the district or the holder of a tax deed or certificate, in the nature of an action to foreclose a mortgage, and this remedy for the collection of such assessments is adequate, and assessments collected are public funds although they are to be used solely for the purpose of paying principal and interest on drainage bonds. Wilkinson v. Boomer, 217 N. C. 217, 7 S. E. (2d) 491 (1940).

Provision Implementing Collection. — See § 156-109 and note.

A receiver cannot intervene, in a bank's action against the board, on the ground that he has the right, under this

section to collect payments. See Board of Drainage Com'rs v. Lafayette Southside Bank, 27 F. (2d) 286 (1928).

Money from Assessments Is Like Public Money of County.—This and the following sections impress the moneys derived from the assessments as public money of the county, to be kept in the depository designated under the statute for such funds, although the funds in question are devoted to a particular or defined use. Com'rs v. Lewis, 174 N. C. 528, 94 S. E. 8 (1917).

Due Process of Law Not Denied.—The statute under which a drainage district is formed does not deny the district due process of law by providing for the collection and security of the assessments as other county taxes are collected, kept, etc. Com'rs v. Lewis, 174 N. C. 528, 94 S. E. 8 (1917).

Assessments Have Priority over Mortgage.—The assessments on lands for a bond issue have a prior lien to a mortgage executed thereon prior to the formation of said district. Drainage Commissioners v. Eastern Home, etc., Ass'n, 165 N. C. 697, 81 S. E. 947 (1914).

§ **156-106. Assessment not collectible out of other property of delinquent.**—Only the land assessed in the drainage proceeding shall be liable for the drainage tax or assessment, and no other property of the landowner shall or may be sold for said drainage tax or assessment: Provided, that this section shall not apply to any drainage bond sold and delivered prior to March 7, 1927, or to any litigation pending at that time. (1919, c. 282, s. 2; C. S., s. 5362; 1927, c. 139.)

Local Modification.—Cumberland, Robeson: 1927, c. 139, s. 1½.

§ **156-107. Sheriff in good faith selling property for assessment not liable for irregularity.**—The sheriff who executes upon property for the collection of drainage assessments under the provisions of this article shall not be liable either civilly or criminally if he shall sell such property in good faith, even though such sale is irregular or for any cause illegal. (1919, c. 282, s. 4; C. S., s. 5363.)

§ **156-108. Receipt books prepared.**—The clerk of the superior court in each county where one or more drainage districts have been established shall be required to have prepared annually during the month of August a form of receipt, with appropriate stubs attached and properly bound, for the drainage assessments due on each tract of land as recited in the assessment rolls. This bound book of tax receipts or bills shall be indorsed "Drainage assessments of the (here give the name of the district) for the county of ....., delivered to the sheriff or tax collector as of the first Monday in September, 19.., for collection as required by law," and the same indorsement shall be printed at the top of each tax bill or blank receipt. Each tax bill or blank receipt shall contain a blank space for the name of the owner of the property, the amount of the annual drainage tax, the amount of maintenance tax, if any, and a receipt at the bottom of the same, followed by a blank line for the signature of the tax collector. This bound book of tax bills or receipts, with the blanks duly filled in, shall be delivered to the sheriff or tax collector on the first Monday of September of each year. The necessary cost of printing and binding such book of tax bills or receipts and the filling in of the same shall be a proper charge against such drainage district and shall be paid by the board of drainage commissioners. (1917, c. 152, s. 9; 1919, c. 208, s. 2; C. S., s. 5364.)

Stated in Nesbit v. Kafer, 222 N. C. 48, 21 S. E. (2d) 903 (1942).

§ **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 county 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.)

The first sentence of the second paragraph must be read in connection with the provisions of § 156-105 that "the assessments shall constitute a first and paramount lien, second only to State and county taxes upon the lands assessed for the payment of bonds and interest thereon as they become due, and shall be collected in the same manner and by the same officers as State and county taxes are collected," and when so considered, it is clear that this section is not in conflict with § 156-105, but is intended to implement collection of the assessment by the sheriff. Nesbit v. Kafer, 222 N. C. 48, 21 S. E. (2d) 903 (1942).

§ **156-110. Authority to collect arrears.**—If any sheriff or tax collector was authorized to collect drainage assessments in any year prior to 1917, and failed to collect any part of such drainage assessments, and is now out of office, or is still holding the office of sheriff or tax collector, then and in such event such sheriff or tax collector, regardless of the expiration of his term of office, is hereby authorized and directed to proceed to the collection of such unpaid drainage assessments, and in default of payment being made, he is further authorized to make sales of such lands as may be in default at the times and in the manner authorized by law during the year one thousand nine hundred and seventeen, one thousand nine hundred and eighteen, or one thousand nine hundred and nineteen. (1917, c. 152, s. 9; C. S., s. 5366.)

§ **156-111. Sheriff to make monthly settlements; penalty.**—The sheriff or tax collector shall be required to make settlements with the county 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 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.)

§ **156-112. Duty of treasurer to make payment; penalty.**—It shall be the duty of the county 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 county 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.)

Effect of Act Abolishing Office of County Treasurer.—Chapter 46, Public-Local Laws 1917, abolishes the office of county treasurer of Robeson County and substitutes therefor a depositary and financial agent, with provision that it shall perform the duties of treasurer in disbursement of the county funds. The act further provides that the sheriff, as such, or ex officio treasurer, shall turn over all moneys of the county to such depositary. It was held that moneys derived from assessments of a drainage district, being county funds, should be deposited, as the statute directs, with the depositary lawfully designated. Com'rs v. Lewis, 174 N. C. 528, 94 S. E. 8 (1917).

§ **156-113. Fees for collection.**—The fee allowed the sheriff or tax collector for collecting the drainage tax as hereinbefore prescribed 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 county treasurer for collecting or receiving the revenue obtained from the sale of the bonds hereinbefore provided for, nor for disbursing the revenue raised for paying off such bonds. (1911, c. 67, s. 13; C. S., s. 5369; 1925, c. 271, s. 1.)

Local Modification.—Pitt: 1925, c. 271, s. 2.

Construed with Other Sections. — The relevant sections of the various statutes upon the subject of the collection of assessments on lands in drainage districts by sheriffs and tax collectors and their compensation therefor, being in pari materia, should be construed together by the courts in ascertaining the legislative intent. Drainage Com'rs v. Davis, 182 N. C. 140, 108 S. E. 506 (1921).

Sheriff's Compensation Restricted. — The bringing forward of § 13, ch. 67, Public Laws 1911, in this section, providing that 2 per cent shall be allowed sheriffs "for collecting the drainage assessments as hereinbefore prescribed," is a legislative construction of the prior law, and was intended to restrict the compensation of the sheriff to 2 per cent of the amount of the assessments in drainage districts collected by him, and not to allow him a commission of 5 per cent as in case of taxes collected for general governmental purposes. Drainage Com'rs v. Davis, 182 N. C. 140, 108 S. E. 506 (1921).

Compensation of Treasurer.—This section, dealing with the compensation to be allowed the county treasurer for disburs-

ing the revenue obtained from the sale of bonds of drainage district, provides but one compensation for all services. Drainage Com'rs v. Credle, 182 N. C. 442, 109 S. E. 88 (1921).

§ 156-114. Conveyance of land; change in assessment roll; procedure.—1. Status of Land Fixed.—The boundaries of lands as surveyed and mapped, the ownership thereof, and the classification and assessment thereof as appears in the final report and map and upon the assessment roll, shall be and remain as of the time when the district was established and the final report of the board of viewers was approved by the court. No conveyance or devise of land or devolution by inheritance after the petition has been filed or the owner thereof has been served with the original summons, either by personal service or by publication, shall affect the status or liability of such land as a part of such drainage district, except as herein provided.

2. Conveyance before Final Report.—If the owner of any lands included in such district shall, after the filing of the petition, and after being served with the original summons and before the approval of the final report, convey the whole or any part of such lands, or the title thereto shall be otherwise changed, then and in such event the grantor and grantee or new owner, or either, may file a petition in an ancillary proceeding before the clerk of the superior court setting forth the facts, with a description of the lands conveyed either in part or the entire body of land, together with a description of the land excepted and not conveyed. If the grantor or grantee or new owner, in whole or in part, file such petition, the other not so joining shall be served with notice of same. The clerk may require the petitioner to attach to the petition a map showing the boundaries of the entire body of land as it appears in the record of the proceedings, and also showing the part conveyed. If the ownership of such land has been changed by devise or inheritance, or any joint ownership has been changed by partition, such new owner may file a petition as herein provided. Such petition shall conclude with a prayer that the grantee or new owner be made a party to the proceeding. The court after a hearing may make the grantee or new owner a party to the drainage proceeding and shall certify to the engineer and viewers a description of the land so conveyed or held by the new owner, with directions to verify the boundaries and to classify the land to the same extent as if the grantee was the original party. Any part of such lands not so conveyed shall be and remain a part of the district.

3. Conveyance after District Established.—After the district shall be established, the lands classified, the final report approved, and the assessment roll filed, no conveyance of any land in the district shall affect or change the existing status or liability of such land as to assessment charges or otherwise, except in the manner herein defined. When the title and ownership of any tract of land embraced in the district have been changed or vested in others by grant, devise, or inheritance, or by partition between joint owners, subsequent to the establishment of the district, the assessment roll may be amended in the following manner: The grantor and grantee, or the new owners, may file a petition with the chairman of the board of drainage commissioners alleging that the ownership of the land has changed, and the manner thereof, in whole or in part. If the whole body of land as appears in the final report or on the assessment roll has changed ownership, a general description consistent with such final report and map shall be sufficient. If the ownership of the body of land has changed only as to part thereof, the petition shall contain a description of the part thereof claimed by the new owners, and the number of acres and the classifications, or the several classes if it be in more than one class, and also a description of that part of the land the title to which remains in the original owner, with the number of acres and with the classification and the several classes if it contains more than one class of land. The petition shall so describe the land and the number of acres in each class as to that part of which the ownership has changed as to maintain the

number of acres originally assessed, and the class or classes in which the same has been assessed, and the chairman of the board of drainage commissioners may require the petitioners to have the lands surveyed, and submit a map if the same shall be necessary.

4. Duty of Chairman of Drainage Commissioners and Clerk.—The chairman of the board of drainage commissioners shall present this petition to the clerk of the superior court at any time thereafter, not later than the first Monday in July following. It shall be the duty of the clerk to examine and verify the facts set forth in the petition, and particularly to determine if the number of acres assessed and the classes thereof against the new owners added to the number of acres and the classes assessed against that part of the land, the title to which has not changed, shall equal the total number of acres and the classes so assessed as appear against such entire body of land in the final report and assessment roll. If the clerk shall be so satisfied, he shall enter an order or decree changing the original assessment roll, or the assessment roll as theretofore amended, by adding the name of the new owner with the number of acres assessed in each class, and by amending the number of acres assessed and the classes thereof against the original owner as appears on the original assessment roll or assessment roll as theretofore amended. It shall be the duty of the clerk after such order to make such changes in the assessment roll. It shall be the duty of the clerk of the superior court in making changes in the original assessment roll from time to time to observe and maintain the total number of acres in each class, to the end that the revenue produced from the annual assessment shall not be thereby diminished. The chairman of the board of drainage commissioners, instead of presenting to the clerk of the court each petition of landowners separately, may combine a number of petitions and present the same to the court at one and the same time. The first Monday in July in each year is hereby set apart as a special day on which petitions for changing the assessment roll may be submitted, at which time the clerk shall hear all petitions not theretofore submitted.

5. Failure of Chairman of Board to Act.—If the chairman of the board of drainage commissioners shall fail to act when any petition shall be submitted to him as herein provided, or the chairman or any member of the board shall fail to discharge any duty imposed by this section or any other provision of the general drainage law, it is hereby made the duty of the clerk of the superior court, either independently or upon the request of any landowner in the district, to cite such chairman or member to appear before him upon a certain day and show cause why he should not be removed from office, and unless good cause be shown, it shall be the duty of the clerk to remove the chairman or any member of the board of drainage commissioners and to certify his action, to the end that another member may be elected according to law. If the failure of the chairman or any member of the board of drainage commissioners to discharge such duty shall be willful, he shall be guilty of a misdemeanor, and upon conviction shall be punished by fine or imprisonment, or both, in the discretion of the court.

6. When Owner May File Petition with Clerk.—If the grantor and grantee, or all those claiming to have acquired title to any body of land on the assessment roll and whose assessment will be affected, cannot agree upon joinder in a petition to the chairman of the board of drainage commissioners, or if the said chairman fails within a reasonable time to discharge his duty by presenting the petition to the court, then either party interested in the tract of land as it appears on the assessment roll may file a petition with the clerk of the superior court setting forth the facts as to the change in ownership and title of such land, with the description of the entire tract of land and the number of acres in each class, together with a description of that part of the land as to which the ownership has changed, with the number of acres in each class, and pray the court to order that the assessment roll be amended in accordance with the title and interest of the several owners. At the time of filing the petition a summons shall issue to the other parties in-

terested in the tract of land to show cause, on a day certain, why the prayer of the petition should not be granted. Upon the return day the clerk of the court shall hear all the evidence, find the facts, and enter up a judgment directing the appropriate amendment to the assessment roll. It shall be the duty of the clerk to amend the assessment roll in accordance with his judgment.

7. Effect of Change in Assessment Roll.—No judgment or amendment of the assessment roll shall be valid unless the number of acres and the classes assessed against the original and new owners shall equal the area and classification as contained in the tract of land as it appears on the original assessment roll. This petition may be presented to the court at any time, but the first Monday in July in each year is hereby designated as the day upon which all petitions for amendments to the assessment roll may be submitted. Any amendments to the assessment roll ordered after the last day of August in each year shall not become effective until the first day of September the following year, and the assessment roll as it appears on the first day of September of each year shall constitute the assessment roll to be delivered to the sheriff on the first Monday in September, and he shall collect the drainage assessments as they appear thereon without regard to any changes in title or ownership or any changes in the assessment roll made by the court after the thirty-first day of August. All amendments sought to be made to the assessment roll shall have reference to the assessment roll as it appears at the time the amendment is sought, which shall be either the original assessment roll or as amended; but it shall be the duty of the clerk of the superior court to examine frequently the assessment roll as amended, and before the same shall be further amended, and make certain that the aggregate number of acres in each class as appeared on the original assessment roll shall not be reduced, nor the aggregate annual assessments reduced. Any amendments ordered shall be made on the assessment roll and become due in the following September, and on all subsequent assessment rolls which have not become due or collectible.

8. Clerk to Prepare New Assessment Rolls.—It shall be the duty of the chairman and the secretary of the board of drainage commissioners of the district to render to the clerk of the court any clerical assistance involved in changes in the assessment rolls, but the primary duty and responsibility in making such amendments shall remain with the clerk of the superior court, and he shall be held liable for any error or omission which may work a loss to the district or the bondholders. If such amendments to the assessment rolls shall make necessary the preparation of new assessment rolls, the clerk of the superior court shall be required to prepare such new assessment rolls with the clerical assistance of the chairman and secretary of the board of drainage commissioners, and such new assessment rolls shall be signed by the chairman and secretary of the board of drainage commissioners and by the clerk of the superior court before delivery to the sheriff or tax collector as required upon the original assessment rolls. The original assessment rolls shall be preserved by the clerk of the court among his records for future reference.

9. Number of Copies.—In the event it shall be necessary to prepare new assessment rolls, the clerk shall prepare four copies, one copy for the drainage record, another for the sheriff or tax collector, another for the chairman of the board of drainage commissioners, and the other for filing and preserving among the records, and which fourth copy shall never be mutilated or interlined, but shall be preserved in its original form for reference. As to all drainage districts heretofore established, the clerk of the court shall prepare an additional copy of all the original assessment rolls for the several years the lands in such districts are assessed and securely preserve the same, at least until all outstanding bonds of the district shall be paid, to the end that they may always be accessible for reference and comparison. It shall not be necessary hereafter to deliver to the sheriff or tax collector a copy of the assessment roll for the current year in which assess-

ments are due and payable, but the copy provided for him may remain among the records of the clerk of the court for safekeeping and reference by him.

10. Costs Determined.—As compensation to the clerk of the court for the performance of duties imposed herein, he shall be paid such sum by the board of drainage commissioners of such drainage district as they may deem fair and adequate, and the same is hereby declared a proper charge against said district, but no additional compensation shall be paid to the clerk in those counties where he receives a salary in lieu of fees. Any costs which may accrue in amendments to the assessment rolls shall be adjudged against the parties in interest, in the discretion of the clerk, and such costs shall be paid before the amendment shall become effective. As to all petitions which shall be filed and submitted to the court on the first Monday in July, no costs shall be paid or adjudged against any party in those counties where the clerk and sheriff receive a salary in lieu of fees.

11. Chairman Represents Board.—As to all petitions filed with the chairman of the board of drainage commissioners, or as to the discharge of any duty by the chairman required of him under the general drainage law, he shall be presumed to act for the board, and the chairman shall do all things necessary to protect and maintain the interests of the drainage district. If the chairman shall be or become a landowner in the drainage district and may desire an amendment to the assessment rolls, he may file his petition before any other member of the board, or file the same directly with the clerk of the superior court.

12. Application of Section.—The provisions of this section shall apply to landowners in districts heretofore established and to drainage proceedings heretofore instituted to the same extent as to drainage proceedings hereafter instituted and established. (1917, c. 152, s. 4; 1919, c. 208, s. 1; C. S., s. 5370.)

§ 156-115. Warranty in deed runs to purchaser who pays assessment.—Where the land assessed by drainage commissioners under the provisions of this article has been purchased since the making of the assessment by a purchaser for value without notice under a deed of general warranty, and said purchaser pays to the sheriff the amount of said drainage assessment, which is a lien on the land purchased, then such purchaser who pays the said drainage assessment shall have a right of action against the warrantor of his title under the covenant of general warranty contained in his deed for the recovery of the amount paid. (1919, c. 282, s. 3; C. S., s. 5371.)

Section Does Not Refer to Future Assessments.—An assessment matured and due, under the decisions, would constitute "a lien on the land purchased," but this section does not refer to future assessments not due at the time the land was purchased. Branch v. Saunders, 195 N. C. 176, 141 S. E. 583 (1928).

Consequently, liens on lands within a statutory drainage district for assessment charges for its maintenance and upkeep do not fall within a warranty or covenant against encumbrances contained in a deed until they are due and payable. Branch v. Saunders, 195 N. C. 176, 141 S. E. 583 (1928).

§ 156-116. Modification of assessments.—1. Relevy.—Where the court has confirmed an assessment for the construction of any public levee, ditch, or drain, and such assessment has been modified by the court of superior jurisdiction, but for some unforeseen cause it cannot be collected, the board of drainage commissioners shall have power to change or modify the assessment as originally confirmed to conform to the judgment of the superior court and to cover any deficit that may have been caused by the order of court or unforeseen occurrence. The relevy shall be made for the additional sum required, in the same ratio on the lands benefited as the original assessment was made.

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 county 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 county 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 county 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 county treasurer for future disbursement for other purposes as herein provided or subject to the order of the board of drainage commissioners.

4. Insufficient Funds.—If there shall be any impairment or destruction of the drainage works by any unforeseen cause or occurrence not anticipated, during the period of construction by the contractor, the contractor shall nevertheless repair and complete the works according to the contract and specifications and shall be liable therefor and also his sureties on his bond; but if the contractor shall make default and if there shall be a failure to collect all resulting damages from such contractor and the sureties upon his bond, and it shall thereby be necessary to raise a greater sum of money to complete the drainage works in accordance with the plans, or if for any other unavoidable cause it shall be necessary to raise a greater sum to complete such drainage works, the board of drainage commissioners, having first obtained the approval of the clerk of the superior court, shall prepare new assessment rolls upon all the lands in the district upon the original basis of classification of benefits and increase the same in sufficient sums to equal the deficit thereby created, and the same shall constitute the new assessment rolls until changed according to law, and shall be certified to the tax collector as herein provided.

5. Additional Bonds Issued.—If for any of the causes hereinbefore recited in this section, or for any other cause, a sum of money greater than the proceeds of sale of the drainage bonds shall become necessary to complete the drainage system, and the board of drainage commissioners shall determine that the amount to be raised is greater than can be realized from the collection of one annual assessment upon the lands in the district without imposing an undue burden upon the lands, or if it is advisable or necessary to raise the money more expeditiously, then and

under such conditions additional bonds may be issued in such aggregate sum as may be necessary.

6. Manner of Issue.—The proceedings for the issue of such additional bonds shall be substantially as follows: The board of drainage commissioners shall file their petition with the clerk of the superior court, setting forth all the facts which require the expenditure of more money and the issue of additional bonds to complete the drainage system, which shall be accompanied by the recommendation of the drainage engineer who was one of the original viewers, or some other expert drainage engineer selected by the drainage commissioners; whereupon the court shall issue a notice to all the owners of land within the district reciting the substance of the petition and directing each to appear before the court on a day certain, not less than twenty days after the service upon all the parties, and to show cause, if any they have, why the additional bonds should not be authorized, which notice shall be served personally on each such landowner by reading the same, and by leaving a copy, and if the same cannot be personally served, then it shall be served in the manner authorized by law. Any landowner may file an answer denying any material allegation in the petition or setting forth any valid objection to same before the return day thereof.

Upon the day when the notice is returnable, or on such day as to which the same may have been continued, the court shall proceed to hear the petition and answers. If the court shall find that the allegations of the petition are true, and that the issue of additional bonds is advisable or necessary, the court shall make an appropriate order authorizing and directing the issue of such additional bonds, fixing the amount of such issue, the date of same, the time when the interest and principal shall be payable, and all other matters necessary and appropriate in the premises. Any landowner may appeal from the order of the clerk of the superior court, and on such appeal only the issues raised in the answer shall be considered, and such appeal and the further procedure thereon shall be as prescribed in special proceedings, except as modified by this subchapter.

After the court shall have ordered the additional issue of bonds, the further procedure as to the assessment rolls, the levying and collecting of the drainage taxes, the disbursement of the revenue therefrom for the payment of such bonds and interest thereon, and all further procedure shall be the same as required for the establishment of drainage districts. The additional bonds issued shall not exceed twenty-five per cent of the total amount originally issued. The additional issue of bonds shall bear six per cent interest per annum and may be made payable in ten annual installments, or in lesser number of annual installments as nearly equal as may be, as recommended by the board of drainage commissioners and approved by the court. (1909, c. 442, s. 35; 1911, c. 67, s. 15; C. S., s. 5372.)

Surplus Returned to Owners.—Where a drainage district of a county having assessed the property owners therein for improvements, and when having completed the same there is a surplus in the hands of the county treasurer, the board of drainage commissioners may, upon the exercise of a sound discretion, and in good faith, determine that the fund on hand is not necessary for further disbursements for the benefit of the district, according to the plan adopted, and distribute the same proportionately among those assessed in accordance with law, especially when such owners have thereto agreed. Foil v. Board, 192 N. C. 652, 135 S. E. 781 (1926).

Public-Local Law Must Be Followed.—Where, under the provisions of a public-local law, a drainage district may lend its money derived from its assessments until required for use in payment of the principal and interest on its bonds maturing serially for a period of 10 years, and the statute provides for a depository for these funds, the drainage commissioners may not contract with a different bank to deposit the funds there, in consideration of such bank buying at par a certain issue of such bonds that could not otherwise have been sold, except below par; nor could the transaction, contemplating a period of 10 years, be construed as a loan to the bank as authorized by the statute, and the transaction is void, regarded either

as a deposit of the funds or a loan thereof. Com'rs v. Lewis, 174 N. C. 528, 94 S. E. 8 (1917).

Cited in Robeson County Drainage Dist. v. Bullard, 229 N. C. 633, 50 S. E. (2d) 742 (1948).

§ **156-117. Subdistricts formed.**—Subdistricts may be formed by owners of land in main districts theretofore established in the manner provided for the organization of main districts. Such subdistricts shall have the right to use the ditches or canals of the main districts for outlets. The formation of subdistricts shall not operate to release the lands in any subdistrict from the payment of any assessment or levy made prior to the formation of such subdistricts, nor from any assessment which may thereafter be made for the completion and maintenance of the canals in main districts, or for the payment of the principal and interest on any indebtedness incurred by the main district, nor shall it give the subdistrict any claim on the funds of such main district for its local use. It shall be the duty of the drainage commissioners of the main district to control all matters pertaining to the main district drainage. Drainage commissioners for the subdistricts shall have authority and control over all matters pertaining to drainage within their respective subdistricts, except such work as belongs exclusively to the main district. (1917, c. 152, s. 8; C. S., s. 5373.)

§ **156-118. Bonds for improvement and maintenance; petition.**—The board of drainage commissioners for any drainage district heretofore or that may hereafter be formed shall have the right to issue and sell bonds for the maintenance or improvement of their district, if, in the opinion of said board of drainage commissioners, it would be an unreasonable burden on any of the landowners of said district to levy an assessment as provided in § 156-92 and amendments thereto, sufficient to do the necessary maintenance or improvement: Provided, that the board of drainage commissioners shall first petition to the clerk of superior court of the county in which their drainage district was formed, setting forth the facts that the canals in their districts are not sufficient to afford proper drainage, and that, in the opinion of the board, the said canals need to be recleaned, widened, deepened, or lengthened, or that additional canals should be cut in certain places, and that the said work will cost more than an average of one dollar ($1.00) per acre for all the lands in the district, and to raise such an amount by levying one assessment would be an unreasonable burden on a part of the landowners of their district, and they ask the court to allow them to issue and sell bonds for a sufficient amount to do the work which is needed to be done. (1923, c. 231, s. 1; C. S., s. 5373(a).)

§ **156-119. Viewers; appointment and report.**—Immediately after the presentment of such a petition, the clerk shall appoint a board of viewers (of the same qualifications as is required when a drainage district is first formed) to view the said district over, and report to him (not later than twenty days from date appointed) whether or not any or all of the work asked for in the petition should be done, and whether or not the cost of the work which should be done would be an unreasonable burden on any of the landowners if collected by one assessment, or would it be better to allow a bond issue to cover the work. (1923, c. 231, s. 2; C. S., s. 5373(b).)

§ **156-120. Disallowance of petition; order; reclassification of lands; map and profile.**—If the board of viewers do not favor the bond issue, it would be the duty of the clerk not to allow the same, but the petition may be presented again at any time after six months. If the board of viewers report that a bond issue is preferable, the clerk shall order the board of viewers to make a profile as is required when the district is first formed. If, in the opinion of the board of drainage commissioners, a new property map of the district should accompany the profiles, the clerk shall order the board of viewers to make such new map, showing the present owners in the district or in that portion thereof to be bene-

fited by the proposed repairs, maintenance or improvement. The board of viewers shall with their profile or profiles file a report showing the lands to be benefited by the proposed repairs or maintenance or other improvements, the estimated costs thereof and the proportion or percentage which each tract of land shall bear for such repair, maintenance or improvement. Only those lands benefited by the proposed expenditures for repair, maintenance or improvement shall be assessed, and the assessment so made shall be in proportion to the benefits to be derived therefrom. The property maps, profiles and estimates of costs of repair, maintenance or improvement and lands benefited and benefits received shall be filed with the clerk in the time and manner prescribed for the filing of such reports when the district is first created. (1923, c. 231, s. 3; C. S., s. 5373(c); 1947, c. 982, s. 2.)

Editor's Note.—The 1947 amendment repealed the former section and substituted the above section therefor.

§ **156-121. Redress to dissatisfied landowners.**—Any one owning land which has been reclassified by the board of viewers who is dissatisfied with their classification shall have the same redress as has heretofore been provided where divisions of classification have been made by a petition to the clerk or otherwise. (1923, c. 231, s. 4; C. S., s. 5373(d).)

§ **156-122. Increase to extinguish debt.**—If in the opinion of the board of drainage commissioners it would help the sale of the maintenance or improvement bonds, or they would deem it necessary under the provision of § 156-101, they may, with the approval of the clerk of the superior court, add to the amount estimated by the board of viewers a sufficient amount to pay off all outstanding obligations of the district, leaving this their only bond issue. (1923, c. 231, s. 5; C. S., s. 5373(e).)

§ **156-123. Proceedings as for original bond issue.**—The compensation of the board of viewers and their assistants, together with all other expenses in connection with this bond issue, shall be paid in the same manner, the duties and power of the clerk, and the duties and power of the board of drainage commissioners, the bonds shall be advertised and sold, divided into such annual installments, bear such a rate of interest, the landowners shall be given the same notices and the same rights to pay cash, the contract shall be let and supervised, and contractor paid the same, as if this was the original bond issue. (1923, c. 231, s. 6; C. S., s. 5373(f).)

§ **156-124. No drainage assessments for original object may be levied on property when once paid in full.**—Whenever any assessment has been made or may be made by any drainage district formed under the laws of the State of North Carolina upon any lands in said district, either for construction or maintenance of its system of drainage or for any other purpose, and the particular assessment made against any particular piece of property has been paid or shall be hereafter paid in full, then and in that event no other or further assessment may be made upon said land for the purpose of providing money for the purpose for which the original assessment was made. (1933, c. 504; 1935, c. 469, s. 5.)

Local Modification.—Mecklenburg: 1933, c. 504; 1935, c. 469.

Editor's Note.—The 1935 amendment re-enacted this section without change.

This section does not apply to bonds issued prior to its effective date, or affect the right of the holders of such bonds under prescribed conditions to require the levying and collection of special assessments for the purpose of paying the bonds. Board of Com'rs v. Gaines, 221 N. C. 324, 20 S. E. (2d) 377 (1942).

Assessments to Pay Judgment Rendered Prior to Effective Date.—This section is held not to affect the liability of lands within a drainage district for additional assessments necessary to pay a judgment against the district, rendered prior to the

effective date of this section, for improvements theretofore made by the district. Virginia-Carolina Joint Stock Land Bank v. Watt, 207 N. C. 577, 178 S. E. 228 (1935).

§ 156-124.1. Assessments for repair, etc., of canals; notice and publication; exceptions to report.—All assessments for repair, maintenance or enlargement or other improvements of any canal or canals in any drainage district shall be levied against the lands benefited by such repair, enlargement or improvement. The drainage commissioners shall give notice of the proposed assessments by publication at least once a week for a period of four weeks in some newspaper published in the county in which said district was created, or if there be no such newspaper, by posting a notice at the courthouse door in said county for thirty days. Any property owner may within said thirty-day period file exceptions to said report, whereupon the clerk shall fix a time for the hearing of all exceptions which may be filed, and at said time the clerk shall hear said exceptions and render such judgment as may be meet and proper. Any property owner not having excepted to the proposed assessment within the time herein provided for shall be concluded and bound by the assessment as proposed. (1947, c. 982, s. 3.)

ARTICLE 9.

Adjustment of Delinquent Assessments.

§ 156-125. Adjustment by board of commissioners authorized.—The board of commissioners of any drainage district may, in connection with the issuance of bonds for the purpose of refunding outstanding bonds of the district, and in addition to preparing a new assessment roll, for the payment of principal and interest of such refunding bonds, and when the bonds so refunded constitute all of the bonds of the district for which an assessment has been made against property therein, adjust the uncollected delinquent installments of the assessment made upon property in the district, for the payment of principal and interest of the bonds so refunded and for other purposes authorized by law before said bonds were refunded. The adjustment of such delinquent assessments may include reduction of the principal amount of the delinquent installments, not exceeding fifty per centum thereof, to which reduced installments shall be added interest computed thereon, at a rate not less than the rate of interest of the refunding bonds, from the date of delinquency of said installments to the date of the refunding bonds, and shall include any costs legally incurred for the collection of the same; the date of delinquency shall be deemed to be the first day of December following the date upon which each of said installments became due: Provided, however, all delinquent installments of such assessment shall be adjusted on the same basis and by the same method. (1935, c. 469, s. 1.)

§ 156-126. Extension of adjusted installments.—Upon adjustment of delinquent installments of any assessment as provided herein, the payment of all delinquent installments so adjusted may be extended over a period not exceeding the life of the issue of refunding bonds, but in no event over a period exceeding twenty years. Such extension shall be made by the preparation of assessment rolls, which shall provide for the payment of installments so adjusted in equal annual installments which shall become due annually on September first, in accordance with the original assessment, and shall bear interest at the rate of four per centum per annum from December first following their due date until paid. Such assessment rolls shall be prepared and filed with the sheriff and the clerk of superior court and receipts shall be prepared and the same shall be collected in the same manner as other assessments of the district. (1935, c. 469, s. 2.)

§ 156-127. Special fund set up; distribution of collections.—The collection of assessments adjusted under this article and of interest accrued under §

156-126 shall be set aside in a fund and shall be applied as follows: one-third of such collections may be used solely for operating and administrative expenses of the district, but the remaining two-thirds thereof shall be reserved as additional security for the payment of the refunding bonds, or for the purchase and retirement of such refunding bonds, at prices not exceeding par and accrued interest. (1935, c. 469, s. 3.)

§ 156-128. Approval of adjustments by Local Government Commission.—Any adjustments of delinquent assessments under the provisions of this article shall be effective only upon approval of the Local Government Commission. (1935, c. 469, s. 4.)

§ 156-129. Amount of assessments limited; reassessments regulated.—The assessments made under this article shall in no instance, and against no piece of property, be greater in amount than that per cent which the per cent assessment authorized by this article bears to the unpaid original assessment upon each piece or tract of property within the district. In no instance, either under this article or any other law, shall any reassessment be made upon any piece of property for the purpose of providing money for the same purpose for which the original assessment was made, when the original assessment upon said property has been paid, or shall be paid prior to such general reassessment, nor to the extent that the original assessment has been paid. (1935, c. 469, s. 4(b).)

ARTICLE 10.

Report of Officers.

§ 156-130. Drainage commissioners to make statements. — It shall be the duty of the commissioners of all drainage districts in the State of North Carolina organized under the provisions of the laws thereof to file with the clerk of the superior court in the county where such district is organized a monthly statement or account during the course of construction of canals for the district, showing the receipts and expenditures of all funds coming into their hands belonging to such drainage district for the period of one month prior to the day on which the same is filed, and also to post a copy of such statement or account at the courthouse door in the county. After the construction of the canals has been concluded and the drainage commissioners have only to maintain the canals, said drainage commissioners shall only be required to file and post the annual statement required in § 156-131. Such statement or account shall be certified by the chairman of the board of commissioners of each drainage district and shall be attested by the secretary thereof, and a copy thereof shall be filed and kept as a part of the minutes of the district. (1917, c. 72, s. 1; C. S., s. 5374; 1927, c. 98, s. 6.)

Cross Reference.—As to this section not applying in case of special local act, see note to § 156-137.

Editor's Note.—The 1927 amendment provided that after construction of the canal, an annual report would be sufficient.

§ 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, and shall post a copy of same at the courthouse door in the county where the district is organized, and, if there be a newspaper published in the county, shall publish such account therein. (1917, c. 72, s. 2; C. S., s. 5375.)

Cross Reference.—As to this section not applying in case of special local act, see note to § 156-137.

§ 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, and shall fail to post or publish the same 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.)

§ **156-133. Auditor appointed.**—The board of county commissioners of each county in which one or more drainage districts have been established shall, annually, on the first Monday in May, appoint one of the members of the finance committee of the county, if the county has such finance committee, who shall be designated "Auditor for Drainage District:" but if the county has no finance committee, then the board of county commissioners shall appoint an intelligent and competent person of sufficient experience who shall be designated as the "Auditor for Drainage District." Such auditor shall receive such compensation as shall be agreed upon by the board of county commissioners, to be paid out of the general fund of said district, but not to exceed fifty dollars annually. (1917, c. 152, s. 10; 1919, c. 208, s. 3; C. S., s. 5377.)

§ **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 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 of the county 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 county 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.)

Article 11.

General Provisions.

§ **156-135. Construction of drainage law.**—The provisions of this subchapter shall be liberally construed to promote the leveeing, ditching, draining, and reclamation of wet and overflowed lands. The collection of the assessment shall not be defeated, where the proper notices have been given, by reason of any defect in the proceedings occurring prior to the order of the court confirming the final report of the viewers; but such order or orders shall be conclusive and final that all prior proceedings were regular and according to law, unless they were appealed from. If on appeal the court shall deem it just and proper to release any person or to modify his assessment or liability, it shall in no manner affect the rights and legality of any person other than the appellant, and the failure to appeal from the order of the court within the time specified shall be a waiver of any illegality in the proceedings, and the remedies provided for in this subchapter shall exclude all other remedies. (1909, c. 442, s. 37; C. S., s. 5379.)

Liberal Construction of Chapter.—The drainage laws apply to the whole State, and by the express provision of this section they should be liberally construed to promote the leveeing, ditching, draining, and reclamation of wet and overflowed lands. Board v. Brett Engineering Co., 165 N. C. 37, 80 S. E. 897 (1914).

A Necessary Provision.—This provision that the collection of assessments shall not be defeated, etc., is absolutely necessary if the public are to be protected in their purchase of the bonds put upon the market. It is to be presumed that when the court has rendered such final judgment and the bonds are issued there will be no interference with the collection of the assessments to pay the bondholders, but that all controversies were thrashed out and settled before such final judgment. Banks v. Lane, 171 N. C. 505, 88 S. E. 754 (1916).

Formation of District Not Subject to Collateral Attack.—Board of Drainage Com'rs v. Lafayette Southside Bank, 27 F. (2d) 286 (1928).

§ **156-135.1. Investment of surplus funds.**—Any drainage district organized under the provisions of subchapter III of chapter 156 of the General Statutes and the governing authority of same is hereby authorized and empowered to invest any surplus funds or any funds not needed for the immediate use of the district in United States bonds or any securities or type of investment in which guardians, executors, administrators and others acting in a fiduciary capacity are authorized to make investments by virtue of article 1 of chapter 36 of the General Statutes as amended. (1951, c. 1058, s. 1.)

§ **156-136. Removal of officers.**—Any engineer, viewer, superintendent of construction or other person appointed under this chapter may be removed by the court, upon petition, for corruption, negligence of duties, or other good and satisfactory cause shown. (1909, c. 442, s. 38; C. S., s. 5380.)

§ **156-137. Local drainage laws not affected.**—This subchapter shall not repeal or change any local drainage laws already enacted. (1909, c. 442, s. 38½; C. S., s. 5381.)

Special Local Act Not Affected. — Where a special local statute for the formation and operation of a drainage district is complete in itself in all its details, a general law expressing itself applicable to all such drainage districts in the State, adding further duties and making the failure of the commissioners to file certain reports an indictable offense, §§ 156-130, 156-131, will not be construed to apply unless special reference is made to the special local act. State v. Gettys, 181 N. C. 580, 107 S. E. 307 (1921).

§ **156-138. Punishment for violating law as to drainage districts.**—If any person shall violate any of the provisions of law in reference to drainage districts as provided in this chapter, or shall leave any log, brush, trash, or other thing where it is liable to wash into an adjacent stream and obstruct the flow of water or cut any tree so as to fall in a stream, or place any other obstruction in a

stream in a drainage district, he shall be fined not more than fifty dollars or imprisoned not more than thirty days. (1905, c. 541, ss. 7, 9; Rev., s. 3378; C. S., s. 5382.)

SUBCHAPTER IV. DRAINAGE BY COUNTIES.

Article 12.

Protection of Public Health.

§ 156-139. Cleaning and draining of streams, etc., under supervision of governmental agencies. — When the board of commissioners of any county subject to the provisions of this article shall, by resolution duly adopted, find as facts: (a) That the cleaning out and draining of any portion of any nonnavigable stream, creek or swamp area in such county is necessary and/or desirable to protect and promote the health of the citizens of such county, and (b) that the agricultural benefits which the lands along such stream or area might receive from such cleaning out and draining would be so negligible as not to justify the levying of any special assessments against such lands on account thereof, it may order, provide for, and accomplish the cleaning out and draining of such portion of such stream, creek or swamp area by, through, and under the supervision and jurisdiction of, the health department, or any sanitary committee, or any drainage commission, or other governmental agency or department of such county. (1943, c. 553, s. 1.)

Editor's Note.—For comment on this and the following two sections, see 21 N. C. Law Rev. 352.

§ 156-140. Tax levy.—In order to carry out and accomplish the objects and purposes of this article, the board of commissioners of any such county may annually levy and collect a county-wide tax not exceeding two cents (2c) upon each one hundred dollars ($100.00) in value of the taxable property in such county. (1943, c. 553, s. 2.)

§ 156-141. Article applicable to certain counties only.—This article shall apply only to those counties which may have a population in excess of one hundred thousand persons. (1943, c. 553, s. 3.)

Chapter 157.

Housing Authorities and Projects.

Article 1.

Housing Authorities Law.

Article 2.

Municipal Co-operation and Aid.

Article 3.

Eminent Domain.

Article 1.

Housing Authorities Law.

§ 157-1. Title of article.—This article may be referred to as the Housing Authorities Law. (1935, c. 456, s. 1.)

Editor's Note. — For comment on this article, see 19 N. C. Law Rev. 484.

Constitutionality. — A housing authority created under this article is not invested with legislative and supreme judicial powers, and therefore its creation does not violate the constitutional provision that these powers be and remain separate and distinct. Cox v. Kinston, 217 N. C. 391, 8 S. E. (2d) 252 (1940).

Slum Clearance Held Public Purpose.— "Slum clearance" to rehabilitate crowded and congested areas in cities and towns where conditions conducive to disease and public disorder exist, is a public purpose, for which the legislature may create municipal corporations, and housing authorities established under this and the following sections, are for such governmental purpose. Wells v. Housing Authority, 213 N. C. 744, 197 S. E. 693 (1938).

Property Exempt from Taxation.—This article is a constitutional exercise of a legislative power and the agency therein set up is a municipal corporation within the meaning of the provisions of the Constitution. It follows as a corollary to this that the property of the housing authority is exempt from State, county, and municipal taxation. Wells v. Housing Authority, 213 N. C. 744, 197 S. E. 693 (1938).

§ 157-2. Finding and declaration of necessity.—It is hereby declared that unsanitary or unsafe dwelling accommodations exist in urban and rural areas throughout the State and that such unsafe or unsanitary conditions arise from overcrowding and concentration of population, the obsolete and poor condition of the buildings, improper planning, excessive land coverage, lack of proper light, air and space, unsanitary design and arrangement, lack of proper sanitary facilities, and the existence of conditions which endanger life or property by fire and other causes; that in such urban and rural areas many persons of low income are forced to reside in unsanitary or unsafe dwelling accommodations; that in such urban and rural areas there is a lack of safe or sanitary dwelling accommodations available to all the inhabitants thereof and that consequently many persons of low income are forced to occupy overcrowded and congested dwelling accommodations; that these conditions cause an increase in and spread of disease and crime and constitute a menace to the health, safety, morals and welfare of the citizens of the State and impair economic values; that these conditions cannot be remedied by the ordinary operation of private enterprise; that the clearance, replanning and reconstruction of such areas and the providing of safe and sanitary dwelling accommodations for persons of low income are public uses and purposes for which public money may be spent and private property acquired; that it is in the public interest that work on such projects be instituted as soon as possible; and that the necessity for the provisions hereinafter enacted is hereby declared as a matter of

legislative determination to be in the public interest. (1935, c. 456, s. 2; 1938, Ex. Sess., c. 2, s. 14; 1941, c. 78, s. 2.)

Editor's Note.—Prior to the 1941 amendment, this section applied to cities and towns of more than five thousand inhabitants.

Chapter 1081 of Session Laws 1949, which amended §§ 160-417 and 160-421 and struck out § 160-423, re-enacted all of chapter 2 of the Public Laws of 1938, as thereby amended.

For comment on the 1941 amendment, see 19 N. C. Law Rev. 481.

Cited in Mallard v. Eastern Carolina Regional Housing Authority, 221 N. C. 334, 20 S. E. (2d) 281 (1942).

§ 157-3. Definitions.—The following terms, wherever used or referred to in this article shall have the following respective meanings, unless a different meaning clearly appears from the context:

(1) "Authority" or "housing authority" shall mean a public body and a body corporate and politic organized in accordance with the provisions of this article for the purposes, with the powers and subject to the restrictions hereinafter set forth.

(2) "City" shall mean the city or town having a population of more than five thousand inhabitants (according to the last federal census) which is, or is about to be, included in the territorial boundaries of an authority when created hereunder.

(3) "Council" shall mean the legislative body, council, board of commissioners, board of trustees, or other body charged with governing the city.

(4) "City clerk" and "mayor" shall mean the clerk and mayor, respectively, of the city or the officers thereof charged with the duties customarily imposed on the clerk and mayor respectively.

(5) "Municipality" shall mean any city, town, incorporated village or other municipality in the State.

(6) "Commissioner" shall mean one of the members of an authority appointed in accordance with the provisions of this article.

(7) "Government" shall include the State and federal governments and any subdivision, agency or instrumentality, corporate or otherwise, of either of them.

(8) "State" shall mean the State of North Carolina.

(9) "Federal government" shall include the United States of America, the Federal Emergency Administration of Public Works or any agency, instrumentality, corporate or otherwise, of the United States of America.

(10) "Housing project" shall include all real and personal property, buildings and improvements, stores, offices, lands for farming and gardening, and community facilities acquired or constructed or to be acquired or constructed pursuant to a single plan or undertaking (a) to demolish, clear, remove, alter or repair unsanitary or unsafe housing, and/or (b) to provide safe and sanitary dwelling accommodations for persons of low income. The term "housing project" may also be applied to the planning of the buildings and improvements, the acquisition of property, the demolition of existing structures, the construction, reconstruction, alteration and repair of the improvements and all other work in connection therewith.

(11) "Community facilities" shall include real and personal property, and buildings and equipment for recreational or social assemblies, for educational, health or welfare purposes and necessary utilities, when designed primarily for the benefit and use of the housing authority and/or the occupants of the dwelling accommodation.

(12) "Bonds" shall mean any bonds, interim certificates, notes, debentures, obligations, or other evidences of indebtedness issued pursuant to this article.

(13) "Mortgage" shall include deeds of trust, mortgages, building and loan contracts or other instruments conveying real or personal property as security for bonds and conferring a right to foreclose and cause a sale thereof.

(14) "Trust indenture" shall include instruments pledging the revenues of

real or personal properties but not conveying such properties or conferring a right to foreclose and cause a sale thereof.

(15) "Contract" shall mean any agreement of an authority with or for the benefit of an obligee whether contained in a resolution, trust indenture, mortgage, lease, bond or other instrument.

(16) "Real property" shall include lands, lands under water, structures, and any and all easements, franchises and incorporeal hereditaments and every estate and right therein, legal and equitable, including terms for years and liens by way of judgment, mortgage or otherwise.

(17) "Obligee of the authority" or "obligee" shall include any bondholder, trustee or trustees for any bondholders, any lessor demising property to the authority used in connection with a housing project or any assignee or assignees of such lessor's interest or any part thereof, and the United States of America, when it is a party to any contract with the authority.

(18) "Farmers of low income" shall mean persons or families who at the time of their admission to occupancy in a dwelling of the authority: (1) live under unsafe or unsanitary housing conditions; (2) derive their principal income from operating or working upon a farm; and (3) had an aggregate average annual net income for the three years preceding their admission that was less than the amount that shall be determined by the authority to be necessary, within its area of operation, to enable them, without financial assistance, to obtain decent, safe and sanitary housing, without overcrowding. (1935, c. 456, s. 3; 1938, Ex. Sess., c. 2, s. 14; 1941, c. 78, s. 2; 1943, c. 636, s. 1.)

Editor's Note. — The 1938 amendment substituted "five" for "fifteen" in subsection (2). The 1941 amendment added subsection (18). The 1943 amendment made changes in subsections (5) and (12).

Chapter 1081 of Session Laws 1949, which amended §§ 160-417 and 160-421 and struck out § 160-423, re-enacted all of chapter 2 of the Public Laws of 1938, as thereby amended.

A housing authority created hereunder is a municipal corporation created for a public governmental purpose, and such authority is invested with a governmental function. Cox v. Kinston, 217 N. C. 391, 8 S. E. (2d) 252 (1940).

§ 157-4. Notice, hearing and creation of authority.—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. (1935, c. 456, s. 4; 1943, c. 636, s. 7.)

Editor's Note. — The 1943 amendment struck out the former paragraph of this section relating to boundaries of housing authorities. See note under § 157-39.1.

Determination of Existence of Facts Justifying Creation of Authority. — The provision of this section investing municipal corporations with the power to determine each for itself the existence or nonexistence of facts necessary for the creation of a housing authority to perform a proper municipal governmental function within its limits is not an unconstitutional delegation of legislative authority. Cox v. Kinston, 217 N. C. 391, 8 S. E. (2d) 252 (1940).

The existence or nonexistence of facts within its corporate limits justifying the creation of a housing authority for the determination of the municipal corporation, which duty is political and not judicial, and in proceedings to enjoin the activities of a

housing authority created under the statute the court does not have authority to hear evidence in regard to the existence of the facts upon which the creation of the housing authority is predicated. Whether an appeal will lie from the municipal corporation to review such findings, quaere. Cox v. Kinston, 217 N. C. 391, 8 S. E. (2d) 252 (1940).

Publication of Notice.—Under this section publication of notice is not required for the creation of a rural housing authority, and a rural housing authority duly created thereunder is a municipal corporation created for a public purpose and realty acquired by such authority is exempt from taxation. Mallard v. Eastern Carolina Regional Housing Authority, 221 N. C. 334, 20 S. E. (2d) 281 (1942).

§ 157-5. Appointment, qualifications and tenure of commissioners. —An authority shall consist of five commissioners appointed by the mayor and he shall designate the first chairman. No commissioner may be a city official.

The commissioners who are first appointed shall be designated by the mayor to serve for terms of one, two, three, four and five years respectively from the date of their appointment. Thereafter, the term of office shall be five years. A commissioner shall hold office until his successor has been appointed and has qualified. Vacancies shall be filled for the unexpired term. Three commissioners shall constitute a quorum. The mayor shall file with the city clerk a certificate of the appointment or reappointment of any commissioner and such certificate shall be conclusive evidence of the due and proper appointment of such commissioner. A commissioner shall receive no compensation for his services but he shall be entitled to the necessary expenses including traveling expenses incurred in the discharge of his duties.

When the office of the first chairman of the authority becomes vacant, the authority shall select a chairman from among its members. An authority shall select from among its members a vice-chairman, and it may employ a secretary (who shall be executive director), technical experts and such other officers, agents and employees, permanent and temporary, as it may require, and shall determine their qualifications, duties and compensation. An authority may call upon the corporation counsel or chief law officer of the city for such legal services as it may require or it may employ its own counsel and legal staff. An authority may delegate to one or more of its agents or employees such powers or duties as it may deem proper. (1935, c. 456, s. 5.)

§ 157-6. Duty of authority and commissioners. — The authority and its commissioners shall be under a statutory duty to comply or to cause compliance strictly with all provisions of this article and the laws of the State and in addition thereto, with each and every term, provision and covenant in any contract of the authority on its part to be kept or performed. (1935, c. 456, s. 6.)

§ 157-7. Interested commissioners or employees. — No commissioner or employee of an authority shall acquire any interest direct or indirect in any housing project or in any property included or planned to be included in any project, nor shall he have any interest direct or indirect in any contract or proposed contract for materials or services to be furnished or used in connection with any housing project. If any commissioner or employee of an authority owns or controls an interest direct or indirect in any property included or planned to be included in any housing project, he shall immediately disclose the same in writing to the authority and such disclosure shall be entered upon the minutes of the authority. Failure to so disclose such interest shall constitute misconduct in office. (1935, c. 456, s. 7.)

§ 157-8. Removal of commissioners.—The mayor may remove a commissioner for inefficiency or neglect of duty or misconduct in office, but only after the commissioner shall have been given a copy of the charges against him (which may be made by the mayor) at least ten days prior to the hearing thereon and had an opportunity to be heard in person or by counsel.

Any obligee of the authority may file with the mayor written charges that the authority is violating willfully any law of the State or any term, provision or covenant in any contract to which the authority is a party. The mayor shall give each of the commissioners a copy of such charges at least ten days prior to the hearing thereon and an opportunity to be heard in person or by counsel and shall within fifteen days after receipt of such charges remove any commissioners of the authority who shall have been found to have acquiesced in any such willful violation.

A commissioner shall be deemed to have acquiesced in a willful violation by the authority of a law of this State or of any term, provision or covenant contained in a contract to which the authority is a party, if, before a hearing is held on the charges against him, he shall not have filed a written statement with the authority of his objections to, or lack of participation in, such violation.

In the event of the removal of any commissioner, the mayor shall file in the office of the city clerk a record of the proceedings together with the charges made against the commissioners and the findings thereon. (1935, c. 456, s. 8.)

§ 157-9. Powers of authority. — An authority shall constitute a public body and a body corporate and politic, exercising public powers, and having all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this article, including the following powers in addition to others herein granted:

To investigate into living, dwelling and housing conditions and into the means and methods of improving such conditions; to determine where unsafe, or insanitary dwelling or housing conditions exist; to study and make recommendations concerning the plan of any city or municipality located within its boundaries in relation to the problem of clearing, replanning and reconstruction of areas in which unsafe or insanitary dwelling or housing conditions exist, and the providing of dwelling accommodations for persons of low income, and to co-operate with any city municipal or regional planning agency; to prepare, carry out and operate housing projects; to provide for the construction, reconstruction, improvement, alteration or repair of any housing project or any part thereof; to take over by purchase, lease or otherwise any housing project located within its boundaries undertaken by any government, or by any city or municipality located in whole or in part within its boundaries; to manage as agent of any city or municipality located in whole or in part within its boundaries any housing project constructed or owned by such city; to act as agent for the federal government in connection with the acquisition, construction, operation and/or management of a housing project or any part thereof; to arrange with any city or municipality located in whole or in part within its boundaries or with a government for the furnishing, planning, replanning, installing, opening or closing of streets, roads, roadways, alleys, sidewalks or other places or facilities or for the acquisition by such city, municipality, or government of property, options or property rights or for the furnishing of property or services in connection with a project; to arrange with the State, its subdivisions and agencies, and any county, city or municipality of the State, to the extent that it is within the scope of each of their respective functions, (a) to cause the services customarily provided by each of them to be rendered for the benefit of such housing authority and/or the occupants of any housing projects and (b) to provide and maintain parks and sewage, water and other facilities adjacent to or in connection with housing projects and (c) to change the city or municipality map, to plan, replan, zone or rezone any part of the city or municipality; to lease or rent any of the dwelling or other accommodations or any of the lands, buildings, structures or facilities embraced in any housing project and to establish and revise the rents or charges therefor; to enter upon any building or property in order to conduct investigations or to make surveys or soundings; to purchase, lease, obtain options upon, acquire by gift, grant, bequest, devise, or otherwise any property real or personal or any interest therein from any person, firm, corporation, city, municipality, or government; to acquire by eminent domain any real property,

including improvements and fixtures thereon; to sell, exchange, transfer, assign, or pledge any property real or personal or any interest therein to any person, firm, corporation, municipality, city, or government; to own, hold, clear and improve property; to insure or provide for the insurance of the property or operations of the authority against such risks as the authority may deem advisable; to procure insurance or guarantees from a federal government of the payment of any debts or parts thereof secured by mortgages made or held by the authority on any property included in any housing project; to borrow money upon its bonds, notes, debentures or other evidences of indebtedness and to secure the same by pledges of its revenues, and (subject to the limitations hereinafter imposed) by mortgages upon property held or to be held by it, or in any other manner; in connection with any loan, to agree to limitations upon its right to dispose of any housing project or part thereof or to undertake additional housing projects; in connection with any loan by a government, to agree to limitations upon the exercise of any powers conferred upon the authority by this article; to invest any funds held in reserves or sinking funds, or any funds not required for immediate disbursement, in property or securities in which savings banks may legally invest funds subject to their control; to sue and be sued; to have a seal and to alter the same at pleasure; to have perpetual succession; to make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the authority; to make and from time to time amend and repeal bylaws, rules and regulations not inconsistent with this article, to carry into effect the powers and purposes of the authority; to conduct examinations and investigations and to hear testimony and take proof under oath at public or private hearings on any matter material for its information; to issue subpoenas requiring the attendance of witnesses or the production of books and papers and to issue commissions for the examination of witnesses who are out of the State or unable to attend before the authority, or excused from attendance; and to make available to such agencies, boards or commissions as are charged with the duty of abating or requiring the correction of nuisances or like conditions, or of demolishing unsafe or insanitary structures within its territorial limits, its findings and recommendations with regard to any building or property where conditions exist which are dangerous to the public health, morals, safety or welfare. Any of the investigations or examinations provided for in this article may be conducted by the authority or by a committee appointed by it, consisting of one or more commissioners, or by counsel, or by an officer or employee specially authorized by the authority to conduct it. Any commissioner, counsel for the authority, or any person designated by it to conduct an investigation or examination shall have power to administer oaths, take affidavits and issue subpoenas or commissions. An authority may exercise any or all of the powers herein conferred upon it, either generally or with respect to any specific housing project or projects, through or by an agent or agents which it may designate, including any corporation or corporations which are or shall be formed under the laws of this State, and for such purposes an authority may cause one or more corporations to be formed under the laws of this State or may acquire the capital stock of any corporation or corporations. Any corporate agent, all of the stock of which shall be owned by the authority or its nominee or nominees, may to the extent permitted by law exercise any of the powers conferred upon the authority herein. In addition to all of the other powers herein conferred upon it, an authority may do all things necessary and convenient to carry out the powers expressly given in this article. No provisions with respect to the acquisition, operation or disposition of property by other public bodies shall be applicable to an authority unless the legislature shall specifically so state.

Notwithstanding anything to the contrary contained in this article or in any other provision of law an authority may include in any contract let in connection with a project, stipulations requiring that the contractor and any subcontractors comply with requirements as to minimum wages and maximum hours of labor,

and comply with any conditions which the federal government may have attached to its financial aid of the project. (1935, c. 456, s. 9; 1939, c. 150.)

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

Not Delegation of Legislative Function. —The fact that an administrative board or municipal corporation is authorized to investigate and determine the existence or nonexistence of facts upon which depend the application of the law it is charged with administering is not a delegation of legislative functions. Cox v. Kinston, 217 N. C. 391, 8 S. E. (2d) 252 (1940).

§ **157-10. Co-operation of authorities.** — Any two or more authorities may join or co-operate with one another in the exercise, either jointly or otherwise, of any or all of their powers for the purpose of financing (including the issuance of bonds, notes or other obligations and giving security therefor), planning, undertaking, owning, constructing, operating or contracting with respect to a housing project or projects located within the boundaries of any one or more of said authorities. For such purpose an authority may by resolution prescribe and authorize any other housing authority or authorities, so joining or co-operating with it, to act on behalf with respect to any or all of such powers. Any authorities joining or co-operating with one another may by resolutions appoint from among the commissioners of such authorities an executive committee with full power to act on behalf of such authorities with respect to any or all of their powers, as prescribed by resolutions of such authorities. (1935, c. 456, s. 10; 1943, c. 636, s. 2.)

Editor's Note. — The 1943 amendment rewrote this section. See note under § 157-39.1.

§ **157-11. Eminent domain.**—The authority shall have the right to acquire by eminent domain any real property, including fixtures and improvements, which it may deem necessary to carry out the purposes of this article after the adoption by it of a resolution declaring that the acquisition of the property described therein is in the public interest and necessary for public use. The authority may exercise the power of eminent domain pursuant to the provisions of either:

(a) Sections 40-11 to 40-29, both inclusive;

(b) Any other applicable statutory provisions now in force or hereafter enacted for the exercise of the power of eminent domain.

Property already devoted to a public use may be acquired, provided, that no property belonging to any city or municipality or to any government may be acquired without its consent and that no property belonging to a public utility corporation may be acquired without the approval of the commission or other officer or tribunal, if any there be, having regulatory power over such corporation. (1935, c. 456, s. 11.)

§ **157-12. Acquisition of land for government.**—The authority may acquire by purchase or by the exercise of its power of eminent domain, as aforesaid, any property real or personal for any housing project being constructed or operated by a government. The authority upon such terms and conditions, with or without consideration, as it shall determine, may convey title or deliver possession of such property so acquired or purchased to such government for use in connection with such housing project. (1935, c. 456, s. 12.)

§ **157-13. Zoning and building laws.**—All housing projects of an authority shall be subject to the planning, zoning, sanitary and building laws, ordinances and regulations applicable to the locality in which the housing project is situated. (1935, c. 456, s. 13.)

§ **157-14. Types of bonds authority may issue.**—An authority shall have power to issue bonds from time to time in its discretion for any of its corporate purposes. An authority shall also have power to issue or exchange refunding

bonds for the purpose of paying, retiring, extending or renewing bonds previously issued by it. An authority may issue such types of bonds as it may determine, including (without limiting the generality of the foregoing) bonds on which the principal and interest are payable from income and revenues of the authority and from grants or contributions from the federal government or other source. Such income and revenues securing the bonds may be: (a) exclusively the income and revenues of the housing project financed in whole or in part with the proceeds of such bonds; (b) exclusively the income and revenues of certain designated housing projects, whether or not they are financed in whole or in part with the proceeds of such bonds; or (c) the income and revenues of the authority generally. Any such bonds may be additionally secured by a pledge of any income or revenues of the authority, or a mortgage of any housing project, projects or other property of the authority.

Neither the commissioners of an authority nor any person executing the bonds shall be liable personally on the bonds by reason of the issuance thereof. The bonds and other obligations of an authority (and such bonds and obligations shall so state in their face) shall not be a debt of any city or municipality and neither the State nor any such city or municipality shall be liable thereon, nor in any event shall such bonds or obligations be payable out of any funds or properties other than those of said authority. The bonds shall not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation of the laws of the State. Bonds may be issued under this article notwithstanding any debt or other limitation prescribed in any statute.

This article without reference to other statutes of the State shall constitute full and complete authority for the authorization, issuance, delivery and sale of bonds hereunder and such authorization, issuance, delivery and sale shall not be subject to any conditions, restrictions or limitations imposed by any other law whether general, special or local. (1935, c. 456, s. 14; 1939, c. 150, s. 2.)

Editor's Note. — The 1939 amendment rewrote this section.

A city or town is not liable on the bonds of a housing authority within its territory, it being expressly provided that neither the State nor the city or town shall be liable, and the authority not being an agency of the city or town so as to contravene this express statutory provision. Wells v. Housing Authority, 213 N. C. 744, 197 S. E. 693 (1938).

§ 157-15. Form and sale of bonds.—The bonds of the authority shall be authorized by its resolution and shall be issued in one or more series and shall bear such date or dates, mature at such time or times, not exceeding sixty years from their respective dates, bear interest at such rate or rates, not exceeding six per centum (6%) per annum payable semiannually, be in such denominations (which may be made interchangeable) be in such form, either coupon or registered, carry such registration privileges, be executed in such manner, be payable in such medium of payment, at such place or places, and be subject to such terms of redemption (with or without premium) as such resolution or its trust indenture or mortgage may provide.

The bonds may be sold at public sale held after notice published once at least ten days prior to such sale in a newspaper having a general circulation in the city and in a financial newspaper published in the city of New York, New York or in the city of Chicago, Illinois; provided, however, that such bonds may be sold to the federal government at private sale without any public advertisement. The bonds may be sold at such price or prices as the authority shall determine provided that the interest cost to maturity of the money received for any issue of said bonds shall not exceed six per centum (6%) per annum.

Pending the authorization, preparation, execution or delivery of definitive bonds, the authority may issue interim certificates, or other temporary obligations, to the purchaser of such bonds. Such interim certificates, or other temporary obligations, shall be in such form, contain such terms, conditions and provisions, bear

such date or dates, and evidence such agreements relating to their discharge or payment or the delivery of definitive bonds as the authority may by resolution, trust indenture or mortgage determine.

In case any of the officers whose signatures appear on any bonds or coupons shall cease to be such officers before the delivery of such bonds, such signatures shall, nevertheless, be valid and sufficient for all purposes, the same as if they had remained in office until such delivery.

The authority shall have power out of any funds available therefor to purchase any bonds issued by it at a price not more than the principal amount thereof and the accrued interest; provided, however, that bonds payable exclusively from the revenues of a designated project or projects shall be purchased out of any such revenues available therefor. All bonds so purchased shall be cancelled. This paragraph shall not apply to the redemption of bonds.

Any provision of any law to the contrary notwithstanding, any bonds, interim certificates, or other obligations issued pursuant to this article shall be fully negotiable. (1935, c. 456, s. 15.)

§ 157-16. Provisions of bonds, trust indentures, and mortgages.—In connection with the issuance of bonds and/or the incurring of any obligation under a lease and in order to secure the payment of such bonds and/or obligations, the authority shall have power:

(1) To pledge by resolution, trust indenture, mortgage (subject to the limitations hereinafter imposed), or other contract, all or any part of its rents, fees, or revenues.

(2) To covenant against mortgaging all or any part of its property, real or personal, then owned or thereafter acquired, or against permitting or suffering any lien thereon.

(3) To covenant with respect to limitations on its right to sell, lease or otherwise dispose of any housing project or any part thereof, or with respect to limitations on its right to undertake additional housing projects.

(4) To covenant against pledging all or any part of its rents, fees and revenues to which its right then exists or the right to which may thereafter come into existence or against permitting or suffering any lien thereon.

(5) To provide for the release of property, rents, fees and revenues from any pledge or mortgage, and to reserve rights and powers in, or the right to dispose of, property which is subject to a pledge or mortgage.

(6) To covenant as to the bonds to be issued pursuant to any resolution, trust indenture, mortgage or other instrument and as to the issuance of such bonds in escrow or otherwise, and as to the use and disposition of the proceeds thereof.

(7) To covenant as to what other, or additional debt, may be incurred by it.

(8) To provide for the terms, form, registration, exchange, execution and authentication of bonds.

(9) To provide for the replacement of lost, destroyed or mutilated bonds.

(10) To covenant that the authority warrants the title to the premises.

(11) To covenant as to the rents and fees to be charged, the amount (calculated as may be determined) to be raised each year or other period of time by rents, fees, and other revenues and as to the use and disposition to be made thereof.

(12) To covenant as to the use of any or all of its property, real or personal.

(13) To create or to authorize the creation of special funds in which there shall be segregated (a) the proceeds of any loan and/or grant; (b) all of the rents, fees and revenues of any housing project or projects or parts thereof; (c) any monies held for the payment of the costs of operation and maintenance of any such housing projects or as a reserve for the meeting of contingencies in the operation and maintenance thereof; (d) any monies held for the payment of the principal and interest on its bonds or the sums due under its leases and/or as a reserve for such payments; and (e) any monies held for any other reserves or contingencies; and to covenant as to the use and disposal of the monies held in such funds.

(14) To redeem the bonds, and to covenant for their redemption and to provide the terms and conditions thereof.

(15) To covenant against extending the time for the payment of its bonds or interest thereon, directly or indirectly, by any means or in any manner.

(16) To prescribe the procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds the holders of which must consent thereto and the manner in which such consent may be given.

(17) To covenant as to the maintenance of its property, the replacement thereof, the insurance to be carried thereon and the use and disposition of insurance moneys.

(18) To vest in an obligee of the authority the right, in the event of the failure of the authority to observe or perform any covenant on its part to be kept or performed, to cure any such default and to advance any moneys necessary for such purpose, and the moneys so advanced may be made an additional obligation of the authority with such interest, security and priority as may be provided in any trust indenture, mortgage, lease or contract of the authority with reference thereto.

(19) To covenant and prescribe as to the events of default and terms and conditions upon which any or all of its bonds shall become or may be declared due before maturity and as to the terms and conditions upon which such declaration and its consequences may be waived.

(20) To covenant as to the rights, liabilities, powers and duties arising upon the breach by it of any covenant, condition, or obligation.

(21) To covenant to surrender possession of all or any part of any housing project or projects upon the happening of an event of default (as defined in the contract) and to vest in an obligee the right without judicial proceedings to take possession and to use, operate, manage and control such housing projects or any part thereof, and to collect and receive all rents, fees and revenues arising therefrom in the same manner as the authority itself might do and to dispose of the monies collected in accordance with the agreement of the authority with such obligee.

(22) To vest in a trustee or trustees the right to enforce any covenant made to secure, to pay, or in relation to the bonds, to provide for the powers and duties of such trustee or trustees, to limit liabilities thereof and to provide the terms and conditions upon which the trustee or trustees or the holders of bonds or any proportion of them may enforce any such covenant.

(23) To make covenants other than in addition to the covenants herein expressly authorized, of like or different character.

(24) To execute all instruments necessary or convenient in the exercise of the powers herein granted or in the performance of its covenants or duties, which may contain such covenants and provisions, in addition to those above specified as the government or any purchaser of the bonds of the authority may reasonably require.

(25) To make such covenants and to do any and all such acts and things as may be necessary or convenient or desirable in order to secure its bonds, or in the absolute discretion of the authority tend to make the bonds more marketable; notwithstanding that such covenants, acts or things may not be enumerated herein; it being the intention hereof to give the authority power to do all things in the issuance of bonds, in the provisions for their security that are not inconsistent with the Constitution of the State and no consent or approval of any judge or court shall be required thereof; provided, however, that the authority shall have no power to mortgage all or any part of its property, real or personal, except as provided in § 157-17. (1935, c. 456, s. 16.)

§ 157-17. Power to mortgage when project financed with governmental aid.—In connection with any project financed in whole or in part by a

government, the authority shall also have power to mortgage all or any part of its property, real or personal, then owned or thereafter acquired, and thereby:

(a) To vest in a government the right, upon the happening of an event of default (as defined in such mortgage), to foreclose such mortgage through judicial proceedings or through the exercise of a power of sale without judicial proceedings, so long as a government shall be the holder of any of the bonds secured by such mortgage.

(b) To vest in a trustee or trustees the right, upon the happening of an event of default (as defined in such mortgage), to foreclose such mortgage through judicial proceedings or through the exercise of a power of sale without judicial proceedings, but only with the consent of the government which aided in financing the housing project involved.

(c) To vest in other obligees the right to foreclose such mortgage by judicial proceedings, but only with the consent of the government which aided in financing the project involved.

(d) To vest in an obligee, including a government, the right in foreclosing any mortgage as aforesaid, to foreclose such mortgage as to all or such part or parts of the property covered thereby as such obligee (in its absolute discretion) shall elect; the institution, prosecution and conclusion of any such foreclosure proceedings and/or the sale of any such parts of the mortgaged property shall not affect in any manner or to any extent the lien of the mortgage on the parts of the mortgaged property not included in such proceedings or not sold as aforesaid. (1935, c. 456, s. 17.)

§ 157-18. Remedies of an obligee of authority.—An obligee of the authority shall have the right in addition to all other rights which may be conferred on such obligee subject only to any contractual restrictions binding upon such obligee:

(a) By mandamus, suit, action or proceeding in law or equity (all of which may be joined in one action) to compel the authority, and the commissioners, officers, agents or employees thereof to perform each and every term, provision and covenant contained in any contract of the authority, and to require the carrying out of any or all covenants and agreements of the authority and the fulfillment of all duties imposed upon the authority by this article.

(b) By suit, action or proceeding in equity to enjoin any acts or things which may be unlawful, or the violation of any of the rights of such obligee of the authority.

(c) By suit, action or proceeding in any court of competent jurisdiction to cause possession of any housing project or any part thereof to be surrendered to any obligee having the right to such possession pursuant to any contract of the authority. (1935, c. 456, s. 18.)

§ 157-19. Additional remedies conferrable by mortgage or trust indenture. — Any authority shall have power by its trust indenture, mortgage, lease or other contract to confer upon any obligee holding or representing a specified amount in bonds, lease or other obligations the right upon the happening of an "event of default" as defined in such instrument:

(a) By suit, action or proceeding in any court of competent jurisdiction to obtain the appointment of a receiver of any housing project of the authority or any part or parts thereof. If such receiver be appointed, he may enter and take possession of such housing project or any part or parts thereof and operate and maintain same, and collect and receive all fees, rents, revenues, or other charges thereafter arising therefrom in the same manner as the authority itself might do and shall keep such moneys in a separate account or accounts and apply the same in accordance with the obligations of the authority as the court shall direct.

(b) By suit, action or proceeding in any court of competent jurisdiction to re-

quire the authority and the commissioners thereof to account as if it and they were the trustees of an express trust. (1935, c. 456, s. 19.)

§ **157-20. Remedies cumulative.** — All the rights and remedies hereinabove conferred shall be cumulative and in addition to all other rights and remedies that may be conferred upon such obligee of the authority by law or by any contract with the authority. (1935, c. 456, s. 20.)

§ **157-21. Limitations on remedies of obligee.**—No interest of the authority in any property, real or personal, shall be subject to sale by the foreclosure of a mortgage thereon, either through judicial proceedings or the exercise of a power of sale contained in such mortgage, except in the case of the mortgages provided for in § 157-17. All property of the authority shall be exempt from levy and sale by virtue of an execution, and no execution or other judicial process shall issue against the same. No judgment against the authority shall be a charge or lien upon its property, real or personal. The provisions of this section shall not apply to or limit the right of obligees to foreclose any mortgage of the authority provided for in § 157-17, and in case of a foreclosure sale thereunder, to obtain a judgment or decree for any deficiency due on the indebtedness secured thereby and issue on the credit of the authority. Such deficiency judgment or decree shall be a lien and charge upon the property of the authority, which may be levied on and sold by virtue of an execution or other judicial process for the purpose of satisfying such deficiency judgment or decree. (1935, c. 456, s. 21.)

§ **157-22. Title obtained at foreclosure sale subject to agreement with government.** — Notwithstanding anything in this article to the contrary, any purchaser or purchasers at a sale of real or personal property of the authority whether pursuant to any foreclosure of a mortgage, pursuant to judicial process or otherwise, shall obtain title subject to any contract between the authority and a government relating to the supervision by a government of the operation and maintenance of such property and the construction of improvements thereon. (1935, c. 456, s. 22.)

§ **157-23. Contracts with federal government.**—In addition to the powers conferred upon the authority by other provisions of this article, the authority is empowered to borrow money and/or accept grants from the federal government for or in aid of the construction of any housing project which such authority is authorized by this article to undertake, to take over any land acquired by the federal government for the construction of a housing project, to take over or lease or manage any housing project constructed or owned by the federal government, and to these ends, to enter into such contracts, mortgages, trust indentures, leases or other agreements as the federal government may require including agreements that the federal government shall have the right to supervise and approve the construction, maintenance and operation of such housing project. It is the purpose and intent of this article to authorize every authority to do any and all things necessary to secure the financial aid and the co-operation of the federal government in the construction, maintenance and operation of any housing project which the authority is empowered by this article to undertake. (1935, c. 456, s. 23.)

§ **157-24. Security for funds deposited by authorities.**—The authority may by resolution provide that (1) all moneys deposited by it shall be secured by obligations of the United States or of the State of a market value equal at all times to the amount of such deposits or (2) by any securities in which savings banks may legally invest funds within their control or (3) by an undertaking with such sureties as shall be approved by the authority faithfully to keep and pay over upon the order of the authority any such deposits and agreed interest thereon, and all banks and trust companies are authorized to give any such security for such deposits. (1935, c. 456, s. 24.)

§ **157-25. Housing bonds, legal investments and security.**—The State and all public officers, municipal corporations, political subdivisions, and public bodies, all banks, bankers, trust companies, savings banks and institutions, building and loan associations, savings and loan associations, investment companies and other persons carrying on a banking business, all insurance companies, insurance associations, and other persons carrying on an insurance business, and all executors, administrators, guardians, trustees and other fiduciaries may legally invest any sinking funds, moneys or other funds belonging to them or within their control in any bonds issued by a housing authority established (or hereafter established) pursuant to this article or issued by any public housing authority or agency in the United States, when such bonds are secured by a pledge of annual contributions to be paid by the United States government or any agency thereof, and such bonds shall be authorized security for all public deposits and shall be fully negotiable in this State; it being the purpose of this article to authorize any persons, firms, corporations, associations, political subdivisions, bodies and officers, public or private, to use any funds owned or controlled by them, including (but not limited to) sinking, insurance, investment, retirement, compensation, pension and trust funds, and funds held on deposit, for the purchase of any such bonds and that any such bonds shall be authorized security for all public deposits and shall be fully negotiable in this State: Provided, however, that nothing contained in this article shall be construed as relieving any person, firm or corporation from any duty of exercising reasonable care in selecting securities. (1935, c. 456, s. 25; 1941, c. 78, s. 3.)

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

§ **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 are declared to be issued for a public purpose and to be public instrumentalities and, together with interest thereon, shall be exempt from taxes when same are held by the federal government or by any purchaser from the federal government or anyone acquiring title from or through such purchaser. (1935, c. 456, s. 26.)

Since a housing authority created under § 157-1 and the following section, is a municipal corporation created for a public, governmental purpose, its property is exempt from the State, county and municipal taxation. Wells v. Housing Authority, 213 N. C. 744, 197 S. E. 693 (1938).

§ **157-27. Reports.**—The authority shall at least once a year file with the mayor of the city a report of its activities for the preceding year, and shall make any recommendations with reference to any additional legislation or other action that may be necessary in order to carry out the purposes of this article. (1935, c. 456, s. 27.)

§ **157-28. Restriction on right of eminent domain; right of appeal preserved; investigation by Utilities Commission.** — Notwithstanding any finding of public convenience and necessity, either in general or specific, by the terms of this article, the right of eminent domain shall not be exercised unless and until a certificate of public convenience and necessity for such project has been issued by the Utilities Commission of North Carolina, and the proceedings leading up to the issuing of such certificate of public convenience and necessity, and the right to appear therefrom shall be as now provided by law and said rights are hereby expressly reserved to all interested parties in said proceedings. In addition to the powers now granted by law to the Utilities Commission of North

Carolina, the said Utilities Commission is hereby vested with full power and authority to investigate and examine all projects set up or attempted to be set up under the provisions of this article and determine the question of the public convenience and necessity for said project. (1935, c. 456, s. 28.)

§ 157-29. Rentals and tenant selection.—It is hereby declared to be the policy of this State that each housing authority shall manage and operate its housing projects in an efficient manner so as to enable it to fix the rentals for dwelling accommodations at the lowest possible rates consistent with its providing decent, safe and sanitary dwelling accommodations, and that no housing authority shall construct or operate any such project for profit, or as a source of revenue to the city. To this end an authority shall fix the rentals for dwellings in its projects at no higher rates than it shall find to be necessary in order to produce revenues which (together with all other available monies, revenues, income and receipts of the authority from whatever sources derived) will be sufficient (a) to pay, as the same become due, the principal and interest on the bonds of the authority; (b) to meet the cost of, and to provide for, maintaining and operating the projects (including the cost of any insurance) and the administrative expenses of the authority; and (c) to create (during not less than the six years immediately succeeding its issuance of any bonds) a reserve sufficient to meet the largest principal and interest payment which will be due on such bonds in any one year thereafter and to maintain such reserve. In the operation or management of housing projects an authority shall at all times observe the following duties with respect to rentals and tenant selection: (a) it may rent or lease the dwelling accommodations therein only to persons who lack the amount of income which is necessary (as determined by the housing authority undertaking the housing project) to enable them, without financial assistance, to live in decent, safe and sanitary dwellings, without overcrowding; (b) it may rent or lease the dwelling accommodations only at rentals within the financial reach of such persons; (c) it may rent or lease to a tenant dwelling accommodations consisting of the number of rooms (but no greater number) which it deems necessary to provide safe and sanitary accommodations to the proposed occupants thereof, without overcrowding; and (d) it shall not accept any person as a tenant in any housing project if the person or persons who would occupy the dwelling accommodations have an annual net income in excess of five times the annual rental of the quarters to be furnished such person or persons, except that in the case of families with three or more minor dependents, such ratio shall not exceed six to one; in computing the rental for this purpose of selecting tenants, there shall be included in the rental the average annual cost (as determined by the authority) to occupants of heat, water, electricity, gas, cooking range and other necessary services or facilities, whether or not the charge for such services and facilities is in fact included in the rental.

Nothing contained in this section shall be construed as limiting the power of an authority to vest in an obligee the right, in the event of a default by the authority, to take possession of a housing project or cause the appointment of a receiver thereof, free from all the restrictions imposed by this section. (1939, c. 150.)

Preference of Landowners Conveying Property.—An agreement of a rural housing authority giving priority in occupancy of its dwelling units to those landowners, or the tenants, sharecroppers or farm wage hands of such landowners, who convey property to the authority, provided that they come within the definition of families of low income is not unlawful discrimination in favor of such class. Mallard v. Eastern Carolina Regional Housing Authority, 221 N. C. 334, 20 S. E. (2d) 281 (1942).

§ 157-30. Creation and establishment validated. — The creation and establishment of housing authorities under the provisions of chapter four hundred and fifty-six, Public Laws of one thousand nine hundred and thirty-five, as amended by chapter two, Public Laws of one thousand nine hundred and thirty-eight, Ex-

tra Session, and as further amended by chapter one hundred and fifty, Public Laws of one thousand nine hundred and thirty-nine, and any additional amendments thereto, known as the Housing Authorities Law [§ 157-1 et seq.], together with all proceedings, acts and things heretofore undertaken, performed or done with reference thereto, are hereby validated, ratified, confirmed, approved and declared legal in all respects, notwithstanding any want of statutory authority or any defect or irregularity therein. (1939, c. 118, s. 1; 1941, c. 62, s. 1.)

Cross Reference.—See Editor's Note under § 157-32.1.

Editor's Note. — For comment on the 1941 Act, see 19 N. C. Law Rev. 484.

§ 157-31. Contracts, agreements, etc., validated. — All contracts, agreements, obligations and undertakings of such housing authorities heretofore entered into relating to financing or aiding in the development, construction, maintenance or operation of any housing project or projects or to obtaining aid therefor from the United States Housing Authority, including (without limiting the generality of the foregoing) loan and annual contributions contracts and leases with the United States Housing Authority, agreements with municipalities or other public bodies (including those which are pledged or authorized to be pledged for the protection of the holders of any notes or bonds issued by such housing authorities or which are otherwise made a part of the contract with such holders of notes or bonds) relating to co-operation and contributions in aid of housing projects, payments (if any) in lieu of taxes, furnishing of municipal services and facilities, and the elimination of unsafe and insanitary dwellings, and contracts for the construction of housing projects, together with all proceedings, acts and things heretofore undertaken, performed or done with reference thereto, are hereby validated, ratified, confirmed, approved and declared legal in all respects, notwithstanding any want of statutory authority or any defect or irregularity therein. (1939, c. 118, s. 2; 1941, c. 62, s. 2.)

Cross Reference. — See Editor's Note under § 157-32.1.

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

§ 157-32. Proceedings for issuance, etc., of bonds and notes validated. — All proceedings, acts and things heretofore undertaken, performed or done in or for the authorization, issuance, execution and delivery of notes and bonds by housing authorities for the purpose of financing or aiding in the development or construction of a housing project or projects, and all notes and bonds heretofore issued by housing authorities are hereby validated, ratified, confirmed, approved and declared legal in all respects, notwithstanding any want of statutory authority or any defect or irregularity therein. (1939, c. 118, s. 3; 1941, c. 62, s. 3.)

Cross Reference. — See Editor's Note under § 157-32.1.

Editor's Note. — The 1941 amendment substituted "of" for "or" in the phrase "want of statutory authority" near the end of the section.

§ 157-32.1. Other validation of creation, etc.—The creation, establishment and organization of housing authorities under the provisions of the Housing Authorities Law (chapter four hundred and fifty-six, Public Laws of one thousand nine hundred and thirty-five, as amended, codified as § 157-1 et seq.), together with all proceedings, acts and things heretofore undertaken or done with reference thereto, are hereby validated and declared legal in all respects. (1943, c. 89, s. 1.)

Editor's Note.—This section and §§ 157-32.2 and 157-32.3, validating housing authorities created under § 157-1 et seq., together with certain acts done in connection therewith, are similar to §§ 157-30 through 157-32. The words "notwithstanding any want of statutory authority or any defect or irregularity therein," appearing at the end of §§ 157-30 through 157-32, do not appear in the other sections and they differ slightly in other particulars

§ 157-32.2. Other validation of contracts, agreements, etc. — All contracts, agreements and undertakings of such housing authorities heretofore entered into relating to financing, or aiding in the development or operation of any housing projects, including (without limiting the generality of the foregoing) loan and annual contributions contracts, agency contracts and leases, agreements with municipalities or other public bodies (including those which are pledged or authorized to be pledged for the protection of the holders of any notes or bonds issued by such housing authorities or which are otherwise made a part of the contract with such holders of notes or bonds) relating to co-operation in aid of housing projects, payments to public bodies in the State, furnishing of municipal services and facilities and the elimination of unsafe and insanitary dwellings, and contracts for the construction of housing projects, together with all proceedings, acts and things heretofore undertaken or done with reference thereto, are hereby validated and declared legal in all respects. (1943, c. 89, s. 2.)

Cross Reference. — See Editor's Note under § 157-32.1.

§ 157-32.3. Other validation of bonds and notes.—All proceedings, acts and things heretofore undertaken or done in or for the authorization, issuance, execution and delivery of notes and bonds by housing authorities for the purpose of financing or aiding in the development or construction of a housing project or projects, and all notes and bonds heretofore issued by housing authorities are hereby validated and declared legal in all respects. (1943, c. 89, s. 3.)

Cross Reference. — See Editor's Note under § 157-32.1.

§ 157-33. Notice, hearing and creation of authority for a county.— Any twenty-five (25) residents of a county having a population of more than sixty thousand (60,000) may file a petition with the clerk of the board of county commissioners setting forth that there is a need for an authority to function in the county. Upon the filing of such a petition such clerk shall give notice of the time, place and purposes of a public hearing at which the board of county commissioners will determine the need for an authority in the county. Such notice shall be given at the county'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 county or, if there be no such newspaper, by posting such a notice in at least three public places within the county, at least ten days preceding the day on which the hearing is to be held.

Upon the date fixed for said hearing to be held upon notice as provided herein, an opportunity to be heard shall be granted to all residents and taxpayers of the county and to all other interested persons. After such a hearing, the board of county commissioners shall determine (1) whether insanitary or unsafe inhabited dwelling accommodations exist in the county and/or (2) whether there is a lack of safe or sanitary dwelling accommodations in the county available for all the inhabitants thereof. In determining whether dwelling accommodations are unsafe or insanitary, the board of county commissioners shall take into consideration the following: The physical condition and age of the buildings; the degree of overcrowding; the percentage of the 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 board of county commissioners shall adopt a resolution so finding (which need not go into any detail other than the mere finding) and shall thereupon appoint, as hereinafter provided, five commissioners to act as an authority. Said authority 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 board of county commissioners made the aforesaid determination after such hearing and 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 board of county commissioners, 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. (1941, c. 78, s. 4; 1943, c. 636, s. 7.)

Editor's Note. — The 1943 amendment struck out the former paragraph relating to the area of operation of housing authorities. See note under § 157-39.1.

§ 157-34. Commissioners and powers of authority for a county.— The commissioners of a housing authority created for a county may be appointed and removed by the board of county commissioners of the county in the same manner as the commissioners of a housing authority created for a city may be appointed and removed by the mayor, and except as otherwise provided herein, each housing authority created for a county and the commissioners thereof shall have the same functions, rights, powers, duties and limitations provided for housing authorities created for cities and the commissioners of such housing authorities: Provided, that for such purposes the term "mayor" or "council" as used in the housing authorities law and any amendments thereto shall be construed as meaning "board of county commissioners," the term "city clerk" as used therein shall be construed as meaning "clerk of the board of county commissioners" and the term "city" as used therein shall be construed as meaning "county" unless a different meaning clearly appears from the context: Provided, further, that a housing authority created for a county shall not be subject to the

limitations provided in clause (d) of § 157-29 of the housing authorities law with respect to housing projects for farmers of low income. (1941, c. 78, s. 4.)

§ 157-35. Creation of regional housing authority.—If the board of county commissioners of each of two or more contiguous counties having an aggregate population of more than sixty thousand (60,000) by resolution declares that there is a need for one housing authority to be created for all of such counties to exercise powers and other functions herein prescribed for a housing authority in such counties, a public body corporate and politic to be known as a regional housing authority for all of such counties shall (after the commissioners thereof file an application with the Secretary of State as hereinafter provided) thereupon exist for and exercise its powers and other functions in such counties; and thereupon any housing authority created for any of such counties shall cease to exist except for the purpose of winding up its affairs and executing a deed to the regional housing authority as hereinafter provided: Provided, that the board of county commissioners shall not adopt a resolution as aforesaid if there is a county housing authority created for such county which has any bonds or notes outstanding unless first, all holders of such bonds and notes consent in writing to the substitution of such regional housing authority in lieu of such county housing authority on all such bonds and notes; and second, the commissioners of such county housing authority adopt a resolution consenting to the transfer of all the rights, contracts, obligations, and property, real and personal, of such county housing authority to such regional housing authority as hereinafter provided: Provided, further, that when the above conditions are complied with and such regional housing authority is created and authorized to exercise its powers and other functions, all rights, contracts, agreements, obligations, and property, real and personal, of such county housing authority shall be in the name of and vest in such regional housing authority, and all obligations of such county housing authority shall be the obligations of such regional housing authority and all rights and remedies of any person against such county housing authority may be asserted, enforced, and prosecuted against such regional housing authority to the same extent as they might have been asserted, enforced, and prosecuted against such county housing authority. When any real property of a county housing authority vests in a regional housing authority as provided above, the county housing authority shall execute a deed of such property to the regional housing authority which thereupon shall file such deed in the office provided for the filing of deeds: Provided, that nothing contained in this sentence shall affect the vesting of property in the regional housing authority as provided above.

The board of county commissioners of each of two or more said contiguous counties shall by resolution declare that there is a need for one regional housing authority to be created for all of such counties to exercise powers and other functions herein prescribed in such counties, if such board of county commissioners finds (and only if it finds) (a) insanitary or unsafe dwelling accommodations exist in the area of its respective county and/or there is a lack of safe or sanitary dwelling accommodations in the county available for all the inhabitants thereof and (b) that a regional housing authority for the purposed region would be a more efficient or economical administrative unit than a housing authority for an area having a smaller population to carry out the purposes of the Housing Authorities Law and any amendments thereto, in such county. In determining whether dwelling accommodations are unsafe or insanitary, the board of county commissioners 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 both (a) and (b) of the above enumerated conditions

exist, the board of county commissioners shall adopt a resolution so finding (which need not go into any detail other than the mere finding). After the appointment, as hereinafter provided, of the commissioners to act as the regional housing authority, said authority 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 the boards of county commissioners made the aforesaid determination and that they have been appointed 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 act; (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.

In any suit, action or proceeding involving the validity or enforcement of, or relating to any contract of the regional housing authority, the regional housing 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. (1941, c. 78, s. 4; 1943, c. 636, ss. 3, 7.)

Editor's Note. — The 1943 amendment inserted the words in parentheses in the first paragraph and added that part of the paragraph appearing after the word "outstanding" in the first proviso. The amendment also struck out the former paragraph relating to the area of operation of housing authorities. See note under § 157-39.1.

§ **157-36. Commissioners of regional housing authority.**—The board of county commissioners of each county included in regional housing authority shall appoint one person as a commissioner of such authority, and each such commissioner to be first appointed by the board of county commissioners of a county may be appointed at or after the time of the adoption of the resolution declaring the need for such regional housing authority or declaring the need for the inclusion of such county in the area of operation of such regional housing authority. When the area of operation of a regional housing authority is increased to include an additional county or counties as provided in this article, the board of county commissioners of each such county shall thereupon appoint one additional person as a commissioner of the regional housing authority. The board of county commissioners of each county shall appoint the successor of the commissioner appointed by it. If any county is excluded from the area of operation of a regional housing authority, the office of the commissioner of such regional housing authority appointed by the board of county commissioners of such county shall be thereupon

abolished. A certificate of the appointment of any such commissioner signed by the chairman of the board of county commissioners (or the appointing officer) shall be conclusive evidence of the due and proper appointment of such commissioner. If the area of operation of a regional housing authority consists at any time of an even number of counties, the Governor of North Carolina shall appoint one additional commissioner to such regional housing authority whose term of office shall be as herein provided for a commissioner of a regional housing authority, except that such term shall end at any earlier time that the area of operation of the regional housing authority shall be changed to consist of an odd number of counties. The Governor shall likewise appoint each person to succeed such additional commissioner. A certificate of the appointment of any such additional commissioner shall be signed by the Governor and filed with the Secretary of State. A copy of such certificate, duly certified by the Secretary of State, shall be conclusive evidence of the due and proper appointment of such additional commissioner. The commissioners of a regional housing authority shall be appointed for terms of five years except that all vacancies shall be filled for the unexpired terms. Each commissioner shall hold office until his successor has been appointed and has qualified.

For inefficiency or neglect of duty or misconduct in office, a commissioner of a regional housing authority may be removed by the board of county commissioners appointing him, or in the case of the commissioner appointed by the Governor, by the Governor: Provided, that such commissioner shall have been given a copy of the charges against him at least ten days prior to the hearing thereon and: Provided, that such commissioner shall have had an opportunity to be heard in person or by counsel.

The commissioners appointed as aforesaid shall constitute the regional housing authority, and the powers of such authority shall be vested in such commissioners in office from time to time.

The commissioners of a regional housing authority shall elect a chairman from among the commissioners and shall have power to select or employ such other officers and employees as the regional housing authority may require. A majority of the commissioners of a regional housing authority shall constitute a quorum of such authority for the purpose of conducting its business and exercising its powers and for all other purposes. (1941, c. 78, s. 4; 1943, c. 636, s. 4.)

Editor's Note. — The 1943 amendment inserted the first six sentences of the first paragraph in place of the first four sentences as formerly appearing. See note under § 157-39.1.

§ 157-37. Powers of regional housing authority. — Except as otherwise provided herein, a regional housing authority and the commissioners thereof shall, within the area of operation of such regional housing authority, have the same functions, rights, powers, duties and limitations provided for housing authorities created for cities or counties and the commissioners of such housing authorities: Provided, that for such purposes the term "mayor" or "council" as used in the Housing Authorities Law and any amendments thereto shall be construed as meaning "board of county commissioners," the term "city clerk" as used therein shall be construed as meaning "clerk of the board of county commissioners" and the term "city" as used therein shall be construed as meaning "county" unless a different meaning clearly appears from the context: Provided, further, that a regional housing authority shall not be subject to the limitations provided in clause (d) of § 157-29 of the Housing Authorities Law with respect to housing projects for farmers of low income. Except as otherwise provided in this article, all the provisions of law applicable to housing authorities created for counties and the commissioners of such authorities shall be applicable to regional housing authorities and the commissioners thereof. (1941, c. 78, s. 4; 1943, c. 636, s. 6.)

Editor's Note. — The 1943 amendment added the last sentence. See note under § 157-39.1.

§ **157-38. Rural housing projects.**—Housing authorities created for counties and regional housing authorities are specifically empowered and authorized to borrow money, accept grants and exercise their other powers to provide housing for farmers of low income. In connection with such projects, such housing authorities may enter into such lease or purchase agreements, accept such conveyances and rent or sell dwellings forming part of such projects to or for farmers of low income, as such housing authority deems necessary in order to assure the achievement of the objectives of this article. Such leases, agreements or conveyances may include such covenants as the housing authority deems appropriate regarding such dwellings and the tracts of land described in any such instrument, which covenants shall be deemed to run with the land where the housing authority deems it necessary and the parties to such instrument so stipulate. Nothing contained in this section shall be construed as limiting any other powers of any housing authority. (1941, c. 78, s. 4.)

§ **157-39. Housing application by farmers.**—The owner of any farm operated, or worked upon, by farmers of low income in need of safe and sanitary housing may file an application with a housing authority of a county or a regional housing authority requesting that it provide for a safe and sanitary dwelling or dwellings for occupancy by such farmers of low income. Such applications shall be received and examined by housing authorities in connection with the formulation of projects or programs to provide housing for farmers of low income. (1941, c. 78, s. 4.)

§ **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 thousand, 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.)

Editor's Note. — The act inserting this section also inserted §§ 157-39.2 through 157-39.8, inclusive, and amended §§ 157-3, 157-4, 157-10, 157-33, 157-35, 157-36 and 157-37. Section 9 of the amendatory act provided: "The powers conferred by this act shall be in addition and supplemental to the powers conferred by any other law. Nothing contained in this act shall affect the term of office of any commissioner of a housing authority heretofore appointed under the housing authorities law. The enactment of this act shall not be construed to render invalid any action or proceeding had or taken for the creation or establishment of a housing authority pursuant to laws in existence prior to the enactment of this act."

§ **157-39.2. Increasing area of operation of regional housing au-**

thority.—The area of operation or boundaries of a regional housing authority shall be increased from time to time to include one or more additional contiguous counties not already within a regional housing authority if the board of county commissioners of each of the counties then included in the area of operation of such regional housing authority, the commissioners of the regional housing authority and the board of county commissioners of each such additional county or counties each adopts a resolution declaring that there is a need for the inclusion of such additional county or counties in the area of operation of such regional housing authority. Upon the adoption of such resolutions, any county housing authority created for any such additional county shall cease to exist except for the purpose of winding up its affairs and executing a deed to the regional housing authority as hereinafter provided: Provided, however, that such resolutions shall not be adopted if there is a county housing authority created for any such additional county which has any bonds or notes outstanding unless first, all holders of such bonds and notes consent in writing to the substitution of such regional housing authority in lieu of such county housing authority as the obligor thereon; and second, the commissioners of such county housing authority adopt a resolution consenting to the transfer of all the rights, contracts, bonds, and property, real and personal, of such county housing authority to such regional housing authority as hereinafter provided: Provided, further, that when the above two conditions are complied with and the area of operation of such regional housing authority is increased to include such additional county, as hereinabove provided, all rights, contracts, bonds, and property, real and personal, of such county housing authority shall be in the name of and vested in such regional housing authority, all contracts and bonds of such county housing authority shall be the contracts and bonds of such regional housing authority and all rights and remedies of any person against such county housing authority may be asserted, enforced, and prosecuted against such regional housing authority to the same extent as they might have been asserted, enforced, and prosecuted against such county housing authority.

When any real property of a county housing authority vests in a regional housing authority as provided above, the county housing authority shall execute a deed of such property to the regional housing authority which thereupon shall file such deed in the office provided for the filing of deeds: Provided, that nothing contained in this sentence shall affect the vesting of property in the regional housing authority as provided above.

The board of county commissioners of each of the counties in the regional housing authority, the commissioners of the regional housing authority and the board of county commissioners of each such additional county or counties shall by resolution declare that there is a need for the inclusion of such county or counties in the area of operation of the regional housing authority, only if (a) the board of county commissioners of each such additional county or counties find that insanitary or unsafe inhabited dwelling accommodations exist in such county or there is a shortage of safe or sanitary dwelling accommodations in such county available to persons of low income at rentals they can afford, and (b) the board of county commissioners of each of the counties then included in the area of operation of the regional housing authority, the commissioners of the regional housing authority and the board of county commissioners of each such additional county or counties find that the regional housing authority would be a more efficient or economical administrative unit if the area of operation of the regional housing authority is increased to include such additional county or counties. (1943, c. 636, s. 5.)

§ 157-39.3. Decreasing area of operation of regional housing authority.—The area of operation or boundaries of a regional housing authority shall be decreased from time to time to exclude one or more counties from such area if the board of county commissioners of each of the counties in such area

and the commissioners of the regional housing authority each adopt a resolution declaring that there is a need for excluding such county or counties from such area: Provided, that no action may be taken pursuant to this section if the regional housing authority has outstanding any bonds or notes, unless first all holders of such bonds or notes consent in writing to such action: Provided, further, that if such action decreases the area of operation of the regional housing authority to only one county, such authority shall thereupon constitute and become a housing authority for such county, in the same manner as though such authority were created, and constituted a public and corporate body for such county pursuant to other provisions of this Housing Authority Law, and the commissioners of such authority shall be thereupon appointed as provided for the appointment of commissioners of a housing authority created for a county.

The board of county commissioners of each of the counties in the area of operation of the regional housing authority and the commissioners of the regional housing authority shall adopt a resolution declaring that there is a need for excluding a county or counties from such area only if: (a) each such board of county commissioners of the counties to remain in the area of operation of the regional housing authority and the commissioners of the regional housing authority find that (because of facts arising or determined subsequent to the time when such area first included the county or counties to be excluded) the regional housing authority would be a more efficient or economical administrative unit if such county or counties were excluded from such area, and (b) the board of county commissioners of each county or counties to be excluded and the commissioners of the regional housing authority each also find that (because of the aforesaid changed facts) another housing authority for such county or counties would be a more efficient or economical administrative unit to function in such county or counties. Nothing contained herein shall be construed as preventing a county or counties excluded from the area of operation of a regional housing authority, as provided above, from thereafter being included within the area of operation of any housing authority in accordance with this article.

Any property held by a regional housing authority within a county or counties excluded from the area of operation of such authority as herein provided, shall (as soon as practicable after the exclusion of said county or counties, respectively) be disposed of by such authority in the public interest. (1943, c. 636, s. 5.)

§ 157-39.4. Requirements of public hearings.—The board of county commissioners of a county shall not adopt any resolution authorized by §§ 157-35, 157-39.2 or 157-39.3 unless a public hearing has first been held which shall conform (except as otherwise provided herein) to the requirements of this Housing Authorities Law for hearings to determine the need for a housing authority of a county: Provided, that such hearings may be held by the board of county commissioners without a petition therefor.

In connection with the issuance of bonds, a regional housing authority may covenant as to limitations on its right to adopt resolutions relating to the increase or decrease of its area of operation. (1943, c. 636, s. 5.)

§ 157-39.5. Consolidated housing authority.—If the governing body of each of two or more municipalities (with a population of less than five thousand, 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.)

§ 157-39.6. Findings required for authority to operate in municipality. — No governing body of a city or other municipality shall adopt a resolution as provided in § 157-39.1 declaring that there is a need for a housing authority (other than a housing authority established by such municipality) to exercise its powers within such municipality, unless a public hearing has first been held by such governing body and unless such governing body shall have found in substantially the following terms: (a) that insanitary or unsafe inhabited dwelling accommodations exist in such municipality or that there is a shortage of safe or sanitary dwelling accommodations in such municipality available to persons of low income at rentals they can afford; and (b) that these conditions can be best remedied through the exercise of the aforesaid housing authority's powers within the territorial boundaries of such municipality: Provided, that such findings shall not have the effect of thereafter preventing such

municipality from establishing a housing authority or joining in the creation of a consolidated housing authority or the increase of the area of operation of a consolidated housing authority. The clerk (or the officer with similar duties) of the city or other municipality shall give notice of the public hearing and such hearing shall be held in the manner provided in § 157-4 for a public hearing by a council to determine the need for a housing authority in the city.

During the time that, pursuant to these findings, a housing authority has outstanding (or is under contract to issue) any evidences of indebtedness for a project within the city or other municipality, no other housing authority may undertake a project within such municipality without the consent of said housing authority which has such outstanding indebtedness or obligation. (1943, c. 636, s. 5.)

§ **157-39.7. Meetings and residence of commissioners.**—Nothing contained in this Housing Authorities Law shall be construed to prevent meetings of the commissioners of a housing authority anywhere within the perimeter boundaries of the area of operation of the authority or within any additional area where the housing authority is authorized to undertake a housing project, nor to prevent the appointment of any person as a commissioner of the authority who resides within such boundaries or such additional area, and who is otherwise eligible for such appointment under this Housing Authorities Law. (1943, c. 636, s. 5.)

§ **157-39.8. Agreement to sell as security for obligations to federal government.**—In any contract or amendatory or superseding contract for a loan and annual contributions heretofore or hereafter entered into between a housing authority and the federal government with respect to any housing project undertaken by said housing authority, any such housing authority is authorized to make such covenants (including covenants with holders of bonds issued by such authority for purposes of the project involved), and to confer upon the federal government such rights and remedies, as said housing authority deems necessary to assure the fulfillment of the purposes for which the project was undertaken. In any such contract, the housing authority may, notwithstanding any other provisions of law, agree to sell and convey the project (including all lands appertaining thereto) to which such contract relates to the federal government upon the occurrence of such conditions, or upon such defaults on bonds for which any of the annual contributions provided in said contract are pledged, as may be prescribed in such contract, and at a price (which may include the assumption by the federal government of the payment, when due, of the principal of and interest on outstanding bonds of the housing authority issued for purposes of the project involved) determined as prescribed therein and upon such other terms and conditions as are therein provided. Any such housing authority is hereby authorized to enter into such supplementary contracts, and to execute such conveyances, as may be necessary to carry out the provisions hereof. Notwithstanding any other provisions of law, any contracts or supplementary contracts or conveyances made or executed pursuant to the provisions of this section shall not be or constitute a mortgage within the meaning or for the purposes of any of the laws of this State. (1943, c. 636, s. 5.)

Article 2.

Municipal Co-operation and Aid.

§ **157-40. Finding and declaration of necessity.**—It is hereby declared that insanitary or unsafe dwelling accommodations exist in various areas of the State, and that consequently many persons of low income are forced to reside in such dwelling accommodations; that these conditions cause an increase in and spread of disease and crime and constitute a menace to the health, safety,

morals and welfare of the citizens of the State and impair economic values; that the clearance, replanning and reconstruction of the areas in which insanitary or unsafe housing conditions exist and the providing of safe and sanitary dwelling accommodations for persons of low income are public uses and purposes for which private property may be acquired; that it is in the public interest that work on such projects be instituted as soon as possible in order to relieve unemployment which now constitutes an emergency; and the necessity in the public interest for the provisions hereinafter enacted, is hereby declared as a matter of legislative determination. (1935, c. 408, s. 1.)

Editor's Note. — For an analysis of this article, see 13 N. C. Law Rev. 379.

§ **157-41. Definitions.**—The following terms, whenever used or referred to in this article, shall have the following respective meanings, unless a different meaning clearly appears from the context:

(1) "Housing authority" shall mean any housing authority organized pursuant to the Housing Authorities Law of this State.

(2) "City" shall mean any city of the State having a population of more than fifteen thousand inhabitants (according to the last federal census) which is, or is about to be, included in the territorial boundaries of a housing authority.

(3) "Municipality" shall mean any city, town or incorporated village of the State.

(4) "Housing project" shall mean any undertaking (a) to demolish, clear, remove, alter or repair unsafe or insanitary housing, and/or (b) to provide dwelling accommodations for persons of low income, and said term may also include such buildings and equipment for recreational or social assemblies for educational, health or welfare purposes, and such necessary utilities as are designed primarily for the benefit and use of the housing authority and/or the occupants of such dwelling accommodations. (1935, c. 408, s. 2.)

§ **157-42. Conveyance, lease or agreement in aid of housing project.**—For the purpose of aiding and co-operating in the planning, construction and operation of housing projects located within their respective territorial boundaries, the State, its subdivisions and agencies, and any county, city or municipality of the State may, upon such terms, with or without considerations as it may determine:

(a) Dedicate, release, sell, convey, or lease any of its interest in any property, or grant easements, licenses or any other rights or privileges therein to a housing authority or the United States of America or any agency thereof;

(b) Cause parks, playgrounds, recreational, community, educational, water, sewer or drainage facilities, or any other works, which it is otherwise empowered to undertake, to be furnished adjacent to or in connection with housing projects;

(c) Furnish, dedicate, close, pave, install, grade, regrade, plan or replan streets, roads, roadways, alleys, sidewalks or other places, which it is otherwise empowered to undertake;

(d) Plan or replan, zone, or rezone; make exceptions from building regulations and ordinances; any city or town also may change its map;

(e) Cause services to be furnished to the housing authority of the character which it is otherwise empowered to furnish;

(f) Enter into agreements with respect to the exercise by it of its powers relating to the repair, closing or demolition of unsafe, insanitary or unfit dwellings;

(g) Enter into agreements (which may extend over any period, notwithstanding any provision or rule of law to the contrary) with a housing authority respecting action to be taken pursuant to any of the powers granted by this article. Any law or statute to the contrary notwithstanding, any sale, conveyance, lease or agreement provided for in this section may be made by the State, a

city, county, municipality, subdivision or agency of the State without appraisal, public notice, advertisement or public bidding.

(h) With respect to any housing project which a housing authority has acquired or taken over from the United States of America or any agency thereof and which the housing authority by resolution has found and declared to have been constructed in a manner that will promote the public interest and afford necessary safety, sanitation and other protection, no city or county shall require any changes to be made in the housing project or the manner of its construction or take any other action relating to such construction. (1935, c. 408, s. 3; 1939, c. 137.)

Cross Reference.—As to the authority of municipalities in the repair, closing and demolition of unfit dwellings, see § 160-182 et seq.

Editor's Note. — The 1939 amendment rewrote this section.

§ 157-43. Advances and donations by the city and municipality.— The council or other governing body of the city included within the territorial boundaries of such authority is authorized to make an estimate of the amount of money necessary for the administrative expenses and overhead of the housing authority during the first year following the incorporation of such housing authority, and to appropriate such amount to the authority out of any moneys in the city treasury not appropriated to some other purposes, and to cause the moneys so appropriated to be paid the authority as a donation, and moneys so appropriated and paid to a housing authority by a city shall be deemed to be a necessary expense of such city. In addition thereto, the city and any municipality located in whole or in part within the boundaries of a housing authority shall have the power annually and from time to time to make donations or advances to the authority of such sums as the city or municipality in its discretion may determine. The authority, when it has money available therefor, shall reimburse the city or municipality for all advances by way of loan made to it. (1935, c. 408, s. 5.)

§ 157-44. Action of city or municipality by resolution. — Except as otherwise provided in this article or by the Constitution of the State, all action authorized to be taken under this article by the council or other governing body of any city or of any municipality may be by resolution adopted by a majority of all the members of its council or other governing body, which resolution may be adopted at the meeting of the council or other governing body at which such resolution is introduced and shall take effect immediately upon such adoption, and no such resolution need be published or posted. (1935, c. 408, s. 5.)

§ 157-45. Restrictions on exercise of right of eminent domain; duties of Utilities Commission; investigation of projects.—Notwithstanding any finding of public convenience and necessity, either in general or specific, by the terms of this article, the right of eminent domain shall not be exercised unless and until a certificate of public convenience and necessity for such project has been issued by the Utilities Commission of North Carolina, and the proceedings leading up to the issuing of such certificate of public convenience and necessity, and the right to appeal therefrom shall be as now provided by law and said rights are hereby expressly reserved to all interested parties in said proceedings. In addition to the powers now granted by law to the Utilities Commission of North Carolina, the said Utilities Commission is hereby vested with full power and authority to investigate and examine all projects set up or attempted to be set up under the provisions of this article and determine the question of public convenience and necessity for said project. (1935, c. 408, s. 6.)

Cross Reference.—As to proceedings before the Utilities Commission and appeal therefrom, see §§ 62-13 through 62-26.

§ 157-46. Purpose of article.—It is the purpose and intent of this article

that the State, its subdivisions and agencies, and any county, city or municipality of the State shall be authorized, and are hereby authorized, to do any and all things necessary to aid and co-operate in the planning, construction and operation of housing projects by the United States of America and by housing authorities. (1935, c. 408, s. 7.)

§ **157-47. Supplemental nature of article.**—The powers conferred by this article shall be in addition and supplemental to the powers conferred by any other law. (1935, c. 408, s. 8.)

Article 3.

Eminent Domain.

§ **157-48. Finding and declaration of necessity.**—It is hereby declared that insanitary or unsafe dwelling accommodations exist in various areas of the State and that consequently many persons of low income are forced to reside in such dwelling accommodations; that these conditions cause an increase in and spread of disease and crime and constitute a menace to the health, safety, morals and welfare of the citizens of the State and impair economic values; that the clearance, replanning and reconstruction of the areas in which insanitary or unsafe housing conditions exist and the providing of safe and sanitary dwelling accommodations for persons of low income are public uses and purposes for which private property may be acquired; that it is in the public interest that work on such projects be instituted as soon as possible in order to relieve unemployment which now constitutes an emergency; and the necessity in the public interest for the provision hereinafter enacted, is hereby declared as a matter of legislative determination. (1935, c. 409, s. 1.)

§ **157-49. Housing project.**—The term "housing project" whenever used in this article shall mean any undertaking (a) to demolish, clear, remove, alter or repair unsafe or insanitary housing and/or (b) to provide dwelling accommodations for persons of low income, and said term may also include such buildings and equipment for recreational or social assemblies for educational, health or welfare purposes, and such necessary utilities as are designed primarily for the benefit and use of the occupants of such dwelling accommodations. (1935, c. 409, s. 2.)

§ **157-50. Eminent domain for housing projects.** — Any corporation, which is an agency of the United States of America, shall have the right to acquire by eminent domain any real property, including improvements and fixtures thereon, which it may deem necessary for a housing project being constructed, operated or aided by it or the United States of America. Any corporation borrowing money or receiving other financial assistance from the United States of America or any agency thereof for the purpose of financing the construction or operation of any housing project or projects, the operation of which will be subject to public supervision or regulation, shall have the right to acquire by eminent domain any real property, including fixtures and improvements thereon, which it may deem necessary for such project. A housing project shall be deemed to be subject to public supervision or regulation within the meaning of this article if the rents to be charged by it are in any way subject to the supervision, regulation or approval of the United States of America, the State or any of their subdivisions or agencies, or by a housing authority, city, municipality or county, whether such right to supervise, regulate or approve be by virtue of any law, statute, contract or otherwise.

Any such corporate agency of the United States of America or any such corporation, upon the adoption of a resolution declaring that the acquisition of the property described therein is in the public interest and necessary for public use, may exercise the power of eminent domain pursuant to the provisions of

either: (a) Sections 40-11 to 40-29, both inclusive; (b) Any other applicable statutory provisions, now in force or hereafter enacted for the exercise of the power of eminent domain. (1935, c. 409, s. 3.)

§ 157-51. Certificate of convenience and necessity required; right of appeal; investigation of projects.—Notwithstanding any finding of public convenience and necessity, either in general or specific, by the terms of this article, the right of eminent domain shall not be exercised unless and until a certificate of public convenience and necessity for such project has been issued by the Utilities Commission of North Carolina, and the proceedings leading up to the issuing of such certificate of public convenience and necessity, and the right to appeal therefrom shall be as now provided by law and said rights are hereby expressly reserved to all interested parties in said proceedings. In addition to the powers now granted by law to the Utilities Commission of North Carolina, the said Utilities Commission is hereby vested with full power and authority to investigate and examine all projects set up or attempted to be set up under the provisions of this article and determine the question of the public convenience and necessity for said project. (1935, c. 409, s. 4.)

Cross Reference.—As to proceedings before the Utilities Commission and appeal therefrom, see §§ 62-13 through 62-26.

Article 4.

National Defense Housing Projects.

§ 157-52. Purpose of article.—It is hereby found and declared that the National Defense Program involves large increases in the military forces and personnel in this State, a great increase in the number of workers in already established manufacturing centers and the bringing of a large number of workers and their families to new centers of defense industries in the State; that there is an acute shortage of safe and sanitary dwellings available to such persons and their families in this State which impedes the National Defense Program; that it is imperative that action be taken immediately to assure the availability of safe and sanitary dwellings for such persons to enable the rapid expansion of national defense activities in this State and to avoid a large labor turnover in defense industries which would seriously hamper their production; that the provisions hereinafter enacted are necessary to assure the availability of safe and sanitary dwellings for persons engaged in national defense activities which otherwise would not be provided at this time, and that such provisions are for the public use and purpose of facilitating the National Defense Program in this State. It is further declared to be the purpose of this article to authorize housing authorities to do any and all things necessary or desirable to secure the financial aid of the federal government, or to co-operate with or act as agent of the federal government, in the expeditious development and the administration of projects to assure the availability when needed of safe and sanitary dwellings for persons engaged in national defense activities. (1941, c. 63, s. 1.)

§ 157-53. Definitions.—(a) "Persons engaged in national defense activities," as used in this article shall include: Enlisted men in the military and naval services of the United States and employees of the War and Navy Departments assigned to duty at military or naval reservations, posts or bases; and workers engaged or to be engaged in industries connected with and essential to the National Defense Program; and shall include the families of the aforesaid persons who are living with them.

(b) "Persons of low income," as used in this article, shall mean persons or families who lack the amount of income which is necessary (as determined by the housing authority undertaking the housing project) to enable them, without

financial assistance, to live in decent, safe and sanitary dwellings, without overcrowding.

(c) "Development" as used in this article, shall mean any and all undertakings necessary for the planning, land acquisition, demolition, financing, construction or equipment in connection with a project (including the negotiation or award of contracts therefor), and shall include the acquisition of any project (in whole or in part) from the federal government.

(d) "Administration," as used in this article, shall mean any and all undertakings necessary for management, operation or maintenance, in connection with any project, and shall include the leasing of any project (in whole or in part) from the federal government.

(e) "Federal government," as used in this article, shall mean the United States of America or any agency or instrumentality, corporate or otherwise, of the United States of America.

(f) The development of a project shall be deemed to be "initiated," within the meaning of this article, if a housing authority has issued any bonds, notes or other obligations with respect to financing the development of such project of the authority, or has contracted with the federal government with respect to the exercise of powers hereunder in the development of such project of the federal government for which an allocation of funds has been made prior to the termination of the present war.

(g) "State public body," as used in this article, shall include the State, its subdivisions and agencies, and any county, city, town or incorporated village of the State.

(h) "Housing authority," as used in this article, shall mean any housing authority established or hereafter established pursuant to article one of this chapter. (1941, c. 63, s. 8; 1943, c. 90, s. 2.)

Editor's Note. — The 1943 amendment struck out the words "December thirty-first, one thousand nine hundred and forty-three" formerly appearing at the end of subsection (f) and inserted in lieu thereof the words "the termination of the present war."

§ 157-54. Rights, powers, etc., of housing authorities relative to national defense projects. — Any housing authority may undertake the development and administration of projects to assure the availability of safe and sanitary dwellings for persons engaged in national defense activities whom the housing authority determines would not otherwise be able to secure safe and sanitary dwellings within the vicinity thereof, but no housing authority shall initiate the development of any such project pursuant to this article after the termination of the present war.

In the ownership, development or administration of such projects, a housing authority shall have all the rights, powers, privileges and immunities that such authority has under any provision of law relating to the ownership, development or administration of slum clearance and housing projects for persons of low income, in the same manner as though all the provisions of law applicable to slum clearance and housing projects for persons of low income were applicable to projects developed or administered to assure the availability of safe and sanitary dwellings for persons engaged in national defense activities as provided in this article, and housing projects developed or administered hereunder shall constitute "housing projects" under article one of this chapter, as that term is used therein: Provided, that during the period (herein called the "national defense period") that a housing authority finds (which finding shall be conclusive in any suit, action or proceeding) that within its authorized area of operation, or any part thereof, there is an acute shortage of safe and sanitary dwellings which impedes the National Defense Program in this State and that the necessary safe and sanitary dwellings would not otherwise be provided when needed for persons engaged in national defense activities, any project developed or administered by such housing authority (or by any housing authority co-operating with it) in such area

pursuant to this article, with the financial aid of the federal government (or as agent for the federal government as hereinafter provided), shall not be subject to the limitations provided in § 157-29; and provided further, that, during the national defense period, a housing authority may make payments in such amounts as it finds necessary or desirable for any services, facilities, works, privileges or improvements furnished for or in connection with any such projects. After the national defense period, any such projects owned and administered by a housing authority shall be administered for the purposes and in accordance with the provisions of article one of this chapter. (1941, c. 63, s. 2; 1943, c. 90, s. 1.)

Editor's Note. — The 1943 amendment struck out the words "December thirty-first, one thousand nine hundred and forty-three" formerly appearing at the end of the first paragraph and inserted in lieu thereof the words "the termination of the present war."

§ 157-55. Co-operation with federal government; sale to same.—A housing authority may exercise any or all of its powers for the purpose of co-operating with, or acting as agent for, the federal government in the development or administration of projects by the federal government to assure the availability of safe and sanitary dwellings for persons engaged in national defense activities and may undertake the development or administration of any such project for the federal government. In order to assure the availability of safe and sanitary housing for persons engaged in national defense activities, a housing authority may sell (in whole or in part) to the federal government any housing projects developed for persons of low income but not yet occupied by such persons; such sale shall be at such price and upon such terms as the housing authority shall prescribe and shall include provision for the satisfaction of all debts and liabilities of the authority relating to such project. (1941, c. 63, s. 3.)

§ 157-56. Co-operation of State public bodies in developing projects.—Any State public body shall have the same rights and powers to co-operate with housing authorities, or with the federal government, with respect to the development or administration of projects to assure the availability of safe and sanitary dwellings for persons engaged in national defense activities that such State public body has pursuant to article two of this chapter, for the purpose of assisting the development or administration of slum clearance or housing projects for persons of low income. (1941, c. 63, s. 4.)

§ 157-57. Obligations issued for projects made legal investments; security for public deposits.—Bonds or other obligations issued by a housing authority for a project developed or administered pursuant to this article shall be security for public deposits and legal investments to the same extent and for the same persons, institutions, associations, corporations, bodies and officers as bonds or other obligations issued pursuant to article one of this chapter for the development of a slum clearance or housing project for persons of low income. (1941, c. 63, s. 5.)

§ 157-58. Bonds, notes, etc., issued heretofore, validated.—All bonds, notes, contracts, agreements and obligations of housing authorities heretofore issued or entered into relating to financing or undertaking (including co-operating with or acting as agent of the federal government in) the development or administration of any project to assure the availability of safe and sanitary dwellings for persons engaged in national defense activities, are hereby validated and declared legal in all respects, notwithstanding any defect or irregularity therein or any want of statutory authority. (1941, c. 63, s. 6.)

§ 157-59. Further declaration of powers granted housing authorities. — This article shall constitute an independent authorization for a housing authority to undertake the development or administration of projects to assure the availability of safe and sanitary dwellings for persons engaged in national

defense activities as provided in this article and for a housing authority to co-operate with, or act as agent for, the federal government in the development or administration of similar projects by the federal government. A housing authority may do any and all things necessary or desirable to co-operate with, or act as agent for, the federal government, or to secure financial aid, in the expeditious development or in the administration of projects to assure the availability of safe and sanitary dwellings for persons engaged in national defense activities and to effectuate the purposes of this article. (1941, c. 63, s. 7.)

§ **157-60. Powers conferred by article supplemental.**—The powers conferred by this article shall be in addition and supplemental to the powers conferred by any other law, and nothing contained herein shall be construed as limiting any other powers of a housing authority. (1941, c. 63, s. 9.)

Chapter 158.

Local Development.

§ 158-1. Purposes of chapter.—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-fortieth 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 any 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. (1925, c. 33, s. 1.)

Payment of Expenses of Chamber of Commerce Not Authorized.—This chapter does not authorize a city to use its tax revenues for the payment of expense incident to the ordinary activities of the chamber of commerce of the city. Horner v. Chamber of Commerce, 231 N. C. 440, 57 S. E. (2d) 789 (1950).

§ 158-2. Ratification or petition of voters required.—No city, incorporated town, or county, shall raise or appropriate money under this chapter unless and until this chapter shall have been approved by a majority of the qualified voters of 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. (1925, c. 33, s. 2.)

§ 158-3. Election to adopt chapter.—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 at any time by ordinance call a special election for the purpose of submitting the question of the approval of this chapter to the voters of such city, incorporated town, or county. In said ordinance said board of aldermen, or other governing body of any city, or town, or said county commissioners, shall specify the time of holding the election and determine and set forth whether or not there shall be a new registration of the voters for such election. Notice of the registration of the voters and of the election shall be given, the voters shall be registered, the election shall be held, the returns shall be canvassed, and the results shall be determined, declared and published under and pursuant to the provisions of § 160-387, known as the Municipal Finance Act, and as therein provided for an election upon a bond ordinance providing for the issuance of bonds for a purpose other than the pay-

ment of necessary expenses of a municipality. A ballot or ballots shall be furnished to each qualified voter at said election. The ballots for those who vote in favor of this chapter shall contain the words "for the act to aid in the development of any city, incorporated town, or county," and the ballots for those who vote against this chapter shall contain the words "against the act to aid in the development of any city, incorporated town, or county." Except as otherwise provided in said § 160-387, the registration and election shall be conducted in accordance with the laws then governing elections for municipal or county officers in such municipality or county, and governing the registration of the electors for such election of officers. (1925, c. 33, s. 3.)

Cited in Horner v. Chamber of Commerce, 231 N. C. 440, 57 S. E. (2d) 789 (1950).

§ **158-4. Action to invalidate election; limitation.**—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 the statement showing the result of the election. (1925, c. 33, s. 4.)

§ **158-5. Petition to adopt chapter in certain towns.**—In any incorporated town of less than three thousand inhabitants, in lieu of an election as herein provided, the will of the voters may be determined by a petition in writing giving approval of this chapter, which petition shall be signed by at least three-fourths of all the registered voters of said municipality whose names appeared upon the registration books of the municipality for the election of municipal officers next preceding the time of the filing of said petition: Provided, that such three-fourths of the voters shall be the owners of at least seventy-five per cent of the total taxable property of said town, as shown by the assessed valuation, and the tax lists of such town as last fixed for municipal taxation. The residence address of each signer shall be written after his signature; each signature to the petition shall be verified by a statement (which may relate to a number of signatures) made by some adult resident freeholder of the municipality, under oath before an officer competent to administer oaths to the effect that the signature was made in his presence, and is the genuine signature of the person whose name it purports to be. The petition need not be all on one sheet, and if on more than one sheet, it shall be verified as to each sheet. The board of aldermen or other governing body of said town shall canvass said petition and shall include in their canvass the voters signing the petition, and the number of voters upon the registration books and qualified to sign the petition, and the assessed valuation as last fixed for municipal taxation of the property owned by the voters signing the petition, and the entire assessed valuation of property within the town, and shall judiciously determine and declare the result of the canvass of said petition, and shall prepare and publish a statement of the result, and publish the same as required in the case of an election by ballot under this chapter. The same limitation upon the right of action or defense founded upon the invalidity of the petition shall apply in the case of an election by ballot under this chapter. (1925, c. 33, s. 5.)

§ **158-6. Effect of adoption of chapter.**—If and when this chapter shall have been approved by the voters of any city, incorporated town, or county, at an election or by petition as provided by this chapter, then and thereafter the governing body of such city, or incorporated town, or the county commissioners of such county, may raise by taxation and appropriate money within the limits and for the purposes specified in this chapter. (1925, c. 33, s. 6.)

Local Modification.—Pamlico: 1925, c. 33, s. 7.

Chapter 159.

Local Government Acts.

Article 1.

Local Government Commission and Director of Local Government.

ARTICLE 1.

Local Government Commission and Director of Local Government.

§ **159-1. Official title.**—This article shall be known and may be cited as the Local Government Act. (1931, c. 60, s. 1.)

§ **159-2. Definitions.**—The word Commission will herein be used to refer to the Local Government Commission created by this article; the word Director will refer to the Director of Local Government; the word unit will be used to refer to a county, city, town, incorporated village, township, school district, school taxing district or other district or political subdivision of government of the State; and where bonds or notes are mentioned reference shall be deemed made to any obligations to pay money issued by or in behalf of any unit unless otherwise indicated or specified. (1931, c. 60, s. 2.)

County Government Advisory Commission Abolished. — The Local Government Commission is the successor to the County Government Advisory Commission, § 3 of the Local Government Act having abolished the latter agency and ordered its books, records, documents, and files to be turned over to the Local Government Commission. It was further provided that all the functions, powers, and duties of the old commission should be transferred to the Director of Local Government. Section 6 of the Local Government Act gave the Local Government Commission discretion to require the State Auditor and the State Sinking Fund Commission to turn over books, records, and files made or filed under Public Laws 1927, c. 214, or Public Laws 1929, c. 277, or to require the same to be retained subject to the inspection of the new commission.

Duties Transferred to Director of Local Government. — The duties of the County Government Advisory Commission, now transferred to the Director of Local Government, were set out in Public Laws 1927, c. 91, s. 16, as follows: "The duties of the Commission shall be to take under consideration the whole subject of county administration; to advise with the county commissioners as to the best methods of administering the county business; to pre

pare and recommend to the governing authorities of the various counties simple and efficient methods of accounting, together with blanks, books, and other necessary improvements; to suggest such changes in the organization of the departments of the county government as will best promote the public interests, and to render assistance in carrying the same into operation. They may make such recommendations to the Governor from time to time as they may deem advisable as to changes in the general laws controlling county government, and such recommendations may be submitted by the Governor, upon his approval, to the next meeting of the General Assembly."

§ 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 such assistants as may be necessary, who shall be responsible to the Director, and may fix their compensation subject to the approval of the Governor. 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; 1931, c. 296, s. 8; 1933, c. 31, s. 1.)

Editor's Note. — The 1933 amendment made the Secretary of State an ex officio member of the Commission, made the Treasurer ex officio Director, and provided for the appointment by the Director of the secretary of the Commission and assistant to the Director, and added the last sentence. Section 3 of the amendatory act provides for the transfer of the records to the State Treasurer.

See 11 N. C. Law Rev. 251, for comment on this section as amended in 1933.

§ 159-4. Executive committee; powers; quorum.—The State Auditor and State Treasurer, the Commissioner of Revenue and Secretary of State shall constitute the executive committee of the Commission and shall be vested with all the powers of the Commission except when the Commission is in session and except as otherwise provided in this article. Action of the Commission as a whole and of the executive committee shall be taken by resolution which shall be in effect upon passage by a majority of the members of the Commission or the committee present at the meeting at which such resolution is passed. A

majority of the Commission shall be a quorum. (1931, c. 60, s. 8; 1933, c. 31, s. 2.)

Editor's Note. — The 1933 amendment substituted Secretary of State for the Director as a member of the committee.

§ 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 may 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.)

§ 159-6. Review by Commission of actions of executive committee.—Action of the Commission taken by the executive committee, except approval of notes maturing not more than six months from their date, shall be subject to review by the Commission as a whole upon the application of any aggrieved party, including any taxpayer or citizen, and including any member of the executive committee, if the aggrieved party shall within five days after such action by the executive committee file with the Commission a request for such review. (1931, c. 60, s. 10.)

§ 159-7. Application to Commission for issuance of bonds or notes.—Before any bonds or notes may be issued by or in behalf of a unit the board authorized by law to issue the same, or a duly authorized agent of said board, shall file application with the Commission on a form prescribed by the Commission for its approval of the proposed bonds or notes, which application shall state such facts and shall have annexed thereto such exhibits in regard to such bonds or notes and to such unit and its financial condition as may be required by the Commission. In any case where the question of issuance of proposed bonds or notes is required by law or the Constitution to be submitted to the voters at an election, such election with respect to such bonds or notes shall not be valid unless the application required herein shall have been filed not later than forty days (Sundays and holidays included) prior to such election. A statement signed by either the chairman or secretary of the Commission directed to the board authorized by law to issue the proposed bonds or notes and containing the date on which such application was filed and either a description of the proposed bonds or notes as set forth in the application or reference to the order, ordinance or resolution pursuant to which the proposed bonds or notes may be issued shall be conclusive evidence that the provisions of this section are complied with. The Commission shall consider such application and shall determine whether the issuance of such bonds or notes is necessary or expedient. (1931, c. 60, s. 11; 1949, c. 1085.)

Cross Reference. — As to purposes for which bonds may be issued and taxes levied, see § 153-77.

Editor's Note. — The 1949 amendment rewrote this section.

§ 159-8. Determining advisability of proposed issues.—In determining whether a proposed issue of bonds or notes shall be approved, the Commission may consider the necessity for any improvement to be made from the proceeds of any such bonds or notes, the amount of indebtedness of the unit then outstanding, the fact that sinking funds for existing debts have been adequately maintained or have not been adequately maintained, the percentage of collections of taxes for the preceding fiscal year, the fact of compliance or non-compliance

with the law in the matter of budgetary control, the question of whether the unit is in default in the payment of any of its indebtedness or interest thereon, the existing tax rates, the increase of tax rate, if any, necessary to maintain such sinking funds adequately, the assessed value of taxable property, and the reasonable ability of the unit to sustain the additional tax levy, if any, necessary, to pay the interest and principal of the proposed obligations, as the same become payable. If the proposed issue is for a public improvement in the nature of establishing or enlarging a revenue producing enterprise, the Commission shall take into consideration the probable earnings of the improvement and the extent to which such earnings will be sufficient to pay the interest and principal when due of the proposed obligations or that part thereof to be devoted to such improvement. The Commission shall also consider the adequacy or inadequacy of the amount of the proposed issue for the accomplishment of the purpose for which the obligations are to be issued, and whether such amount is excessive. The Commission shall have authority to inquire into and to give consideration to any other matters which it may believe to have a bearing on the question presented. (1931, c. 60, s. 12.)

§ 159-9. Commission to order issue if satisfied of certain points enumerated; public hearing on refusal.—If, upon the information and evidence received the Commission is of the opinion (a) that issuance of the proposed obligations is necessary or expedient and (b) that the amount proposed is adequate and not excessive and, except as to funding and refunding bonds, (c) either that adequate sinking funds have been maintained or that reasonable assurance has been given that thenceforth they will be maintained to the extent required by or under the authority of law, and (d) that the increase in tax rate, if any, that will be necessitated for the proper maintenance of sinking funds as so required will not be unduly burdensome and (e) that the unit is not in default in the payment of the principal or interest of any of its indebtedness and (f) that the requirements of law for budgetary control have been substantially complied with and (g) that at least eighty (80%) per cent of the general taxes of the unit for the preceding fiscal year have been collected, then and in such event the Commission shall make its order approving such issuance. If upon the information presented the Commission is not of such opinion or is in doubt as to any facts or as to any conclusions to be drawn therefrom, it shall so notify the officer or board making the application, and if such officer or board so request, shall give notice that the Commission will hold a public hearing on the application at a time and place to be specified in such notice, at which public hearing the officers and citizens and taxpayers of the unit may be heard. The Commission may designate its secretary or any other suitable person to conduct any such hearing and to prepare a digest of testimony and submit the same and his recommendations for the consideration of the Commission. (1931, c. 60, s. 13.)

§ 159-10. Order of refusal after hearing; vote of unit to veto action of Commission. — If after any such hearing the Commission should not be of such opinion, it shall enter an order giving its reasons for not holding such opinion and in that event the proposed obligations shall not be issued except in such amount and in such manner, if any, as the Commission may approve, or unless, and until, the proposed indebtedness shall have been submitted to and approved by a vote of the voters of the local unit for which such indebtedness is proposed, such election to be held in the manner, if any, provided by law for the holding of elections on the question of issuing such bonds, and otherwise in such manner as may be required by the Commission. (1931, c. 60, s. 14.)

§ 159-11. Review by Commission of approval or refusal of executive committee. — An order of the Commission made by the executive committee

approving such issuance shall not be reviewable by the Commission as a whole unless request for such review shall be filed with the Commission within five days, Sundays excepted, after such order shall be given (except an order passed by unanimous vote of members present approving notes running not more than six months, which shall not be reviewable) but orders of the Commission by the executive committee declining to approve issuance may be reviewed by the Commission as a whole if application therefor shall be filed with the Commission within thirty days after such order. New evidence and information may be considered upon any such review, and the Commission as a whole shall not be bound by the evidence or information considered by the executive committee. (1931, c. 60, s. 15.)

§ **159-12. Legality of bonds and notes not involved.**—The approval by the Commission of bonds or notes shall not extend to or be regarded as an approval of the legality of the bonds or notes in any respect. (1931, c. 60, s. 16.)

§ **159-13. Sale of bonds and notes.**—All bonds and notes of a unit, unless sold pursuant to a call for bids heretofore legally given, shall be sold by the Commission at its office in the city of Raleigh, but the Commission shall not be required to make any such sale or to call for bids for any bonds or notes until it shall have approved the issuance thereof as hereinabove provided nor until it shall have received such transcripts, certificates and documents as it may in its discretion require as a condition precedent to the sale or advertisement. Before any such sale is conducted the Commission shall cause a notice of the proposed sale to be published at least once at least ten days before the date fixed for the receipt of bids (a) in a newspaper published in the unit having the largest or next largest circulation in the unit or if no newspaper is there published, then in a newspaper published in the county in which the unit is located, if any, and if there be no such newspaper such notice shall be posted at the door of the courthouse, and (b) such notice, in the discretion of the Commission, may be published also in some other newspaper of greater general circulation published in the State. The Commission may in its discretion cause such notice to be published in a journal approved by the Commission and published in New York City, devoted primarily to the subject of State, county and municipal bonds; provided, however, that notes maturing not more than six months from their date may be disposed of either by private or public negotiation, after five days' notice has been given in the manner specified in clause (a) of this section; and provided, further, that upon request of the board or body authorizing any of such bonds or notes for the purpose of refunding, funding, or renewing indebtedness, and with the consent of the holder of any such indebtedness so to be refunded, funded or renewed, the Commission through the State Treasurer may exchange any such bonds or notes for a like or greater amount of such indebtedness, and make such adjustment of accrued interest as may be requested by said board or body, in which event the publication of notice as hereinabove provided shall not be required. The notice published shall state that the bonds or notes are to be sold upon sealed bids and that there will be no auction, and shall give the amount of the bonds or notes, the place of sale, the time of sale or the time limit for the receipt of proposals and that bidders must present with their bids a certified check upon an incorporated bank or trust company payable unconditionally to the order of the State Treasurer for two per cent of the face value of the bonds and one-half of one per cent on notes bid for, drawn on some bank or trust company, the purpose of such check being to secure the unit against any loss resulting from the failure of the bidder to comply with the terms of his bid. The Commission shall keep a record of the names and addresses of all who request information as to the time for receipt of bids for such bonds or notes, and shall mail or send a copy of such notice of sale and a descriptive circular in relation there-

to to all such names and addresses, but failure so to do shall not affect the legality of the bonds or notes. (1931, c. 60, s. 17; 1931, c. 296, s. 1; 1933, c. 258, s. 1.)

Editor's Note.—Prior to the 1933 amendment, this section formerly provided that the bonds or notes might be exchanged for a like or greater face amount and interest on the exchanged notes collected. See 11 N. C. Law Rev. 215, for comment on this section as amended in 1933.

Public Laws 1941, c. 141, s. 1, repealed § 4392 of the Consolidated Statutes which made it a misdemeanor for certain agencies of a county, city or town to sell bonds without giving the notice required by that section. Section 2 of the repealing act provided that "no bonds heretofore [March 12, 1941] sold or contracted to be sold in the manner provided by the Local Government Act, being chapter sixty, Public Laws of 1931, as amended, shall be held to have been illegally sold by reason of failure to observe the requirements of § 4392 of the Consolidated Statutes."

See 12 N. C. Law Rev. 325, where it is suggested that this agency would hold in check bond issues for erecting and extending electric systems.

§ **159-14. Proposals opened in public; award; rejection of bids.**—All proposals shall be opened in public and the bonds or notes shall be awarded to the highest legal bidder, if a fixed rate of interest is named in the notice, or shall be awarded to the highest bidder for the lowest interest rate upon which a legal offer is made if the notice states that bidders may specify the rate of interest, or, if a notice of sale of bonds states that bidders may name one rate for part of the bonds of an issue and another rate or rates for the balance, to the bidder offering to purchase the bonds at the lowest interest cost to the unit, such cost to be determined by deducting the total amount of the premium bid from the aggregate amount of interest upon all of the bonds until their respective maturities, or, if a notice of sale of notes so provides, to the bidder offering to purchase the notes at the lowest interest cost to the unit, such cost to be determined by deducting the total amount of the premium bid from the aggregate amount of interest upon the notes until their maturity. No legal bids may be rejected unless all bids are rejected. If the bids rejected contain any legal bid which is legally acceptable under the advertisement, the bonds or notes shall not be sold until after further advertisement and under the conditions herein prescribed for the first advertisement. (1931, c. 60, s. 18; 1935, c. 356, s. 1; 1939, c. 231, s. 3.)

§ **159-15. Minimum price; private sale in event of no bids.**—No bonds or notes shall be sold at less than par and accrued interest, nor except as herein otherwise provided or permitted shall any bonds or notes be sold except upon sealed proposals, after publication of notice as hereinabove provided, unless no bid is received upon such notice which is a legal bid and legally acceptable under such notice, in which event the bonds or notes may be sold at private sale at any time within thirty days after the date for receiving bids given in such notice. (1931, c. 60, s. 19.)

§ **159-16. Rejection in event of objection by unit.**—If after the receipt of bids and before an award of the bonds or notes an authorized representative of the unit shall object to any award which the Commission may be about to make pursuant to the foregoing provisions and shall not withdraw such objection, the Commission shall reject all bids and shall make no award until after further advertisement as herein provided. (1931, c. 60, s. 20.)

§ **159-17. Make-up of bonds or notes.**—No such bond or note shall be engraved, lithographed, printed, typewritten or written upon more than one sheet of paper (but a separate sheet or sheets may be used for interest coupons), and the Commission may in its discretion require the use of a protectograph or other means to prevent the raising of the amount thereof or imitation of such bonds or notes. (1931, c. 60, s. 21.)

§ **159-18. Obligations of units must be certified by Commission.**—No

bonds or notes or other obligations of any unit hereafter issued shall be valid unless on the face or reverse thereof there be a certificate signed by the secretary of the Commission or an assistant designated by him either (a) that the issuance of the same has been approved, under the provisions of the Local Government Act, or (b) that the bond or note is not required by law to be approved by the Commission. Such certificate shall be conclusive evidence that the requirements of this article as to approval by the Commission, advertisement and sale have been observed, and shall also be conclusive evidence that the requirements of §§ 159-19 and 159-20 have been complied with. (1931, c. 60, s. 22; 1931, c. 296, s. 2.)

Time Debt Contracted. — The debt is contracted during the fiscal year following that in which the debt was reduced in accordance with Constitution, Article V, § 4, even though the certificate of the secretary of the Local Government Commission was not executed within that time. Board of Education v. State Board of Education, 217 N. C. 90, 6 S. E. (2d) 833 (1940).

§ 159-19. Detailed record of all issues to be kept by Commission.—Prior to the execution of such certificate the Commission shall cause to be entered of record in its office a description of such bonds or notes, giving their amount, date, the times fixed for payment of principal and interest, the rate of interest, the place or places at which the principal and interest will be payable, the denomination or denominations and the purpose of issuance, together with the name of the board in which is vested the authority and power to levy taxes for the payment of the principal and interest of such bonds or notes and a reference to the law under which it is claimed such bonds or notes are issued, and shall require to be filed with the Commission a statement of the recording officer of the unit that all proceedings of the board in authorizing the bonds or notes have theretofore been and remain correctly recorded in a bound book of the minutes and proceedings of the board, giving in such statement the designation of the book and the pages or other identification of the exact portion of the book in which such record was made. (1931, c. 60, s. 23.)

§ 159-20. Contract for services must be approved by Commission.—All contracts and agreements made by any unit with any person, firm or corporation for services to be rendered in the drafting of forms of proceedings for a proposed bond or note issue, except contracts and agreements with attorneys at law licensed to practice before the courts of the State within which they have their residence or regular place of business, which involve no agreement, express or implied, except for legal services, shall be void unless approved by the Commission, whose duty it shall be before causing the certificate of its approval to be endorsed or placed on any such bonds or notes to satisfy itself, by such evidence as it may deem sufficient, that no such contract not so approved by the Commission is in effect in relation to such bonds or notes. (1931, c. 60, s. 24.)

§ 159-21. State Treasurer to deliver bonds or notes to purchaser; application of proceeds.—When the bonds or notes are executed by the proper officers they shall be turned over to the State Treasurer and after the certificate of the Commission hereinabove required shall be placed thereon, he shall deliver them to the purchaser or order, collect the purchase price or proceeds and before the close of the following day remit the same to the lawful custodian of funds of the unit or, in his discretion, to the properly designated depository or depositories of the unit, after assurance that the safeguarding of such proceeds has been provided as required by law and after deducting all necessary expense including the expense of advertising, selling, shipping and delivering the bonds or notes; nevertheless in the case of bonds or notes sold for refunding or funding purposes the Treasurer may provide that such proceeds shall be deposited at the place of payment of the indebtedness to be refunded or funded for use solely in the payment of such indebtedness or under the conditions herein-

above provided he may provide for the exchange of such bonds or notes for the evidences of indebtedness to be refunded or funded thereby, or, if such indebtedness is not evidenced by bonds, notes, coupons or similar instruments, he may provide for the delivery of said new bonds or notes against a receipt or release from the creditor to whom or to which the indebtedness to be funded or refunded is owing. Coupons or notes issued in exchange for outstanding coupons shall be deemed to be notes issued for refunding or funding purposes, within the meaning of this section. (1931, c. 60, s. 25; 1935, c. 356, s. 2.)

Editor's Note. — The 1935 amendment added the latter part of the first sentence beginning with the words "or, if such indebtedness is not evidenced by bonds, notes, coupons." It also added the last sentence.

§ **159-22. Suit on behalf of unit for fulfillment of contracts of sale.** —The Commission shall have power to enforce by action or suit in superior court of the county or unit affected or in the federal court of the district, for and in behalf of the State or the unit affected, any contract or agreement made by the Commission for the sale of any bonds or notes of a unit. (1931, c. 60, s. 26.)

§ **159-23. Unit must remit interest and principal as they fall due; cancellation of obligations paid.**—It shall be the duty of every officer of a unit upon whom is imposed by law the duty of remitting funds for the payment of bonds, notes and interest coupons of the unit to remit to the place at which the same are payable sufficient funds for the payment of such bonds, notes and coupons in sufficient time for the payment thereof as the same fall due, and at the same time to remit to such place of payment the necessary fiscal agency fees of the disbursing bank or trust company at which such bonds, notes or coupons are payable. Upon surrender of the bonds, notes or coupons so paid the same shall be canceled. It shall be the duties of the officers remitting said funds to report to the Director, simultaneously with making the remittance, upon forms to be provided by the Director. (1931, c. 60, s. 27.)

§ **159-24. Records of unit sinking funds.**—It shall be the duty of the Director to ascertain by reports which he is hereby authorized to require made to him by any financial officer of any unit and by such other means as he may determine upon, the amounts of sinking funds collected for the payment of bonds of each unit not maturing in annual series and the investments of such sinking funds and the rate of taxation levied to provide for such sinking funds. It shall be his further duty to determine from such information whether the provisions of law for the raising and maintenance and preservation of such sinking funds have been observed and if he shall find that in any respect such provisions of law have not been observed he shall issue an order to the officers and/or board members of such unit in charge of such matters who have failed to observe such provisions, requiring them to comply therewith and stating the amount or amounts to be raised annually by taxation for such purpose, and in other respects requiring such officers and/or board members fully to comply with such laws. Within five days after the issuance of any such order, unless the Commission in its discretion shall extend such time, any officer or board member receiving the same shall be entitled to apply to the Commission for a modification of such order, and unless modified by the Commission, and if so modified, to the extent of the order as so modified, it shall be the duty of all officers and board members to whom such order is directed to comply with the same. (1931, c. 60, s. 28.)

§ **159-25. Investment of unit sinking funds.**—It shall be the duty of all officers having charge of the investment of sinking funds of each unit either to deposit such funds under security therefor as provided by this article, or to invest the same (or deposit in part and invest in part) in bonds or notes of the United States or of the State of North Carolina, or in bonds or notes of

such unit, 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; provided, that no such funds may be so invested in a building and loan association unless and until authorized by the Insurance Commissioner, or in shares of a federal savings and loan association unless and until authorized by an officer of the Federal Home Loan Bank at Winston-Salem, or in such bonds or notes of North Carolina municipalities, counties and school districts as are eligible for investment of the sinking funds of the State under any law in force at the time of investment of such local sinking funds; provided, however, that no investment shall be made in any bonds or notes of any city, county or school district except with the approval of the Commission, which is hereby directed to scrutinize with great care any applications for any such investment and to refrain from approving the same unless such investment is prudent and is safe in the opinion of the Commission and unless the legality thereof has been approved by an attorney believed by the Commission to be competent as an authority upon the law of public securities. No such securities shall be purchased at more than the market price thereof, nor sold at less than the market price thereof. The interest and revenues received upon securities held for any sinking fund and any profit made on the resale thereof shall become and be a part of such sinking fund. (1931, c. 60, s. 29; 1933, cc. 143, 436; 1939, c. 146.)

Cross References.—As to investing sinking funds in bonds guaranteed by the United States, see § 53-44. As to investing sinking funds in refunding bonds, see § 142-29.

Editor's Note. — The 1933 amendment deleted two clauses from this section, one qualifying the deposit in bonds of a unit by the words "if such sinking funds are applicable to the payment of such bonds or notes" and the other limiting the approval to cases where the unit is not in default of any payment of principal or interest. See 11 N. C. Law Rev. 216.

The 1939 amendment inserted the part of the section dealing with investments in shares of building and loan associations and federal savings and loan associations.

§ 159-26. Notification to unit officers of unfavorable state of sinking funds; sale of unsafe investments.—If it shall appear to the Director at any time that the sinking funds of any unit are not deposited under security or invested in securities as required by this article, it shall be his duty to notify the officer or officers in charge of such sinking funds of such failure to comply with law, and thereupon it shall be the duty of such officer or officers to comply therewith within thirty days, except as to the sale of investments held by any such sinking fund which are not eligible for the investment thereof, and as to such investments it shall be the duty of such officer or officers to sell the same within nine months after such notification of the Director is received, at a price approved by the Director; provided, however, that the Commission in its discretion may extend from time to time the time for sale of any such investments, but no one extension shall be made to cover a period of more than one year from the time the extension is made: Provided further, that the Director in his discretion may extend for a period not exceeding ninety days the time for securing funds deposited in banks prior to March eighteenth, one thousand nine hundred and thirty-one, and the Commission may, in its discretion, further extend said time, but no such extension or extensions of the time for securing such funds shall be made for a period ending later than October first, one thousand nine hundred and thirty-one, without the approval of the Commissioner of Banks. (1931, c. 60, s. 30; 1931, c. 296, s. 6.)

§ 159-27. Reports to Director as to sinking funds.—It shall be the duty of all officers in charge of the sinking funds of units to report on forms to be furnished by the Director to the Director on the first day of July, one thousand nine hundred thirty-one, and on the first day of each January and July

thereafter, a statement of the amounts of the sinking funds of such unit, and whether the same are on deposit, and if so, how the same are secured, or whether the same are invested, and if so, a description of the investments with the respective amounts thereof, in order that the Commission and the Director may be kept informed in regard to such sinking funds; but the Commission or the Director may at any other times require such reports to be made and it shall be the duty of the officers in charge of the sinking funds of any unit to make such reports as herein provided. (1931, c. 60, s. 31.)

§ **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 has 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 Caroline 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.)

Local Modification. — Alleghany, Ashe, Rockingham: 1935, c. 375, s. 2.

Editor's Note. — This section was so changed by the amendments that a statement of the changes is not practical.

Section 2 of the 1939 Act repealed all laws and clauses of laws in conflict except subsection (4) of § 53-45.

§ **159-29. Semiannual reports to Director on status of unit funds.**—It shall be the duty of all officers having the charge or custody of any funds of any unit to report to the Director on the first days of January and July of each year (or such other semiannual dates as may be fixed by the Director) and at other times upon direction of the Commission or the Director the amounts of

funds of the unit then in their charge or custody, and the amounts of deposits of such funds in any depository or depositories, and a description of the surety bonds or collateral securities deposited to secure the same. It shall be the duty of the Director to require such reports to be made and to see that the provisions of this section are complied with. (1931, c. 60, s. 33.)

§ 159-30. Officers of local units relieved of personal liability when bank deposits are insured.—If it shall be impossible or impracticable to safeguard any funds of the unit in the manner required by this article, if deposited in any depository within the unit, the officer having charge or custody of such funds may deposit the same without personal responsibility in any bank or trust company organized under the laws of the United States of America, or of any state within said country, either within or without the boundaries of said unit in which deposits are insured by the Federal Deposit Insurance Corporation, in accordance with the acts of Congress: Provided, that without the approval of the Local Government Commission, the sum on deposit in any such bank, at any time, shall not exceed the amount insured by the said Federal Deposit Insurance Corporation. (1931, c. 60, s. 34; 1935, c. 424.)

Local Modification.—Ashe: 1935, c. 424, s. 2.

Editor's Note. — The 1935 amendment added the phrases "without personal responsibility" and "either within or without the boundaries of said unit," etc. It also added the proviso.

§ 159-31. Appointment of unit administrator of finance in event of default.—If funds sufficient for the payment of the principal and interest due at any time upon any valid indebtedness of any unit shall not be remitted for the payment thereof in sufficient time to pay the same when due the Director may appoint a qualified person of good repute and ability as administrator of finance of such unit, at such compensation as may be determined by the Director, but not in excess of three hundred dollars monthly nor for a period of more than one year except with the approval of the Governor. It shall be the duty of such administrator of finance to take full charge of the collection of taxes in such unit and the charge and custody of all funds of the unit and the safeguarding thereof and of the disbursement of moneys for all purposes, or to take charge of such part of any or all such duties as the Director may determine. The administrator may retain under his supervision and control any city or county officers or employees for the performance of any part of such duties falling within the lines of their customary office or employment or may remove any tax collector or accountant or other officer having connection with the collection and disbursement of funds of the unit in his discretion. The administrator shall comply, on behalf of such units, with all the requirements of law applicable to such units, officers and employees. Any questions or disputes arising out of the appointment of such administrator or his assumption of duties hereunder or as to his powers, may be presented to the Commission on the application of any officer, taxpayer or citizen of the unit or on the application of the Director, and the Commission shall be empowered to determine the same. The compensation and expenses of the administrator, and the expenses of the Director and the Commission, arising out of the provisions of this section, shall be a charge against the unit and shall be paid by it and shall be deemed a special purpose for the payment of which this special provision of law is made, and the amount thereof shall be included in the budget of the unit for the following fiscal year.

One year after any unit shall have failed to remit the principal and/or interest due upon any valid indebtedness then outstanding, upon petition of the holders of fifty-one per centum of the indebtedness of the unit, the Director shall appoint an administrator of finance, by and with the consent of the resident judge of the district in which the unit is located, who, upon his appointment, shall have the authority hereinbefore in this section conferred upon the administrator of finance.

The petition shall disclose all facts and circumstances available in connection with the issue in default, including the names and addresses of all known holders of such issue, and, insofar as the petitioning holders, shall contain a consent to the filing of the petition.

The order shall be in such form as the Director and judge may determine, to include, however, such facts as may appear from the petition to be the facts with respect to the issue in default. It shall show the consent of the resident judge to the appointment of the administrator of finance named in the order.

Immediately upon the filing of the petition and the entry of the order, which shall be done within ten days after the date the petition is filed with the Director, the Director shall certify, over his hand and the seal of the Treasurer, the petition and order to the superior court of the county where the unit is located, if it be a unit other than the county, and to the superior court of the county, if the unit be a county. Upon receipt of the certified petition and order, it shall be the duty of the clerk of the superior court to which certified to issue such notice as may be prescribed by the Director, and cause the same to be published in a newspaper of general circulation published in the State and in a journal approved by the Commission for "notice of sale" of evidences of indebtedness, once a week for four weeks, and issue a copy of such notice to all holders of the issue in default named in the petition. Such notice shall contain a provision requiring all holders of such issue to appear in person or through attorney, and disclose their name, address and amount of the issue held.

Upon the expiration of the period of publication hereinbefore prescribed, the cause shall be transferred by the clerk of the superior court to the civil issue docket of the court, and the same shall thereafter stand upon such docket to be proceeded with as in other civil actions, but shall be placed upon the trial calendar at each term of the court thereafter for the trial of civil actions until final action is entered by the court at term.

Any action taken in the cause shall be after notice issued and published as hereinbefore provided, but from any order entered, unless the holders of all of the issue in default shall have responded, shall remain open for a period of thirty days after the publication of the order as hereinbefore prescribed for publication of notice. If the holder of any amount of such issue in default shall, during said thirty-day period, file a petition for a modification or revocation of the order, said order shall not become effective until the petitioning holder or holders shall have been heard by the court. If the order shall be, on such petition, modified or revoked, the order modifying or revoking the order shall become the order of the court in the cause.

Upon the notice hereinbefore prescribed and in the manner herein provided, the court shall have authority to enter any order which shall be for the interest of the unit and the holders of the issue in default, but no order entered shall become finally operative until the expiration of the time hereinbefore provided for the filing of petitions for modification or revocation. Any order which is agreed to by the unit and the holders of the issue in default may be entered at any time, but such order shall be likewise published, and unless agreed to by the holders of the entire issue in default, shall become operative only after the expiration of the period hereinbefore provided for the filing of petitions for modification or revocation, and the court shall have authority, upon the filing of such a petition, to modify or revoke the order entered by agreement, which order then entered, shall thereupon become effective and operative.

The costs of all publications and of the issuance of all notices shall be paid by the administrator of finance: Provided, however, that the holders of the issue in default filing the original petition shall advance the necessary cost, but shall be reimbursed by the administrator of finance upon the docketing of the cause upon the civil issue docket of the superior court to which certified.

The court, with the consent of the Director, for good cause shown, shall have

the right to remove the administrator of finance appointed, and, with the consent of the Director, appoint another administrator of finance in his place. The administrator of finance appointed upon the institution of the cause or thereafter by the court shall give such bond as shall be prescribed by the Director and the resident judge of the district. The compensation shall be fixed for the administrator of finance by the Director and the resident judge of the district and all costs shall be paid as provided in the first paragraph of this section. Until the final determination of the cause and the entry of an order finally discharging an administrator of finance, the administrator of finance shall have such powers and perform such duties as prescribed in the first paragraph of this section. (1931, c. 60, s. 35; 1933, c. 374.)

Editor's Note. — The 1933 amendment added all of this section beginning with the second paragraph.

This section was amended by providing an additional method for the adjustment of the indebtedness of local government units, and the proceeding so authorized seems to be in the nature of a creditors' bill, with a very general power in the court to make orders. The duties and powers of the administrator of finance are not defined, but they would probably be similar to those of a receiver in a creditors' suit. See 11 N. C. Law Rev. 215.

§ 159-32. Director to inform unit of amount of taxes to be levied. —At least thirty days before the time for the levy of taxes in each unit of the State for the payment of the principal or interest of its obligations, if the Director shall have sufficient information available therefor, it shall be his duty to mail to the recording officer of each board having power to levy such taxes, a statement of the amount to be provided by taxation or otherwise for the payment of the interest and sinking fund requirements upon such obligations within the fiscal year and for the payment of the obligations maturing in such year. (1931, c. 60, s. 36.)

§ 159-33. Director to notify units of due dates of obligations.—At least thirty days before the date upon which the principal or interest of any obligation of any unit shall be payable, if the Director shall have sufficient information available therefor, it shall be his duty to mail to the recording officer of such unit a statement of the amount of principal and interest so payable and a statement of the requirement of this article that such amount shall be remitted to the place at which the same are payable. (1931, c. 60, s. 37.)

§ 159-34. Unit must levy sufficient taxes to provide for maturing obligations.—Any board whose duty it shall be to provide for the payment by taxation or otherwise of the principal or interest of any valid obligations of the unit shall make provision for such payment by the levy of such taxes as are authorized to be levied therefor at or before the time provided for such tax levy, or make other legal provision for such payment, and every member thereof who shall be present at the time for such levy or provision shall vote in favor thereof and shall cause his request that such tax levy or provision be made to be recorded in the minutes of the meeting: Provided, in making such levy any such board may determine and make allowance for moneys due to it and receipt of which may be reasonably anticipated by such unit. (1931, c. 60, s. 38; 1933, c. 332.)

Editor's Note. — The 1933 amendment added the proviso.

§ 159-35. Failure to meet obligations when due if funds are in hand a misdemeanor.—If the officer of any unit whose duty it shall be to pay any of the principal or interest of valid obligations of the unit or to remit the same to the place of payment as provided in this article, shall have funds for such payment at his disposal but shall fail or refuse so to do within the time required hereby and in sufficient amount for such payment, whether or not such payment or remission for payment shall have been ordered or forbidden by any board or

officer of the unit, the officer so failing or refusing shall be guilty of a misdemeanor and upon conviction shall be fined and/or imprisoned in the discretion of the court, and shall be liable in a civil action for all damages on the suit of any one aggrieved thereby. (1931, c. 60, s. 39.)

§ **159-36. Voting for appropriation for other purposes than obligations or application of funds otherwise a misdemeanor.**—Every member of any board of a local unit who shall knowingly vote for any appropriation to any purpose other than the payment of the interest or principal or sinking fund of any bonds or notes of the unit any money raised by taxation or otherwise for such purpose, until all of such principal and interest shall have been paid, and any disbursing officer who shall knowingly pay out any of such money for any other purpose than the payment of such interest or principal or sinking fund until all of such principal and interest shall have been paid, whether or not such payment shall have been ordered or forbidden by any board or officer of the unit, shall be guilty of a misdemeanor and upon conviction shall be fined and/or imprisoned in the discretion of the court, and shall be liable in a civil action for all damages on the suit of any one aggrieved thereby. (1931, c. 60, s. 40.)

§ **159-37. False statement a misdemeanor.**—If any officer or any member of any board upon whom duties are imposed by this article shall knowingly make or certify any false statement in any certificate or statement required or permitted by this article, he shall be guilty of a misdemeanor and upon conviction shall be fined and/or imprisoned in the discretion of the court, and shall be liable in a civil action for all damages on the suit of any one aggrieved thereby. (1931, c. 60, s. 41.)

§ **159-38. Willful failure to perform duty a misdemeanor.**—If any officer or any member of any board of any local unit upon whom duties are imposed by this article or of whom duties are required pursuant to the provisions of this article shall knowingly and willfully fail or refuse to perform any such duty, he shall be guilty of a misdemeanor and upon conviction shall be fined and/or imprisoned in the discretion of the court, and shall be liable in a civil action for all damages on the suit of any aggrieved person. (1931, c. 60, s. 42.)

§ **159-39. Other violations misdemeanor.**—Notwithstanding the declarations of this article that certain specific offenses shall constitute misdemeanors and be punishable, the willful violation by the Director or by any member of the Commission or any officer or member of a board of a unit of any duty whatsoever imposed upon him by or under the provisions of this article, or his willful failure, neglect or refusal to perform any such duty, shall be, and is hereby declared to be a misdemeanor, and shall be punishable by fine and/or imprisonment in the discretion of the court, and shall render the offender liable for damages at the suit of any aggrieved party. (1931, c. 60, s. 43.)

§ **159-40. Prosecution by Attorney General; investigation of charges.**—In case of the violation of any criminal provisions of this article, the Attorney General of the State of North Carolina upon complaint of the Director, whose duty it shall be to make such complaint in case of any such violation, shall investigate the charges preferred and if in his judgment the law has been violated he shall direct the solicitor of the district in which the offense was committed to institute a criminal action against the offending person or persons. Upon request of the Governor, the Attorney General shall take charge of such prosecution and, at the request of the Governor, special counsel may be employed to assist the Attorney General or the solicitor. (1931, c. 60, s. 44.)

§ **159-41. Removal by Governor of offending persons.** — Without abating any of the provisions of this article for criminal and civil actions, and for penalties and damages, it shall be the duty of the Director in the case of any

breach of the provisions of this article or any failure or refusal to comply with any requirement made herein or permitted to be imposed hereby, by any member of the Commission or by any officer or member of a board of any unit (but in case of any such non-compliance, failure or refusal by the Director himself, it shall be the duty of the Attorney General through the solicitor of the proper district) to bring the offense to the attention of the Governor, who shall consider the same and may in his judgment remove from office the offending officer or member and appoint a successor, subject to other provisions of law as to the appointment or election of successors of officers or members so removed. Such order of removal, however, shall not be effective until after a hearing before the Commission, which shall set a time therefor and shall give due notice thereof to the offending officer or member, and the order of the Commission after such hearing, whether such order shall confirm or refuse to confirm the removal, shall be final. In the event the Commission shall refuse to confirm the order of removal such officer or member shall continue his duties as such officer or member, but otherwise shall be removed from office pursuant to the order of removal issued by the Governor. (1931, c. 60, s. 45.)

§ 159-42. Law applicable to all units having power to levy taxes ad valorem. — 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 one thousand nine hundred and forty-nine. (1931, c. 60, s. 74; 1935, c. 356, s. 3; 1941, c. 191; 1947, c. 992; 1949, c. 925.)

Editor's Note. — The 1935 amendment added a clause at the end of the section reading "before the adjournment of the regular session of the General Assembly in one thousand nine hundred thirty-five." Prior to the 1941 amendment the article applied to "all counties, cities and towns". The amendment changed the date at the end of the section from 1935 to 1941, and the 1947 amendment changed it to 1947. The 1949 amendment inserted the word "general" and changed the date to 1949.

For brief comment on the 1947 amendment, see 25 N. C. Law Rev. 455.

§ 159-43. Temporary loans and notes therefor. — In the issuance of notes for temporary loans as provided by the County Finance Act, the Municipal Finance Act and this article, the governing body may delegate to any officer of the unit the power to fix the face amount, the rate of interest, the time of maturity and the place of payment of principal and interest within and under the limitations, if any, established by the resolution authorizing the issue of such notes and the limitations fixed by this article and other laws. (1931, c. 60, s. 75; 1931, c. 296, s. 4.)

§ 159-44. Notes and bonds of units redeemable before maturity. — Any notes or bonds of a unit may (but need not) be made subject to call for redemption before maturity at the option of the unit issuing them, but no such bond or note shall be redeemed before maturity without the consent of the holder thereof, unless such bond or note states on its face that the unit reserves the right to redeem the same before maturity. There may also be incorporated in or endorsed upon notes, bonds or coupons of a unit provisions reserving to the unit the right to extend the time for payment thereof to a fixed or determinable future time, specified in such provisions. The word "determinable" is here used in the same sense that it is used in the Negotiable Instruments Law of North Carolina (chapter twenty-five). The negotiability of bonds, notes and coupons of a unit shall not be affected by the reservation therein of a right of redemption or extension pursuant to this section. (1931, c. 296, s. 3; 1933, c. 258, s. 2; 1935, c. 356, s. 4.)

Cross Reference. — As to accelerating maturity of bonds and notes of counties and municipalities, see § 153-81.

Editor's Note. — The 1933 amendment rewrote this section, and the 1935 amendment added the last three sentences.

§ 159-45. Plans or agreements for funding or refunding; exchange for outstanding coupons or interest notes.—The board or body authorized to issue funding and refunding bonds of a unit is hereby invested with all powers necessary for the execution and fulfillment of any plan or agreement for the settlement, adjustment, funding, or refunding of the indebtedness of the unit, not inconsistent with general laws relating to the issuance of funding and refunding bonds. Such plan or agreement may provide among other things for the issuance of funding bonds and refunding bonds; for the issuance of new coupons or notes in exchange for outstanding coupons, for the purpose of enabling the unit to reserve the right to extend the time for payment of the whole or a part of the interest represented by such outstanding coupons; for the endorsement or stamping of bonds, notes or coupons, for the purpose of extending the time for payment of the principal thereof or interest thereon or for the purpose of reserving the right to extend said time; and for the doing of any other thing authorized by law with respect to outstanding indebtedness of the unit. All such plans or agreements made or entered into prior to May 9, 1935, and approved by the Local Government Commission are hereby ratified and validated. New coupons or interest notes issued in exchange for outstanding coupons as aforesaid shall be executed in such manner as may be determined by said board or body, and approval thereof by the Local Government Commission need not be noted thereon. A certificate signed by the secretary of the Local Government Commission or by an assistant designated by him, stating that such new coupons or interest notes have been approved by the Local Government Commission or under the provisions of the Local Government Act, shall be conclusive evidence that the requirements of this article with respect to approval by said Commission have been complied with. All provisions of law relating to the means of payment of coupons surrendered in exchange for new coupons or interest notes as aforesaid shall apply to the payment of such new coupons or interest notes. The powers conferred by this section with respect to the issuance of new coupons or interest notes in exchange for outstanding coupons, and with respect to the endorsement or stamping of bonds, notes or coupons, may be exercised by resolution of the board or body authorized by law to issue funding bonds or refunding bonds of a unit, and any such resolution shall be in force and effect from and after its passage, and need not be submitted to the voters of the unit.

The State of North Carolina hereby gives its assent to the act of Congress approved May twenty-fourth, one thousand nine hundred and thirty-four, entitled "An Act to amend an Act entitled 'an Act to establish a uniform system of bankruptcy throughout the United States,' approved July first, one thousand eight hundred and ninety-eight, and acts amendatory thereof and supplemental thereto," and hereby authorizes all units, after approval has been given thereto by the Local Government Commission, to proceed under the provisions of said act for the readjustment of their debts. (1933, c. 258, s. 4; 1935, c. 356, s. 5.)

Cross Reference.—As to statute authorizing local units of State to avail themselves of Federal Bankruptcy Act, see § 23-48.

Editor's Note. — The 1935 amendment added all of this section beginning with the second sentence.

Ordinance provision that holders of proposed refunding bonds should be subrogated to all rights and powers of holders of refunded bonds is sanctioned by law, and such provision will enter into and become an integral part of the bonds when issued, with contractual force and effect, and may not be impaired by subsequent legislation. Bryson City Bank v. Bryson City, 213 N. C. 165, 195 S. E. 398 (1938).

Defendant municipality proposed to issue refunding bonds to be exchanged for like amounts of the original bonds in the hands of the holders of the original indebtedness, the refunding bonds to be secured by all rights and powers of taxation which protected and formed a part of the obligation of the original bonds. It was held that the parties and the debt are the same and the transaction amounts in reality to an extension and renewal of the original bonds under legislative sanction, and an act of the legislature, passed after the issuance of the original bonds, limiting the tax rate of the municipality is inoperative as to the refunding bonds when the limitation therein imposed would prevent the payment of

the refunding bonds according to their tenor, and the contention that even though the refunding bonds would not create a new debt, such debt would be evidenced by a new contract, and that therefore the refunding bonds would be subject to the limitation of the statute enacted prior to the issuance of the refunding bonds, is untenable. Bryson City Bank v. Bryson City, 213 N. C. 165, 195 S. E. 398 (1938).

§ 159-46. Provisions in bond resolutions set out.—In any ordinance, order or resolution authorizing or providing for the issuance of bonds or notes of a unit for the purposes of refunding, funding or renewing indebtedness, it shall be lawful to incorporate any or all of the following provisions, which shall have the force of contract between the unit and the holders of said bonds or notes, and every board or body authorized to issue such bonds or notes or to levy taxes for their payment shall have power to do all things necessary or convenient for the purpose of carrying out such provisions, viz.:

(a) Provisions for the creation of a special fund or funds to be used for the purchase of said bonds or notes at market prices less than par and accrued interest, or for the payment of the bonds or notes at par and accrued interest at or before maturity. All bonds or notes so purchased or paid shall be canceled and shall not be reissued.

(b) Provisions for levying a tax annually or otherwise for the payment of the principal of the bonds or notes or for the said retirement fund.

(c) Provisions pledging any taxes, special assessments, or other revenues or moneys of the unit to the payment of said bonds or notes or to said retirement fund.

(d) Provisions whereby, so long as any of said bonds or notes are outstanding, the unit will not pledge any particular revenues or moneys, except special property taxes, without securing such bonds or notes equally and ratably with the other obligations to be secured by such pledge.

(e) Provisions whereby any special fund aforesaid may be a revolving fund, and used temporarily for other purposes, and thereafter replenished, upon such terms and conditions as may be set forth in said ordinance, resolution or order.

(f) Provisions for the custody of any such special fund by a bank or trust company in this or any other state or by the State Treasurer.

(g) Provisions for the allocation and payment daily or periodically of moneys payable to any of said special funds.

(h) Provisions for the determination by arbitration of any question arising under any of the foregoing provisions.

(i) Provisions whereby the holders of said bonds or notes, whether such bonds or notes shall have been delivered in exchange for the indebtedness refunded or funded thereby or shall have been sold and the proceeds thereof applied to the retirement of such indebtedness, shall be subrogated to all the rights and powers of the holders of such indebtedness.

(j) Provisions whereby bonds and notes, together with the matured and unmatured interest thereon, may be deposited with the State Treasurer as trustee, or some bank or trust company designated as trustee by the governing body of the unit with the approval of the Local Government Commission, and bonds issued from time to time or at specified intervals of time for the funding or refunding of all or any part of the indebtedness so deposited; the indebtedness of any depositor to be canceled and extinguished at such time or times as the plan or agreement for the settlement, adjustment, funding or refunding of the indebtedness of the unit may specify, and need not be canceled and extinguished simultaneously with the issuance of bonds for funding or refunding a part of such indebtedness: Provided, that the ordinance, order, or resolution authorizing the issuance of funding or refunding bonds referred to in this clause (j) may be adopted, or passed at such times as the plan or agreement may designate.

No such provisions shall become effective without the approval of the Local

Government Commission. (1933, c. 258, s. 4; 1935, c. 356, s. 6; 1939, c. 231, s. 3.)

Cross References.—As to what the ordinance must show when a municipality issues bonds, see § 160-379; when a county issues bonds, see § 153-78.

Editor's Note. — The 1935 amendment inserted subsections (i) and (j) of this section. The 1939 amendment struck out the words "incurred before July 1, 1933," formerly appearing after the word "indebtedness" in the first paragraph.

Provision Becoming Part of Bonds.—A provision set out in this section and incorporated in an ordinance authorizing the issuance of bonds will enter into and become an integral part of the bonds when issued, with contractual force and effect, which may not be impaired by subsequent legislation. Nash v. Board of Com'rs, 211 N. C. 301, 190 S. E. 475 (1937).

§ 159-47. Issuance by local units of new bonds to replace mutilated bonds and bonds registered as to both principal and interest.—In case any bond heretofore or hereafter issued by any unit has heretofore or shall hereafter become mutilated or has heretofore or shall hereafter be registered as to both principal and interest, the governing body of the unit may by resolution provide for the issuance of a new bond in exchange and substitution for and upon the cancellation of the mutilated bond and its interest coupons, if any, or the bond registered as to both principal and interest. The provisions of such resolution must be approved by the Local Government Commission before any exchange shall be made thereunder. In all such cases the holder shall pay the reasonable expenses and charges of the unit and of the Commission in connection with such exchange. Such new bond shall mature at the same time and bear interest at the same rate as the bond in exchange for which it shall be issued, and shall be executed in such manner as may be provided in the resolution providing for the issuance of the new bond. Each such new bond shall be signed by the officers who are in office at the time of such signing, and shall contain a recital to the effect that it is issued in exchange for a certain bond (describing such bond sufficiently to identify it) and is to be deemed a part of the same issue as the original bond. (1939, c. 259.)

§ 159-48. Cancellation of own bonds, etc., acquired by unit.—Any bonds or other evidences of indebtedness issued by a unit which have heretofore been or may hereafter be acquired by said unit, unless so acquired for investment of sinking funds of said unit, shall be immediately cancelled and extinguished as obligations of said unit. It shall be the duty of any officer or employee of said unit in whose possession or custody said bonds or other evidences of indebtedness are placed to cancel the same as herein provided and to promptly report such cancellation to the Local Government Commission and furnish in said report a full description of the bonds or other evidences of indebtedness so canceled. (1939, c. 356.)

§ 159-49. State not liable for debts of units nor units for obligations of each other.—Nothing herein contained shall be construed to bind the State of North Carolina to pay any part of any debt due by any county, municipality or other unit of government, nor shall it be construed that any county or other unit shall be liable for the debts of any other county or unit. (1931, c. 60, s. 77.)

§ 159-49.1. Investment of unused proceeds of sale of bonds by counties, cities and towns in designated securities.—If for any reason the whole or any part of the proceeds of the sale of bonds heretofore issued by a county, city or town cannot be applied to the purpose for which such bonds were authorized, such proceeds 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. Nothing in this section shall be construed as permitting moneys from realization of such investment, by sale or by payment, to be applied to any purpose other than that now authorized by law, except that such moneys may be reinvested in the bonds, notes or certificates of indebtedness herein provided for investment. Earnings from such investment may be applied to payment of the interest or principal of the bonds from which such proceeds were derived or may be applied as increment to such proceeds. (1943, c. 14.)

Editor's Note. — For comment on this section, see 21 N. C. Law Rev. 357.

§ **159-49.2. Investment of bond proceeds pending use.** — When the proceeds of any bonds heretofore or hereafter sold by any county, city or town, shall not be needed for a period of not less than ninety days to meet contractual or other obligations in connection with the purposes for which such bonds were issued, such county, city or town may, with the prior approval of the Local Government Commission, invest the proceeds of such bonds not so needed in the securities listed in § 159-49.1; provided, the maturities of such securities conform to the date or dates such county, city or town will need the moneys so invested. (1949, c. 858.)

Article 2.

Validation of Bonds, Notes and Indebtedness of Unit.

§ **159-50. "Unit" defined.**—In this article the word "unit" means a county, city, town, township, school district, school taxing district, or other district or political subdivision of government of the State. (1931, c. 186, s. 1.)

Cited in Castevens v. Stanly County, 211 N. C. 642, 191 S. E. 739 (1937).

§ **159-51. Validation of bond and note issues by units.**—In all cases where a unit has issued its bonds or notes prior to March 26, 1931, and has received for the bonds or notes an amount of money not less than the face amount of the bonds or notes, and has expended said money for public purposes, said bonds or notes are hereby validated, and all bonds or notes subsequently issued to pay or renew said bonds or notes are also hereby validated, notwithstanding any lack of statutory authority or failure to observe any statutory provision concerning the issuance of such bonds or notes. This section shall not be construed as validating any bonds or notes, the proceeds of which have been lost by reason of the failure of any bank. (1931, c. 186, s. 2.)

§ **159-52. Test cases testing validity of funding bonds.**—At any time after the adoption of an ordinance, resolution, or order for the issuance of refunding or funding bonds of a unit by the board authorized by law to issue the same, and following the approval of the issuance of such bonds by the Local Government Commission, and prior to the issuance of any such bonds, such board may cause to be instituted in the name of the unit an action in the superior court of any county in which all or any part of the unit lies, to determine the validity of such bonds and the validity of the means of payment provided therefor. Such action shall be in the nature of a proceeding in rem, and shall be against each and all the owners of taxable property within the unit and each and all the citizens residing in the unit, but without any requirement that the name of any such owner or citizen be stated in the complaint or in the summons. Jurisdiction of all parties defendant may be had by publication of a summons once a week for three successive weeks in some newspaper of general circulation published in each county in which any part of the unit lies, and jurisdiction shall be complete within twenty

days after the date of the last publication of such summons in the manner herein provided. Any interested person may become a party to such action, and the defendants and all others interested may at any time before the expiration of such twenty days appear and by proper proceedings contest the validity of the indebtedness to be refunded or funded or the validity of such refunding or funding bonds or the validity of the means of payment provided therefor. The complaint shall set forth briefly by allegations, references, or exhibits the proceedings taken by such board in relation to such bonds and the means of payment provided therefor, and, if an election was held to authorize such issuance, a statement of that fact, together with a copy of the election notice and of the official canvass of votes and declaration of the result. There shall similarly be set forth in the complaint a statement of the amount, purpose, and character of the indebtedness to be refunded or funded, and such other allegations as may be relevant. The prayer of the complaint shall be that the court find and determine as against the defendants the validity of such bonds and the validity of the means of payment so provided. (1931, c. 186, s. 4; 1935, c. 290, s. 1; 1937, c. 80.)

Editor's Note. — This section was rewritten by the 1935 amendment. The 1937 amendment substituted the words "date of the last" for the word "full" formerly appearing in the third sentence.

The action authorized by this and the following four sections is in the nature of a proceeding in rem, and is adversary both in form and in substance. These sections contemplate that issues both of law and of fact may be raised by pleadings duly filed, and that such issues shall be determined by the court. The court has no power by virtue of these sections to validate bonds which are for any reason invalid. It has power only to determine whether or not on the facts as found by the court and under the law applicable to these facts, the bonds are valid. Castevens v. Stanly County, 211 N. C. 642, 191 S. E. 739 (1937).

Service of Summons by Publication Is Sufficient.—The contention that an owner of taxable property within the unit, or a citizen residing therein, may be deprived of his property, without due process of law, or contrary to the law of the land, by a decree or judgment in the action declaring or adjudging that the bonds and tax to be levied for their payment, are valid, because it is not required by this section that his name shall appear in the summons or in the complaint, or that the summons shall be served on him personally, cannot be sustained. The action is declared by this section to be in the nature of a proceeding in rem. In such case, all persons included within a well defined class may be made parties defendant, and service of summons by publication is sufficient, although such persons are not named in the summons. Castevens v. Stanly County, 211 N. C. 642, 191 S. E. 739 (1937).

If Published as Required by This Section.—See Castevens v. Stanly County, 211 N. C. 642, 191 S. E. 739 (1937).

§ **159-53. Rules of pleading and practice.**—The trial of such action shall be in accordance with the Constitution and laws of the State; and the rules of pleading and practice provided by the General Statutes and court rules for civil actions, including the procedure for appeals, which are not inconsistent with the provisions of this article, are hereby declared applicable to all actions herein provided for: Provided, however, that an appeal from a decree in such action must be taken within thirty days from the date of rendition of such decree. The court shall render a decree either validating such bonds and the means of payment provided therefor, or adjudging that such bonds and the means of payment provided therefor are, in whole or in part, invalid and illegal. (1931, c. 186, s. 5; 1935, c. 290, s. 2.)

Editor's Note. — The 1935 amendment inserted the proviso at the end of the first sentence, and substituted the words "a decree" for the word "judgment" near the beginning of the second sentence.

§ **159-54. Judgment establishing validity of issue.**—If (a) the superior court shall render a decree validating such bonds and the means of payment provided therefor and no appeal shall be taken within the time prescribed herein, or (b) if taken, the decree validating such bonds and the means of payment pro-

vided therefor shall be affirmed by the Supreme Court, or (c) if the superior court shall render a decree adjudging that such bonds and the means of payment provided therefor are, in whole or in part, invalid and illegal, and on appeal the Supreme Court shall reverse such decree and sustain the validity of such bonds and the means of payment provided therefor (in which case the Supreme Court shall issue its mandate to the superior court requiring it to render a decree validating such bonds and the means of payment provided therefor), the decree of the superior court validating such bonds and the means of payment provided therefor shall be forever conclusive as to the validity of such bonds and the validity of the means of payment provided therefor as against the unit and as against all taxpayers and citizens thereof, to the extent of matters and things pleaded or which might have been pleaded, and to such extent the validity of said bonds and means of payment thereof shall never be called in question in any court in this State. (1931, c. 186, s. 6; 1935, c. 290, s. 3.)

Editor's Note. — The 1935 amendment rewrote this section.

Section Does Not Estop Taxpayer from Challenging Validity of Bonds if Service Inadequate.—The contention that by this section an owner of taxable property within the unit, or a citizen residing therein, is estopped from challenging the validity of the bonds and of the tax, without having had an opportunity to be heard, cannot be sustained. No decree or judgment adverse to his rights can be rendered in an action instituted and prosecuted in accordance with the provisions of the statute, until every taxpayer and citizen of the unit has been lawfully served with summons, and until he has had ample opportunity to appear and file such pleadings as he may wish. If he has failed to avail himself of his constitutional rights, which are fully protected by the statute, he has no just ground of complaint that the court will not hear him when he invokes its aid after the decree or judgment has been finally rendered, and others have relied upon its protection. Castevens v. Stanly County, 211 N. C. 642, 191 S. E. 739 (1937).

§ 159-55. Taxing costs. — The costs in any action brought under this article may be allowed and apportioned between the parties or taxed to the losing party, in the discretion of the court. (1931, c. 186, s. 7.)

§ 159-56. Levying special tax for proposed issues.—If the complaint in any action brought under this article, or an exhibit attached to such complaint shows that an ordinance or resolution has been adopted by the unit providing that a tax sufficient to pay the principal and interest of the bonds or notes involved in such action is to be levied and collected, such ordinance or resolution shall be construed as meaning that such tax is to be levied without regard to any constitutional or statutory limitation of the rate or amount of taxes, unless such ordinance or resolution declares that such limitation is to be observed in levying of such tax. (1931, c. 186, s. 8.)

Constitutionality.—This section and the four preceding sections are not unconstitutional either on the ground that the statute confers nonjudicial functions on the superior courts or on the ground that the statute denies due process of law to taxpayers or citizens of a local governmental unit, in violation of the provisions of the Fourteenth Amendment to the Constitution of the United States, or of the 17th section of Article I of the Constitution of North Carolina. Castevens v. Stanly County, 211 N. C. 642, 191 S. E. 739 (1937).

§ 159-57. Notice of proposed issue to be published by unit. — Any unit may by resolution of the official board of such unit, authorized by law to issue bonds or notes, cause to be published a notice of the intention of said board to issue bonds or notes of the unit for the purpose of funding, refunding or renewing outstanding obligations or alleged obligations issued prior to passage of such resolution. Such notice shall describe said obligations or alleged obligations in a manner sufficient to identify them. It shall also state, either in general or specific terms, the purpose or purposes for which said outstanding obligations were incurred or issued, as determined by said official board of said unit prior to

the publication of said notice. Said notice shall further state that a tax is to be levied on all taxable property in the unit sufficient to pay the bonds or notes proposed to be issued, or any bonds or notes that may be subsequently issued for the purpose of refunding, funding, renewing or paying said bonds or notes. Said notice shall be published once in each of three successive weeks in a newspaper published in the unit having the largest or next largest circulation in the unit, or if no newspaper is there published, then in a newspaper published in the county in which the unit is located, if any, and if there be no such newspaper such notice shall be posted at the door of the courthouse or building where said official board usually holds its meetings, and published in some newspaper published in the State of North Carolina and circulating in said unit. Such notice shall contain a statement that it is being published under the provisions of this section. After the issuance of any bonds or notes in accordance with the intention expressed in said notice, the validity of said bonds or notes and/or of any subsequently issued instruments evidencing the same indebtedness, shall not be open to question in any court upon the ground that any of the obligations or alleged obligations for the funding or renewal of which such bonds or notes were issued, were or are invalid, nor shall the power of the unit to levy a sufficient tax on all taxable property in the unit for the payment of the principal and interest of said bonds or notes, or of any subsequently issued instruments evidencing the same indebtedness, be open to question in any court upon the ground that the obligations or alleged obligations for the funding or renewal of which said bonds or notes were issued were invalid, or upon the ground that said original obligations or alleged obligations were not issued for a purpose for which such tax can be levied, except in an action or proceeding commenced within thirty days after the first publication of said notice of intention. The date of such first publication shall be stated in said notice. (1931, c. 186, s. 9; 1935, c. 290, s. 4.)

Editor's Note.—Prior to the 1935 amendment this section applied only until July, 1932, and the outstanding obligations were those issued since March 1, 1929. The amendment makes the section general and permanent in its application. Prior to the amendment, it was required that a copy of the section be posted with the notice. Now a statement that notice is being published according to the section is all that is required. Prior to the amendment the purposes of levy could be attacked by an action "commenced at least two days prior to the issuance of said bonds or notes." The quoted passage was deleted by the amendment.

§ **159-58. Invalidated issues unaffected.**—This article shall not apply to any bonds or notes that have been held invalid by any court of competent jurisdiction. (1931, c. 186, s. 11.)

Article 3.

Funding and Refunding of Debts of Local Units Other than Counties, Cities and Towns.

§ **159-59. Local units, other than counties, cities and towns, authorized to fund outstanding debts.**—Any unit other than a county, city or town may issue bonds as provided in this article for the purpose of funding or refunding any or all of its matured or unmatured notes or bonds, or the interest accrued thereon. The word unit as here used means a township, school district, school taxing district, road district, drainage district, sanitary district, water district, or other district, political subdivision or local governmental agency. The notes and bonds hereby authorized to be funded or refunded include notes and bonds issued in the name of a county, but payable from taxes levied in a township, school district or other unit embracing only a part of the territory of the county. (1933, c. 257, s. 1; 1939, c. 231, s. 4.)

Editor's Note. — The 1939 amendment struck out the words "provided, the indebtedness evidenced by said notes or bonds was incurred before July 1, 1933," formerly appearing at the end of the first sentence.

§ **159-60. General law applicable.**—Bonds issued pursuant to this article shall be issued in accordance with the provisions of the County Finance Act, as amended, relating to the issuance of funding and refunding bonds under that act, except in the following respects, viz.:

(a) They shall be issued in the name of the obligor named in the obligations to be funded or refunded, or in the name of the successor to the obligor named in the obligation to be refunded or funded;

(b) They shall be issued by or on behalf of the unit by the same board or body which issued the obligations to be funded or refunded, or its successor, or, if said board or body is no longer in existence, by the board of county commissioners or other governing body of the county in which the unit, or the major portion of the unit, is situated;

(c) It shall not be necessary to include in the order or resolution authorizing the bonds, or in the notice required to be published prior to final passage of the order or resolution, any statement concerning the filing of a debt statement, or the contents thereof; and, as applied to said bonds, §§ 153-78, 153-83, 153-84, 153-85, 153-86 and 153-87 of the County Finance Act, shall be read and understood as if they contained no requirements in respect to such matters;

(d) The bonds shall mature at such time or times, not later than forty years after their date, as may be fixed or provided for in the resolutions under which they are issued;

(e) The bonds shall also be issued in accordance with the provisions of the Local Government Act, as amended. (1933, c. 257, s. 2; 1935, c. 484; 1941, c. 147.)

Editor's Note. — The 1935 amendment added the part of subsection (a) beginning with the words "or in the name of." The 1941 amendment rewrote subsection (e).

§ **159-61. Taxes to pay new obligations authorized.**—Taxes for the payment of the principal and interest of bonds issued pursuant to this article shall be levied by the board or body authorized by existing law to levy taxes for the payment of the obligations funded or refunded by said bonds, and shall be levied only in the territory subject to taxation for the payment of the obligations so funded or refunded. (1933, c. 257, s. 3.)

§ **159-62. County Finance Act applicable.**—Except where they are inconsistent with the provisions of this article, all of the provisions of the County Finance Act, as amended, applicable to bonds issued under that act for the funding or refunding of indebtedness, shall be applicable to bonds issued under this article. For the purpose of applying the provisions of said act to bonds issued under this article, the following words and phrases in said act shall be deemed to have the following meanings when applied to said bonds, viz.: "Governing body" means the board or body authorized by this article to issue bonds, except the words "governing body" in § 153-110 of the County Finance Act, where said words mean the board or body authorized by this article to levy taxes; "county" means the unit by or on behalf of which the bonds are to be issued under this article; "published" means published in a newspaper published in a county in which such unit is situated, if there be such a newspaper, but otherwise means posted at the courthouse door of said county and at least three other public places; "clerk of board of commissioners" means the clerk or secretary of the board or body authorized by this article to issue bonds; "this act" means this article. (1933, c. 257, s. 4; 1939, c. 231, s. 4(b).)

Editor's Note. — The 1939 amendment struck out the words "incurred before July 1, 1933," formerly appearing after the word "indebtedness" in the first sentence.

Article 4.

Assistance for Defaulting Local Government Units in the Preparation of Workable Refinancing Plans.

§ 159-63. Aid of Director of Local Government to defaulting local units.—Whenever it shall appear that any county, city, town, or other local government unit of this State has defaulted for a period of six months in the payment of the principal or interest of any of its outstanding notes or bonds, the Director of Local Government is hereby given the authority to prepare and certify to the governing body of such local government unit a plan for refinancing, readjustment, or compromising said debt in order to remove the default and prevent its recurrence. (1935, c. 124, s. 1.)

§ 159-64. Investigating fiscal affairs of units; negotiations with creditors; plans for refinancing or readjustment. — For the purpose of determining the financial position, the Director of Local Government may make or cause to be made an investigation of the fiscal affairs of such units which are in default in the payment of principal or interest for a period of six months, and advise with the governing body of such unit regarding the refinancing and/or readjustment of its debts, and is authorized to negotiate with the creditors of such units for the purpose of reaching an agreement with them. Whenever a plan of refinancing and/or readjustment, whether prepared by the Director, by a private refunding agency, or by the officials of the unit, appears to the Director of Local Government as being fair and equitable and reasonably within the ability of such unit to meet, it shall be submitted by him to the Local Government Commission for its approval, and upon such approval, the governing body of such local government unit shall adopt same and pass the necessary orders or ordinances for the purpose of carrying said plan into effect. (1935, c. 124, s. 2.)

§ 159-65. Power of Director to accept or reject budget of local units. —In order to conserve the financial resources of any local government unit of this State and to provide a means of constant advisory services, the Director of Local Government is hereby given authority to approve or disapprove the budget of any unit which has accepted the plan and put same into effect, and the governing body of such unit shall first obtain the approval of the said Director before passing any order or ordinance adopting said budget. (1935, c. 124, s. 3.)

§ 159-66. Annual statements from units.—The Director of Local Government shall have authority to require of the local units in which he functions under this article annual statements showing the collection of revenues and the disbursements for expenses, both divided as between general operating fund, debt service fund, and special funds, if any, and it shall be his duty to require the proper allocation of all collected revenues to the funds for which said revenues were levied, in accordance with the budget, and to require that disbursements shall be made only from appropriations duly made. (1935, c. 124, s. 4.)

§ 159-67. Extent and time limit of Director's authority. — The authority hereby granted to the Director of Local Government shall continue in force in such local government units until, in the discretion of the Director of Local Government, said local government unit has performed the duties required of it or has satisfied the Director that it will do so, until the agreements made with the creditors have been discharged in accordance with the plan of refinancing and/or readjustment of its debt. (1935, c. 124, s. 5.)

§ 159-68. Certain local laws reserved.—Nothing in this article shall be construed to repeal any public-local or private act passed by the General Assembly of one thousand nine hundred and thirty-five, relative to the readjustment or refunding of the bonded indebtedness of any local governmental unit in

North Carolina, except and until an agreement has been reached between the bondholders and the governing body of said unit, and when said agreement has been reached and certified to the Director of the Local Government Commission by both contracting parties, then and in that event the provisions of said article shall apply to such defaulting local governmental units. (1935, c. 124, s. 6.)

Chapter 160.

Municipal Corporations.

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SUBCHAPTER I. REGULATIONS INDEPENDENT OF ACT OF 1917.

ARTICLE 1.

General Powers.

§ 160-1. Body politic.—Every incorporated city or town is a body politic and corporate, and shall have the powers prescribed by statute, and those necessarily implied by law, and no other. (Code, s. 702; Rev., s. 2915; C. S., s. 2622.)

Powers.—A municipal corporation is a political subdivision of the State and can exercise only such powers as are granted in express words, or those necessary or fairly implied or incident to the powers expressly conferred, or those essential to

the accomplishment of the declared objects and purposes of the corporation. Stephenson v. Raleigh, 232 N. C. 42, 59 S. E. (2d) 195 (1950).

A municipal corporation has only such powers as are granted to it by the General Assembly in its specific charter or by the general laws of the State applicable to all municipal corporations, and the powers granted in the charter will be construed together with those given under the General Statutes. Laughinghouse v. New Bern, 232 N. C. 596, 61 S. E. (2d) 802 (1950).

Same — Discretion as to Accomplishment of Purposes.—A municipal corporation has only those powers expressly granted in its charter and by the general law, construing the acts together, and those powers reasonably implied in or incident to the granted powers which are necessary to effect the fair intent and purpose of its creation, and it may exercise a sound discretion as to the means by which the purposes of its creation may be accomplished. Riddle v. Ledbetter, 216 N. C. 491, 5 S. E. (2d) 542 (1939).

Same—Outlay of Tax Revenues. — A municipality is a creature of the State and has "the powers prescribed by statute, and those necessarily implied by law, and no other," therefore a city or town cannot make a rightful outlay of its tax revenues unless the outlay is explicitly or implicitly authorized by a statute conforming to the Constitution. Horner v. Chamber of Commerce, 231 N. C. 440, 57 S. E. (2d) 789 (1950).

The implied powers of a municipality are those which are necessarily or fairly implied in or incident to the powers expressly granted, or essential to the accomplishment of the purposes of the corporation. Green v. Kitchin, 229 N. C. 450, 50 S. E. (2d) 545 (1948). For a leading article on this case, see 27 N. C. Law Rev. 500.

A municipal corporation has no authority to waive its immunity from tort liability in performance of its governmental functions. Stephenson v. Raleigh, 232 N. C. 42, 59 S. E. (2d) 195 (1950).

Cited in Wells v. Housing Authority, 213 N. C. 744, 197 S. E. 693 (1938).

§ 160-2. Corporate powers.—A city or town is authorized:

1. To sue and be sued in its corporate name.

Cross References.—As to venue of an action against a municipality, see § 1-77 and note. As to necessity of demand before suit against a municipality, see § 153-64. As to time within which an action against a municipality must be brought, see § 1-53.

In General.—A town must be sued in its corporate name and not in the name of its officers. Young v. Barden, 90 N. C. 424 (1886).

How Served with Summons.—A summons against a city may be served on the mayor and on the secretary of the board of aldermen. Loughran v. Hickory, 129 N. C. 281, 40 S. E. 46 (1901).

Form of Action.—As a general rule, whenever a good cause of action exists against a municipal corporation, it may be prosecuted by an action in whatever form would be appropriate against an individual. The creditor is not limited to an action by mandamus. Winslow v. Commissioners, 64 N. C. 218 (1870).

Venue in County Where Municipality Located.—Cities and towns must be sued in the county in which they are located, and if suit is brought in another county, they have the right to have it removed. Jones v. Statesville, 97 N. C. 86, 2 S. E. 346 (1887). See § 1-77 and note.

Action in Name of All Citizens against City.—In an action against a municipal corporation to enjoin the collection of an illegal tax, it is not error to allow all citizens other than the original plaintiff to be made parties plaintiff. Cobb v. Elizabeth City, 75 N. C. 1 (1876).

2. Out of any funds on hand, and without creating any debt, to purchase and hold real estate for the use of its inhabitants.

Cross References.—As to power to dispose of property, see §§ 160-59 through 160-61. As to power to establish markets, see §§ 160-53 and 160-228. As to power to acquire property, see §§ 160-204 through 160-221.

Erection of Public Building.—The erection by a city of a public building with funds for the purpose on hand, for governmental offices, academy of music, public meetings, etc., is for a governmental purpose, and within the exercise of the discretionary powers conferred upon the governing body of the municipality, and where no further expense may be incurred such as to pledge the credit of the city, or therein impose an obligation upon it, there is no violation of our Constitution, Art. VII, § 7. Adams v. Durham, 189 N. C. 232, 126 S. E. 611 (1925).

3. To purchase and hold land, within or without its limits, not exceeding fifty acres (in cities or towns having a population of more than twenty thousand the number of acres shall be in the discretion of the governing body of said city), for the purpose of a cemetery, and to prohibit burial of persons at any other place in town, and to regulate the manner of burial in such cemetery. 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 conveyances 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.

Cross References.—See also, § 160-200, subsection 36. As to care of cemeteries, see §§ 160-258, 160-259 and 160-260.

Editor's Note.—Prior to the 1927 amendment there was no provision for towns or cities having over twenty thousand inhabitants. The limit of fifty acres applied to all.

City's Power over Interment. — The ownership of a lot in a cemetery, or license to inter therein, is subject to the police power of the State, and interments may be forbidden, and bodies already interred removed, by ordinance of the city, if authorized by act of the legislature. Humphrey v. Board, 109 N. C. 132, 13 S. E. 793 (1891).

Relief to Taxpayers When Section Violated.—Where the proper authorities of a city have purchased lands for a negro cemetery in excess of the fifty acres allowed by this section, in good faith, to meet a necessary need therefor, and at a reasonable price, and have paid therefor and accepted a deed from the owners, injunctive relief at the suit of the taxpayers will be denied. Harrison v. New Bern, 193 N. C. 555, 137 S. E. 582 (1927).

The title of the purchaser at a tax foreclosure sale may not be challenged by the listed owner upon the purchaser's motion for a writ of assistance, and such purchaser may be a municipality where it does not appear of record that the purchase of the land was ultra vires, a municipality having the power to purchase land for certain purposes under this section. Wake County v. Johnson, 206 N. C. 478, 174 S. E. 303 (1934).

4. To make such contracts, and purchase and hold such personal property as may be necessary to the exercise of its powers.

Cross References.—As to power to establish a library, see § 160-65. As to water and lights, see § 160-255 et seq. As to sewerage, see § 160-239 et seq. As to fire department, see § 160-235. As to letting contracts for construction, etc., see § 143-129 et seq. As to contractor on municipal building giving bond, see § 44-14.

5. To make such orders for the disposition or use of its property as the interest of the town requires.

Local Modification.—City of Reidsville: 1949, c. 323.

Cross References.—As to sale of municipal property, see §§ 160-59 through 160-61. As to reconveyance of property donated to municipality for a specific purpose, see § 153-3.

Power to Cede Away or Control Public Affairs. — Municipal corporations may make authorized contracts, but they have no power under this section to make contracts or pass bylaws which shall cede away, control, or embarrass their legislative or governmental powers, or which shall disable them from performing their public duties. The receipt of $600 from a citizen in consideration of locating certain public buildings near his property so as to enhance the value is such a contract. Edwards v. Goldsboro, 141 N. C. 60, 53 S. E. 652 (1906).

6. To grant upon reasonable terms franchises for public utilities, such grants not to exceed the period of sixty years, unless renewed at the end of the period granted; also to sell or lease, upon such conditions and with such terms of payment as the city or town may prescribe, any waterworks, lighting plants, gas or electric, or any other public utility which may be owned by any city or town: Provided, that in the event of such sale or lease it shall be approved by a majority of the qualified voters of such city or town; and also to make contracts, for a period

not exceeding thirty years, for the supply of light, water or other public commodity.

Editor's Note. — The second 1921 amendment inserted the provision for conditions and terms, and the 1933 amendment struck out a provision that the subsection should not apply to Cumberland County.

Although the Utilities Commission is the principal agency for regulation of electricity rates in North Carolina, the municipalities still can, if they will, play an important part in view of this section. See 12 N. C. Law Rev. 294.

Discretion of Local Body.—The terms and conditions upon which franchises to public utilities are to be granted, unless clearly unreasonable or expressly prohibited by law, rests in the sound discretion of the local body. Mullen v. Louisburg, 225 N. C. 53, 33 S. E. (2d) 484 (1945).

Statutory Term Read into Contract. — Where a franchise granted by a municipality fails to stipulate a term, the statutory term of sixty years will be read into the contract as a part thereof. Boyce v. Gastonia, 227 N. C. 139, 41 S. E. (2d) 355 (1947).

Franchises for Use of Streets Must Be Expressly Conferred.—"The law is well settled that the title either of the fee in the soil or an easement is vested in the municipality, in trust for the use of the people as and for a public highway, and that it cannot, without legislative authority, divert them from this use." Therefore a grant by a city of a franchise allowing gas pipes to be laid in its streets is void unless allowed by express legislation. Elizabeth City v. Banks, 150 N. C. 407, 64 S. E. 189 (1909).

Duty Imposed with Franchise to Water Company.—The acceptance of a municipal franchise by a water company carries with it the duty of supplying water to all persons along the lines of its mains without discrimination and at uniform rates. Griffin v. Goldsboro Water Co., 122 N. C. 206, 30 S. E. 319 (1898).

Same—Power to Repudiate.—A water company operating under a franchise-contract from a city or town, and receiving the benefits and advantages arising thereunder, may not repudiate the duty of supplying water free to public schools, etc., which it had expressly contracted to do in accepting the franchise containing such provision, and collect for water it had furnished them upon a quantum meruit or otherwise. Henderson Water Co. v. Trustees, 151 N. C. 171, 65 S. E. 927 (1909).

Rights of Abutting Owners.—As against the rights of abutting owners the municipal authorities have no power to grant to a railroad company an easement to lay its track upon and operate its trains over the streets of a town, even though the title to the streets be in the town. Staton v. Atlantic Coast Line R. Co., 147 N. C. 428, 61 S. E. 455 (1908).

Exclusive Privilege Unconstitutional.—Those provisions of an ordinance granting the exclusive privilege to construct and maintain waterworks within the corporate limits of a town, and the exclusive use of its streets, alleys, sidewalks, public grounds, streams and bridges, come within the confirmation of § 31, of Art. I, of the Constitution of this State, which declares that "perpetuities and monopolies are contrary to the genius of a free state and ought not to be allowed." Thrift v. Elizabeth City, 122 N. C. 31, 30 S. E. 349 (1898).

License Not a Permanent Easement.—A license granted by a city to a railroad company to lay a track upon and to that extent use the streets, in the absence of an express power in the charter to do so, such license cannot be construed into a grant of a permanent easement. State v. Atlantic & N. C. R. Co., 141 N. C. 736, 53 S. E. 290 (1906).

Power to Annul License to Street Railroad.—After a city, by ordinance, has granted a street railroad a right to construct its line over certain streets it cannot by subsequent ordinance arbitrarily annul such license. Asheville St. Ry. Co. v. Asheville, 109 N. C. 688, 14 S. E. 316 (1891).

Private Sale of Property Held for Public Use.—The provision of § 160-59 in regard to sale at public outcry is not applicable to sales under this section, and when the approval of the voters is had there may be a private sale of such property as is included in the provision of this section. Section 160-59 is not applicable to property held in trust, Church v. Dula, 148 N. C. 262, 61 S. E. 639 (1908), and it was for a sale of such property that this section was especially intended. See Allen v. Reidsville, 178 N. C. 513, 101 S. E. 267 (1919).

When Approval of Voters Not Required.—Where a municipality decides to abandon the generation of electricity by the use of Diesel engines and substitute therefor electricity purchased wholesale for distribution through its electric plant, and in pursuance of such change of policy, advertises a sale of Diesel engines under § 160-59, there is no sale by such mu-

nicipality of its electric plant requiring approval of a majority of the qualified voters under this section. Mullen v. Louisburg, 225 N. C. 53, 33 S. E. (2d) 484 (1945).

7. To provide for the municipal government of its inhabitants in the manner required by law.

Cited in State v. Vanhook, 182 N. C. 831, 109 S. E. 65 (1921).

8. To levy and collect such taxes as are authorized by law.

Cross Reference.—As to municipal taxation, see § 160-56 et seq.

9. To do and perform all other duties and powers authorized by law.

Cross References.—As to authority of municipalities to co-operate in planning, constructing, and operating housing projects, see § 157-40 et seq. As to duty of governing body in city of over 10,000 to establish a juvenile court, see § 110-44. As to power to establish and maintain meat inspection, see § 106-161. As to power to contribute toward erection of memorials, see § 100-10. As to power to appropriate money for joint county and municipal hospitals, see § 131-46. As to power to make rules and regulations concerning motor vehicles, see § 20-169. As to authority to contribute to local organizations of State and federal agencies in war effort, see § 153-9.1. As to authority to lease, convey or acquire property for use as armory, see § 143-235. As to appropriations for benefit of military units, see § 143-236.

Can Only Exercise Conferred Power.—A municipality has no inherent police powers, but can exercise only those conferred by the State, and any reasonable doubt concerning such powers is resolved against it. State v. Dannenberg, 150 N. C. 799, 63 S. E. 946 (1911).

Parking Fee.—Prior to the 1941 amendment of § 160-200, subsection 31, it was held that this section did not confer upon a municipality authority to enact ordinances imposing a parking fee or charge for a parking space. Rhodes v. Raleigh, 217 N. C. 627, 9 S. E. (2d) 389 (1940).

10. To establish, erect, repair, maintain and operate a city or town jail or guardhouse, and to raise by taxation the moneys necessary therefor. (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.)

Editor's Note.—The 1949 amendment added subsection 10. For brief comment on amendment, see 27 N. C. Law Rev. 473.

§ **160-3. How corporate powers exercised.**—The corporate powers can be exercised only by the board of commissioners, or in pursuance of resolutions adopted by them, unless otherwise specially provided by law. (Code, s. 703; Rev., s. 2917; C. S., s. 2624.)

Cross Reference.—As to exercise of powers by governing body, see § 160-267 et seq.

Majority of Those Present May Validate Ordinance.—If an act is to be done by an incorporated body, the law, resolution or ordinance authorizing it to be done is valid if passed by a majority of those present at a legal meeting. Cleveland Cotton Mills v. Commissioners, 108 N. C. 678, 13 S. E. 271 (1891); LeRoy v. Elizabeth City, 166 N. C. 93, 81 S. E. 1072 (1914).

§ **160-4. Application and meaning of terms.**—This subchapter shall apply to all incorporated cities and towns where the same shall not be inconsistent with special acts of incorporation, or special laws in reference thereto, and the word "commissioners" shall also be construed to mean "aldermen," or other governing municipal authorities. The sections relating to municipal or town elections shall apply to all cities and towns not expressly excepted by law. (R. C., c. 111, s. 23; Code, s. 3827; Rev., s. 2918; C. S., s. 2625.)

Cross Reference.—As to application of Municipal Corporation Act of 1917, see § 160-193.

General Law Applies if Not Inconsist-

ent with Special Law or Charter. — A general law applies to all towns and cities in the State if it is not inconsistent with some special law or the charter of a town or city. State v. Smith, 103 N. C. 403, 9 S. E. 435 (1889).

Inconsistent Laws—Which Prevails. — The general law holds in the absence of special laws. In case of special laws the general law is repealed only to the extent of a conflict. If there is no conflict the two may be construed in pari materia. Raleigh v. Peace, 110 N. C. 32, 14 S. E. 521 (1892).

Stated in Wilson v. Mooresville, 222 N. C. 283, 22 S. E. (2d) 907 (1942).

ARTICLE 2.

Municipal Officers.

Part 1. Commissioners.

§ **160-5. Number and election.**—The board of commissioners of each town shall consist of not less than three nor more than seven commissioners, who shall be biennially elected by the qualified voters of the town, at the time and in the manner prescribed by law. (R. C., c. 111, s. 1; Code, s. 3787; Rev., ss. 2917, 2919; C. S., s. 2626.)

Cross References.—As to number of commissioners, see §§ 160-198, 160-310, 160-317, and 160-340. As to the general election laws, see § 163-148 et seq. As to municipal elections, see § 160-29 et seq.

§ **160-6. Number may be changed.**—After the first election the voters of any town may, whenever and as often as they choose, at the time of electing commissioners, and after due notice given thereof by the commissioners then in authority, by a majority of all the votes cast, alter the number of commissioners, so that the number be not more than seven nor less than three; and thenceforth the number of commissioners agreed on shall be chosen. (R. C., c. 111, s. 7; Code, s. 3791; Rev., s. 2922; C. S., s. 2627.)

§ **160-7. Oath of office.**—The commissioners shall take and subscribe an oath before some person authorized by law to administer oaths that they will faithfully and impartially discharge the duties of their office, and such oaths shall be filed with the mayor of such town and entered in a book kept for that purpose. (R. C., c. 111, s. 12; Code, s. 3799; Rev., s. 2920; C. S., s. 2628.)

Cross Reference.—As to oaths required, see §§ 11-6, 11-7, and 11-11.

§ **160-8. Vacancies filled.**—In case of a vacancy after election in the office of commissioner the others may fill it until the next election. (R. C., c. 111, s. 9; Code, s. 3793; Rev., s. 2921; C. S., s. 2629.)

§ **160-9. Commissioners appoint other officers and fix salaries.**—The board of commissioners may appoint a town constable, and such other officers and agents as may be necessary to enforce their ordinances and regulations, keep their records, and conduct their affairs; may determine the amount of their salaries or compensation; and also the compensation or salary of the mayor; may impose oaths of office upon them, and require bonds from them payable to the State, in proper penalties for the faithful discharge of their duties. (R. C., c. 111, s. 13; 1862, c. 51; Code, s. 3800; Rev., s. 2925; C. S., s. 2630.)

Cross Reference.—As to power to appoint a health officer, see § 130-31.

Special Tax Collector.—Whenever the authorities of a town shall be commanded to levy and collect taxes they may appoint a special tax collector to collect the same. But this power to appoint such a collector is additional, and does not abridge their right to require the collection to be made by the regular officer appointed for that purpose. Webb v. Beaufort, 88 N. C. 496 (1883).

Compensation When No Salary Specified.—Where a municipal corporation engages a commissioner of its sinking fund under the provisions of its charter, by which the incumbent was employed for a term of years continuously, his employ-

ment is that of a public officer, which precludes compensation based upon a quantum meruit, and he may not recover for his services in the absence of express statutory provision. Borden v. Goldsboro, 173 N. C. 661, 92 S. E. 694 (1917).

Applied in Wadesboro v. Atkinson, 107 N. C. 317, 12 S. E. 202 (1890).

Cited in Wilson v. Mooresville, 222 N. C. 283, 22 S. E. (2d) 907 (1942); Green v. Kitchin, 229 N. C. 450, 50 S. E. (2d) 545 (1948).

Part 2. Mayor.

§ **160-10. How elected; vacancy.**—At the same time when commissioners are elected, the voters may by ballot, under the inspection of the same persons and under the same rules and regulations, elect a mayor of the town; and the person having the highest number of votes shall be declared elected. In case of vacancy in the office, the commissioners may fill the same. (R. C., c. 111, s. 10; Code, s. 3794; Rev., s. 2931; C. S., s. 2631.)

Cross References.—As to election of mayor under Plan "A" of municipal government, see § 160-309; under Plan "B," see § 160-316; under Plan "C," see § 160-335; under Plan "D," see § 160-345. As to governing body filling vacancy, see § 160-274.

Powers and Duties of Mayor—Mayor Pro Tem.—The word "mayor" first occurs in English history in 1189, when Richard I substituted a mayor for the two bailiffs of London. In 5 Words and Phrases, 4450, it is said that the word "mayor" comes from an old English word "maier," which means "power," "authority," and not from the Latin "major"—greater. He represents the power and authority of the town, and the duty of presiding at meetings of the town commissioners is only one of the duties he exercises. While the powers and duties of the mayor may vary according to the charter of the town or the laws of the State, it is probably without any exception his duty to execute the laws and local regulations of his city and to supervise the discharge of their duties by the subordinate officers of the city government. Such an office could not be left vacant, without public inconvenience, during the illness or absence of the incumbent, and hence § 160-12 provides a mode of selecting a substitute, a pro tem. mayor, who shall "exercise his duties"—meaning all his duties (for there is no restriction) and as fully as he could have done. State v. Thomas, 141 N. C. 791, 53 S. E. 522 (1906). As to restriction on powers, see § 160-274.

§ **160-11. Oath of office.**—The mayor, before some justice of the peace, or other person authorized by law to administer oaths, shall take and subscribe the oaths prescribed for public officers, and an oath that he will faithfully and impartially discharge the duties imposed upon him by law, which said oath shall be filed with the records of the town and be entered on the same book with the oaths of the commissioners. (R. C., c. 111, s. 11; Code, s. 3798; Rev., s. 2932; C. S., s. 2632.)

Cross Reference.—As to oaths required, see §§ 11-6, 11-7 and 11-11.

§ **160-12. Presides at commissioners' meeting; mayor pro tem.**—The mayor shall preside at the meetings of the commissioners, but shall have no vote except in case of a tie; and in the event of his absence or sickness, the board of commissioners may appoint one of their number pro tempore, to exercise his duties. (R. C., c. 111, s. 10; Code, s. 3794; Rev., s. 2933; C. S., s. 2633.)

Cross References.—As to veto power of mayor under Plan "A" of municipal government, see § 160-314; under Plan "B," see § 160-323. As to power of mayor pro tempore, see § 160-274.

Mayor's Power to Vote.—Ordinarily the office of mayor is of an executive or administrative character, and he is not permitted to vote except in cases where it is especially provided. Markham v. Simpson, 175 N. C. 135, 95 S. E. 106 (1918).

Powers of Mayor Pro Tem.—The appointment of a mayor pro tem. vests him with all the powers of the mayor, including that of issuing warrants in criminal actions. State v. Thomas, 141 N. C. 791, 53 S. E. 522 (1906). As to restriction on powers, see § 160-274.

§ **160-13. Mayor's jurisdiction as a court.**—The mayor of every city or incorporated town is hereby constituted an inferior court, and as such court

such mayor shall be a magistrate and conservator of the peace, and within the corporate limits of his city or town shall have the jurisdiction of a justice of the peace in all criminal matters arising under the laws of the State, or under the ordinances of such city or town. The rules of law regulating proceedings before a justice of the peace shall be applicable to proceedings before such mayor, and he shall be entitled to the same fees which are allowed to justices of the peace. (1871-2, c. 195; 1876-7, c. 243; Code, s. 3818; Rev., s. 2934; C. S., s. 2634.)

Cross References.—As to jurisdiction of a justice of the peace in criminal matters, see §§ 7-129 and 7-211. As to rules of practice before a justice, see § 7-149. As to fees allowed a justice, see § 7-134. As to jurisdiction of municipal recorder's court, see § 7-190. See also, § 7-223. As to municipal-county courts, see § 7-240.

Power of Legislature to Grant Jurisdiction.—The legislature has power to grant to the chief officers of cities and towns all the jurisdiction which it could grant to judges of special courts under the Constitution. State v. Pender, 66 N. C. 314 (1872).

Criminal Jurisdiction.—The mayors of towns and cities have jurisdiction of the offense of violating town or city ordinances. State v. Wilson, 106 N. C. 718, 11 S. E. 254 (1890). They also have the same criminal jurisdiction within the corporate limits as a justice of the peace. Greensboro v. Shields, 78 N. C. 417 (1878). They occasionally have concurrent jurisdiction in such matters. State v. Cainan, 94 N. C. 880 (1886).

Enforcement of City Laws.—"The duties of a mayor are to cause the laws of the city to be enforced, and to superintend inferior officers." State v. Thomas, 141 N. C. 791, 53 S. E. 522 (1906).

Whether Street Established and Obstructed.—The mayor's court has jurisdiction of a case in which the controversy is whether or not a public street has been established, and whether or not a certain party obstructed it in violation of an ordinance. Such a controversy is not as to title to the land for if the street is established title is not material. Henderson v. Davis, 106 N. C. 88, 11 S. E. 573 (1890).

Conviction Not Bar to Prosecution in Higher Courts.—A conviction of violating a city ordinance punishing the disturbance of the good order and quiet of the town by fighting is not a bar to a prosecution by the State for an assault. State v. Taylor, 133 N. C. 755, 46 S. E. 5 (1903).

Punishment for Contempt.—In In re Deaton, 105 N. C. 59, 11 S. E. 244 (1890), it is decided that the power given justices of the peace by § 5-6, is extended to mayors by this section. But, in fact, the power to punish for contempt is inherent in all courts and essential to their existence. State v. Aiken, 113 N. C. 651, 18 S. E. 690 (1893).

Every court inherently possesses power to fine for contempt. As the mayor's court is "an inferior court" it possesses this power. In re Deaton, 105 N. C. 59, 11 S. E. 244 (1890).

Statute or Ordinance Must Be Set Out and Conformed to.—In a trial before a mayor the statute or ordinance that the accused is prosecuted under must be set out, and the one he is prosecuted under conformed to. Greensboro v. Shields, 78 N. C. 417 (1878).

Same — Amendment of Warrant. — A warrant for violating a town ordinance, held bad for omitting to set forth the act by virtue of which the ordinance was passed, may be amended after verdict on payment of costs. Commissioners v. Frank, 46 N. C. 436 (1854).

Right of Removal.—One prosecuted before a mayor for violating a town ordinance is not entitled to a removal under § 7-147, for that section is applicable only to justices of the peace. Although the two officers exercise concurrent jurisdiction in some matters, they are distinct. State v. Joyner, 127 N. C. 541, 37 S. E. 201 (1900).

Applied in State v. Cainan, 94 N. C. 880 (1886); State v. Smith, 103 N. C. 403, 9 S. E. 435 (1889); State v. Peters, 107 N. C. 876, 12 S. E. 74 (1890).

Cited in Board v. Henderson, 126 N. C. 689, 36 S. E. 158 (1900); Paul v. Washington, 134 N. C. 363, 47 S. E. 793 (1904); School Directors v. Asheville, 137 N. C. 503, 50 S. E. 279 (1905); Barnes v. Cherry, 190 N. C. 772, 130 S. E. 611 (1925).

§ 160-14. Enforcement of ordinances and penalties.—As such court the mayor shall have authority to hear and determine all cases that may arise upon the ordinances of the city or town; to enforce penalties by issuing execution upon any adjudged violation thereof, and to execute the laws and rules that may be made and provided by the board of commissioners of the city or town for the government and regulation of the city or town; but in all cases any person dissatisfied with the judgment of the mayor may appeal to the superior

court as in case of a judgment rendered by a justice of the peace. (1876-7, c. 243, s. 2; Code, s. 3819; Rev., s. 2935; C. S., s. 2635.)

Cross References.—As to punishment for violation of an ordinance, see § 14-4. As to appeal from judgment rendered by a justice of the peace, see § 7-177 et seq., and also § 1-299. As to the adoption of ordinances, see § 160-270.

Superior Court's Jurisdiction over Ordinances.—An offense against a city must be punished under the ordinances of the city, and the superior court has no jurisdiction. State v. White, 76 N. C. 15 (1877); State v. Threadgill, 76 N. C. 17 (1877). This is true if the city ordinance does not conflict with the general law. When there is a conflict the general law prevails, and the superior court has jurisdiction. Washington v. Hammond, 76 N. C. 33 (1877). The right of appeal to the superior court preserves the constitutional rights of one convicted in a mayor's court. State v. Brittain, 143 N. C. 668, 57 S. E. 352 (1907).

Cited in Guano Co. v. Tarboro, 126 N. C. 68, 35 S. E. 231 (1900).

§ 160-15. May sentence to work on streets.—In all cases where judgments may be entered up against any person for fines, according to the laws and ordinances of any incorporated town, and the person against whom the same is so adjudged refuses or is unable to pay such judgment, the mayor before whom such judgment is entered may order and require such person, so convicted, to work on the streets or other public works until, at fair rates of wages, such person shall have worked out the full amount of the judgment and costs of the prosecution; and all sums received for such fines shall be paid into the treasury. No woman shall be worked on the streets. (1866-7, c. 13; Code, s. 3806; 1897, c. 270; 1899, c. 128; Rev., s. 2937; C. S., s. 2636.)

Fine Treated as Debt.—A fine or penalty imposed by a municipal ordinance is treated as a debt, and, under Art. 1, § 16, of the Constitution, a person from whom it is attempted to be collected is exempt from arrest, but he may be indicted and punished for the criminal offense of violation of the ordinance for which it is imposed, under the statute. State v. Earnhardt, 107 N. C. 789, 12 S. E. 426 (1890).

§ 160-16. Mayor certifies ordinances on appeal.—In all cases of appeal from a mayor's court to the superior or other court of appeal, when the offense charged is the violation of a town ordinance the mayor shall send with the papers in the case a true copy of the ordinance alleged to have been violated, and shall certify under his hand and seal that said ordinance was in force at the time of the alleged violation of the same. (1899, c. 277; Rev., s. 2936; C. S., s. 2637.)

Cross Reference.—As to how ordinance is pleaded and proved, see §§ 8-5 and 160-272.

This section is construed with § 8-5 and a certificate or affidavit stating that the attached paper is a copy of the ordinance is sufficient to admit it in evidence, although it is not certified that it was in force at the time of the alleged violation. But anything other than strict compliance with this section is not commended. State v. Abernethy, 190 N. C. 768, 130 S. E. 619 (1925).

Place of Signature.—"The failure of the mayor to sign the certificate at the bottom does not render it invalid, for the place of the signature is not material. It may be at the top, or in the body, of the instrument, as well as at the foot. Burriss v. Starr, 165 N. C. 657, 81 S. E. 929 (1914). 'It is well settled in this State that when a signature is essential to the validity of an instrument, it is not necessary that the signature appear at the end, unless the statute uses the word "subscribe." Devereux v. McMahon, 108 N. C. 134, 12 S. E. 902 (1891); Richards v. Lumber Co., 158 N. C. 54, 73 S. E. 485 (1911); Boger v. Lumber Co., 165 N. C. 557, 81 S. E. 784 (1914).'" State v. Abernethy, 190 N. C. 768, 130 S. E. 619 (1925).

Records Kept by Clerk Evidence of Ordinance.—The records of the proceedings of the board of aldermen, kept by the town clerk, is competent evidence of town ordinances. State v. Irvin, 126 N. C. 89, 35 S. E. 430 (1900).

Part 3. Constable and Policemen.

§ 160-17. Constable to take oath of office.—The town constable shall, before some person authorized to administer oaths, take and subscribe to the

oaths prescribed for public officers, and an oath that he will faithfully and impartially discharge the duties of his office according to law, which said oath shall be filed with the mayor and entered in a book with the oaths of the commissioners. (R. C., c. 111, s. 20; Code, s. 3808; Rev., s. 2938; C. S., s. 2638.)

Cross Reference. — As to oaths prescribed for public officers, see §§ 11-6 and 11-7.

Applied in Wadesboro v. Atkinson, 107 N. C. 317, 12 S. E. 202 (1890).

Cited in Paul v. Washington, 134 N. C. 363, 47 S. E. 793 (1904).

§ 160-18. Power and duties of constable.—As a peace officer, the constable shall have within the town all the powers of a constable in the county; and as a ministerial officer, he shall have power to serve all civil and criminal process that may be directed to him by any court within his county, under the same regulations and penalties as prescribed by law in the case of other constables, and to enforce the ordinances and regulations of the board of commissioners as the board may direct. Whenever any process or other notice is so directed as to authorize a township constable to execute the same a town constable in that county may execute the same without any more specific direction: Provided, such town constable shall be required to give bond for performance of his duties such as is required of township constables who execute civil process. (R. C., c. 111, s. 20; 1879, c. 266; Code, ss. 3808, 3810; 1897, c. 519; 1899, c. 168; Rev., s. 2939; 1907, c. 52, s. 1; C. S., s. 2639.)

Cross Reference.—As to powers, duties, bond, etc., of township constables, see § 151-1 et seq.

Process Must Be Directed to Constable.—It was held in Davis v. Sanderlin, 119 N. C. 84, 25 S. E. 815 (1896), that process could not be served by a constable outside of his town or city, where the process was directed to "any constable or other lawful officer of said county" and that to enable a constable of a city or town to serve court process, such process must be directed (addressed) to him, as required, not necessarily by name, but officially as the constable of his city or town. And the law is the same if a constable undertakes to execute process within the limits of the town or city. In all cases where constables undertake to execute process under this section they can do so only in those cases where the process is directed (addressed) to them as constables of such city or town. Forte v. Boone, 114 N. C. 176, 19 S. E. 632 (1894); Upper Appomattox Co. v. Buffalo, 121 N. C. 37, 27 S. E. 999 (1897); Baker v. Brem, 126 N. C. 367, 35 S. E. 630 (1900).

Authority to Serve for Superior Court.—A constable has no authority to serve any paper for the superior court that is not process. Forte v. Boone, 114 N. C. 176, 19 S. E. 632 (1894).

Power to Arrest Restricted.—The powers conferred upon city and town constables are limited, in respect to arrests without warrant, to the territory embraced within the corporate boundaries; but when the constable is acting under a valid warrant from duly authorized officer, he may make arrests at any place within the county in which such city or town is situated. State v. Sigman, 106 N. C. 728, 11 S. E. 520 (1890).

In the absence of statutory authority, the power of a sheriff or other peace officer is limited to his own county, township, or municipality, and he cannot without a warrant make an arrest out of his own county, township, or municipality, where the person to be arrested is charged with the commission of a misdemeanor—beyond such limits his right to arrest is no greater than that of a private citizen. Wilson v. Mooresville, 222 N. C. 283, 22 S. E. (2d) 907 (1942).

Same—Failure to Carry Prisoner before Magistrate for Investigation. — A town constable who fails to carry a drunk arrested without warrant before magistrate for investigation of charge but instead releases him from "lockup" upon his becoming sober is guilty of assault and battery. State v. Parker, 75 N. C. 249 (1876).

§ 160-18.1. Right of police officers to transport prisoners and attend court beyond territorial jurisdiction.—Police officers are hereby authorized to transport persons charged with crime beyond the corporate limits for the purpose of placing them in jail or to transport persons charged with crime from one jail to another jail or to return persons charged with crime

from a point outside the corporate limits to the municipality or to a jail. They are further authorized to go beyond the city limits for the purpose of attending court. (1951, c. 25.)

§ **160-19. Constable as tax collector.**—The constable shall have the same power to collect the taxes imposed by the commissioners as sheriffs have to collect the taxes imposed by the county commissioners, and he may be required by the commissioners to give bond, with sufficient surety, payable to the State of North Carolina, in such sum as the commissioners may prescribe, to account for the same; upon which suit may be brought by the commissioners as upon the bonds of other officers. The bond of the constable shall be duly proved, before the mayor and commissioners, and registered in the office of the register of deeds. (R. C., c. 111, s. 21; Code, s. 3809; Rev., s. 2940; C. S., s. 2640.)

Special Tax Collector Does Not Affect Duty of Constable.—An act providing for the appointment of a special tax collector to collect taxes to pay a judgment against a town does not abridge the authority of the city to require the constable to collect the taxes, but only affords increased facilities for fulfilling the orders of the court without overtaxing existing collecting officers. Webb v. Beaufort, 88 N. C. 496 (1883).

Liability for Failure to Perform Duty.—A constable of a town appointed to collect taxes is liable for his failure to perform his duty. He cannot take advantage of any irregularity of form to avoid liability. Wadesboro v. Atkinson, 107 N. C. 317, 12 S. E. 202 (1890).

§ **160-20. Policemen appointed.**—The board of commissioners may appoint town watch or police, to be regulated by such rules as the board may prescribe. (R. C., c. 111, s. 16; Code, s. 3803; Rev., s. 2926; C. S., s. 2641.)

Municipality May Send Policemen to Training School.—The explicit power of a municipality to appoint and employ police contemplates that the persons so engaged be qualified and competent, and therefore a municipality has implied authority, exercisable within the discretion of its governing body, to send its policemen to a police training school and to make proper expenditures for this purpose. Green v. Kitchin, 229 N. C. 450, 50 S. E. (2d) 545 (1948). For a leading article on this case, see 27 N. C. Law Rev. 500.

§ **160-21. Policemen execute criminal process.**—A policeman shall have the same authority to make arrests and to execute criminal process, within the town limits, as is vested by law in a sheriff. (Code, s. 3811; Rev., s. 2927; C. S., s. 2642.)

Cross Reference.—As to arrest generally, see § 15-39 et seq.

In General.—Where a town charter provides for the appointment of a chief of police or marshal and declares that, in the execution of process, he shall have the same power, etc., which sheriffs and constables have, the service by such officer of a summons directed to "the sheriff of W. county or town constable of W. town" is valid. Lowe v. Harris, 121 N. C. 287, 28 S. E. 535 (1897).

Power to Arrest Limited.—The power of a policeman to arrest without a warrant is restricted to the corporate limits of the city, and an arrest out of the limits without a warrant for the breach of an ordinance is an assault. Sossamon v. Cruse, 133 N. C. 470, 45 S. E. 757 (1903). See also, Wilson v. Mooresville, 222 N. C. 283, 22 S. E. (2d) 907 (1942).

A policeman has the authority under general statute to deputize a citizen to aid him in serving a warrant for breach of the peace, a policeman being given the same authority, within the town limits, in making arrests as a sheriff. Tomlinson v. Norwood, 208 N. C. 716, 182 S. E. 659 (1935). See §§ 14-224 and 15-45.

Arrest without a Warrant.—A police officer may arrest without warrant for violation of municipal ordinances, committed in his presence; but the offender must be taken before the mayor as soon as practicable, a warrant obtained and trial had. State v. Freeman, 86 N. C. 683 (1882). But to make an arrest out of the town limits he must do so under a warrant or by virtue of §§ 15-40, 15-41. Martin v. Houck, 141 N. C. 317, 54 S. E. 291 (1906). Otherwise the arrest will be an assault. Sossamon v. Cruse, 133 N. C. 470, 45 S. E. 757 (1903).

An instruction to the effect that police officers had a right to enter a cafe without a warrant and make whatever investigation they deemed necessary is held

without error, since the officers have a right to enter a public place as invitees unless forbidden to enter therein, and further, officers may enter public or private property upon hearing a disturbance therein and make an arrest without a warrant to prevent a breach of the peace. State v. Wray, 217 N. C. 167, 7 S. E. (2d) 468 (1940).

A police officer within the limits of the city which has clothed him with authority, like a sheriff or constable, may summarily and without warrant arrest a person for a misdemeanor committed in his presence. This is a necessary concomitant of police power and essential for police protection. But in such case it is the duty of the officer to inform the person arrested of the charge against him and immediately take him before someone authorized to issue criminal warrants and have a warrant issued, giving him opportunity to provide bail and communicate with counsel and friends. Perry v. Hurdle, 229 N. C. 216, 49 S. E. (2d) 400 (1948).

Force Allowed in Making Arrests.—If an officer is resisted in making an arrest, he may use that degree of force which is necessary to the proper performance of his duty; and, after an accused person is arrested, the officer is justified in the use of such force as may be necessary, even to taking life, to prevent his escape, whether the offense charged is a felony or misdemeanor. He may take such precautions as handcuffing or tying the prisoner. State v. Sigman, 106 N. C. 728, 11 S. E. 520 (1890).

No Right to Kill or Injure Misdemeanant Fleeing Arrest.—When a person charged with a misdemeanor is fleeing from arrest, and an officer shoots him, such officer is guilty of assault. If death results the officer is guilty of murder if he intended to kill; manslaughter if unintentional. State v. Sigman, 106 N. C. 728, 11 S. E. 520 (1890); Sossamon v. Cruse, 133 N. C. 470, 45 S. E. 757 (1903).

Cited in Paul v. Washington, 134 N. C. 363, 47 S. E. 793 (1904); Green v. Kitchin, 229 N. C. 450, 50 S. E. (2d) 545 (1948).

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 five 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. (1919, c. 23, s. 1; C. S., s. 2643; 1945, c. 1040, s. 2.)

Local Modification.—Buncombe, Chatham, Stanly, Vance, Wake: 1945, c. 1040, ss. 2½, 3.

Editor's Note.—The 1945 amendment added the last sentence.

In North Carolina, the beginning of municipal zoning is seen in the statute of 1919 authorizing cities and towns to create planning boards. This was followed in 1923 by the general zoning law, § 160-172 et seq. of the General Statutes. See 5 N. C. Law Rev. 240.

§ 160-23. Board to make reports.—The board shall make a report at least annually to the governing body of the city or town, giving information regarding the condition of the city or town, and any plans or proposals for the development of the city or town and estimates of the cost thereof. (1919, c. 23, s. 2; C. S., s. 2644.)

§ 160-24. Expenses provided for.—The governing body of such city or town may appropriate to such local planning board such amount as they may deem necessary to carry out the purposes of its creation, and for the improvement of the municipality, and shall provide what sums, if any, shall be paid to said board as compensation. (1919, c. 23, s. 3; C. S., s. 2645.)

Part 5. General Qualification of Officers.

§ 160-25. Must be voters in town or city.—No person shall be a mayor,

commissioner, councilman, or alderman of any city or town unless he shall be a qualified voter therein. (1870-1, c. 24, s. 3; Code, s. 3796; Rev., s. 2941; C. S., s. 2646; 1951, c. 24.)

Local Modification.—Nash: 1951, c. 1208, s. 1; town of Andrews: 1947, c. 419; city of Bryson City: 1947, c. 363; town of Franklin: 1947, c. 38; town of Highlands: 1947, c. 45; town of Marion: 1947, c. 793; town of Mars Hill: 1947, c. 566; town of Nashville: 1951, c. 1208; town of Old Fort: 1947, c. 793; town of Robbinsville: 1949, c. 55; town of Spring Hope in Nash County: 1951, c. 281; town of Sylva: 1947, c. 11; town of Wallace: 1947, c. 799; municipalities in Transylvania: 1947, c. 246.

Cross Reference.—As to removal when person unlawfully holds office, see § 1-515.

Editor's Note.—The 1951 amendment deleted the words "intendant of police" and "or other chief officer" formerly appearing in this section, and inserted "councilman."

A person not a resident of an unincorporated municipality may not be elected chief of police by the board of commissioners of the municipality. Barlow v. Benfield, 231 N. C. 663, 58 S. E. (2d) 637 (1950).

Vacating Office for Pre-Existing Impediment.—While there can be no serious doubt of the right of a corporate body to vacate the seat of a corporate officer for adequate causes arising subsequent to taking his seat, there has been no precedent for depriving a member of his place by the action of a municipal body of which he is a member for any pre-existing impediment affecting his capacity to hold the office. Ellison v. Raleigh, 89 N. C. 125 (1883).

Applied in Foard v. Hall, 111 N. C. 369, 16 S. E. 420 (1892).

§ **160-26. Refusal to qualify and act.**—Every person elected or appointed commissioner, mayor, or town constable, who, after being duly notified, shall neglect or refuse to qualify and perform the duties of his office or appointment, shall pay twenty-five dollars, one-half to the use of the town and the other half to the use of any person who will sue for the same. (R. C., c. 111, s. 22; Code, s. 3812; Rev., s. 2942; C. S., s. 2647.)

Cross Reference.—As to time for mayor elected under plans A, B, C, and D to qualify, see § 160-307.

Constitutionality. — The provisions of this section are not in conflict with Art. 1, § 17, of the Constitution. London v. Headen, 76 N. C. 72 (1877).

§ **160-27. Hold office until successor qualified.**—Whenever the day of election shall be altered, the officers of the corporation elected or appointed before that day shall hold their places till the day of election, and until other officers shall be elected or appointed and qualified. And they shall hold their offices in like manner when there is any failure to make the annual election. (R. C., c. 111, s. 8; Code, s. 3792; Rev., s. 2943; C. S., s. 2648.)

Part 6. Reduction of Salaries.

§ **160-28. Reduction of salaries notwithstanding legislative enactment.**—Whenever the salary of any officer or employee of any county, city, town, or other municipality has been fixed by legislative enactment, the governing body of such county, city, town, or other municipality may reduce such salary by an amount not to exceed ten per cent of the salary as so fixed: Provided, this section shall not apply to salaries of teachers or other officers in the public schools. (1931, c. 429, s. 21.)

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 town of Graham, and in the towns in the counties of Bertie, Cabarrus, Caldwell, Catawba, Chowan, Davidson, Edgecombe, Gaston, Lenoir, Nash, Pitt, Robeson, Stokes, Surry, Vance, Wayne and Wilson. (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.)

Local Modification.—Gaston, town of Belmont: 1935, c. 161; city of Lenoir: 1947, c. 615, s. 2.

Cross References.—As to application of general election laws to cities and towns, see § 163-148. As to primaries in municipalities operating under Plan C, see § 160-335.

Editor's Note.—The 1931 amendment and the first 1935 amendment struck out "Columbus" and "Mitchell", respectively, from the list of counties in this section.

The 1933 amendment deleted the town of Shelby from the list of excepted places, and the second 1935 amendment added the town of Graham to the list.

Cited in Hendersonville v. Jordan, 150 N. C. 35, 63 S. E. 167 (1908).

§ 160-30. When elections held.—In all cities and towns an election shall be held on Tuesday after the first Monday of May, one thousand nine hundred and five, and biennially thereafter. (1901, c. 750, s. 19; Rev., s. 2945; 1907, c. 165; C. S., s. 2650.)

Local Modification. — Harnett; C. S. 2650; Harnett, town of Dunn: 1925, c. 67; Mitchell, town of Spruce Pine: 1935, c. 215.

Editor's Note.—Session Laws 1947, c. 615, s. 1, provides: "The provisions of §§ 160-30 through 160-51 of the General Statutes shall be applicable to all municipal elections held in the city of Lenoir in Caldwell County, except primary elections."

Applied in Hendersonville v. Jordan, 150 N. C. 35, 63 S. E. 167 (1908).

§ 160-31. Polling places. — There shall be at least one polling place in each ward in the town or city, if the said town or city is divided into wards; and if not divided into wards, then there shall be as many polling places as may be established by the governing body of said town or city. (1901, c. 750, s. 2; Rev., s. 2946; C. S., s. 2651.)

Local Modification.—Alamance, town of Graham: 1943, c. 591.

Cross Reference.—See § 163-163.

Fixed by Governing Authorities and Fully Advertised. — The general law clearly contemplates that the polling place should be fixed by the governing authorities of the city or town; and these places are, as a rule, of the substance and should be established and fully advertised. Hendersonville v. Jordan, 150 N. C. 35, 63 S. E. 167 (1908).

§ 160-32. Registrars appointed.—The board of commissioners shall select, at least thirty days before any city or town election, one person for each election precinct, who shall act as registrar of voters for such precinct; and shall make publication of the names of the persons so selected, and of the time of the election, at the town or city hall, or at the usual place of holding the mayor's court, immediately after such appointment, and shall cause a notice to be served upon the registrars by the sheriff of the county or the township constable. If any registrar shall die or neglect to perform his duties, said governing body may appoint another in his place. (1901, c. 750, s. 5; 1903, c. 613; Rev., s. 2947; C. S., s. 2652.)

Local Modification.—Alamance, town of Graham: 1935, c. 353.

§ 160-33. Registrars take oath of office. — Before entering upon the duties of his office each registrar shall take an oath before some person authorized by law to administer oaths to faithfully perform the duties of his office as registrar. (1901, c. 750, s. 6; Rev., s. 2948; C. S., s. 2653.)

Cross Reference.—As to oath taken by registrars and judges of elections, see § 163-164.

Registration Accepted in Absence of Oath.—Even if no oath is administered to the registrar, the registration must be accepted as the act of a public officer. State v. Nicholson, 102 N. C. 465, 9 S. E. 545 (1889).

Freeholders Not Required.—The registrars are not required to be freeholders. Hendersonville v. Jordan, 150 N. C. 35, 63 S. E. 167 (1908).

§ 160-34. Registration of voters.—It shall be the duty of the board of

commissioners of every city and town to cause a registration to be made of all the qualified voters residing therein, under the rules and regulations prescribed for the registration of voters for general elections. And where there has been a registration of voters, the board of commissioners may, in its discretion, order a new registration of voters; and unless such new registration shall be ordered, the election shall be held under the existing registration, with such revision as is herein provided. (Code, s. 3795; 1901, c. 750, s. 3; Rev., c. 2949; C. S., s. 2654.)

Local Modification.—Alamance, town of Graham: 1935, c. 353.

Cross Reference.—As to qualification and registration of voters, see Constitution, Art. VI, §§ 2 and 3, and § 163-29 et seq.

Qualified Voters.—A "qualified voter" is one duly registered. Southerland v. Goldsboro, 96 N. C. 49, 1 S. E. 760 (1887).

When a town charter provides for registration biennially, one registering as required by the charter answers the requirement, and should be allowed to vote in all city elections. In case a registration is called for by the corporate authorities notice must be given as provided by the preceding section and failure to give such notice will not give the city authorities power to deprive one of the right to vote under his regular registration. Smith v. Wilmington, 98 N. C. 343, 4 S. E. 489 (1887).

The words "general elections" refer not to an election purely local, but to one held throughout the State, when the books are required to be kept open for twenty days. If it was intended to refer to municipal elections, the legislature would not have used the word "general," but the word "regular," the former word being chosen as having a definite and well understood meaning and as contradistinguished from "local" or "municipal." Hardee v. Henderson, 170 N. C. 572, 87 S. E. 498 (1916).

Under this statute voters at municipal elections must have the same qualifications as are required in general elections, i. e., in elections for State and county. State v. Viele, 164 N. C. 122, 80 S. E. 408 (1913).

Cited in Gower v. Carter, 195 N. C. 697, 143 S. E. 513 (1928).

§ **160-35. Notice of new registration.**—In the event a new registration is ordered the board of commissioners shall give thirty days' notice thereof by advertisement in some newspaper, if there be one published in the town or city, and if there be none so published, then in three public places in the city or town. (1901, c. 750, s. 4; Rev., s. 2950; C. S., s. 2655.)

Local Modification.—Alamance, town of Graham: 1935, c. 353.

Failure to Give Notice.—While the law providing for notice of election and the registration of voters is mandatory as to the officers required to give such notice, it is only directory where a fair election has been held and voters were not deprived of their right of suffrage, in which case the failure to give notice is not ground for disturbing the election where the result could not have been otherwise. Hill v. Skinner, 169 N. C. 405, 86 S. E. 351 (1915), cited in Hardee v. Henderson, 170 N. C. 572, 87 S. E. 498 (1916).

Notice Signed by Clerk.—As to sufficiency of notice given by order of the board signed only by the clerk, see discussion in Briggs v. Raleigh, 166 N. C. 149, 81 S. E. 1084 (1914).

§ **160-36. Registration books revised.**—Each registrar shall be furnished with registration books, and it shall be his duty to revise the registration book of his precinct in such manner that said books shall show an accurate list of the electors previously registered in such ward or precinct and still residing therein, without requiring such electors to be registered anew. (1901, c. 750, s. 6; Rev., s. 2951; C. S., s. 2656.)

§ **160-37. Time for registration.**—Each registrar shall, between the hours of nine o'clock a. m. and five o'clock p. m. on each day (Sunday excepted) for seven days preceding the day for closing the registration books, as hereinafter provided, keep open said books for the registration of any new electors residing in the precinct, and entitled to register, whose names have never before been registered in such precinct, or do not appear in the revised list. Such books shall be open until nine o'clock p. m. of each Saturday during such registration period and

shall be closed for registration on the second Saturday before each election. (1901, c. 750, s. 6; Rev., s. 2952; C. S., s. 2657.)

This section was intended for the registration of new voters and not for the registration of all the voters. Section 163-31 provides for registration of all the voters. Hardee v. Henderson, 170 N. C. 572, 87 S. E. 498 (1916).

Section Only Directory.—"The fact that the registration book was not kept open during the whole prescribed period, on the Saturday before the election, cannot be allowed to render the election void, when it was kept open for inspection up to 2 p. m., and no one was denied the opportunity of examining it or sought it afterwards. This does not vitiate the election." State v. Nicholson, 102 N. C. 465, 9 S. E. 545 (1889).

In Hill v. Skinner, 169 N. C. 405, 86 S. E. 351 (1915), it was settled that, though registration books which by law should have been kept open twenty days were kept open only for eight days, the election will not be set aside where there was an extremely large registration and it did not appear that any voters were deprived of their rights or that a longer period of registration would in any way have affected the result. Hardee v. Henderson, 170 N. C. 572, 87 S. E. 498 (1916).

§ **160-38. Registration on election day.**—No registration shall be allowed on the day of election, but if any person shall give satisfactory evidence to the registrar and judges of election that he has become of the age of twenty-one years or otherwise has become qualified to register and vote since the registration books were closed for registration, he shall be allowed to register and vote. (1901, c. 750, s. 8; Rev., s. 2953; C. S., s. 2658.)

§ **160-39. Books open for challenge.**—On the second Saturday before the election the registration books shall be kept open at the polling place in the precinct for the inspection of the electors of the precinct, and any of such electors shall be allowed to object to the name of any person appearing on said books. (1901, c. 750, s. 7; Rev., s. 2955; C. S., s. 2659.)

§ **160-40. Practice in challenges.**—When a person is challenged the registrar shall enter upon his books opposite the name of the person objected to the word "challenged," and the registrar shall appoint a time and place, on or befor the Monday immediately preceding election day, when he, together with the judges of election, shall hear and decide the objection, giving personal notice to the voter so objected to; and if for any cause personal notice cannot be given, then it shall be sufficient to leave a copy thereof at his residence. If any person challenged shall be found not duly qualified, the registrar shall erase his name from the books. They shall hear and determine the cause of challenge under the rules and regulations prescribed by the general law regulating elections for members of the General Assembly. (1901, c. 750, ss. 7, 9; Rev., s. 2956; C. S., s. 2660.)

§ **160-41. Judges of election.**—The board of commissioners shall appoint, at least thirty days before any city or town election, two judges of election, who shall be of different political parties where possible, and shall be men of good character, able to read and write, at each place of holding election in said city or town, who, before entering upon the discharge of their duties, shall take an oath, before some person authorized by law to administer oaths, to conduct the election fairly and impartially, according to the Constitution and laws of the State. (1901, c. 750, s. 7; Rev., s. 2958; C. S., s. 2661.)

Local Modification.—Alamance, town of Graham: 1935, c. 353.

Cross Reference.—As to oath taken by judges of election, see § 163-164.

Applied in Hendersonville v. Jordan, 150 N. C. 35, 63 S. E. 167 (1908).

§ **160-42. Vacancies on election day.**—If any vacancy shall occur on the day of election in the office of registrar, the same shall be filled by the judges of election, and if any vacancy shall occur on that day in the office of judge the same shall be filled by the registrar; vacancies occurring at any other time shall be filled by the board of commissioners. (1901, c. 750, s. 20; Rev., s. 2954; C. S., s. 2662.)

§ **160-43. Judges superintend election.**—The judges of election shall open the polls and superintend the same until the close of election; they shall keep poll books in which shall be entered the name of every person who shall vote, and at the close of the election they shall certify the same over their proper signatures and deposit them with the board of commissioners. (1901, c. 750, s. 7; Rev., s. 2959; C. S., s. 2663.)

§ **160-44. When polls open and close.**—The polls shall be open on the day of election from six thirty o'clock a.m. until six thirty o'clock p.m. Eastern Standard Time, and no longer; and each person whose name may be registered shall be entitled to vote. (1901, c. 750, s. 10; Rev., s. 2960; C. S., s. 2664; 1941, c. 222.)

§ **160-45. Who may vote.**—All qualified electors, who shall have resided for four months 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.)

Cross Reference.—As to qualification of voters, see N. C. Constitution, Art. VI, §§ 2 and 3.

Qualification for Municipal Suffrage.—Qualifications for voting in a municipal election are the same as in a general election. People v. Canaday, 73 N. C. 198, 21 Am. Rep. 465 (1875); State v. Viele, 164 N. C. 122, 80 S. E. 408 (1913); Gower v. Carter, 194 N. C. 293, 139 S. E. 604 (1927).

§ **160-46. Ballots counted.** — When the election shall be finished the registrar and judges of election shall open the boxes and count the ballots, reading aloud the names of the persons which shall appear on each ballot; and if there shall be two or more ballots rolled up together, or any ballot shall contain the names of more persons than the elector has the right to vote for, or shall have a device or ornament upon it, in either of these cases such ballots shall not be numbered in taking the ballots, but shall be void; and the counting of votes shall be continued without adjournment until completed, and the result thereof declared. (1901, c. 750, s. 13; Rev., s. 2963; C. S., s. 2667.)

§ **160-47. Registration books, where deposited.**—Immediately after any election the registrars shall deposit the registration books for the respective precincts with the board of commissioners. (1901, c. 750, s. 11; Rev., s. 2957; C. S., s. 2668.)

§ **160-48. Board of canvassers.** — The registrar and judges of election in each voting precinct shall appoint one of their number to attend the meeting of the board of canvassers as a member thereof, and shall deliver to the member who shall have been so appointed the original returns of the result of the election in such precinct; and the members of the board of canvassers who shall have been so appointed shall attend the meeting of the board of canvassers, and shall constitute the board of town canvassers for such election, and a majority of them shall constitute a quorum. In towns where there is only one voting precinct, the registrar and judges of election shall, at the close of the election, declare the result thereof. (1901, c. 750, ss. 13, 14; Rev., s. 2964; C. S., s. 2669.)

§ **160-49. Meeting of board of canvassers.**—The board of canvassers shall meet on the next day after the election at twelve o'clock m., at the mayor's office, and they shall each take the oath prescribed in the general law governing elections for members of the county board of elections. (1901, c. 750, s. 15; Rev., s. 2965; C. S., s. 2670.)

§ **160-50. Board determines result; tie vote.**—The board of canvassers shall, at their meeting, in the presence of such electors as choose to attend, open, canvass and judicially determine the result, and shall make abstracts, stating the number of legal ballots cast in each precinct for each office, the name of each person

voted for and the number of votes given to each person for each different office, and shall sign the same. It shall have power and authority to pass upon judicially all the votes relative to the election and judicially determine and declare the result of the same, and shall have power and authority to send for papers and persons and examine the latter upon oath; and in case of a tie between two opposing candidates, the result shall be determined by lot. In all other respects all elections held in any town or city shall be conducted as prescribed for the election of members of the General Assembly. (1901, c. 750, ss. 16, 17; Rev., s. 2966; C. S., s. 2671.)

Cross Reference.—As to declaration of election and tie vote in county elections, see § 163-91.

Burden of Proof.—In an action in quo warranto to try title to an office the burden of proof is on the plaintiff to show that the holder of the office has not been duly elected by qualified voters. This is not shown when after rejecting certain votes there is a tie. Gower v. Carter, 194 N. C. 293, 139 S. E. 604 (1927).

§ **160-51. Notice of special election.**—No special election shall be held for any purpose in any county, township, city or town unless at least thirty days' notice shall have been given of the same by advertisement in some newspaper published in said county, city or town, or by advertisement posted at the courthouse of the county and four other public places in such county, city or town. (1901, c. 750, s. 24; Rev., s. 2967; C. S., s. 2672.)

Where Notice Not Given for Full Period.—Where the election for the issue of bonds by a township for road purposes has been held in all respects in accordance with the provisions of a statute, at the usual polling places, etc., they will not be declared invalid at the instance of a purchaser, on the ground that the full period of the thirty-day notice of the time and place of the election had not been advertised as set out in this section when there is no suggestion of fraud and full publicity had been given by newspapers of large local circulation, the election had been broadly discussed beforehand, and it does not appear that any voter is objecting to the bonds or has been deprived of his right to vote. Board v. Malone, 179 N. C. 10, 101 S. E. 500 (1919).

Article 4.

Ordinances and Regulations.

§ **160-52. General power to make ordinances.**—The board of commissioners shall have power to make ordinances, rules and regulations for the better government of the town, not inconsistent with this chapter and the law of the land, as they may deem necessary; and may enforce them by imposing penalties on such as violate them; and may compel the performance of the duties imposed upon others, by suitable penalities. (R. C., c. 111, ss. 12, 17; Code, ss. 3799, 3804; Rev., s. 2923; C. S., s. 2673.)

Cross References.—As to powers to pass ordinances under the act of 1917, see § 160-200, subsection 7. As to enforcement of municipal ordinances, see §§ 160-13, 160-14, 160-18, 160-21 and 14-4.

Editor's Note.—To give all the illustrations of the general application of the principle of this section to be found in the reports would be too extensive for a work of this kind, and reference should be had to digest citations for a more complete treatment.

As to ordinances "inconsistent with this chapter and the law of the land," see 27 N. C. Law Rev. 567.

In General.—"In construing this and similar legislation elsewhere, the courts have very generally held that the established municipal authorities may enact such ordinances as are promotive of the peace and good order of the town, the limitation being that the regulations may not be unreasonable or unduly discriminative nor manifestly oppressive and in 'derogation of common right.'" State v. Burbage, 172 N. C. 876, 89 S. E. 795 (1916).

It is not necessary now to aver an authority to pass the ordinance conferred by a general and public law, as it was when that authority was derived under a special act of incorporation. State v. Merritt, 83 N. C. 677 (1880).

Construction against City.—A doubt as to whether an ordinance is invalid, as conflicting with individual rights, should be resolved against the city. Slaughter v.

O'Berry, 126 N. C. 181, 35 S. E. 241, 48 L. R. A. 442 (1900).

Courts Slow to Question Discretion of Ordinance.—By this section discretionary power is vested in the city authorities, and the courts will be slow to interfere when the ordinance is not contrary to the laws of the State and no fraud, dishonesty or oppression is charged. State v. Austin, 114 N. C. 855, 19 S. E. 919 (1894). Or unless their action is so clearly unreasonable as to amount to oppression and manifest abuse of their discretion, and then the power of the court will be exercised with great caution and only in a clear case. Jones v. North Wilkesboro, 150 N. C. 646, 64 S. E. 866 (1909).

Ordinances Operative until Repealed.—Succeeding boards of commissioners are deemed to act subject to the provisions of ordinances passed by their predecessors in authority, until they see fit to repeal them. Hutchins v. Durham, 118 N. C. 457, 24 S. E. 723 (1896).

General Laws Prevail over Ordinances.—"The true principle is that municipal bylaws and ordinances must be in harmony with the general laws of the State, and whenever they come in conflict with the general laws the bylaws and ordinances must give way." Washington v. Hammond, 76 N. C. 33 (1877); State v. Stevens, 114 N. C. 873, 19 S. E. 861 (1894).

Classification of Occupations.—The general question of the right of classification was very fully considered in State v. Davis, 157 N. C. 648, 73 S. E. 130 (1911), and Smith v. Wilkins, 164 N. C. 135, 80 S. E. 168 (1913), and the doctrine was approved that the General Assembly or municipal corporation has the power to classify the different occupations, provided the classification is not unreasonable and oppressive, and that usually the extent to which the power will be exercised is for the General Assembly or the governing body of the municipality. State v. Davis, 171 N. C. 809, 89 S. E. 40 (1916).

An ordinance of a town, authorized by statute, imposing a fine of $25 upon drug stores for selling cigars, etc., on Sunday, and a fine of $5 for the same offense upon restaurants, cafés, and lunch stands, declaring the same to be a misdemeanor, relates to distinct and easily severable occupations, and in the absence of any finding that those engaged in them come in competition with each other, the ordinance will not be declared unconstitutional and invalid upon the ground that it is discretionary against the owners of drug stores. State v. Davis, 171 N. C. 809, 89 S. E. 40 (1916).

Sunday Ordinances.—By virtue of this section the power to enact Sunday ordinances has been delegated to the municipalities of the State. State v. Trantham, 230 N. C. 641, 55 S. E. (2d) 198 (1949).

"It is against the public policy of the State that one should pursue his ordinary business calling on Sunday, and it is very generally understood not only that ordinary business pursuits may be regulated, but altogether prohibited on Sunday." State v. Medlin, 170 N. C. 682, 86 S. E. 597 (1915); State v. Burbage, 172 N. C. 876, 89 S. E. 795 (1916).

An ordinance of a town may, under the provisions of this section prohibit the opening of all places of business on Sunday, except drug stores; and it is not an unreasonable regulation, under the police power of the town, inasmuch as drug stores are open all day Sunday, for the governing authorities to further provide that they may sell articles of common use which are quasi necessities to many, such as mineral waters, soft drinks, cigars and tobacco, only, between certain hours of that day. State v. Medlin, 170 N. C. 682, 86 S. E. 597 (1915).

Power to Close Business at Certain Hours.—The right of a city to restrict hours of business is restricted to cases when it is for the protection and benefit of the public. It has no power to require a merchant to close his store at an early hour because other merchants so desire to close all stores at a regular early hour. State v. Ray, 131 N. C. 814, 42 S. E. 960 (1902).

Sitting in Place of Business after Closing Time.—A city has power to restrict the use of property in so far as it may injure others, but it has no power to provide against a person sitting in his place of business after a time prescribed for closing it. State v. Thomas, 118 N. C. 1221, 24 S. E. 535 (1896).

Regulation of Gasoline Stations.—That the regulation of gasoline filling or gasoline storage stations comes within the police power of the State is freely conceded; and that such power is specifically conferred upon the plaintiff is likewise conceded. Wake Forest v. Medlin, 199 N. C. 83, 154 S. E. 29 (1930).

It is not necessary to the validity of an ordinance regulating the establishment of gasoline filling stations in a municipality that it substantially comply with the provisions of § 160-172 et seq., since the regulation of filling stations comes within the State police power which has been conferred on municipalities by the general

law. Shuford v. Waynesville, 214 N. C. 135, 198 S. E. 585 (1938).

Power That May Be Conferred on Constable.—An ordinance could not constitutionally confer upon a constable, a ministerial officer, the power to arrest and imprison for a penalty incurred or for any other violation of law, except it may be for safe custody. Men may not be arrested, imprisoned and released upon the judgment or at the discretion of a constable or anyone else. State v. Parker, 75 N. C. 249, (1876).

Insulting an Officer.—The commissioners of a town have no authority to make it unlawful for one to insult an officer or police while in the discharge of his duty, nor to provide a fine for one convicted of such offense. State v. Clay, 118 N. C. 1234, 24 S. E. 492 (1896).

Ordinance against Hogs at Large.—A town ordinance declaring that "all hogs, etc., found running at large within the town" shall be taken up or impounded, is valid, whether the owner resides within the corporate limits of such town or not. Rose v. Hardie, 98 N. C. 44, 4 S. E. 41 (1887). See § 68-24 and notes.

Parking Fee Not Authorized.—This section does not confer upon a municipality authority to enact ordinances imposing a parking fee or charge for a parking space. Rhodes v. Raleigh, 217 N. C. 627, 9 S. E. (2d) 389 (1940). But see § 160-200, subsection 31, which was amended by Public Laws 1941, cc. 153 and 319, after the decision in this case.

Applied in State v. Stevens, 114 N. C. 873, 19 S. E. 861 (1894).

Cited in State v. Stallings, 230 N. C. 252, 52 S. E. (2d) 901 (1949).

§ 160-53. Power to establish and regulate markets.—The board of commissioners may establish and regulate their markets, and prescribe at what place, within the corporation, shall be sold marketable things; in what manner, whether by weight or measure, may be sold grain, meal or flour (if flour be not packed in barrels), fodder, hay, or oats in straw; may erect scales for the purpose of weighing the same, appoint a weigher, fix his fees, and direct by whom they shall be paid. But it shall not be lawful for the commissioners or other authorities of any town to impose any tax whatever on wagons or carts selling farm products, garden truck, fish and oysters on the public streets thereof. (R. C., c. 111, s. 14; 1879, c. 176; Code, s. 3801; Rev., s. 2928; C. S., s. 2674.)

Cross Reference.—As to market houses, their establishment and maintenance, see §§ 160-167 and 160-228.

Section Is Liberally Construed.—"The courts have been disposed to construe much more liberally grants to municipalities of authority to exercise a limited control over the markets by prescribing reasonable regulations either for the protection of the health or the comfort or convenience of its people, than laws that purport to invest such corporations with more extraordinary powers." State v. Summerfield, 107 N. C. 895, 12 S. E. 114 (1890).

Contract for Erection of Market.—A contract between a city and individuals for the erection by the individuals of a market house, which shall be under the control of the city, and which provides for a maximum rental for stalls therein, and which declares that the city shall pay a rental equal to the taxes on the property, until the enterprise is on a paying basis, and which permits the city, at its option, to purchase the property, is not in conflict with the Constitution, and does not violate any principle of public policy. State v. Perry, 151 N. C. 661, 65 S. E. 915 (1909).

Lease of Building for Market Purposes.—If a municipal corporation has power under its charter to build a market house, it has power also to lease a building for market purposes. Wade v. New Bern, 77 N. C. 460 (1877).

Prohibiting Sale of Merchandise Outside of Market.—A town or city having the power under its charter to regulate its markets, and prescribe at what places and in what manner in the town market things shall be sold, may prohibit by an ordinance the sale of fresh meats within the corporate limits outside of the market house, and may impose a penalty for a violation of the ordinance. State v. Pendergrass, 106 N. C. 664, 10 S. E. 1002 (1890); Angels v. Winston-Salem, 193 N. C. 207, 136 S. E. 489 (1927).

Extent of Control over Market When Leased.—The occupant of a market stall, under a license subject to revocation under the provision of the city ordinances, acquires no right in the soil, as under a lease, and no additional right of possession, from the fact that he has been allowed to hold over because there was no annual renting of stalls on the day prescribed by the ordinance; but he is an occupant at the absolute pleasure and dis-

cretion of the licensor. Hutchins v. Durham, 118 N. C. 457, 24 S. E. 273, 32 L. R. A. 706 (1896).

Power to Require Weighing of Oats.—An ordinance adopted by the intendant and commissioners of the city of Raleigh, requiring oats to be weighed by the public weighmaster before being offered for sale, and imposing a penalty for its violation, is not unconstitutional, but valid. Raleigh v. Sorrell, 46 N. C. 49 (1853).

Requirement That Cotton Be Weighed—Fee.—A town ordinance providing that the commissioners shall elect a cotton-weigher who shall receive eight cents compensation for every bale weighed by him, one-half to be paid by the buyer and the other by the seller, and prescribing a penalty for buying or selling in the corporate limits without having it weighed by such cotton-weigher, is a valid and reasonable regulation. State v. Tyson, 111 N. C. 687, 16 S. E. 238 (1892).

§ **160-54. Repair of streets and bridges.**—The board of commissioners shall provide for keeping in proper repair the streets and bridges in the town, in the manner and to the extent they may deem best; may cause such improvements in the town to be made as may be necessary: Provided, however, so long as the maintenance of any streets and/or bridges within the corporate limits of any town be taken over by the State Highway and Public Works Commission, such town shall not be responsible for the maintenance thereof and shall not be liable for injuries to persons or property resulting from the failure to maintain such streets and bridges. (R. C., c. 111, s. 16; Code, s. 3803; Rev., s. 2930; C. S., s. 2675; 1949, c. 862.)

I. In General.
II. Use, Repair and Improvement.
  A. Use.
  B. Duty to Repair.
  C. Liability for Damage to Property.
  D. Rights of Abutting Owner.
III. Grade Crossings, Viaducts, etc.
IV. Liability for Defects or Obstructions Causing Injury.

Cross References.

As to power of Utilities Commission to abolish grade crossings, see § 62-50. As to power of city to acquire land by purchase or condemnation for street purposes, see §§ 160-204, 160-205, and § 160-200, subsection 11. As to street and sidewalk improvement, see also, § 160-78 et seq., and § 160-222 et seq. As to maintenance of streets constructed by the State Highway and Public Works Commission in towns of less than three thousand, see § 136-18, subsection g.

I. IN GENERAL.

Editor's Note.—The 1949 amendment added the proviso. For brief comment on amendment, see 27 N. C. Law Rev. 474.

A discretionary power is conferred by this section and will not be interfered with unless abused. In numerous and repeated decisions the principle has been announced and sustained that the courts may not interfere with discretionary powers conferred on these local administrative boards for the public welfare unless their action is so clearly unreasonable as to amount to an oppressive and manifest abuse of discretion. Munday v. Newton, 167 N. C. 656, 83 S. E. 695 (1914).

II. USE, REPAIR AND IMPROVEMENT.

A. Use.

Use for Other Purposes.—"While it is the duty of a municipal corporation to use reasonable care to keep its streets in a safe condition to drive upon, it has the right to devote the sides of the streets to other useful public purposes, provided it leaves an unobstructed driveway of ample width for the passage of teams. It may construct sidewalks of a higher grade and gutters of a lower grade than the driveway, place curbing on the line of the gutters, erect hydrants and authorize the erection of hitching posts and stepping stones as well as poles to support the wires of telegraph and telephone lines." Dougherty v. Horseheads, 159 N. Y. 154, 53 N. E. 799 (1912), quoted in Rollins v. Winston-Salem, 176 N. C. 411, 97 S. E. 211 (1918).

B. Duty to Repair.

The duty of keeping the streets repaired devolves upon the municipality functioning through the proper officials. In Bunch v. Edenton, 90 N. C. 531 (1886), the court said that it is the positive duty of the corporate authorities of a town to keep the streets, including the sidewalks, in "proper repair," that is, in such condition as that the people passing and repassing over them might at all times do so with reasonable ease, speed and safety. Positive nuisances on or near the streets

should be forbidden under proper penalties, and, when they exist, should be abated. Fitzgerald v. Concord, 140 N. C. 110, 52 S. E. 309 (1905).

Streets shall be kept in proper repair to the extent that this can be accomplished by proper and reasonable care and continuing supervision. Willis v. New Bern, 191 N. C. 507, 132 S. E. 286 (1926); Hunt v. High Point, 226 N. C. 74, 36 S. E. (2d) 694 (1946).

This duty extends to streets dedicated and accepted by the municipality but not to streets or portions of streets not accepted by it although dedicated by some individual. Hughes v. Clark, 134 N. C. 457, 46 S. E. 956, 47 S. E. 462 (1904).

And to Sidewalks.—The rights, powers, and liability of the municipality extend equally to the sidewalk as to the roadway, for both are parts of the street; and towns and cities are held to the same degree of liability for failure to repair sidewalks as to repair the other part of the street. Bunch v. Edenton, 90 N. C. 431 (1886); Tate v. Greensboro, 114 N. C. 392, 19 S. E. 767 (1894); Wolfe v. Pearson, 114 N. C. 621, 19 S. E. 264 (1894); Russell v. Monroe, 116 N. C. 720, 21 S. E. 550, 47 Am. St. Rep. 823 (1895); Neal v. Marion, 129 N. C. 345, 40 S. E. 116 (1901); Hester v. Traction Co., 138 N. C. 288, 50 S. E. 711 (1905).

Guarding against Perilous Places.—Proper repair implies that all bridges, dangerous pits, embankments, dangerous walls, and the like perilous places and things very near and adjoining the streets shall be guarded against by proper railings and barriers or other reasonably necessary signals for the protection of the public. Fitzgerald v. Concord, 140 N. C. 110, 52 S. E. 309 (1905); Willis v. New Bern, 191 N. C. 507, 132 S. E. 286 (1926); Hunt v. High Point, 226 N. C. 74, 36 S. E. (2d) 694 (1946).

Commissioners' Duty.—This section does not impose on the commissioners the duty to personally work the streets but it does impose on them a duty to keep them in repair. Although the power allows discretion, the commissioners are subject to indictment for neglecting to keep public streets in repair. State v. Dickson, 124 N. C. 871, 32 S. E. 961 (1899).

Contracts with and Duties of Public Service Companies to Repair. — A city may by contract with a street railroad provide for the repair of the street between the tracks, as a consideration for the franchise, and the railroad will be required to repair and keep its part in the same condition as the rest of the street. New Bern v. Atlantic, etc., R. Co., 159 N. C. 542, 75 S. E. 807 (1912).

Pipes, conduits, rails, and structures erected or constructed in the city streets under a general grant of authority to use the streets therefor are subject to the paramount power and duty of the city to repair, alter, and improve the streets, as the city, in its discretion, may deem proper, and to construct therein sewers and other improvements for the public benefit. Raleigh v. Carolina Power Co., 180 N. C. 234, 104 S. E. 462 (1920).

C. Liability for Damage to Property.

General Rule.—Where a municipal corporation has authority to grade its streets it is not liable for consequential damage, unless the work was done in an unskillful and incautious manner. Meares v. Wilmington, 31 N. C. 73 (1848). This holding has been approved and followed in many subsequent cases. Salisbury v. Western North Carolina Railroad, 91 N. C. 490 (1884); Wright v. Wilmington, 92 N. C. 160 (1885); Tate v. Greensboro, 114 N. C. 392, 19 S. E. 767 (1894); Wolfe v. Pearson, 114 N. C. 621, 19 S. E. 264 (1894); Brown v. Electric Co., 138 N. C. 533, 51 S. E. 62 (1905); Small v. Edenton, 146 N. C. 527, 60 S. E. 413 (1908); Ward v. Commissioners, 146 N. C. 534, 60 S. E. 418 (1908); Jones v. Henderson, 147 N. C. 120, 60 S. E. 894 (1908). In Thomason v. Seaboard, etc., R. Co., 142 N. C. 300, 55 S. E. 198 (1906), the subject is referred to as "the settled doctrine of this State." Dorsey v. Henderson, 148 N. C. 423, 62 S. E. 547 (1908).

Shade Trees Cut While Grading.—The discretionary power of repairing and maintaining a street is vested in the commissioners of a city, and an action for damages caused by cutting of trees in the street, by them, will not lie in favor of an abutting property owner, in the absence of negligence, malice or wantonness. Tate v. Greensboro, 114 N. C. 392, 19 S. E. 767 (1894).

D. Rights of Abutting Owner.

To Remove Nuisance.—When a street is repaired or changed by a city so as to damage an owner of the fee in the street or to cause a nuisance the owner has no right to change the condition of the street so as to remove the nuisance or lessen the damage, and such act will subject him to indictment. State v. Wilson, 107 N. C. 865, 12 S. E. 320 (1890).

Ratification by City.—However, it may be pointed out incidentally that when an unauthorized person does an act of repair to streets that might have been done by a city, a ratification by the city will re-

lieve him of any liability as a trespasser. Wolfe v. Pearson, 114 N. C. 621, 19 S. E. 264 (1894).

III. GRADE CROSSINGS, VIADUCTS, ETC.

Power to Regulate.—The right of the city government, both under its police powers and the several statutes applicable to require railroads to construct bridges or viaducts, along streets running over their tracks, is fully established in this jurisdiction and is recognized in well-considered cases elsewhere. Atlantic, etc., R. Co. v. Goldsboro, 155 N. C. 356, 71 S. E. 514 (1911); Powell v. Seaboard Air Line R. Co., 178 N. C. 243, 100 S. E. 424 (1919); Northern P. R. Co. v. Minnesota, 208 U. S. 583, 28 S. Ct. 341, 52 L. Ed. 630 (1908).

A city has both inherent power and authority by general statute over its streets for the protection of its citizens, which is not taken from it by § 62-50, conferring like powers upon the Utilities Commission. Durham v. Southern R. Co., 185 N. C. 240, 117 S. E. 17 (1923).

The exercise by the State of its power to provide for the safety of its citizens with respect to grade crossings of its streets by a railroad company is within its police powers, and may be exercised by municipal corporations under authority conferred on them, and not being delegated to the national government, it is not affected by federal legislation upon interstate commerce or the Federal Transportation Act. Durham v. Southern R. Co., 185 N. C. 240, 117 S. E. 17 (1923), affirmed in Southern R. Co. v. Durham, 266 U. S. 178, 45 S. Ct. 51, 69 L. Ed. 231 (1924).

A city charter giving a city specific authority to erect gates at a railroad crossing, or to require the railroad company to place a flagman there to warn pedestrians, with provision that such authority shall not be exclusive, does not limit the authority of the city therein, or take from it the inherent and statutory right to require that the railroad company construct an underpass for the protection of the public. Durham v. Southern R. Co., 185 N. C. 240, 117 S. E. 17 (1923).

In 2 N. C. Law Rev. 104, referring to the case immediately preceding, it was said: "The result of the decisions, so far as the question of substantive law is concerned, is that a municipal corporation may, under its charter or by general law, by proper ordinance, require a railroad company to construct, at its own expense, such crossings for the streets as will best promote the public safety in the use of the streets; that the nature of the crossing to be constructed is within the reasonable discretion of the municipal authorities, and that the presumption is in favor of the validity of the city ordinance."

Cited in Moffitt v. Asheville, 103 N. C. 237, 9 S. E. 695 (1889).

IV. LIABILITY FOR DEFECTS OR OBSTRUCTIONS CAUSING INJURY.

This section imposes on a municipality the positive duty to maintain its streets in a reasonably safe condition for travel, and negligent failure to do so will render it liable to private action for proximate injury. Bunch v. Edenton, 90 N. C. 431 (1884); Russell v. Monroe, 116 N. C. 720, 121 S. E. 550, 47 Am. St. Rep. 823 (1895); Neal v. Marion, 129 N. C. 345, 40 S. E. 116 (1901); Fitzgerald v. Concord, 140 N. C. 110, 52 S. E. 309 (1905); Graham v. Charlotte, 186 N. C. 649, 120 S. E. 466 (1923); Michaux v. Rocky Mount, 193 N. C. 550, 137 S. E. 663 (1927); Speas v. Greensboro, 204 N. C. 239, 167 S. E. 807 (1933); Radford v. Asheville, 219 N. C. 185, 13 S. E. (2d) 256 (1941); Waters v. Belhaven, 222 N. C. 20, 21 S. E. (2d) 840 (1942); Millar v. Wilson, 222 N. C. 340, 23 S. E. (2d) 42 (1942); Hunt v. High Point, 226 N. C. 74, 36 S. E. (2d) 694 (1946).

But Municipality Is Not Insurer of Condition of Streets.—While it is the duty of the city to keep its streets in such repair that they are reasonably safe for public travel, it is not an insurer of such condition nor does it warrant that they shall at all times be absolutely safe. A city is only responsible for a negligent breach of duty. Fitzgerald v. Concord, 140 N. C. 110, 5 S. E. 309 (1905).

Duty to Take Measures to Avert Injury. — Negligent failure to take such measures as ordinary prudence requires to avert injury, where the municipality has actual or imputable knowledge of the dangerous condition, will render municipality liable for injury proximately caused. Hunt v. High Point, 226 N. C. 74, 36 S. E. (2d) 694 (1946).

By Exercise of Proper Care and Continuing Supervision. — In Willis v. New Bern, 191 N. C. 507, 132 S. E. 286 (1926) it is said that streets shall be constructed in a reasonably safe manner, and to this end ordinary care must be exercised at all times. They shall be kept in proper repair or in a reasonably safe condition to the extent that this can be accom-

plished by proper and reasonable care and continuing supervision. Hunt v. High Point, 226 N. C. 74, 36 S. E. (2d) 694 (1946).

Necessity for Notice of Defect.—Since the liability depends upon the negligence of the city, it is evident that before such negligence can exist the city must have had notice of the defect or with the exercise of reasonable diligence would have had notice of it. Jones v. Greensboro, 124 N. C. 310, 32 S. E. 675 (1899).

Plaintiff Must Prove Notice.—So in order to establish responsibility, it is not sufficient to show that a defect existed and an injury has been caused thereby. It must be further shown that the officers of the town "knew, or by ordinary diligence might have discovered, the defect, and the character of the defect was such that injuries to travelers therefrom might reasonably be anticipated." Jones v. Greensboro, 124 N. C. 310, 32 S. E. 675 (1899); Fitzgerald v. Concord, 140 N. C. 110, 52 S. E. 309 (1905).

Implied Notice.—When observable defects in a highway have existed for a time so long that they ought to have been observed, notice of them is implied. Fitzgerald v. Concord, 140 N. C. 110, 52 S. E. 309 (1905).

Same—Question for Jury. — On the question of notice implied from the continued existence of a defect, no definite or fixed rule can be laid down as to the time required and it is usually a question for the jury on the facts and circumstances of each particular case. Fitzgerald v. Concord, 140 N. C. 110, 52 S. E. 309 (1905).

Notice of Latent Defects.—Notice of latent defects should not be so readily presumed from their continuance as open and obvious defects. Fitzgerald v. Concord, 140 N. C. 110, 52 S. E. 309 (1905).

Obstructions.—A city does not have discretionary power to put obstructions in its streets, and it is liable for its negligence in putting or leaving obstructions in the street to one injured by such obstruction. Graham v. Charlotte, 186 N. C. 649, 120 S. E. 466 (1923).

Same—Bridges Must Be as Wide as Street.—A city under the authority of this section in building and repairing streets has no right in building a bridge to obstruct the street with concrete pilasters, and for injuries caused by such obstruction it is liable. Graham v. Charlotte, 186 N. C. 649, 120 S. E. 466 (1923).

Same—Joint Liability with Private Individual.—If any person shall unlawfully erect an obstruction or nuisance in the streets of a city, and the town authorities shall permit it to remain an unreasonable length of time, the town and the tort-feasor are jointly and severally liable to the traveler for an injury resulting therefrom, without any fault on his part. The question of primary and secondary liability is for the offending parties to adjust between themselves. Dillon v. Raleigh, 124 N. C. 184, 32 S. E. 548 (1899).

Independent Contributory Cause.—When two causes combine to produce an injury to a traveler on a highway, both of which are in their nature proximate—the one being a culpable defect in the highway, and the other some occurrence for which neither party is responsible—the municipality is liable, provided the injury would not have been sustained but for such defect. Dillon v. Raleigh, 124 N. C. 184, 32 S. E. 548 (1899).

Failure to Light Street.—While a city may not be under legal necessity of lighting its streets at all, where it does maintain street lights its failure to provide lighting which is reasonably required at a particular place because of the dangerous condition of street is negligent failure to discharge its duty to maintain the streets in a reasonably safe condition for travel. Hunt v. High Point, 226 N. C. 74, 36 S. E. (2d) 694 (1946).

City Cannot Plead Governmental Immunity.—A municipality cannot, with impunity, create in its streets a condition palpably dangerous, neglect to provide the most ordinary means of protection against it, and avoid liability for proximate injury on the plea of governmental immunity. Hunt v. High Point, 226 N. C. 74, 36 S. E. (2d) 694 (1946).

§ 160-55. Abatement of nuisances.—The board of commissioners may pass laws for abating or preventing nuisances of any kind, and for preserving the health of the citizens. Provided, however, it shall not be a nuisance for an employee or servant of a railroad company to make necessary smoke when stoking or operating a coal burning locomotive. (R. C., c. 111, s. 15; Code, s. 3802; Rev., s. 2929; C. S., s. 2676; 1949, c. 594, s. 1.)

Cross References.—As to zoning laws, see § 160-172 et seq. As to protection of water supply, see § 130-108 et seq. As to regulation of privies, see § 130-147 et seq. As to abatement of menaces to health, see §§ 160-234 and 130-25 et seq.

Editor's Note.—The 1949 amendment added the proviso. For brief comment on amendment, see 27 N. C. Law Rev. 474.

Liberal Construction of Authority.—Authority to abate nuisances is liberally construed by the courts for the benefit of the citizens. State v. Beacham, 125 N. C. 652, 34 S. E. 447 (1899).

Encroachment on Street by Buildings.—Any permanent structure or purpresture which materially encroaches upon a public street and impedes travel is a nuisance per se, and may be abated, notwithstanding space is left for the passage of the public, and a failure on the part of a city to abate it in a reasonable time will make it liable as a joint tort-feasor. Graham v. Charlotte, 186 N. C. 649, 120 S. E. 466 (1923).

Health Ordinances.—A city has power to require that a dealer in second-hand clothing turn them over to the city to be disinfected and the exercise of the power cannot be considered as a restriction of an owner over his property, but is only the proper and lawful use of authority to protect the health of its citizens from diseases. Rosenbaum v. New Bern, 118 N. C. 83, 24 S. E. 1 (1896).

Hog Pens.—"The board of town commissioners could forbid the keeping of hog pens in the town to such an extent as they might deem necessary to prevent nuisances to the public, and, indeed, they could have done so without the express authority." State v. Hord, 122 N. C. 1092, 29 S. E. 952 (1898).

Indecent Language or Cursing.—An ordinance which forbids the use of "abusive or indecent language, cursing, swearing or any loud or boisterous talking, hallooing or any other disorderly conduct" within the corporate limits of a town, and imposes a fine of twenty-five dollars for a violation of it, may be enacted by proper authorities under the powers granted to them in the general law, especially under this section and such an ordinance is reasonable. State v. Merritt, 83 N. C. 677 (1880); State v. McNinch, 87 N. C. 567 (1882); State v. Cainan, 94 N. C. 880 (1886); State v. Earnhardt, 107 N. C. 789, 12 S. E. 426 (1890).

Storage of Gasoline.—See Fayetteville v. Spur Distributing Co., 216 N. C. 596, 5 S. E. (2d) 838 (1939).

Liability for Failure to Abate.—A municipal corporation is not civilly liable for the failure to pass ordinances to preserve the public health or otherwise promote the public good nor for any omission to enforce the ordinances enacted under the legislative powers granted in its charter, or to see that they are properly observed by its citizens, or those who may be resident within the corporate limits. Bunch v. Edenton, 90 N. C. 431 (1886); Hull v. Roxboro, 142 N. C. 453, 55 S. E. 351, 12 L. R. A. (N. S.) 638 (1906); Harrington v. Greenville, 159 N. C. 632, 75 S. E. 849 (1912).

But a city is liable in damages for failure to abate in a reasonable time a nuisance that amounts to an obstruction in a street. Dillon v. Raleigh, 124 N. C. 184, 32 S. E. 548 (1899).

Cited in Jones v. Greensboro, 124 N. C. 310, 32 S. E. 675 (1899).

Article 5.

Municipal Taxation.

§ 160-56. Commissioners may levy taxes.—The board of commissioners may annually levy and cause to be collected for municipal purposes an ad valorem tax not exceeding the limitation expressed in § 160-402, and one dollar on each poll, on all persons and property within the corporation, which may be liable to taxation for State and county purposes; and may annually lay a tax on all trades, professions and franchises carried on or enjoyed within the city, unless otherwise provided by law; and may lay a tax on all such shows and exhibitions for reward as are taxed by the General Assembly; and on all dogs, and on swine, horses and cattle, running at large within the town: Provided, however, the board of commissioners may re-adopt any existing ordinance or ordinances levying, assessing, imposing and defining the license and privilege taxes of any city by reference, without reading the same in detail, and by the reading of any amendments or additions thereto. (R. C., c. 111, s. 13; 1862, c. 51; Code, s. 3800; Rev., s. 2924; C. S., s. 2677; 1949, c. 933.)

Cross References.—As to listing and collection of municipal taxes, see § 160-261 et seq. As to prohibition against municipality levying income and inheritance taxes, see § 105-247. As to power to license pawnbrokers, see §§ 91-2 and 105-50.

Editor's Note.—The 1949 amendment added the proviso.

Application Where Charter Indefinite.—Since this section is applicable to all cities and towns except where their charters otherwise provide, a town whose charter provides that it shall have all the privileges and rights allowed to the most favored town in the State, will be presumed to have the power to levy taxes under this section although the charter is indefinite. Wadesboro v. Atkinson, 107 N. C. 317, 12 S. E. 202 (1890).

Same—When Only Restrictive.—Where a town charter is not passed in accordance with Art. II, § 14 of the Constitution the charter is valid but such town cannot levy any tax under said charter, although the charter may contain restrictions on the power to tax that are valid, under Art. VII, § 4 of the Constitution. The town may for necessary expense levy taxes under this section subject to the restrictions of the charter. Cotton Mills v. Waxhaw, 130 N. C. 293, 41 S. E. 488 (1902).

When There Is No Special Statute.—When there is no provision for taxes in the charter of a town, taxes necessary to the expenses of the town may be levied under this section. If there is a provision in the charter for levying taxes, all taxes levied will be presumed to conform to the law and the Constitution, Art. VII, § 7. State v. Irvin, 126 N. C. 989, 35 S. E. 430 (1900).

Taxes on Trades and Professions.—Since the enactment of this section taxes laid upon trades and professions under the name of privilege taxes have been laid expressly for revenue, and such taxes are authorized by this section. State v. Irvin, 126 N. C. 989, 35 S. E. 430 (1900).

The power to levy a tax on all trades includes "any employment or business embarked into for gain or profit." Lenoir Drug Co. v. Lenoir, 160 N. C. 571, 76 S. E. 480 (1912).

Unless inconsistent with a special law or charter of a city a tax may be levied under this section, on a person engaging in any trade within the city. Guano Co. v. Tarboro, 126 N. C. 68, 35 S. E. 231 (1900).

A manufacturer of fertilizers maintaining its sales department in another state from which sales are exclusively made for fertilizer stored for distribution only, in a city in this State, is liable under an ordinance of the city levying a tax upon callings and professions, naming among others "fertilizer manufacturers' agents or dealers," the tax being for the protection afforded by the city in the exercise of such occupation, and the profits derived therefrom. Guano Co. v. New Bern, 158 N. C. 354, 74 S. E. 2 (1912).

Same—Classification.—A municipal corporation is empowered to tax trades or professions carried on or enjoyed within the city, unless otherwise provided by law, but its classification of trades and professions for taxation must be based upon reasonable distinctions and all persons similarly situated must be treated alike. Kenny Co. v. Brevard, 217 N. C. 269, 7 S. E. (2d) 542 (1940).

The law of uniformity does not prohibit the classification by the municipality of dealers in a particular kind of merchandise separately from those whose business it is to sell other articles falling within the same generic term. Rosenbaum v. New Bern, 118 N. C. 83, 24 S. E. 1 (1896).

But an ordinance requiring a license of livery men, and providing that it shall include any persons making contract for hire in town, or "any person carrying any person with a vehicle out of town for hire," is void as being unreasonable. Plymouth v. Cooper, 135 N. C. 1, 47 S. E. 129 (1904).

Money and Choses in Action Subject to Tax.—The word "property," includes moneys, credits, investments and other choses in action. Redmond v. Commissioners, 106 N. C. 122, 10 S. E. 845 (1890).

Taxes on Lottery Applied Strictly.—A city having power to levy a heavy tax on "gift enterprises" must restrict this tax to enterprises that are of a lottery nature. A dealer in trading stamps cannot be taxed, for the tax cannot be applied to a business merely because of its peculiarity. Winston v. Beeson, 135 N. C. 271, 47 S. E. 457 (1904).

Tax on Firm Outside City.—Construing the charter of a city in pari materia with this section, the city is given power to tax a firm outside the city, but which delivers products inside the city to customers procured by its salesman, and collects for its goods upon delivery, such trade being "carried on or enjoyed within the city." Hilton v. Harris, 207 N. C. 465, 177 S. E. 411 (1934).

The charter of a city giving it certain powers in respect to the levying of franchise taxes on trades and professions, etc., and this section will be construed together in determining the legislative grant of power to the municipality to levy taxes of this class. Hilton v. Harris, 207 N. C. 465, 177 S. E. 411 (1934); State

v. Bridgers, 211 N. C. 235, 189 S. E. 869 (1937).

Limitation on License Tax on Use of Motor Vehicle.—Section 20-97 expressly prohibits a municipality from levying a license or privilege tax in excess of $1.00 upon the use of any motor vehicle licensed by the State, and must be construed with and operates as an exception to, and limitation upon the general power to levy license, and privilege taxes upon businesses, trades and professions granted by charter and this section, and provisions of a municipal ordinance imposing a license tax upon the operation of passenger vehicles for hire in addition to the $1.00 theretofore imposed by it upon motor vehicles generally, is void, nor may the additional municipal tax be sustained upon the theory that it is a tax upon the business of operating a motor vehicle for hire rather than ownership of the vehicle, since the word "business" and the word "use" as used in the sections mean the same thing. Cox v. Brown, 218 N. C. 350, 11 S. E. (2d) 152 (1940).

Cited in Love v. Raleigh, 116 N. C. 296, 21 S. E. 503 (1894), dissenting opinion of Clark, J., in Mayo v. Commissioners, 122 N. C. 5, 29 S. E. 343 (1898), which was followed when case was overruled in Fawcett v. Mt. Airy, 134 N. C. 125, 45 S. E. 1029 (1903).

§ 160-57. Uniformity of taxes. — All taxes levied by any county, city, town, or township shall be uniform as to each class of property taxed in the same, except property exempted by the Constitution. (Const., art. 7, s. 9; Rev., s. 2968; C. S., s. 2678.)

Editor's Note.—This section is based upon what was Art. VII, § 9, of the Constitution prior to its amendment in 1935.

§ 160-58. Dog tax.—If any person residing in a town shall have therein any dog, and shall not return it for taxation, and shall fail to pay the tax according to law, the commissioners, at their option, may collect from the person so failing double the tax, or may treat such dog as a nuisance, and order its destruction. (R. C., c. 111, s. 24; Code, s. 3815; Rev., s. 2971; C. S., s. 2683.)

Cross Reference. — As to taxation of dogs by counties, see § 67-5 et seq.

Tax Is on Privilege of Keeping Dog.—Although a dog is property, a dog tax is not directly on the dog as property but is upon the privilege of keeping a dog. If the tax is not paid the dog may be declared a nuisance and killed. Mowery v. Salisbury, 82 N. C. 175 (1880).

Article 6.

Sale of Municipal Property.

§ 160-59. Public sale by mayor and commissioners.—The mayor and commissioners of any 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. (1872-3, c. 112; Code, s. 3824; Rev., s. 2978; C. S., s. 2688.)

Local Modification.—Alexander, Washington, and the town of Lillington in Harnett County: 1941, c. 292; 1943, c. 128; city of Reidsville: 1949, c. 323.

Cross References.—As to when sale at public outcry is not necessary, see § 160-2, subsection 6. As to municipality's power to sell or lease property generally, see § 160-200.

What Real Estate May Be Sold.—In Southport v. Stanly, 125 N. C. 464, 34 S. E. 641 (1899), the court says: The reasonable construction of the statute must be that the town or city authorities can sell any personal property, or sell or lease any real estate which belongs to a town or city, as the surplus of the original acreage ceded for the town or city site, or such land as may have been subsequently acquired or purchased. But in no case can the power be extended to the sale or lease of any real estate which is to be held in trust for the use of the town, or any real estate which is devoted to the purpose of government. To enable the town to sell such real estate there must be a special act of the General Assembly authorizing such sale or lease. Brockenbrough v. Board, 134 N. C. 1, 46 S. E. 28 (1903).

In Moose v. Carson, 104 N. C. 431, 10 S. E. 689 (1889), it was held that when

a city conveys land bounded by an established street, and the grantee enters upon and improves the land, a subsequent conveyance by the corporation of the land covered by the street, whereby the easement of the appurtenant owner is interfered with, is void. But where there have been no improvements made on a dedicated street and the dedicated land has never been used as a street, a city by an act of the legislature conferring authority may sell and convey the land so dedicated to it for street purposes. Church v. Dula, 148 N. C. 262, 61 S. E. 639 (1908).

A contract for removal of sludge from city's sewerage disposal plant was held to relate to a service and not a sale of city property within the meaning of this section, requiring sale of city property to be made by auction. Plant Food Co. v. Charlotte, 214 N. C. 518, 199 S. E. 712 (1938).

Real Estate Agent May Be Employed.—As incidental to the power of a municipal corporation to sell at public auction parcels of land acquired by it by foreclosure of tax and street assessment liens, the municipality has the authority, in the exercise of its discretion in determining the means for accomplishing this purpose, to employ a real estate agent upon commission to obtain a responsible bidder at the sale to bid a sum sufficient to protect the municipality's interest. Cody Realty, etc., Co. v. Winston-Salem, 216 N. C. 726, 6 S. E. (2d) 501 (1940).

Applied in Mullen v. Louisburg, 225 N. C. 53, 33 S. E. (2d) 484 (1945).

Cited in Winston-Salem v. Smith, 216 N. C. 1, 3 S. E. (2d) 328 (1939).

§ **160-60. Sale by county commissioners.**—In any town where there is no mayor or commissioners, the board of county commissioners shall have the power given in the preceding section. (1872-3, c. 112, s. 2; Code, s. 3825; Rev., s. 2979; C. S., s. 2689.)

§ **160-61. Title made by mayor.**—The mayor of any town, or the chairman of any board of commissioners of any town or county, is fully authorized to make title to the purchaser of any property sold under this chapter. (1872-3, c. 112, s. 3; Code, s. 3826; Rev., s. 2980; C. S., s. 2690.)

§ **160-61.1. Certain counties and municipalities authorized to execute warranty deeds; relief from personal liability.**—1. The governing bodies of counties and municipal corporations are hereby authorized and empowered to execute and deliver conveyances to any property, whether acquired by tax or assessment foreclosure or otherwise, with full covenants of warranty whenever in the discretion of said governing bodies it is to the best interest of said counties or municipal corporations to convey by warranty deed.

2. Members of the governing bodies of counties and municipal corporations are hereby relieved of any personal or individual liability by reason of the execution of any such conveyances with covenants of warranty.

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, Wayne, Wilson. (1945, c. 962.)

Article 7.

General Municipal Debts.

§ **160-62. Popular vote required, except for necessary expense.**—No county, city, town, or other municipal corporation shall contract any debt, pledge its faith, or loan its credit, nor shall any tax be levied, or collected by any officer of the same, except for the necessary expenses thereof, unless by a vote of the majority of the qualified voters therein. (Const., art. 7, s. 7; Rev., s. 2974; C. S., s. 2691.)

Cross References.—As to purposes for which bonds may be issued, see § 160-378. As to necessity of approval of bond issue by Local Government Commission,

see § 159-7. As to election on bond issue, see § 160-387. As to restrictions upon power of municipality to borrow or spend, see § 160-399.

Editor's Note.—For cases under this section, see Art. VII, § 7 of the Constitution, as it is the same as this section. See also Art. II, § 14 of the Constitution.

Cited in Sing v. Charlotte, 213 N. C. 60, 195 S. E. 271 (1938).

§ **160-63. Debts paid out of tax funds.**—Debts contracted by a municipal corporation in pursuance of authority vested in it shall not be levied out of any property belonging to such corporation and used by it in the discharge and execution of its corporate duties and trusts, nor out of the property or estate of any individual who may be a member of such corporation or may have property within the limits thereof. But all such debts shall be paid alone by taxation upon subjects properly taxable by such corporation: Provided, that whenever any individual, by his contract, shall become bound for such debt, or any person may become liable therefor by reason of fraud, such person may be subjected to pay said debt. (1870-1, c. 90; Code, s. 3821; Rev., s. 2975; C. S., s. 2692.)

Applied in Fawcett v. Mt. Airy, 134 N. C. 125, 45 S. E. 1029 (1903).

§ **160-64. Debts limited to ten per cent of assessed values.**—It shall be unlawful for any city or town to contract any debt, pledge its faith or loan its credit for the construction of railroads, the support or maintenance of internal improvements or for any special purpose whatsoever, to an extent exceeding in the aggregate ten per cent of the assessed valuation of the real and personal property situated in such city or town. And the levy of any tax to pay any such indebtedness in excess of this limitation shall be void and of no effect. (1889, c. 486; Rev., s. 2977; C. S., s. 2693.)

Constitutional.—This section is constitutional, not being in conflict with Art. VII, § 7 of the Constitution. Wharton v. Greensboro, 146 N. C. 356, 59 S. E. 1043 (1907).

May Be Repealed in Part or in Toto.—This limitation is statutory and not a constitutional one; therefore, the legislature may repeal it in toto or only in its application to certain cities and towns. The fact that a bond issue was in excess of the limitation will not invalidate it if it is later ratified by State legislature. Wharton v. Greensboro, 149 N. C. 62, 62 S. E. 740 (1908).

Only Applicable to Special Purposes.—This section does not apply to indebtedness for necessary expenses nor to bonds to pay debts contracted for necessary expenses, but applies to "special purposes" which are construed to mean enterprises not necessary to the city government. Wharton v. Greensboro, 146 N. C. 356, 59 S. E. 1043 (1907); Underwood v. Asheville, 152 N. C. 641, 68 S. E. 147 (1910); Charlotte v. Trust Co., 159 N. C. 388, 74 S. E. 1054 (1912).

Article 8.

Public Libraries.

§ **160-65. Library established upon petition and popular vote.**—The governing body of any incorporated city or county, upon petition of fifteen per cent (15%) of the registered voters in said city or county who voted in the last election for Governor, may submit the question of the establishment and support of a free public library to the voters at a special election for that purpose. Such special election shall be called by the proper election authorities of the incorporated city or county, and at least twenty days' public notice of same shall be given prior to the opening of the registration books. The registration books shall remain open for the same period of time before said special election as is required by law for them to remain open for a regular election. A new registration of the qualified voters shall be ordered before said special election is held and such new registration shall be made in accordance with the laws for the registration of voters in municipal elections as provided by chapter one hundred and sixty of the General Statutes of North Carolina and as provided by chapter one hundred and sixty-three of the

General Statutes of North Carolina in the case of a county. At said special election there shall be submitted to the voters qualified to vote in said election the question of whether a special tax shall be levied and a free public library established or maintained as herein provided. The ballot to be used in voting on whether any tax authorized by this section shall be levied and a free public library established shall contain the following question: "Shall a special tax be levied for the establishment, maintenance and support of public libraries?", with appropriate spaces for marking "yes" or "no." If a majority of the qualified voters voting at said special election vote in the affirmative, the governing body of the voting unit shall establish the library and may levy, and cause to be collected as other general taxes are collected, a special tax in the amount requested by the petition, which shall not be more than ten cents (10c) nor less than three cents (3c) on the one hundred dollars ($100.00) of the assessed value of the taxable property of such unit. The funds so derived shall constitute the library fund, and shall be kept separate from the other funds of the city or county, to be expended exclusively on such library. When such library has been established, it may be abolished only by a vote of the people in the same manner in which it was established.

In any city or county in which a tax for library purposes has been voted under this section or any other law, the governing body thereof, on the recommendation of the board of trustees of the library, may submit to the voters of such city or county the question as to an increase or decrease, within the limitations of this section, of such tax so authorized. The question shall be submitted to the voters in the manner provided by this section. No election under this section shall be held on the day of any biennial election for county officers, or within sixty days of such an election.

The provisions of this section shall apply to the territory in any county in this State situated outside incorporated cities or towns therein which have established libraries upon petitions and popular elections under this section. It is the intent and purpose of this section to authorize qualified voters in the territory lying outside incorporated cities and towns in this State to file petitions with the governing body of the county in which they are situated, and to be permitted to vote for the establishment of libraries in said territory, and to levy and collect taxes for the establishment and maintenance of the same in the manner and within the limitations set out in this section. (1911, c. 83, s. 1; C. S., s. 2694; 1927, c. 31, s. 1; 1933, c. 365, s. 1; 1945, c. 1005; 1949, cc. 351, 353.)

Cross Reference.—As to power of counties to appropriate money for libraries, see § 153-9, subsection 37.

Editor's Note.—The 1933 and 1945 amendments rewrote this section. The first 1949 amendment added the last paragraph, and the second 1949 amendment substituted "ten cents (10c)" for the "five cents (5c)" near the end of the first paragraph.

§ **160-66. Library trustees appointed.**—For the government of such library there shall be a board of six trustees appointed by the governing body of the city or town or county, chosen from the citizens at large with reference to their fitness for such office; and not more than one member of the board of aldermen or town commissioners shall be at any one time a member of said board. Such trustees shall hold their office for six years from their appointment, and until their successors are appointed and qualified: Provided, that upon their first appointment under this article two members shall be appointed for two years, two for four years, and two for six years, and at all subsequent appointments, made every two years, two members shall be appointed for six years. All vacancies shall be immediately reported by the trustees to the governing body and be filled by appointment in like manner, and, if in an unexpired term, for the residue of the term only. The governing body may remove any trustee for incapacity, unfitness, misconduct, or for neglect of duty. No compensation shall be allowed any trustee. (1911, c. 83, s. 2; C. S., s. 2695; 1927, c. 31, s. 2; 1927, c. 172.)

§ **160-67. Powers and duties of trustees.** — Immediately after appointment, such board of trustees shall organize by electing one of its members as president and one as secretary-treasurer, and such other officers as it may deem necessary. The secretary-treasurer before entering upon his duties shall give bond to the municipality in an amount fixed by the board of trustees, conditioned for the faithful discharge of his official duties. The board shall adopt such by-laws, rules and regulations for its own guidance and for the government of the library as may be expedient and conformable to law. It shall have exclusive control of the expenditure of all moneys collected for or placed to the credit of the library fund, and of the supervision, care, and custody of the rooms or buildings constructed, leased, or set apart for library purposes. But all money received for such library shall be paid into the city treasury or county treasury, be credited to the library fund, be kept separate from other moneys, and be paid out to the secretary-treasurer upon the authenticated requisition of the board of trustees through its proper officers. With the consent of the governing body of the city or town or county, it may lease and occupy, or purchase, or erect upon ground secured through gift or purchase, an appropriate building: Provided, that of the income for any one year not more than one-half may be employed for the purpose of making such lease or purchase or for erecting such building. It may appoint a librarian, assistants, and other employees, and prescribe rules for their conduct, and fix their compensation, and shall also have power to remove such appointees: Provided, that after May 4, 1933, no vacancies existing or occurring in the position of head librarian in such libraries shall be filled by appointment or designation of any person who is not in possession of a library certificate issued under the authority of this article. It may also extend the privileges and use of such library to nonresidents upon such terms and conditions as it may prescribe. (1911, c. 83, s. 3; C. S., s. 2696; 1927, c. 31, s. 3; 1933, c. 365, s. 2.)

Editor's Note. — The 1933 amendment added the proviso to the next to last sentence.

§ **160-68. Library Certification Board.**—The secretary of the North Carolina Library Commission, the librarian of the University of North Carolina, the president of the North Carolina Library Association and one librarian appointed by the executive board of the North Carolina Library Association shall constitute a Library Certification Board who shall serve without pay and who shall issue librarian's certificates under reasonable rules and regulations to be promulgated by the Board and a complete record of the transactions of said Board shall be kept at all times. (1933, c. 365, s. 3.)

§ **160-69. Librarians acting on May 4, 1933; temporary certificates.** —The provisions of this article shall not be construed to affect any librarian in his or her position on May 4, 1933. Such librarians as were then acting shall be entitled to receive a certificate in accordance with positions then held.

Upon the submission of satisfactory evidence that no qualified librarian is available for appointment, a temporary certificate, valid for one year, may be issued upon written application of the Library Board. Such certificate shall not be renewed or extended and shall not be valid beyond the date for which it is issued. (1933, c. 365, s. 3.)

§ **160-70. Annual report of trustees.**—The board of trustees shall make an annual report to the governing body of the city, town or county, stating the condition of their trust, the various sums of money received from the library fund and all other sources, and how much money has been expended; the number of books and periodicals on hand, the number added during the year, the number lost or missing, the number of books loaned out, and the general character of such books; the number of registered users of such library; with such other statistics,

information and suggestions as it may deem of general interest. (1911, c. 83, s. 7; C. S., s. 2697; 1927, c. 31, s. 4; 1933, c. 365, s. 4.)

Editor's Note.—The 1933 amendment rewrote this section.

§ 160-71. Power to take property by gift or devise.—With the consent of the governing body of the city or town or county, expressed by ordinance or resolution, and within the limitations of this article as to the rate of taxation, the Library Board 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. And the city or town or county in all such cases is authorized to acquire a site, levy a tax, and pledge itself by ordinance or resolution to a perpetual compliance with all the terms and conditions of the gift, grant, devise, or bequest so accepted. (1911, c. 83, s. 5; C. S., s. 2698; 1927, c. 31, s. 5.)

§ 160-72. Title to property vested in the city, town or county.—All property given, granted, or conveyed, donated, devised or bequeathed to, or otherwise acquired by any city, town or county for a library shall vest in and be held in the name of such city, town or county 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 made directly to such city, town or county. (1911, c. 83, s. 4; C. S., s. 2699; 1927, c. 31, s. 6; 1933, c. 365, s. 5.)

Editor's Note.—The 1933 amendment rewrote this section.

§ 160-73. Library free.—Every library established under this article shall be forever free to the use of the inhabitants of the city or town, subject to such reasonable regulations as the board of trustees may adopt. (1911, c. 83, s. 6; C. S., s. 2700.)

§ 160-74. Ordinances for protection of library.—The governing body of such city or town or county shall have power to pass ordinances imposing suitable penalties for the punishment of persons committing injury upon such library or the grounds or other property thereof, or for any injury to or for failure to return any book, plate, picture, engraving, map, magazine, pamphlet, or manuscript belonging to such library. (1911, c. 83, s. 8; C. S., s. 2701; 1927, c. 31, s. 7.)

§ 160-75. Contract with existing libraries.—The governing body of any city, town or county, when deemed best for the interest of the city, town or county, may in lieu of supporting and maintaining a public library, enter into a contract with and make annual appropriations of money to such library, associations or corporations as shall maintain a library or libraries, whose books shall be available without charge to the residents of such city, town or county, under such rules and regulations of said library, associations or corporations, as shall be approved by the governing body of such city, town or county. All money paid to such society or corporation under such contract shall be expended solely for the maintenance of such library, and for no other purpose. For the governing body of such library when contract has been made between city and county, the trustees shall be appointed proportionately to the funds provided for its support.

Nothing in this section shall be construed to abolish or abridge any power or duty conferred upon any public library established by virtue of any city or town charter or other special act, or to affect any existing local laws allowing or providing municipal aid to libraries. (1911, c. 83, ss. 9, 10; 1917, c. 215; C. S., s. 2702; 1927, c. 31, s. 8; 1933, c. 365, s. 6.)

Editor's Note.—The 1933 amendment rewrote this section.

§ 160-76. Detention of library property after notice.—Whoever willfully or maliciously fails to return any book, newspaper, magazine, pamphlet or

manuscript belonging to any public library to such library for fifteen days after mailing or delivery in person of notice in writing from the librarian of such library, given after the expiration of the time, which by regulation of such library such book, newspaper, magazine, pamphlet or manuscript may be kept, shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than fifty dollars or imprisonment for not more than thirty days: Provided, that the notice required by this section shall bear upon its face a copy of this section. (1921, c. 118; C. S., s. 2702(a); 1925, c. 39, s. 1.)

Editor's Note.—Prior to the 1925 amendment, the violation of this section was punishable within the discretion of the court.

§ **160-77. Joint libraries.**—Two or more counties or municipalities, or a county or counties and a municipality or municipalities, may join for the purpose of establishing and maintaining a free public library under the terms and provisions contained in this article.

Such combined governmental units shall have the same privileges and shall be subject to the same restrictions as a single unit under this article, and all the provisions of this article, unless inconsistent, shall be applicable to the combined units.

The governing bodies of the combined units shall perform their appropriate duties with regard to the library in the same manner as for a single unit under this article.

Such joint library shall be governed by a board of trustees to be composed of three persons from each of the participating units. The governing body of each unit shall choose the three persons to represent it from the citizens at large with reference to their fitness for such office. For the initial term, one member shall be appointed for two years, one for four years, and one for six years, and until their successors are appointed and qualified. Thereafter, the terms of members shall be for six years and until their successors are appointed and qualified. Vacancies occurring on the board shall be filled by the governing body of the appointing unit for the unexpired term. Any member may be removed by the governing body appointing him for incapacity, unfitness, misconduct or neglect of duty. The board shall serve without compensation.

The amount each participating unit shall contribute to the establishment and support of the joint library shall be based upon relative population and the total assessed value of property in each unit.

Should any county at any time desire to withdraw from such combination, the said county shall be entitled to such proportion of the property as may have been agreed upon in the terms of combination at the time such joint action was taken. (1933, c. 365, s. 7; 1945, c. 401.)

Cross Reference.—As to power of county to appropriate funds for library service, see § 153-9, subsection 37.

Editor's Note.—The 1945 amendment rewrote this section.

Article 9.

Local Improvements.

§ **160-78. Explanation of terms.**—In this article the term "municipality" means any city or town in the State of North Carolina now or hereafter incorporated.

"Governing body" includes the board of aldermen, board of commissioners, council, or other chief legislative body of a municipality.

"Street improvement" includes the grading, regrading, paving, repaving, macadamizing, remacadamizing and bituminous surface treatment constructed on a soil stabilized base course with a minimum thickness of four inches, (such soil stabilizing agents to be top soil, sand clay, sand clay gravel, crushed stone, stone dust, Portland cement, tar, asphalt or any other stabilizing materials of similar character, or any combination thereof,) of public streets and alleys, and the con-

struction, reconstruction, and altering of curbs, gutters and drains in public streets and alleys.

"Sidewalk improvement" includes the grading, construction, reconstruction and altering of sidewalks in public streets or alleys, and may include curbing and gutters.

"Local improvement" means any work undertaken under the provisions of this article, the cost of which is to be specially assessed in whole or in part, upon property abutting directly on the work.

"Frontage" when used in reference to a lot or parcel of land abutting directly on a local improvement, means that side or limit of the lot or parcel of land which abuts directly on the improvement. (1915, c. 56, s. 1; C. S., s. 2703; 1945, c. 461.)

Editor's Note.—The 1945 amendment inserted in the paragraph explaining "street improvement" the provision as to bituminous surface treatment.

Ownership of Street Prerequisite to Assessment for Improvement.—The ownership by the city of a street is a prerequisite to the power of the city to levy an assessment for street improvements against abutting owners thereon. Efird v. Winston-Salem, 199 N. C. 33, 153 S. E. 632 (1930).

Cited in Atlantic, etc., R. Co. v. Ahoskie, 192 N. C. 258, 134 S. E. 653 (1926); Jones v. Durham, 197 N. C. 127, 147 S. E. 824 (1929); Atlantic Coast Line R. Co. v. Ahoskie, 207 N. C. 154, 176 S. E. 264 (1934); Farmville v. Paylor, 208 N. C. 106, 179 S. E. 459 (1935); Raleigh v. Mechanics, etc., Bank, 223 N. C. 286, 26 S. E. (2d) 573 (1943).

§ 160-79. Application and effect.—This article shall apply to all municipalities. It shall not, however, repeal any special or local law or affect any proceedings under any special or local law for the making of street, sidewalk or other improvements hereby authorized, or for the raising of funds therefor, but shall be deemed to be additional and independent legislation for such purposes and to provide an alternative method of procedure for such purposes, and to be a complete act, not subject to any limitation or restriction contained in any other public or private law or laws, except as herein otherwise provided. (1915, c. 56, s. 2; C. S., s. 2704.)

Cross References.—As to the effect of the act of 1917 on this article, see § 160-193. As to street and sidewalk improvement and repair, see also §§ 160-54 and 160-222 et seq. As to improvements generally, see § 160-206 et seq.

Laws Construed Separately.—The General Statutes authorizing cities and towns to issue bonds and assess abutting lands for improving and paving streets, and not requiring that the questions be submitted to the voters, are additional and independent of special or local laws, and where the latter required the question to be first submitted to the voters for their approval, and these requirements have been fully met, under the private act, the transactions thereunder complete and their validity unquestioned, a railroad company may not resist an assessment made under the general law, upon the ground that the provisions of the private acts, requiring the approval of the voters, control the question of the validity of the assessments. Kinston v. Atlantic, etc., R. Co., 183 N. C. 14, 110 S. E. 645 (1922).

In case a special or local law is invalid, this article may be followed in making local improvements. But its provisions must be complied with. Cottrell v. Lenoir, 173 N. C. 138, 91 S. E. 827 (1917).

Special Act Prevails.—When a special or local law is passed that is inconsistent with this article the special or local law will prevail, although there is no reference to this section, or repealing clause. Bramham v. Durham, 171 N. C. 196, 88 S. E. 347 (1916).

Cited in Wake Forest v. Holding, 206 N. C. 425, 174 S. E. 296 (1934).

§ 160-80. Publication of resolution or notice.—Every resolution passed pursuant to this article shall be passed in the manner prescribed by other laws for the passage of resolutions. Whenever a resolution or notice is required by this article to be published, it shall be published at least once in a newspaper published in the municipality concerned, or, if there be no such newspaper, such resolution

or notice shall be posted in three public places in the municipality for at least five days. (1915, c. 56, s. 3; C. S., s. 2705.)

Cited in Jones v. Durham, 197 N. C. 127, 147 S. E. 824 (1929).

§ 160-81. When petition required.—Every municipality shall have power, by resolution of its governing body, upon petition made as provided in § 160-82, to cause local improvements to be made and to defray the expense of such improvements by local assessment, by general taxation, and by borrowing, as herein provided. No petition shall be necessary, however, for the ordering or making of private water, sewer and gas connections as hereinafter provided. Nor shall a petition be necessary for the making of sidewalk improvements in those municipalities in which by other law or laws sidewalk improvements are authorized to be made without petition. (1915, c. 56, s. 4; C. S., s. 2706.)

Cross Reference. — As to resolution without petition and hearing to determine advisability of improvements, see § 160-207.

Absence of Petition Cured by Legislation.—When improvements are made under an assessment, and there has been no petition as required by this section the assessments are invalid. However this defect may be cured by a validating act of the legislature although the act is retrospective. Holton v. Mockville, 189 N. C. 144, 126 S. E. 326 (1925); Gallimore v. Thomasville, 191 N. C. 648, 132 S. E. 657 (1926).

Validation of Proceedings for Improvements Made without Petition.—The General Assembly having the power to confer upon the authorities of a municipal corporation power to improve its streets and sidewalks and to assess the owners of abutting property with a part of the cost of such improvements without a petition, as indicated by this section, has the power to validate proceedings for the improvement of streets and sidewalks which were begun and which have been concluded without an initial petition. Crutchfield v. Thomasville, 205 N. C. 709, 172 S. E. 366 (1934).

Cited in Jones v. Durham, 197 N. C. 127, 147 S. E. 824 (1929).

§ 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 whereon 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.)

Applicable When City Owns Part of Abutting Land.—A town is subject to assessment on its abutting property, and the rule of a majority of lineal feet and number of owners will apply just the same when a city owns a part of the abutting land as any other time. And if the city fails to sign when its signature is necessary to have a majority of lineal feet, the assessment is a nullity. Tarboro v. Forbes, 185 N. C. 59, 116 S. E. 81 (1923).

Actual Contact with Abutting Property Not Necessary.—An objection by the owner of land abutting on the street to an assessment by the front foot rule for special benefit, upon the ground that his property does not come in actual contact with the part of the street for which the city has paid as a general benefit, is untenable under this section. Anderson v. Albemarle, 182 N. C. 434, 109 S. E. 262 (1921).

Petition Necessary.—Under this section an assessment for widening a street under contract with the Highway Commission without petition of a majority of the owners is invalid. Sechriest v. Thomasville, 202 N. C. 108, 162 S. E. 212 (1932).

Sufficiency of Petition. — In Tarboro v. Forbes, 185 N. C. 59, 116 S. E. 81 (1923), it was held that where it appears upon the face of the petition, as a matter

of law, that the signers of the petition do not represent a majority of the lineal feet of the total frontage on the street, proposed to be improved, the determination of the governing body as to the sufficiency of the petition is not final or conclusive. Insofar as the sufficiency of the petition, authorized to be filed under this section, involves only questions of fact, the determination of the governing body, in the absence of fraud, and when acting in good faith, is final and conclusive. Gallimore v. Thomasville, 191 N. C. 648, 132 S. E. 657 (1926).

Approval of Petition Final.—Where the municipal authorities have approved the petition of owners of land abutting upon a street proposed to be improved in accordance with the provisions of statute, their approval and order for the improvements to be made is final, except where it appears from the face of the petition, as a matter of law, that the signers do not represent a majority of the owners or of the lineal feet required by statute. Jones v. Durham, 197 N. C. 127, 147 S. E. 824 (1929).

Where levies are made without a petition the assessments are invalid but not void, and the legislature has the power to validate the assessments by subsequent legislative act, the legislature having the power to authorize the assessments in the first instance. Crutchfield v. Thomasville, 205 N. C. 709, 172 S. E. 366 (1934).

Procedure Must Fulfill Essential Requirements. — While a slight informality of procedure under this section or a failure to observe a provision which is merely directory will not generally affect the validity of an assessment, it is nevertheless true that any substantial and material departure from the essential requirements of the law under which the improvement is made will render an assessment therefor invalid. Tarboro v. Forbes, 185 N. C. 59, 116 S. E. 81 (1923).

Lineal Feet of Frontage—Signing by Railroad Company.—The right of way of a railroad company abutting on a street proposed to be improved by a city is properly included in the lineal feet in the petition for improvement under the provisions of this section. Jones v. Durham, 197 N. C. 127, 147 S. E. 824 (1929).

Abutting Owners.—See note under § 160-85.

Improvement of Only One Side of Street.—Under this section, an assessment levied for street improvements on abutting property owner is not void on the ground that the assessment was for improving only one side of a street. Waxhaw v. S. A. L. Ry. Co., 195 N. C. 550, 142 S. E. 761 (1928).

Signatures as Evidence of Agency.—Where the wife owned the locus in quo, and the petition for public improvements was signed by the husband and by the wife, the signature of the wife as the owner of the property along with the signature of the husband is sufficient evidence to be submitted to the jury on the issue of whether the wife constituted her husband her agent to subsequently act for her in the premises, rendering the listing of the property in his name on the assessment roll, and the special assessment book, and the giving of the statutory notices to him, sufficient, thus rendering the lien against the property valid and enforceable as against her and as against her subsequent grantee. Wadesboro v. Coxe, 218 N. C. 729, 12 S. E. (2d) 223 (1940).

Resolution as Evidence.—In an action by a municipality to enforce a lien for public improvements, objection that plaintiff failed to introduce in evidence the petition for improvements signed by the owners of a majority of the lineal feet frontage abutting the improvements was held untenable where the original resolution of the city introduced in evidence recited a proper petition and that it was duly certified by the clerk, as required by this section, since if such finding was erroneous, the remedy for correction was by appeal. Asheboro v. Miller, 220 N. C. 298, 17 S. E. (2d) 105 (1941).

Applied in High Point v. Clark, 211 N. C. 607, 191 S. E. 318 (1937).

§ 160-83. What resolution shall contain. — 1. Designate Improvements. —The preliminary resolution determining to make a local improvement shall, after its passage, be published. Such resolution 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 effected, and the proportion of the cost thereof to be assessed upon abutting property and the terms and manner of the payment.

2. Sidewalk Improvements.—If such resolution shall provide for a sidewalk improvement, it may, in those municipalities in which the owners of the abutting property are required to make payment of the entire cost thereof, without petition direct that the owners of the property abutting on the improvement shall make

such sidewalk improvement, and that unless the same shall be made by such owners on or before a day specified in the resolution, the governing body may cause such sidewalk improvement to be made.

3. Affecting Railroads.—If the resolution shall provide for a street improvement, it shall direct that any street railway company or other railroad company having tracks on the street or streets or part thereof to be improved shall make such street improvement, with such material and of such a character as may be approved by the governing body, in that part of such street or streets or part thereof which the governing body may prescribe, not to exceed, however, the space between the tracks, the rails of the tracks, and eighteen inches in width outside of the tracks of such company, and that unless such improvement shall be made on or before a day specified in such resolution, the governing body will cause such improvement to be made: Provided, however, that where any such company shall occupy such street or streets under a franchise or contract which otherwise provided, such franchise or contract shall not be affected by this section, except in so far as may be consistent with the provisions of such franchise or contract.

4. Water, Gas, and Sewer Connections.—If the resolution shall provide for a street or sidewalk improvement, it may, but need not, direct that the owners of all property abutting on the improvement shall connect their several premises with water mains, gas and sewer pipes located in the street adjacent to their several premises in the manner prescribed in such resolution, and that unless such owners shall cause connection to be made on or before a day specified in such resolution, the governing body will cause the same to be made. (1915, c. 56, s. 6; C. S., s. 2708.)

Construction of Former Franchise to Railroad.—A city ordinance granting a franchise to a street railway to operate upon its streets, requiring that it do certain grading and other things enumerated at its own expense, and further stating in direct and continuous connection with this subject that "nothing herein contained shall be construed to require said company to pave its roads," is held to apply only to conditions then existing, and will not be construed to exempt the corporation from paying its part of future assessments that may be levied upon abutting owners for the paving and improvements of the streets. Durham v. Durham Public Service Co., 182 N. C. 333, 109 S. E. 40 (1921).

Extent of Railroad's Liability. — This section specifying that the burden imposed upon a street railway company in assessing its property for street improvements shall not exceed "the space between the tracks, the rails of the track, and eighteen inches in width outside of the tracks," is not violated if including the length of the crossties the statutory limitation of the width had not been exceeded. Durham v. Durham Public Service Co., 182 N. C. 333, 109 S. E. 40 (1921).

Railroad Property.—A town, to widen its streets, agreed with a railroad company to condemn land and give it to the company if it would remove its tracks thereto at its own expense. After this arrangement had been carried out, the town assessed the lands of the railroad company for street paving, under a resolution which contains no requirement that the company should improve the land occupied by its tracks as specified by subsection 3 of this section. It was held that the railroad was not liable for the assessment as the property being a part of the street was not "adjoining" within the provisions of this article. Lenoir v. Carolina, etc., Ry. Co., 194 N. C. 710, 140 S. E. 618 (1927).

Cited in Jones v. Durham, 197 N. C. 127, 147 S. E. 824 (1929); Salisbury v. Arey, 224 N. C. 260, 29 S. E. (2d) 894 (1944).

§ **160-84. Character of work and material.**—The governing body shall have power to determine character and type of construction and of material to be used in making a local improvement, and whether the work, where not done by owners of abutting property or by a street or other railroad company, shall be done by the forces of the municipality or by contract: Provided, that for the purposes of securing uniformity in the work the governing body shall always have the

power to have all street paving done by the forces of the municipality or by contract under the provisions of this article. (1915, c. 56, s. 7; C. S., s. 2709.)

Cited in Jones v. Durham, 197 N. C. 127, 147 S. E. 824 (1929).

§ **160-85. Assessments levied.**—1. One-Half on Abutting Property.—One-half of the total cost of a street or sidewalk improvement made by a municipality, exclusive of so much of the cost as is incurred at street intersections and the share of railroads or street railways, shall be specially assessed upon the lots and parcels of land abutting directly on the improvements, according to the extent of their respective frontage thereon, by an equal rate per foot of such frontage, unless the petition for such street or sidewalk improvement shall request that a larger proportion of such cost, specified in the petition, be so assessed, in which case such larger proportion shall be so assessed, and the remainder of such cost shall be borne by the municipality at large; but no assessment for streets and sidewalks shall be made against abutting property on any such street or sidewalk until said street or sidewalk has been definitely laid out and the boundaries of the same definitely fixed.

2. Upon Railroads.—The cost of that part of a street improvement required to be borne by a railroad or street railway company, and made by the municipality after default by a railroad or street railway company in making the same as hereinbefore provided, shall be assessed against such company, and shall be collected in the same manner as assessments are collected from abutting property owners, and such assessment shall be a lien on all of the franchises and property of such railroad or street railway company.

3. For Sidewalks.—The entire cost of a sidewalk improvement required to be made by owners of property abutting thereon, and made by the municipality after default by such property owners in making the same, as hereinbefore provided, shall be assessed against the lots and parcels of land abutting on that side of the street upon which the improvement is made and directly on the improvement, according to their respective frontages thereon, by an equal rate per foot of such frontage.

4. Water, Gas and Sewer Connections.—The entire cost of each water, gas and sewer connection, required to be made by the owner of the property for or in connection with which such connection was made, but made by the municipality after default by such property owner in making the same, as hereinbefore provided, shall be specially assessed against the particular lot or parcel of land for or in connection with which it was made. No lands in the municipality shall be exempt from local assessment. (1915, c. 56, s. 8; 1919, c. 86; C. S., s. 2710.)

I. General Consideration.
II. Railroads.
III. Drains—Water, etc., Connections.

I. GENERAL CONSIDERATION.

The clear interpretation of this section means what its language says—that one-half of the total cost of the street improvements shall be assessed upon the parcel of land abutting directly on the improvement, according to the extent of the respective frontage thereon. Carpenter v. Maiden, 204 N. C. 114, 167 S. E. 490 (1933).

Power to Impose Assessments within Right of Taxation.—The power to impose assessments upon owners whose lands abut upon the streets of a city to be improved, comes within the sovereign right of taxation, and no license, permit, or franchise from the legislature or a municipal board will be construed to establish an exemption from the proper exercise of this power, or in derogation of it, unless these bodies are acting clearly within their authority, and the grant itself is in terms so clear and explicit as to be free from substantial doubt. Durham v. Durham Public Service Co., 182 N. C. 333, 109 S. E. 40 (1921).

The words "abutting on the improvement" means abutting on the street that is improved, and this does not require that the pavement shall extend the entire width of the street when this would be an unnecessary cost, and would greatly enhance the burden of which the plaintiff in this case complains. Anderson v. Albemarle, 182 N. C. 434, 109 S. E. 262 (1921).

Abutting property cannot exist in the street itself, but, in the nature of things, must be property outside of the street, touching or bordering upon the street or improvement. So a railroad is not an abutting owner by virtue of the fact that its tracks are laid in a public street. Town of Lenoir v. Carolina & N. W. Ry. Co., 194 N. C. 710, 140 S. E. 618 (1927).

Intervening Land between Property and Improvement.—The term "abutting property" means that between which and the improvement there is no intervening land. Anderson v. Albemarle, 182 N. C. 434, 109 S. E. 262 (1921).

Where the municipality owns the fee in land located between the street and the property assessed, the assessment is void. Winston-Salem v. Smith, 216 N. C. 1, 3 S. E. (2d) 328 (1939).

School Property Subject to Assessment.—Lands owned by "The School Committee of Raleigh Township, Wake County," and used exclusively for public school purposes, are liable for assessment for street improvements made by the city of Raleigh under this article. Raleigh v. Raleigh City Administrative Unit, 223 N. C. 316, 26 S. E. (2d) 591 (1943).

Also Public Parks, etc.—In the absence of constitutional or statutory provision to the contrary, the public property of a municipality, such as parks, etc., is subject to assessment for local improvements of its streets, and when there is no provision exempting them, a public park of a city is included within the intent and meaning of Laws 1915, ch. 56, providing that lands abutting on a street to be paved or improved should be assessed for such improvements to the extent of the respective frontage of the lots thereon, in a certain proportionate part of the cost, by the "front foot" rule. Tarboro v. Forbes, 185 N. C. 59, 116 S. E. 81 (1923).

Interference by Courts.—Where an act allows assessments to be made by a city on property abutting on a street for pavements or improvements thereon, the legislative declaration on the subject is conclusive as to the necessity and benefit of the proposed improvements, and in applying the principle and estimating the amount as against the owners, individual or corporate, the court may interfere only in case of palpable and gross abuse. Kinston v. Atlantic, etc., R. Co., 183 N. C. 14, 110 S. E. 645 (1922).

Cited in Jones v. Durham, 197 N. C. 127, 147 S. E. 824 (1929).

II. RAILROADS.

Railroads Assessed Same as Private Owners.—The property of railroad companies abutting upon the streets of a city is liable to assessments for the paving and improvements thereon to the same extent as that of private owners, in proper instances, and where proper legislative authority is therefor shown. Kinston v. Atlantic, etc., R. Co., 183 N. C. 14, 110 S. E. 645 (1922).

When Exception as to Street Intersections Inapplicable.—Where railroad property in a city lies along an unimproved street, but abuts upon an improved street that runs through the unimproved one, the owner is ordinarily liable to an assessment of one-half of the costs of the improvement on the abutting and improved street, and the exception in the statute as to street intersections is inapplicable. Mount Olive v. Atlantic, etc., R. Co., 188 N. C. 332, 124 S. E. 559 (1924).

Street Railroad Treated as Abutting Owner.—The property and franchise of street railways laid along a given street or designated locality within the effects and benefits of the proposed improvements, may lawfully be considered abutting owners. Durham v. Durham Pub. Service Co., 182 N. C. 333, 109 S. E. 40 (1921).

A city ordinance granting a franchise to a street railway to operate upon its streets, requiring that it do certain grading and other things enumerated at its own expense, and further stating in direct and continuous connection with this subject that "nothing herein contained shall be construed to require said company to pave its road," is held to apply only to conditions then existing, and will not be construed to exempt the corporation from paying its part of future assessments that may be levied upon abutting owners for the paving and improvements of the street. Durham v. Durham Pub. Service Co., 182 N. C. 333, 109 S. E. 40 (1921).

Same—How Estimate Made.—In making an assessment on the property of a street railway company as an abutting owner on the street improved, not only the value of its tangible property, such as tracks, etc., should be considered, but, also, the estimated value of the company's franchise under which it is operating, and which by fair apportionment should be included in the estimate. Durham v. Durham Public Service Co., 182 N. C. 333, 109 S. E. 40 (1921).

Section Additional to Local Laws.—The general statutes authorizing cities and towns to issue bonds and assess abutting lands for improving and paving streets, and not requiring that the questions be submitted to the voters, are additional and

independent of special or local laws (§ 160-79), and where the latter require the question to be first submitted to the voters for their approval, and these requirements have been fully met, under the private acts, the transactions thereunder complete and their validity unquestioned, a railroad company may not resist an assessment made under this section upon the ground that the provisions of the private acts, requiring the approval of the voters, control the question of the validity of the assessments. Kinston v. Atlantic, etc., R. Co., 183 N. C. 14, 110 S. E. 645 (1922).

Where a city or town has proceeded under private acts to issue bonds and assess the lands of abutting owners for street paving and improvements and for insufficiency of funds thus expended find it necessary to assess the lands of a railroad company abutting on streets so improved under this section, a later act ratifying the private acts, evidently for the purpose of curing apprehended defects and to make the bonds a more safe and desirable investment, cannot affect the validity of the proceedings under the general laws. Kinston v. Atlantic, etc., R. Co., 183 N. C. 14, 110 S. E. 745 (1922).

III. DRAINS—WATER, ETC., CONNECTIONS.

Assessment for Drains.—For constructing drains it is not necessary that the assessments be the same, for cost will be different because of difference in location and slope of the several lots. Gallimore v. Thomasville, 191 N. C. 648, 132 S. E. 657 (1926).

Where Charges for Water and Gas Connections Not Preferred Claim.—Charges for water and gas connections, incurred during the lifetime of a life tenant and unpaid at his death, do not constitute a preferred claim against his estate as taxes assessed on the estate prior to his death, since in no event would such charges stand upon a higher plane than assessments for permanent improvements. Rigsbee v. Brogden, 209 N. C. 510, 184 S. E. 24 (1936).

§ **160-86. Amount of assessment ascertained.**—Upon the completion of any local improvement the governing body shall compute and ascertain the total cost thereof. In the total cost shall be included the interest paid or to be paid on notes or certificates of indebtedness issued by the municipality to pay the expense of such improvement pursuant to the provisions of this article and incident to the improvement and assessment therefor. The governing body must thereupon make an assessment of such total cost pursuant to the provisions of the preceding section, and for that purpose must make out an assessment roll in which must be entered the names of the persons assessed as far as they can ascertain the same, and the amount assessed against them, respectively, with a brief description of the lots or parcels of land assessed. (1915, c. 56, s. 9; C. S., s. 2711.)

In General.—Where a city or town has regularly and sufficiently proceeded to assess the lands of abutting property owners under the provisions of this statute, and have published the notice thereof as § 160-87 requires, and such owners have been afforded ample opportunity to be heard by the commissioners of the municipality (§ 160-88), their failure to appear and resist the assessment thus laid on their property under the proceedings prescribed will bar their right to impeach the ordinance. Vester v. Nashville, 190 N. C. 265, 129 S. E. 593 (1925).

Sufficiency of Description of Land.—The assessments made upon the lands of an owner adjoining a street improved by the authorities of a city or town, will not be declared invalid on the ground of the insufficiency of description in the assessment roll at the suit of such property owners, when in substantial compliance with this and the next section. Vester v. Nashville, 190 N. C. 265, 129 S. E. 593 (1925).

Map Sufficient Description.—A map made by the city engineer duly approved by the city commissioners is sufficient compliance with the requirements of this statute. Holton v. Mockville, 189 N. C. 144, 126 S. E. 326 (1925).

Applied in High Point v. Clark, 211 N. C. 607, 191 S. E. 318 (1937).

Cited in Jones v. Durham, 197 N. C. 127, 147 S. E. 824 (1929).

§ **160-87. Assessment roll filed; notice of hearing.**—Immediately after such assessment roll has been completed, the governing body shall cause it to be deposited in the office of the clerk of the municipality for inspection by parties interested, and shall cause to be published a notice of the completion of the assessment roll, setting forth a description in general terms of the local improvement,

and the time fixed for the meeting of the governing body for the hearing of allegations and objections in respect of the special assessment, such meeting not to be earlier than ten days from the first publication or posting of said notice. Any number of assessment rolls may be included in one notice. (1915, c. 56, s. 9; C. S., s. 2712.)

Notice of Filing.—Where assessments have been imposed under this article it is presumed that the assessment roll was filed in the office of the clerk of the municipality for inspection, and this section gives notice that the roll was there and the amount assessed. Wake Forest v. Holding, 206 N. C. 425, 174 S. E. 296 (1934).

Section Does Not Confer Power to Condemn Property.—The governing body of a town has no jurisdiction in proceeding under this section and § 160-88, to condemn land for street purposes, under the power of eminent domain. Atlantic Coast Line R. Co. v. Ahoskie, 207 N. C. 154, 176 S. E. 264 (1934).

Notice of First Hearing.—Where notice of hearing on the confirmation of an assessment roll was not published, but on the date set for the hearing the municipal board met and adopted the required resolution in amplified form, fixed the time and place for hearing of objections, and notice of the hearing on the second date set was duly published, which hearing was duly had on that date, necessary corrections made, and the assessment roll as corrected duly approved and confirmed, it was held that the fact that notice of hearing on the first date set was not published, as required by this and the following section, was rendered immaterial. Asheboro v. Miller, 220 N. C. 298, 17 S. E. (2d) 105 (1941).

Cited in Jones v. Durham, 197 N. C. 127, 147 S. E. 824 (1929).

§ 160-88. Hearing and confirmation; assessment lien.—At the time appointed for that purpose, or at some other time to which it may adjourn, the governing body, or a committee thereof, must hear the allegations and objections of all persons interested, who appear and may make proof in relation thereto. The governing body may thereupon correct such assessment roll, and either confirm the same or may set it aside, and provide for a new assessment. Whenever the governing body shall confirm an assessment for a local improvement, the clerk of the municipality shall enter on the minutes of the governing body the date, hour, and minute of such confirmation, and from the time of such confirmation the assessments embraced in the assessment roll shall be a lien on the real property against which the same are assessed, superior to all other liens and encumbrances. After the roll is confirmed a copy of the same must be delivered to the tax collector or other officer charged with the duty of collecting taxes. (1915, c. 56, s. 9; C. S., s. 2713.)

Assessments Constitute Liens on Property.—Assessments made upon the property of the owner for street and sidewalk improvements by a town, and in all respects under the authority conferred on the municipality by statute, extending in partial payments over a designated period of time, are to be regarded in the nature of a statutory mortgage when due and payable, and constitute liens on the property within the warranty clause against encumbrances contained in a deed, and are recoverable in the grantee's action against the grantor to the extent he has been required to pay them. Coble v. Dick, 194 N. C. 732, 140 S. E. 745 (1927).

Within Meaning of Warranty against Encumbrances.—The lien for street assessments is an encumbrance within the meaning of the warranty clause against encumbrances contained in a deed. Winston-Salem v. Powell Paving Co., 7 F. Supp. 424 (1934), citing Coble v. Dick, 194 N. C. 732, 140 S. E. 745 (1927).

Lien Amounts to Statutory Mortgage.—The lien given under this section, when properly established, amounts to a statutory mortgage. Kinston v. Atlantic, etc., R. Co., 183 N. C. 14, 110 S. E. 645 (1922); Saluda v. Polk County, 207 N. C. 180, 176 S. E. 298 (1934).

And Is Based on Theory of Special Benefit to Property.—The lien against property for street improvements is a lien in rem against the land itself, but it is not strictly a tax lien and is based upon the theory of special benefit to the property itself. Saluda v. Polk County, 207 N. C. 180, 176 S. E. 298 (1934).

When Lien Attaches.—By provision of this section the lien for street assessments does not attach to land until confirmation of the assessments, and where such assessments are not confirmed by the gov-

erning body of the town until after the execution of a deed to the property, the subsequently attaching lien for the assessments does not violate the warranty and covenant in the deed, in the usual language, against encumbrances. Oliver v. Hecht, 207 N. C. 481, 177 S. E. 399 (1934).

Sufficiency of Compliance with Section.—Where the property owner signs the petition and has notice that improvements are to be made, and notice that the assessment roll giving the amount of the assessment against his property, has been filed in the office of the city clerk, as required by § 160-87, and accepts the benefits and pays installments of the assessments without objection, as provided by § 160-89, he ratifies same and this section is sufficiently complied with. Wake Forest v. Holding, 206 N. C. 425, 174 S. E. 296 (1934).

Priority of Lien.—The amount of an assessment on the owner of land lying along a street for street improvements, is, by this statute creating a lien, superior to all other liens and encumbrances and continues, until paid, against the title of successive owners thereof. Merchants Bank, etc., Co. v. Watson, 187 N. C. 107, 121 S. E. 181 (1924).

The provision of this section in regard to liens does not exclusively refer to subsequent liens; and the reference to the date of confirmation is only to fix the time when the lien is conclusively established, and when so established it takes precedence over all liens then existent or otherwise. Kinston v. Atlantic, etc., R. Co., 183 N. C. 14, 110 S. E. 645 (1922).

In an action to foreclose street assessment liens it was said that if it be thought that effect should be given to the provisions relative to ad valorem taxes in § 105-340, that the lien for taxes levied shall attach to all the real estate of the taxpayer and shall continue until such taxes shall be paid, it may be noted that this section, relating to local assessments provides only that the assessment when confirmed shall be a lien on the real property against which it is assessed, superior to all other liens. Raleigh v. Mechanics, etc., Bank, 223 N. C. 286, 26 S. E. (2d) 573 (1943).

But in Saluda v. Polk County, 207 N. C. 180, 176 S. E. 298 (1934), it was held that a lien for street assessments under this section, while superior to the liens of mortgages or deeds of trust, is subject to the lien of the city and county for taxes for general revenue.

Same — Enforcement against Estate of Decedent.—An assessment made upon adjoining land for a street improvement by a town is a charge upon the land constituting a lien superior to all others and not enforceable against the personalty or other lands of the owner, and when the owner of land has been thus assessed, payable in installments, and he subsequently dies, it is not a debt of the deceased payable by his personal representative, but a charge against the land itself. The provisions of § 28-105, as to the order of payment of debts of the deceased, has no application. Carawan v. Barnett, 197 N. C. 511, 149 S. E. 740 (1929). See Statesville v. Jenkins, 199 N. C. 159, 154 S. E. 15 (1930); High Point v. Brown, 206 N. C. 664, 175 S. E. 169 (1934); Winston-Salem v. Powell Paving Co., 7 F. Supp. 424 (1934).

Statute of Limitations.—The assessment against abutting lands for street improvements is made a lien on the land superior to all other liens and encumbrances under this section, and the ten-year statute of limitation is applicable thereto and not the three-year statute. High Point v. Clinard, 204 N. C. 149, 167 S. E. 690 (1933).

Cited in Jones v. Durham, 197 N. C. 127, 147 S. E. 824 (1929); Wake Forest v. Gulley, 213 N. C. 494, 196 S. E. 845 (1938).

§ 160-89. Appeal to the superior court. — If a person assessed is dissatisfied with the amount of the charge, he may give notice within ten days after such confirmation that he takes an appeal to the next term of the superior court of the county in which the municipality is located, and shall within five days thereafter serve a statement of facts upon which he bases his appeal, but the appeal shall not delay or stop the improvements. The appeal shall be tried at the term of court as other actions at law. (1915, c. 56, s. 9; C. S., s. 2714.)

Jurisdiction of Court Is Derivative. — The jurisdiction of the superior court upon appeal from a levy of assessments for street improvements by the governing body of a town as provided by this section, is entirely derivative, and where a town has no jurisdiction to condemn land the superior court on appeal likewise has no jurisdiction to do so. Atlantic Coast Line R. Co. v. Ahoskie, 207 N. C. 154, 176 S. E. 264 (1934).

Right of Appeal Makes Section Constitutional.—The right of appeal to the courts being provided in case of dissatisfaction by

an owner of land abutting on a street assessed by the governing body of a municipality for street improvement, the objection that the owner's property is taken for a public use in contravention of the due process clause of the Constitution is untenable. Lake v. Wadesboro, 186 N. C. 683, 121 S. E. 12 (1923).

And Is Only Remedy of Abutting Owner.—In an action to enforce a lien for public improvements, a defendant who had notice and ample opportunity to be heard and to appeal from the order confirming the assessment roll, cannot impeach the validity of the ordinance or of the assessment for any alleged irregularities which are not jurisdictional. Asheboro v. Miller, 220 N. C. 298, 17 S. E. (2d) 105 (1941).

While a petition is a prerequisite it is not jurisdictional, and if the finding by the municipal board is erroneous it should be corrected by appeal under this section. Asheboro v. Miller, 220 N. C. 298, 17 S. E. (2d) 105 (1941).

Injunctive Relief.—The remedy of abutting owners assessed for street improvements is given by this section providing the right of appeal and when no appeal has been taken and the work has been completed, injunctive relief against the collection of the assessments by the city will not lie. Jones v. Durham, 197 N. C. 127, 147 S. E. 824 (1929).

The owner of land abutting on a street the municipality proposes to improve has his remedy in objecting to the local assessment on his property because of the insufficiency of the petition, and he may not enjoin the issuance of bonds for this necessary expense on that ground when he has failed to pursue his statutory remedy. Brown v. Hillsboro, 185 N. C. 368, 117 S. E. 41 (1923).

Estoppel to Assert Errors in Assessments.—Where the property owner failed to object and avail himself of the specific remedy for review and correction of the assessment, but made payments on the assessment, he is estopped to show error in the assessment. Wake Forest v. Gulley, 213 N. C. 494, 196 S. E. 845 (1938).

Existence of Street May Be the Issue.—Under the provisions of this statute, it is necessary that there be an existing street in order for a valid assessment for improvements to be laid on the property of abutting owners, and this may be made an issue in an appeal under this section, and the adjoining owner may introduce his evidence to show to the contrary. Atlantic Coast Line R. Co. v. Ahoskie, 192 N. C. 258, 134 S. E. 653 (1926).

Cited in Greensboro v. Bishop, 197 N. C. 748, 150 S. E. 495 (1929); Efird v. Winston-Salem, 199 N. C. 33, 153 S. E. 632 (1930); Crutchfield v. Thomasville, 205 N. C. 709, 172 S. E. 366 (1934); Wake Forest v. Holding, 206 N. C. 425, 174 S. E. 296 (1934); High Point v. Clark, 211 N. C. 607, 191 S. E. 318 (1937).

§ **160-90. Power to adjust assessment.**—The governing body may correct, cancel or remit any assessment for a local improvement, and may remit, cancel or adjust the interest or penalties on any such assessment. The governing body has 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 the local assessment made by it, and thereupon to make a reassessment. In such case there shall be included, as a part of the costs of the public improvement involved, all interest paid or accrued on notes or certificates of indebtedness, or assessment bonds issued by the municipality to pay the expenses of such improvement. The proceeding shall be in all respects as in case of local assessments, and the reassessment shall have the same force as if it had originally been properly made. (1915, c. 56, s. 9; C. S., s. 2715.)

When Section Not Applicable.—Where in accordance with the provisions of § 160-85, subsection 1, the board of aldermen grant a petition for street improvements requesting the assessment of a larger proportion of the cost of the improvements against the lots of land abutting directly thereon than is otherwise required by statute, after the confirmation of the assessment roll a subsequent board of aldermen is without power to grant a petition of the abutting landowners for a reduction of the assessment upon the ground alone that the amount of the assessments exceeded that which they had originally anticipated, and a suit by other taxpayers of the town to enjoin the granting of such petition is proper. This section and § 160-246, have no application. McClester v. China Grove, 196 N. C. 301, 145 S. E. 562 (1928).

An extension resolution providing a new series of installment payments does not invalidate the lien of a municipality for an assessment for public improvements where the sums of the new installments in the aggregate exceed the amount actually due

at the time of the extension. Differences may be adjusted under this section. Salisbury v. Arey, 224 N. C. 260, 29 S. E. (2d) 894 (1944).

Cited in Gallimore v. Thomasville, 191 N. C. 648, 132 S. E. 657 (1926); Jones v. Durham, 197 N. C. 127, 147 S. E. 824 (1929).

§ 160-91. Payment of assessment in cash or by installments.—The property owner or railroad or street railway company hereinbefore mentioned shall have the option and privilege of paying for the improvements hereinbefore provided for in cash, or if they should so elect and give notice of the fact in writing to the municipality within thirty days after the notice mentioned in the next succeeding section, they shall have the option and privilege of paying the assessments in not less than five nor more than ten equal annual installments as may have been determined by the governing body in the original resolution authorizing such improvement. Such installments shall bear interest at the rate of six per centum per annum from the date of the confirmation of the assessment roll, and in case of the failure or neglect of any property owner or railroad or street railway company to pay any installment when the same shall become due and payable, then and in that event all of the installments remaining unpaid shall at once become due and payable and such property and franchises shall be sold by the municipality under the same rules, regulations, rights of redemption and savings as are now prescribed by law for the sale of land for unpaid taxes. The whole assessment may be paid at the time of paying any installment by payment of the principal and all interest accrued to that date. (1915, c. 56, s. 10; C. S., s. 2716.)

Cross Reference.—See note to § 160-92.

Right to Declare All Installments Due.—The provision of this section, that upon failure to pay any installment when due, all installments remaining unpaid should at once become due and payable, gives the municipality the optional right to declare all installments due and payable upon default, and in the absence of its declaration to invoke the acceleration provision the statute of limitations will not begin to run against unpaid installments not then due. Farmville v. Paylor, 208 N. C. 106, 179 S. E. 459 (1935). See Salisbury v. Arey, 224 N. C. 260, 29 S. E. (2d) 894 (1944).

When It Is Mandatory upon City to Allow Installment Payment.—The provisions in this section were enacted for the benefit of the property owner, giving the owner a period of thirty days from the date of notice is given as required by the following section, in which to pay the assessment in cash, without interest; or, if he should so elect and give notice in writing to the municipality within said period of thirty days, that he desires to pay his assessment in installments, then it becomes mandatory upon the city to permit such property owner to pay his assessment in installments. Salisbury v. Arey, 224 N. C. 260, 29 S. E. (2d) 894 (1944).

The option passes to the municipality to proceed to foreclose and collect the entire assessment or to collect the assessment in installments, as provided in the original resolution authorizing the improvements where the property owner remains silent and neither pays in cash within the thirty-day period nor signifies in writing his election to pay in installments. Salisbury v. Arey, 224 N. C. 260, 29 S. E. (2d) 894 (1944).

Cited in Coble v. Dick, 194 N. C. 732, 140 S. E. 745 (1927); Statesville v. Jenkins, 199 N. C. 159, 154 S. E. 15 (1930); High Point v. Brown, 206 N. C. 664, 175 S. E. 169 (1934); Saluda v. Polk County, 207 N. C. 180, 176 S. E. 298 (1934); Raleigh v. Mechanics, etc., Bank, 223 N. C. 286, 26 S. E. (2d) 573 (1943).

§ 160-92. Payment of assessment enforced.—After the expiration of twenty days from the confirmation of an assessment roll the tax collector or such other officer of the municipality as the governing body may direct so to do shall cause to be published in a newspaper published in the municipality, or if there be no such newspaper, shall cause to be posted in at least three public places therein, a notice that any assessment contained in the assessment roll, naming and describing it, may be paid to him at any time before the expiration of thirty days from the first publication of the notice without any addition. In the event the assessment is not paid within such time, it shall bear interest at the rate of six per cent per annum from the date of the computation and ascertainment by the governing body of the total cost of the local improvement after its completion: Pro-

vided, that this shall not apply to improvements made under an ordinance prior to February 26, 1923. The assessment shall be due and payable on the date on which taxes are payable. Provided, that where an assessment is divided into installments one installment shall become due and payable each year on the date on which taxes are due and payable. After default in the payment of any installment, the governing body may, on the payment of all installments in arrears, together with interest due thereon and on reimbursement of any expenses 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. (1915, c. 56, s. 11; C. S., s. 2717; 1923, c. 87; 1929, c. 331, s. 1.)

Cross Reference.—See note to § 160-91.

Editor's Note.—By the 1923 amendment the date when interest begins to run was changed from the time of the "confirmation of the assessment roll" to "after the completion of the local improvement." And the 1929 amendment added the last sentence to this section.

Lien Enforced by Decree of Sale.—The lien created by this article may be enforced by decree of sale. Kinston v. Atlantic, etc., R. Co., 183 N. C. 14, 110 S. E. 645 (1922); Saluda v. Polk County, 207 N. C. 180, 176 S. E. 298 (1934).

Effect of Option to Pay in Installments.—The provisions of this section giving the property owner thirty days in which to pay assessments for local improvements, in cash without interest, or the election to pay the same in installments, are for the benefit of the property owner and, when exercised, become mandatory upon the municipality; but, when the property owner remains silent and neither pays in cash nor elects to pay in installments, the option passes to the municipality to foreclosure or to collect in installments. Salisbury v. Arey, 224 N. C. 260, 29 S. E. (2d) 894 (1944).

Judgments for Installments.—Where the owner of land abutting on the street has refused to pay the assessments lawfully made on him for street improvements, a judgment allowing him to pay by installments may be entered. Durham v. Durham Public Service Co., 182 N. C. 333, 109 S. E. 40 (1921).

Interest Rate Is Prescribed.—The interest rate on street assessments is fixed by statute, and the courts are without authority at law or in equity to prescribe a lesser interest rate. Zebulon v. Dawson, 216 N. C. 520, 5 S. E. (2d) 535 (1939).

Cited in Coble v. Dick, 194 N. C. 732, 140 S. E. 745 (1927); Raleigh v. Mechanics, etc., Bank, 223 N. C. 286, 26 S. E. (2d) 573 (1943).

§ 160-93. Sale or foreclosure for unpaid assessments barred in ten years; no penalties.—No statute of limitation, whether fixed by law especially referred to in this chapter or otherwise, shall bar the right of the municipality to enforce any remedy provided by law for the collection of unpaid assessments, whether for paving or other benefits, and whether such assessment is made under this chapter or under other general or specific acts, save from and after ten years from default in the payment thereof, or if payable in installments, ten years from the default in the payment of any installments. No penalties prescribed for failure to pay taxes shall apply to special assessments, but they shall bear interest at the rate of six per cent per annum only. In any action to foreclose a special assessment the costs shall be taxed as in any other civil action, and shall include an allowance for the commissioner appointed to make the sale, which shall not be more than five per cent of the amount for which the land is sold, and one reasonable attorney's fee for the plaintiff. This section shall apply to all special assessments heretofore or hereafter levied, but shall not apply to any special assessment for the collection of which an action or proceeding has been instituted prior to March 19, 1929. (1929, c. 331, s. 1.)

Local Modification. — Durham: 1935, c. 224; Mecklenburg, City of Charlotte: 1943, c. 181; Sampson, Town of Clinton: 1939, c. 148.

Editor's Note.—For article on collectibility of special assessments more than ten years delinquent, see 22 N. C. Law Rev. 123.

Limitation of Actions.—In a suit under § 105-414 to foreclose a statutory lien on

abutting property, given a city for street improvements, all installments of the amounts assessed therefor which are ten years overdue when action is brought are barred by this section, and no part of the proceeds of sale can be applied to the payment of such installments. Raleigh v. Mechanics, etc., Bank, 223 N. C. 286, 26 S. E. (2d) 573 (1943).

In this section the municipalities are expressly named in the statute of limitations. Therefore, an action to enforce the lien for public improvements, even though instituted under § 105-414, is barred after ten years from default in the payment of the assessments, or, if the assessments are payable in installments, each installment is barred after ten years from default in payment of the same unless the time of payment has been extended as provided by law. Charlotte v. Kavanaugh, 221 N. C. 259, 20 S. E. (2d) 97 (1942).

Section Applies to Action to Foreclose Drainage Assessment. — This section applies to an action brought by a drainage district for foreclosure of delinquent drainage assessments, and authorizes "one reasonable attorney's fee for the plaintiff" to be included and taxed in the costs in such an action. Robeson County Drainage Dist. v. Bullard, 229 N. C. 633, 50 S. E. (2d) 742 (1948).

When Allowance of Attorney's Fee to Be Made.—It would seem that the legislature intended that the allowance of an attorney's fee under this section should be made at the conclusion of the proceeding and not in the course of it. Robeson County Drainage Dist. v. Bullard, 229 N. C. 633, 50 S. E. (2d) 742 (1948).

Cited in Raleigh v. Raleigh City Administrative Unit, 223 N. C. 316, 26 S. E. (2d) 591 (1943).

§ 160-94. Extension of time for payment of special assessments.— At any time or times prior to February the first, one thousand nine hundred and forty-five, the governing body of any city or town may adopt a resolution granting an extension of the time for the payment of any installment or installments of any special assessment, including accrued interest thereon and costs accrued in any action to foreclose under the lien thereon, by arranging such installment or installments, interest and costs into a new series of ten equal installments so that one of said installments shall fall due on the first Monday in October after the expiration of one year after adoption of the aforesaid resolution and one of said installments on the first Monday in October of each year thereafter. Accrued interest on any installment or installments of any special assessment extended under the provisions of this section shall be computed to the first Monday in October following the adoption of the aforesaid resolution: Provided, however, that such extension shall not prevent the payment of any assessment or interest at any time: Provided further, no such extension shall in any way discriminate in favor of or against any property assessed by virtue of said assessment roll: Provided further, that any installment or installments, together with accrued interest and costs extended in accordance with the provisions of this section shall bear interest at the rate of six per centum per annum from the first Monday in October following the adoption of the aforesaid resolution. (1931, c. 249; 1933, cc. 252, 410; 1935, c. 126; 1937, c. 172; 1939, c. 198; 1941, c. 160; 1943, c. 4.)

Local Modification.—Orange, Town of Carrboro: 1937, c. 195.

Editor's Note. — The 1937 amendment changed the year in the first sentence to 1938, the 1939 amendment changed it to 1940, and the 1941 amendment changed it to 1942. The 1943 amendment changed the date therein from "July the first, one thousand nine hundred and forty two" to "February the first, one thousand nine hundred and forty-five."

For comment on the 1941 amendment, see 19 N. C. Law Rev. 526.

For article on collectibility of special assessments more than ten years delinquent, see 22 N. C. Law Rev. 123.

Extension Contrary to Section Is Not Void.—A resolution of the governing body of a municipality, providing for an extension of the payments of an assessment for local improvement in installments, which is contrary to this section, is defective but not void, and may be amended by a subsequent resolution to conform to the statutory requirements. Salisbury v. Arey, 224 N. C. 260, 29 S. E. (2d) 894 (1944).

Where New Installments Exceed Amount Actually Due.—The lien of a municipality, for an assessment for public improvements, is not invalidated by an extension resolution providing a new series of installment payments, where the sums of the new in-

stallments in the aggregate exceed the amount actually due at the time of the extension. Differences may be adjusted under G. S. 160-90. Salisbury v. Arey, 224 N. C. 260, 29 S. E. (2d) 894 (1944).

When Statute of Limitations Begins to Run.—Where a new series of installment payments of an assessment for local improvements is provided, under this section, the ten-year statute of limitations begins to run on each new installment as it becomes due. Salisbury v. Arey, 224 N. C. 260, 29 S. E. (2d) 894 (1944).

§ 160-95. Assessments in case of tenant for life or years.—Whenever any real estate is in the possession or enjoyment of a tenant for life, or a tenant for a term of years, and an assessment is laid or levied on said property by any city, town, county, township, municipal district, or the State, to cover the cost of permanent improvements ordered put thereon by the law or the ordinances of such city or town, township, or municipal district, such as paving streets and sidewalks, laying sewer and water lines, draining lowlands, and permanent improvements of a like character, which constitute a lien upon such property, the amount so assessed for such purposes shall be paid by the tenant for life or for years, and the remaindermen after the life estate, or the owner in fee after the expiration of tenancy for a term of years, pro rata their respective interests in said real estate. (1911, c. 7, s. 1; C. S., s. 2718.)

Assessments Not Preference against Estate of Deceased Life Tenant. — Since street and sidewalk assessments constitute a lien against the property not collectible out of other properties belonging to the owner, and since by this section a life tenant is not liable for the whole assessment, being entitled to have it proportioned under § 160-97, upon the death of a life tenant such assessments made prior to his death do not constitute a preference against his estate payable in the third class of priority as a tax assessed on the estate prior to his death. Rigsbee v. Brogden, 209 N. C. 510, 184 S. E. 24 (1936). See § 28-105 and note.

§ 160-96. Interests of parties ascertained.—The respective interests of a tenant for life and the remainderman in fee shall be calculated as provided in § 37-13. (1911, c. 7, s. 2; C. S., s. 2719.)

§ 160-97. Lien of party making payment.—If the assessment, after same shall be laid or levied, shall all be paid by either the tenant for life or the tenant for a term of years, or by the remainderman, or the owner in fee, the party paying more than his pro rata share of the same shall have the right to maintain an action in the nature of a suit for contribution against the delinquent party to recover from him his pro rata share of such assessment, with interest thereon from the date of such payment, and be subrogated to the right of the city, town, township, municipal district, county, or the State, to a lien on such property for the same. (1911, c. 7, s. 3; C. S., s. 2720.)

§ 160-98. Lien in favor of co-tenant or joint owner paying special assessments.—Any one of several tenants in common, or joint tenants, or copartners, shall have the right to pay the whole or any part of the special assessments assessed or due upon the real estate held jointly or in common, and all sums by him so paid in excess of his share of such special assessments, interest, costs and amounts required for redemption, shall constitute a lien upon the shares of his co-tenant or associates, payment whereof, with interest and costs, he may enforce in proceedings for partition, actual or by sale, or in any other appropriate judicial proceeding: Provided, the lien herein provided for shall not be effective against an innocent purchaser for value unless and until notice thereof is filed in the office of the clerk of the superior court in the county in which the land lies and indexed and docketed in the same manner as other liens required by law to be filed in such clerk's office. (1935, c. 174.)

§ 160-99. Money borrowed to be paid out of assessment.—At any time before the cost of any local improvement shall be computed and ascertained as provided in this article, the municipality may from time to time by resolution au-

thorize the treasurer to borrow money to the extent required to pay the cost of any such improvement or to repay any money borrowed under this section with interest thereon in accordance with the provisions of the Local Government Act. The resolution authorizing any such loan or loans may provide for the issue of notes or certificates of indebtedness of the municipality, or both, payable either on demand or at a fixed time, not more than six months from the date thereof, and bearing interest not exceeding six per centum per annum. Any temporary indebtedness incurred under the authority of this section, with the interest thereon, may be paid out of moneys raised by the issue and sale of "local improvement bonds" or "assessment bonds," or both, to be issued and sold as hereinafter provided, or may be included in the annual tax levy. (1915, c. 56, s. 12; C. S., s. 2721.)

Cross Reference.—As to the Local Government Act, see chapter 159.

§ 160-100. Assessment books prepared.—After the governing body of the municipality has levied the assessment against the property abutting upon the street or streets, the city clerk or person designated shall prepare from such assessment roll and deliver to the tax collector or person designated a well bound book styled Special Assessment Book, which shall be so ruled as to conveniently show:

1. Name of owner of such property.
2. The number of lot or part of lot and the plan thereof if there be a plan.
3. The frontage of said lot.
4. The amount that has been assessed against such lot.
5. The amount of such installments and the day on which installments shall become due.

Such book shall be indexed according to the names of the owners of the property, and entries of all payments or partial payments shall be immediately entered upon said book when made, and said book shall be open to the inspection of any citizen of the municipality. (1915, c. 56, s. 13; C. S., s. 2722.)

Necessity of Special Book.—As between the abutting landowners upon the street improved by a city or town and the proper municipal authorities acting thereon, the failure of the latter to keep the special assessment book is not fatal to the validity of the assessments, if the original assessment roll or book is accessible, sufficient to give all necessary information of the property assessed, and available upon the statutory notice given. Vester v. Nashville, 190 N. C. 265, 129 S. E. 593 (1925).

Stated in Salisbury v. Arey, 224 N. C. 260, 29 S. E. (2d) 894 (1944).

§ 160-101. Apportionment of assessments.—In any case where one or more special assessments shall have been made against any property for any improvement or improvements authorized by this chapter, and said property has been or is about to be subdivided and it is therefore desirable that said assessment or assessments be apportioned among the subdivisions of such property, the governing body may, with the consent of the owner or owners of said property, apportion said assessment or assessments, or the total thereof, fairly among said subdivisions, as same are benefited by the improvement and release such subdivisions, if any, as in the opinion of the governing body are not benefited by the improvement. Thereafter, each of said subdivisions shall be relieved of any part of such original assessment or assessments except the part thereof apportioned to said subdivision, and the part of said original assessment or assessments apportioned to any such subdivision shall be of the same force and effect as the original assessment or assessments. At the time of making such apportionments, the governing body shall cause to be entered upon its minutes an entry to the effect that such apportionment is made with the consent of the owner or owners of the property affected, and such entry shall be conclusive of the truth thereof in the absence of fraud. Such re-assessments may include past due installments of principal, interest and penalty, if any, as well as assessments not then due, and

the remaining installments shall fall due at the same dates as they did under the original assessment. (1929, c. 331, s. 1; 1935, c. 125.)

Editor's Note.—Prior to the 1935 amendment the last sentence of this section prohibited reassessment before payment of past due installments.

§ 160-102. Local improvement bonds issued.—Whenever an assessment for any local improvement has been confirmed, the governing body may by resolution direct that the amount and proportion of the expense of such improvement which shall be borne by the municipality at large shall be raised by the issuance of bonds of the municipality to be known as "local improvement bonds." Such bonds shall be issued as provided in the Municipal Finance Act. (1915, c. 56, s. 14; C. S., s. 2723.)

Cross Reference.—As to Municipal Finance Act, see § 160-377 et seq.

§ 160-103. Assessment bonds issued.—Whenever an assessment for any local improvement has been confirmed, and twenty days have elapsed since the first publication of notice of such confirmation, the governing body may by resolution direct that the amount and proportion of the expense of such improvement which has been assessed upon the abutting property, or any part of such expense, shall be raised by the municipality by the issuance of its bonds, to be known as "assessment bonds." All moneys derived from the collection of assessments upon which assessment bonds are predicated, collected after the passage of the resolution authorizing such bonds, shall be placed in a special fund, to be used only for the payment of the principal and interest of assessment bonds issued under this section, and if at the time of the annual tax levy for any year in such municipality it shall appear that such fund will be for any cause insufficient to meet the principal and interest of such bonds maturing in such year, the amount of the deficiency shall be included in such tax levy. The amount of the assessments for two or more improvements may be included in a single issue of assessment bonds. (1915, c. 56, s. 15; C. S., s. 2724.)

§ 160-104. Improvements on streets abutting railroads.—Municipalities desiring to make street and sidewalk improvements on property owned and/or leased by railroad companies, are hereby authorized to make such improvements on any such street used as a public street, subject to the rights of any such railroad company to use and occupy the same for railroad purposes: Provided, however, that the petition or petitions contemplated and required by the provisions of this article, need not be signed by such railroad company or companies, nor shall any part of the railroad right of way be considered as abutting property, but the said petition shall be signed by at least a majority in number of the owners of property other than the railroad right of way, who must represent at least a majority of all the lineal feet frontage of the lands, other than said railroad right of way (a majority in interest of owners of undivided interest in any piece of property to be deemed and treated as one person for the purpose of the petition), abutting upon such street or streets proposed to be improved: Provided, further, that not more than one-half of the total cost of the street or sidewalk improvement made by such municipality, exclusive of so much of the cost as is incurred at street intersections, shall be specially assessed upon the lots or parcels of land abutting directly on the improvement, other than the property included in the railroad right of way, according to the extent of their respective frontage thereon, by an equal rate per foot of such frontage. (1931, c. 222, s. 1.)

Editor's Note. — Since a municipality may proceed to make street improvements without petition of the owners of abutting property (Shute v. Monroe, 187 N. C. 676, 123 S. E. 71 (1924)), it is clear that where a railroad, owning half of the abutting property, could hold up the improvement by refusal to sign the petition, that the State may authorize the municipality to proceed without the railroad's consent. 9 N. C. Law Rev. 362.

§ 160-105. Railroad rights of way and contracts as to streets unaffected.—Nothing contained in § 160-104 shall be construed so as to deprive any railroad company of any right which it may now or hereafter possess by reason of its ownership of any right of way.

Any additional expense which the railroad may incur in removing or altering any pavement or other improvements made under and by virtue of the provisions of § 160-104, which interfere with the railroad's use of its right of way, shall be borne by the municipality affected: Provided, such section shall not affect in any way existing contracts between municipalities and railroads for rights of way through streets, and shall not affect existing contracts between municipalities and railroads for upkeep and improvements of streets. (1931, c. 222, s. 1½.)

Article 10.

Inspection of Meters.

§ 160-106. Inspectors appointed.—In every city or town in the State of North Carolina where is furnished, for pay, electricity, gas or water by meter measure, the governing body of the city or town may appoint some competent person to act as inspector of meters, whose duty it shall be to inspect and test such meters and to carry out the provisions of this article as herein provided. (1909, c. 150, s. 1; C. S., s. 2729.)

§ 160-107. Time of appointment; oath, bond, and compensation.—Such appointment, if made, shall be made at the first meeting in May of each year of such governing body, subject to the power of such city or town authorities to remove such appointee in the manner provided for the removal of its other appointees and to fill the vacancy caused by such removal. The compensation of such inspector shall be fixed and shall be paid by the city or town so appointing him, and such inspector shall upon his appointment take oath before the mayor of said city or town that he will faithfully perform the duties herein imposed upon him, and the governing body of the city or town may require the inspector to give bond in such sum as they may fix for the faithful discharge of his duties. (1909, c. 150, s. 2; C. S., s. 2730.)

§ 160-108. Apparatus for testing meters provided.—Every person, firm, corporation or municipality furnishing for pay electricity, gas or water by meter measure in any city or town having appointed an inspector of meters, as aforesaid, shall provide and keep a suitable and proper apparatus for testing and proving the accuracy of the meters to be so furnished for use, by which apparatus all such meters shall be tested at their rated capacity. (1909, c. 150, s. 3; C. S., s. 2731.)

§ 160-109. Meters tested before installed.—No person, firm, or corporation or municipality furnishing for pay electricity, gas or water by meter measure shall hereafter furnish, install and put in use any such meter in any city or town having appointed an inspector of meters, as aforesaid, until such meter shall first have been inspected and found correct by such inspector, and it shall be the duty of such inspector to test the same upon the written request of such proposed furnisher. No meter now in service shall be required to be taken out for test, except where there is doubt as to its accuracy and upon the written request of the consumer, as herein provided. (1909, c. 150, s. 4; C. S., s. 2732.)

§ 160-110. Inspection made upon complaint.—When any consumer, by meter, of electricity, gas or water in any city or town having appointed an inspector of meters, as aforesaid, doubts the accuracy of such meter and desires to have the same tested, such consumer may file with the inspector of meters a written complaint of the meter and request that the same be tested, and shall at the same time deposit with the furnisher the sum of one dollar to cover the expense of

taking out and replacing such meter, and thereupon it shall be the duty of such inspector as soon as practicable to accurately test said meter in the presence of and jointly with the authorized agent of the furnisher, and also in the presence of the complainant, if he so desires, and shall give to both the complainant and to the furnisher a written report of such test and the result thereof. (1909, c. 150, s. 5; C. S., s. 2733.)

§ **160-111. Repayment of deposit.**—If upon such test the meter is found to be incorrect, in that it registers more than two and one-half per cent too fast—that is, more than two and one-half per cent more electricity, gas or water than it should, then and in that event the furnisher shall return to the complainant the one dollar deposit and shall promptly properly adjust and repair the meter or furnish a correctly adjusted meter; but if upon such test the meter shall not register more than two and one-half per cent too fast—that is, more than two and one-half per cent more than it ought to—the one dollar deposit shall be retained by the furnisher to cover the expense of taking out and replacing the meter. (1909, c. 150, s. 6; C. S., s. 2734.)

§ **160-112. Adjustment of charges.**—If upon such test the meter shall register more than two and one-half per cent too fast, as above defined, the furnisher shall reimburse the complainant at the rate at which the meter registers too fast for a period of one month back; but if upon such test the meter shall be found to be incorrect, in that it registers more than two and one-half per cent too slow—that is, more than two and one-half per cent less electricity, gas or water than it should—then and in that event the complainant shall, in addition to the amount already charged him, pay at once to the furnisher at the rate at which the meter is too slow for a period of one month back, and the furnisher shall have the same rights for collecting such additional sum as is provided for the collecting of the past due and unpaid bills for electricity, gas or water, as the case may be. (1909, c. 150, s. 7; C. S., s. 2735.)

§ **160-113. Standard of accuracy.**—Any such meter having been tested and found to be not more than two and one-half per cent too slow nor more than two and one-half per cent too fast, as above defined, shall be considered correct, and such inspector shall so mark or stamp such meter and report the same to the governing body of the city or town. (1909, c. 150, s. 8; C. S., s. 2736.)

§ **160-114. Free access to meters.**—Nothing in this article shall be so construed as to prevent any furnisher of electricity, gas or water from having free access to the meters. (1909, c. 150, s. 9; C. S., s. 2737.)

Cited in Raleigh v. Mechanics, etc., Bank, 223 N. C. 286, 26 S. E. (2d) 573 (1943).

Article 11.

Regulation of Buildings.

§ **160-115. Chief of fire department.**—There is hereby created in the incorporated cities and towns of the State, where not already established by their charters, the office of chief of fire department. (1901, c. 677, s. 1; Rev., s. 4815; C. S., s. 2738.)

Cross Reference.—As to fire protection, see §§ 160-235 through 160-238.

§ **160-116. Election and compensation.**—The governing body of every incorporated city and town, when no provision is made in their charters for such office, shall elect a chief of fire department, fix his term of office, prescribe his duties and obligations, and see that he is reasonably remunerated by the city or town for the services required of him by law. They may change his duties and compensation from time to time, not inconsistent with the duties prescribed

in this article. Where the governing body fails or neglects to perform such duty, the Insurance Commissioner shall call it to their attention and if necessary bring the matter before the proper court. Nothing herein may prevent any person elected hereunder from holding some other position in the government of the city or town. (1901, c. 677, s. 2; 1905, c. 506, s. 4; Rev., ss. 2981, 4816; 1915, c. 192, s. 1; C. S., s. 2739.)

Power Governmental. — The power to regulate and prevent fire is governmental, and a failure to exercise this power does not subject a city to action for negligence which causes loss by fire. Harrington v. Greenville, 159 N. C. 632, 75 S. E. 849 (1912).

§ **160-117. Duties of chief of fire department.**—The chief of the fire department shall perform the duties required of him by this article; where such duties are not prescribed by the charters or governing body of incorporated cities and towns, it shall be his duty to preserve and care for the fire apparatus, have charge of the fighting and putting out of all fires, make annual reports to the city municipal governments, seek out and have corrected all places and conditions dangerous to the safety of the municipality from fire, look after buildings being erected with a view to their safety from fires, and do and perform the other duties prescribed by the governing boards of the several municipalities. (1901, c. 677, ss. 1, 3; Rev., ss. 4815, 4817; C. S., s. 2740.)

§ **160-118. Local inspector of buildings.**—The chiefs of fire departments hereinbefore provided for shall also be local inspectors of buildings for the cities or towns for which they are appointed and shall perform the duties required herein and shall make all reports required by the Insurance Commissioner, and shall make all inspections and perform such duties as may be required by the State law or city or town ordinance or by the said Insurance Commissioner: Provided, however, that any city or town may appoint and reasonably remunerate a local inspector of buildings, in which case the chief of fire department shall be relieved of the duties herein imposed. (1905, c. 506, s. 6; Rev., s. 2982; 1915, c. 192, s. 2; C. S., s. 2741.)

§ **160-119. Town aldermen failing to appoint inspectors.** — If the aldermen or commissioners of any city or town shall fail or refuse to appoint a chief of the fire department, or shall fail or refuse to reasonably remunerate him, they shall be guilty of a misdemeanor. The section shall not apply to the aldermen or commissioners of any city or town, where such city or town is by law exempt from the law regulating and controlling the erection and inspection of buildings. (1905, c. 506, s. 4; Rev., s. 3607; C. S., s. 2742.)

§ **160-120. Town officers; inspection of buildings.**—If any chief of any fire department or local inspector of buildings shall fail to perform the duties required of him by law or shall give a certificate of inspection without first making the inspection required by law, or shall improperly give a certificate of inspection, he shall be guilty of a misdemeanor. (1905, c. 506, s. 5; Rev., s. 3610; 1915, c. 192, s. 17; C. S., s. 2743.)

§ **160-121. Electrical inspectors.**—The governing body of any incorporated city or town may in their discretion appoint an electrical inspector in addition to the building inspector, and when said electrical inspector is so appointed he shall do and perform all things herein set out for the building inspector to do and perform in regard to electrical wiring and certificates for same, and in such cases the building inspector shall be relieved of such duties. (1905, c. 506, s. 33; Rev., s. 2983; C. S., s. 2744.)

§ **160-122. County electrical inspectors.**—The county commissioners of each county may, in their discretion, designate and appoint one or more electrical inspectors, who shall qualify as hereinafter prescribed, whose duty shall be to

enforce all State and local laws governing electrical installations and materials, and to make inspections of all new electrical installations and such re-inspections as may be prescribed by the county commissioners in buildings located in any town of one thousand population or less and/or those buildings located outside the corporate limits of all cities and towns, and not otherwise included in this article, and to issue a certificate of inspection where such installations fully meet the requirements for such installations as set forth in this article, or such additional requirements as the board of county commissioners may prescribe. Nothing contained in this article shall be construed as prohibiting said board of county commissioners designating as county inspector any person who also has or may be designated as electrical inspector in any city or town located within said county, or from prohibiting two or more counties from designating the same inspector to perform the duties herein mentioned for such two or more counties. The county commissioners shall also fix the fees to be charged by such county inspector, which fees shall be paid by the owner of the properties so inspected.

The fees collected by the inspector may be retained by him in payment for his services, or the county commissioners, in their discretion, may pay the inspector a fixed salary, in which case the fees collected for permits and inspections shall be paid to the county treasury.

It shall be unlawful for the county electrical inspector or any of his authorized agents to engage in the business of installing electrical wiring, devices, appliances or equipment, and he shall have no financial interest in any concern engaged in such business in the county at any time while holding such office as herein provided for.

Before confirmation of his appointment, the electrical inspector shall take and pass a qualifying examination to be based on the last edition of the National Electrical Code, as filed with the Secretary of State. This examination shall be in writing and shall be conducted according to the rules and regulations prescribed by and under the supervision of the State Electrical Engineer and Inspector and the Board of Examiners of Electrical Contractors. The prescribed rules and regulations may provide for the appointment of class I, class II and class III inspectors in accordance with the qualifications revealed by the examination with respect to the installation of various types and character of equipment and facilities. Examinations shall be given quarterly in Raleigh, or in such other places as may be designated by the State Electrical Engineer and Inspector, at his discretion. Examinations shall be based on the type and character of electrical installations being made in the territory in which the applicant wishes to serve as electrical inspector. An electrical inspector having qualified for a class I appointment shall be eligible without further examination to serve as electrical inspector anywhere in the State, but an inspector having qualified for a class II or class III appointment shall be limited to the territory for which he may qualify.

Upon passing the required examination by any person, a certificate approving him as inspector for a designated territory shall be issued by the Commissioner of Insurance. Such certificate must be renewed annually between January 1st and January 31st and shall be subject to cancellation at any time if the inspector is removed from office for cause by the board of county commissioners, which removal is hereby authorized. The fee for examination shall be five dollars ($5.00), to be returned if the applicant fails to pass. The annual renewal fees for a certificate of appointment shall be one dollar ($1.00). If the person appointed as electrical inspector by the county commissioners fails to take the examination or to make the necessary passing grade, the county commissioners shall continue to make such appointments until one or more applicants has passed the examinations. In the interim, a temporary inspector may act with the approval of the Commissioner of Insurance.

The inspector appointed shall give a bond approved by the county commis-

sioners for the faithful performance of his duties. (1937, c. 57; 1941, c. 105; 1947, c. 719; 1951, c. 651.)

Editor's Note.—Prior to the 1941 amendment this section provided for only one inspector. The 1947 amendment made changes in the first paragraph and added all of the section beginning with the second paragraph. The 1951 amendment struck out the words "to issue permits for" formerly appearing after the word "materials" near the beginning of the section.

§ **160-123. Deputy inspectors.**—All duties imposed by this article upon the building inspector may be performed by a deputy appointed by such inspector. (1905, c. 506, s. 32; Rev., s. 2984; C. S., s. 2745.)

§ **160-124. Fire limits established.** — The governing body of all incorporated cities and towns shall pass ordinances establishing and defining fire limits, which shall include the principal business portion of the cities and towns. (1905, c. 506, s. 7; Rev., s. 2985; C. S., s. 2746.)

Power Discretionary. — The courts will not pass upon the reasonableness of fire limits established by an incorporated town under authority conferred by the legislature, at least where the limits established appear to be reasonable, and without palpable oppression or injustice done. State v. Lawing, 164 N. C. 492, 80 S. E. 69 (1913).

Reasonableness of Ordinances.—While it might be unreasonable to prohibit even the slightest repairs to wooden buildings standing within the fire limits prior to the passage of a statute as ordinance establishing such limits, the power to prevent repairs is delegated and presumably exercised for the protection of property, and where a wooden structure within the bounds is partially destroyed by fire already, it is not unreasonable to require a new roof to be made of material less liable to combustion, or to forbid the repairs altogether when the damage to the building is serious, and to that end to compel the owners to give notice to the town authorities of their purpose to repair, and of the character of the contemplated work. State v. Johnson, 114 N. C. 846, 19 S. E. 599 (1894).

Cited in 5 N. C. Law Rev. 241.

§ **160-125. Punishment for failing to establish fire limits.**—If the aldermen or commissioners of any city or town shall fail or refuse to establish and define the fire limits for such town according to law, they shall be guilty of a misdemeanor. This section shall not apply to aldermen or commissioners of those towns which are exempt from the law governing the inspection of buildings. (1905, c. 506, s. 7; Rev., s. 3608; C. S., s. 2747.)

§ **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. 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 Commissioner 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.)

Cross References.—As to the North Carolina building code, see § 143-136 et seq. As to regulations as to issue of building permits, see § 87-14.

Ordinance Contrary to Statute Void. — By this section a permit from the inspector is required before an owner may repair his buildings, and an ordinance requiring that the permit be gotten from the board of aldermen is contrary to this statute and void. State v. Eubanks, 154 N. C. 628, 70 S. E. 466 (1911).

Rule Must Be Uniform.—The ordinance of a city providing that no person shall erect within the city limits any house or building of any kind, or add to, improve or change any building without having first obtained permission from the board of aldermen, is void, for the reason that it does not prescribe a uniform rule of action for governing the exercises of the discretion of the aldermen, but on the contrary, leaves the rights of property subject to their arbitrary discretion. State v. Tenant, 110 N. C. 609, 14 S. E. 387 (1892).

Permit Secured by Mandamus.—Where a city, under an ordinance, with legislative authority in such matters, has issued a permit to build an additional room to a residence, and thereafter has recalled the permit pending the settlement of a dispute as to whether it would be situate upon an alley claimed to have been widened, and upon the finding by the jury that the alley had not been widened and that the room would not be thereon, a mandamus is the proper remedy, though the form of the issue was incorrect. Clinard v. Winston-Salem, 173 N. C. 356, 91 S. E. 1039 (1917).

§ **160-127. Material used in construction of walls.**—The walls of all buildings in cities or towns where this article applies, other than frame or wooden buildings, shall be constructed of brick, iron or other hard, incombustible material. All rules, regulations and requirements contained in the building law, or set out in this article in regard to the erection of buildings, or any part thereof, shall apply also where any building or walls, or any part thereof, is proposed to be raised, altered, repaired or added to, in order that the objects of the law may be accomplished and deficiencies and menaces to the safety of the city or town may not be made or perpetuated. (1905, c. 506, s. 9; Rev., s. 2987; 1915, c. 192, s. 4; C. S., s. 2749.)

§ **160-128. Frame buildings within fire limits.**—Within the fire limits of cities and towns where this article applies, as established and defined, no frame or wooden building shall be hereafter erected, altered, repaired, or moved except upon the permit of the building inspector, approved by the Insurance Commissioner. (1905, c. 506, s. 8; Rev., s. 2988; 1915, c. 192, s. 5; C. S., s. 2750.)

Cited in 5 N. C. Law Rev. 241.

§ **160-129. Thickness of walls.** — The walls of warehouses, stores, factories, livery stables, hotels or other brick or stone buildings for business purposes in cities or towns where this article applies, except fireproof buildings where the framework is of steel, shall conform to the following schedules:

Height of Building	Minimum Thickness in Inches of Wall				
	1st	2d	3d	4th	5th
One-story building	13	..	..	..	..
Two-story building	17	13	..	..	..
Three-story building	17	17	13	..	..
Four-story building	22	17	17	13	..
Five-story building	26	22	17	17	13

The walls of all brick or stone buildings over five stories high shall be thirteen inches thick for the top story and increasing four inches in thickness for each story below to the ground, the increased thickness of each story to be utilized for beam and girder ledges. All top story walls must extend through and eighteen inches above the roof in parapets not less than thirteen inches thick and coped with terra cotta, stone, cast iron or cement. Upon written application approved by the building inspector the Insurance Commissioner may, where he deems it advisable, allow decreased thickness in walls of concrete, or in brick walls where such thickness is compensated for by pilasters. The roofs of all buildings named

in this section shall be of metal, slate or tile or gravel or other standard fireproof roofing. (1905, c. 506, s. 10; Rev., s. 2989; 1915, c. 192, s. 6; C. S., s. 2751.)

Local Modification. — Durham: 1933, c. 254.

§ **160-130. Foundation of walls; openings and doors protected.**—In all buildings mentioned in the preceding section there shall be prepared a proper and substantial foundation, and no foundation shall be less than one foot below the exposed surface of the ground, and no foundation shall rest on any filling or made ground, and the breadth of the foundation of the several parts of any building shall be proportioned so that as near as practicable the pressure shall be equal on each square foot of the foundation, and cement mortar shall be used in the masonry of all foundations exposed to dampness. No opening or doorway shall be cut through a party or fire wall of a brick or stone building without a permit from the inspector, and every such door or opening shall have top, bottom and sides of stone, brick or iron, shall be closed by two sets of standard metal-covered doors (separated by the thickness of the wall) hung to rabbeted iron frames or to iron hinges in brick or stone rabbets, shall not exceed ten feet in height by eight feet in width, and every opening other than a doorway shall be protected in a manner satisfactory to the inspector. (1905, c. 506, s. 11; Rev., s. 2990; C. S., s. 2752.)

§ **160-131. Metallic standpipes required.**—All business buildings being more than fifty-six feet high, covering an area of more than five thousand superficial feet, also all buildings exceeding eighty feet in height, shall have a four-inch or larger metallic standpipe within or near the front wall extending above the roof and arranged so that engine hose can be attached from the street, such riser to have two and one-half inch hose coupling on each floor. The building inspector may, with the approval of the Insurance Commissioner, allow two or more standpipes of smaller size and proper hose coupling, provided they are of such sizes and number as to be at least equivalent in service to the large standpipes required. All hose coupling shall conform to the size and pattern adopted by the fire department. (1905, c. 506, s. 12; Rev., s. 2991; 1915, c. 192, s. 7; C. S., s. 2753.)

§ **160-132. Construction of joists.**—The ends of joists or beams entering a brick wall shall be cut not less than three-inch bevel so as not to disturb the brickwork by any deflection or breaking of the joists or beams. All such joists or timbers entering a party or division wall from opposite sides shall have at least four inches of solid brickwork between the ends of such timbers or joists. (1905, c. 506, s. 13; Rev., s. 2992; C. S., s. 2754.)

§ **160-133. Chimneys and flues.**—All fireplaces and chimneys in stone or brick walls in any building hereafter erected and any chimneys or flues hereafter altered or repaired shall have the joints struck smooth on the inside, and the firebacks of all fireplaces hereafter erected shall be not less than eight inches in thickness of solid masonry, the chimney walls to be not less than four inches thick, the top of the chimney to extend not less than five feet above the roof for flat roofs and two feet above the ridge of any pitched roof. No woodwork or timber shall be placed under any fireplace or under the brickwork of any chimney. All floor beams, joists and headers shall be kept at least two inches clear of any wall enclosing a fire flue or chimney breast. (1905, c. 506, s. 14; Rev., s. 2993; C. S., s. 2755.)

§ **160-134. Chimneys not built on wood.**—No chimney shall be started or built upon a beam of wood or floor, the brickwork in all cases to start from the ground with proper foundation. In no case shall a chimney be corbeled out more than three inches from the wall, and in all cases corbeling shall consist of at least five courses of brick, the corbeling to start at least three feet below the bottom of the flue. (1905, c. 506, s. 16; Rev., s. 2994; C. S., s. 2756.)

§ **160-135. Construction of flues.**—All flues shall extend at least three

feet above the roof and always above the comb of the roof, and shall be coped with well-burnt terra cotta, stone, cast iron or cement. In all buildings hereafter erected the stone or brickwork of all flues and the chimney shafts of all furnaces, boilers, bakers' ovens, large cooking ranges, and laundry stoves, and all flues used for similar purposes shall be at least eight inches in thickness, with the exception of smoke flues, which are lined with fire clay lining or cast iron. These may be four inches in thickness, but this shall not apply to metal stacks of boiler houses where properly constructed and arranged at a safe distance from wood or other inflammable material. All buildings hereafter erected shall have smoke flues constructed either in walls of eight inches thickness or with smoke flues lined with cast iron or fire clay lining, the walls of which may be four inches in thickness, the lining to commence at the bottom of the flue or at the throat of the fireplace and be carried up continuously the entire height of the flue. All joints shall be closely fitted and the lining shall be built in as the flue or flues are carried up. All chimneys which shall be dangerous in any manner whatever shall be repaired and made safe or taken down. (1905, c. 506, s. 17; Rev., s. 2995; C. S., s. 2757.)

§ **160-136. Hanging flues.**—Hanging flues (that is, for the reception of stovepipes built otherwise than from the ground) shall be allowed only when built according to the following specifications: The flue shall be built four inches thick of the best hard brick, laid on flat side, never on edge, extending at least three feet above the roof and always above the comb of the roof, lined on the inside with cast iron or fire clay flue lining from the bottom of the flue to the extreme height of the flue, and ends of all such lining pipes being made to fit close together and the lining pipe being built in as the flue is carried up. If the flue starts at the ceiling and receives the stovepipe vertically it shall be hung on iron stirrups, bent to come flush with the bottom of ceiling joints. All flues shall have a proper and sufficient support at their base, and in no case shall they be supported even partially by contact in passing through partitions, ceilings, or roofs. Flues not lined as above shall be built from the ground eight inches thick of the best hard brick with the joints struck smooth on the inside. (1905, c. 506, s. 18; Rev., s. 2996; 1915, c. 192, s. 8; C. S., s. 2758.)

§ **160-137. Flues cleaned on completion of building.** — The flues of every building shall be properly cleaned and all rubbish removed and the flues left smooth on the inside upon the completion of the building. (1905, c. 506, s. 19; Rev., s. 2997; C. S., s. 2759.)

§ **160-138. Construction of stovepipes.**—No stovepipe shall pass through any roof, window or weatherboarding, and no stovepipe in any building with wood or combustible floors, ceiling or partitions shall enter any flue unless such pipe shall be at least twelve inches from such floors, ceiling or partitions, unless same is properly protected by metal shield, in which case the distance shall not be less than six inches. In all cases where stovepipes pass through wooden partitions of any kind or other woodwork they shall be guarded by either a double collar of metal with at least three inches air space and holes for ventilation or by a soapstone or burnt-clay ring not less than one inch in thickness extending through the partition or other woodwork. If any chimney, flue or heating apparatus on any premises shall, in the opinion of the inspector, endanger the premises, the inspector shall at once notify in writing the owner or agent of said premises. If such owner or agent fails for a period of forty-eight hours after the service of said notice upon him to make such chimney, flue or heating apparatus safe he shall be liable to a fine of not less than ten dollars nor more than fifty dollars for each day that the condition remains uncorrected. (1905, c. 506, s. 20; Rev., s. 2998; 1915, c. 192, s. 9; C. S., s. 2760.)

§ **160-139. Height of foundry chimneys.**—Iron cupolas or other chimneys of foundries shall extend at least ten feet above the highest point of any roof with-

in a radius of fifty feet of such cupola or chimney. (1905, c. 506, s. 22; Rev., s. 2999; C. S., s. 2761.)

§ **160-140. Steampipes; how placed.** — No steampipes shall be placed within two inches of any timber or woodwork unless the timber or woodwork is protected by a metal shield; then the distance shall not be less than one inch. All steampipes passing through floors and ceilings or laths and plastered partitions shall be protected by a metal tube one inch larger in diameter than the pipe, and the space shall be filled in with mineral wool, asbestos or other incombustible material. (1905, c. 506, s. 21; Rev., s. 3000; C. S., s. 2762.)

§ **160-141. Electric wiring of houses.**—The electric wiring of houses or buildings for lighting or for other purposes shall conform to the regulations prescribed by the organization known as National Board of Fire Underwriters. In order to protect the property of citizens from the dangers incident to defective electric wiring of buildings, it shall be unlawful for any firm or corporation to allow any electric current for the purpose of illuminating any building belonging to any person, firm or corporation to be turned on without first having had an inspection made of the wiring by the building inspector and having received from the inspector a certificate approving the wiring of such building. It shall be unlawful for any person, firm or corporation engaged in the business of selling electricity to furnish any electric current for use for illuminating purposes in any building or buildings of any person, firm or corporation, unless the said building or buildings have been first inspected by the inspector of buildings and a certificate given as above provided. The fee that shall be allowed said inspector of buildings for the work of such inspection of electrical wiring shall be one dollar for each building inspected, to be paid by the person applying for the inspection. (1905, c. 506, s. 23; Rev., s. 3001; C. S., s. 2763.)

Local Modification.—Alamance, city of Burlington: 1931, c. 133; Moore: 1931, c. 49; city of Salisbury: 1949, c. 1044.

Cross Reference. — As to power of the municipality to license electricians, see § 160-266.

Great Care Required.—There is nothing by which the user of an electrical appliance can detect the presence of an unusual high voltage or deadliness of current before touching the wire or coming in contact with it, and the greatest degree of care is required of those furnishing this deadly instrumentality to guard against the danger of its ordinary use as the circumstances may require. McAllister v. Pryor, 187 N. C. 832, 123 S. E. 92 (1924).

Liability for Injuries. — Where the furnisher of electricity for a building was, under its contract with the owner, required to furnish a low voltage of electricity for lighting and various domestic uses, and there is evidence tending to show that in attempting to iron clothes within the building with an electric iron the plaintiff touched the ironer and received a severe shock of electricity, to her injury, which should not and would not ordinarily have occurred by such use had the defendant supplied the current it had contracted to do, the doctrine of res ipsa loquitur applies, and the issue of actionable negligence should be submitted to the jury, denying defendant's motion as of nonsuit thereon. McAllister v. Pryor, 187 N. C. 832, 123 S. E. 92 (1924).

§ **160-142. Quarterly inspection of buildings.**—Once in every three months the local inspector of buildings shall make a personal inspection of every building within the fire limits, and shall especially inspect the basement and garret, and he shall make such other inspections as may be required by the Insurance Commissioner, and shall report to the Insurance Commissioner all defects found by him in any building upon a blank furnished him by the Insurance Commissioner. The building inspector shall notify the owner or occupant of buildings of any defects, and notify them to correct the same within a reasonable time. (1905, c. 506, s. 25; Rev., s. 3002; 1915, c. 192, s. 10; C. S., s. 2764.)

Cited in McAllister v. Pryor, 187 N. C. 832, 123 S. E. 92 (1924).

§ **160-143. Annual inspection of buildings.**—At least once in each year

the local inspector shall make a general inspection of all buildings in the corporate limits and ascertain if the provisions of this article are complied with, and the local inspector alone or with the Insurance Commissioner or his deputy shall at all times have the right to enter any dwelling, store or other building and premises to inspect same without molestation from anyone. It shall be the duty of the local building inspector to notify the occupant and owner of all premises of any defects found in this general inspection, and see that they are properly corrected. (1905, c. 506, s. 29; Rev., s. 3003; 1915, c. 192, s. 11; C. S., s. 2765.)

Cited in McAllister v. Pryor, 187 N. C. 832, 123 S. E. 92 (1924).

§ **160-144. Record of inspections.**—The local inspector shall keep the following record: A book indexed and kept so that it will show readily by reference all such buildings as are approved; that is, name and residence of owner, location of building, how it is to be occupied, date of inspection, what defects found and when remedied and date of building certificate; also a record which shall show the date of every general inspection, defects discovered and when remedied; also a record which shall show the date, circumstances and origin of every fire that occurs, name of owner and occupant of the building in which fire originates, the kind and value of property destroyed or damaged; also a record of inspection of electrical wiring and certificate issued. (1905, c. 506, s. 30; Rev., s. 3004; C. S., s. 2766.)

Cited in McAllister v. Pryor, 187 N. C. 852, 123 S. E. 92 (1924).

§ **160-145. Reports of local inspectors.**—The local inspector shall report before the fifteenth of February of each year the number and dates of general and quarterly inspections during the year ending the thirty-first day of December upon blanks furnished by the Insurance Commissioner, and furnish such other information and make such other reports as shall be called for by the Insurance Commissioner. (1905, c. 506, s. 31; Rev., s. 3005; 1915, c. 192, s. 12; C. S., s. 2767.)

§ **160-146. Fees of inspector.**—For the inspection of every new building, or old building repaired or altered, the local inspector shall charge and collect an inspection fee before issuing the building certificate, as follows: Two dollars for each one-story mercantile storeroom, livery stable or building for manufacturing, and fifty cents for each additional story, and for other buildings twenty-five cents per room; but the inspection fee shall in no case exceed five dollars. The building inspector shall be paid an adequate salary by the city or town for the quarterly and annual inspection of buildings as provided for in this article, and also for the duties under this section where the fees are collected and paid into the treasury of the municipality. (1905, c. 506, s. 27; Rev., s. 3006; 1915, c. 192, s. 13; C. S., s. 2768.)

Local Modification.—Alamance, city of Burlington: 1931, c. 133; Lenoir: 1933, c. 294; Moore: 1931, c. 49; city of Salisbury: 1949, c. 1044.

§ **160-147. Care of ashes, waste, etc.**—Ashes shall be removed in metal vessels and unless moved by city drays shall be stowed in brick, stone or metal receptacles or removed by owner to a place not less than fifteen feet from any wooden building or fence. Oily rags and waste shall be kept in closed metal vessels and shall be removed from building daily. Unslaked lime shall not be left exposed to the weather in or near a building. Stoves or ranges shall not be nearer to unprotected woodwork than two feet and the floors under them shall be protected by metal or sand box. (1905, c. 506, s. 24; Rev., s. 3007; C. S., s. 2769.)

§ **160-148. Ordinances to enforce the law.**—No provision of this article shall be held to repeal the power of any incorporated city or town to make and

enforce any further rules and regulations under the powers granted in their several charters, and said cities and towns may pass ordinances for the enforcement of any provision of this article. (1905, c. 506, s. 34; Rev., s. 3008; C. S., s. 2770.)

§ 160-149. Defects in buildings corrected. — Whenever the local inspector finds any defects in any new building, or finds that said building is not being constructed or has not been constructed in accordance with the provisions of this law, or that an old building because of its condition is dangerous and likely to cause a fire, it shall be his duty to notify the owner of the building of the defects or the failure to comply with this law, and the owner or builder shall immediately remedy the defect and make the building comply with the law. The owner or builder may appeal from the decision of the local inspector to the Insurance Commissioner. (1905, c. 506, s. 28; Rev., s. 3009; 1915, c. 192, s. 14; C. S., s. 2771.)

§ 160-150. Owner of building failing to comply with law. — If the owner or builder erecting any new building, upon notice from the local inspector, shall fail or refuse to comply with the terms of the notice by correcting the defects pointed out in such notice, so as to make such building comply with the law as regards new buildings, he shall be guilty of a misdemeanor, and shall be fined not exceeding fifty dollars. Every week during which any defect in the building is willfully allowed to remain after notice from the inspector shall constitute a separate and distinct offense. (1905, c. 506, s. 28; Rev., s. 3798; 1915, c. 192, s. 18; C. S., s. 2772.)

§ 160-151. Unsafe buildings condemned.—Every building which shall appear to the inspector to be especially dangerous to life because of its liability to fire or in case of fire by reason of bad condition of walls, overloaded floors, defective construction, decay or other causes shall be held to be unsafe, and the inspector shall affix a notice of the dangerous character of the structure to a conspicuous place on the exterior wall of said building. No building now or hereafter built shall be altered, repaired or moved, until it has been examined and approved by the inspector as being in a good and safe condition to be altered as proposed, and the alteration, repair or change so made shall conform to the provisions of the law. (1905, c. 506, s. 15; Rev., s. 3010; 1915, c. 192, s. 15; C. S., s. 2773; 1929, c. 199, s. 1.)

Cross Reference.—As to repair, closing, and demolition of unfit dwellings, see § 160-182 et seq. and § 160-200, subsection 28.

Editor's Note. — The 1929 amendment added the words "to life" in the term "dangerous to life" near the beginning of the section.

Cited in State v. Eubanks, 154 N. C. 628, 70 S. E. 466 (1911); Bonapart v. Nissen, 198 N. C. 180, 151 S. E. 94 (1930).

§ 160-152. Punishment for allowing unsafe building to stand.—If the owner of any building which has been condemned as unsafe and dangerous to life by any local inspector, after being notified by the inspector in writing of the unsafe and dangerous character of such building, shall permit the same to stand or continue in that condition, he shall be guilty of a misdemeanor and shall pay a fine of not less than ten nor more than fifty dollars for each day such building continues after such notice. (1905, c. 506, s. 15; Rev., s. 3802; 1915, c. 192, s. 19; C. S., s. 2774; 1929, c. 199, s. 2.)

Editor's Note. — The 1929 amendment inserted the words "to life" near the beginning of the section.

Cited in Bonapart v. Nissen, 198 N. C. 180, 151 S. E. 94 (1930).

§ 160-153. Removing notice from condemned buildings.—If any person shall remove any notice which has been affixed to any building by the local inspector of any city or town, which notice shall state the dangerous character of the building, he shall be guilty of a misdemeanor, and be fined not less than

ten nor more than fifty dollars for each offense. (1905, c. 506, s. 15; Rev., s. 3799; C. S., s. 2775.)

Cited in Bonapart v. Nissen, 198 N. C. 180, 151 S. E. 94 (1930).

§ **160-154. To what towns applied.**—This article shall apply only to incorporated cities and towns of over one thousand inhabitants according to the last United States census, and such other cities and towns in the State as shall by a vote of their board of aldermen or governing body adopt this article. (1905, c. 506, s. 35; Rev., s. 3011; 1915, c. 192, s. 16; C. S., s. 2776.)

Article 12.

Recreation Systems and Playgrounds.

§ **160-155. Title.** — This article shall be known and may be cited as the "Recreation Enabling Law." (1945, c. 1052.)

Local Modification.—For act modifying the former article as to Scotland County, see 1939, c. 359, s. 2.

Editor's Note. — The 1945 amendment rewrote this article, formerly containing twelve sections to appear as set out in present §§ 160-155 through 160-164. The amendatory act provides: "Nothing in this act shall have the effect of repealing public-local or private acts creating or authorizing the creation of any recreational system by a unit or relating to the management thereof."

The former article was derived from Public Laws 1923, c. 83, and was codified as §§ 2776(a)-2776(l) of the Consolidated Statutes.

The former article was summarized in 1 N. C. Law Rev. 271.

Cited in Purser v. Ledbetter, 227 N. C. 1, 40 S. E. (2d) 702 (1946).

§ **160-156. Declaration of State public policy.**—As a guide to the interpretation and application of this article, the public policy of this State is declared to be as follows: The lack of adequate recreational programs and facilities is a menace to the morals, happiness and welfare of the people of this State in times of peace as well as in time of war. Making available recreational opportunities for citizens of all ages is a subject of general interest and concern, and a function requiring appropriate action by the governing bodies of the several political and educational subdivisions of the State. The legislature, therefore, declares that in its considered judgment the public good and the general welfare of the citizens of this State require an adequate recreation program and that the creation, establishment and operation of a recreation system is a governmental function and a necessary expense as defined by article VII, section seven, of the Constitution of North Carolina. (1945, c. 1052.)

Stated in Purser v. Ledbetter, 227 N. C. 1, 40 S. E. (2d) 702 (1946).

§ **160-157. Definitions.**—(1) Recreation, for the purpose of this article, is defined to mean those activities which are diversionary in character and which aid in promoting entertainment, pleasure, relaxation, instruction, and other physical, mental, and cultural development and experiences of a leisure time nature.

(2) Unit, for the purpose of this article, means county, city and town. (1945, c. 1052.)

§ **160-158. Powers.** — The governing body of any unit, as defined in § 160-157, may exercise the following powers for recreational purposes:

(1) Establish and conduct a system of supervised recreation for such unit.

(2) Set apart for use as parks or playgrounds, recreational centers or facilities, any lands or buildings owned by or leased to such unit and may improve and equip such lands or buildings.

(3) Acquire lands or buildings by gift, purchase, lease or loan, or by condemnation as provided by chapter forty, Eminent Domain, of the General Statutes.

(4) Accept any gift or bequest of money or other personal property or any donation to be applied, principal or income, for recreational use.

(5) Provide, construct, equip, operate and maintain parks, playgrounds, recreation centers and recreation facilities, and all buildings and structures necessary or useful in connection therewith.

(6) Appropriate funds for the purpose of carrying out the provisions of this article. (1945, c. 1052.)

Editor's Note.—The cases cited below were decided under former § 160-156 authorizing the governing body of a city, town, county or school district to dedicate property already owned for use as playgrounds, recreation centers, etc.

Dedication for Recreation Facilities Is for Public Purpose.—The power of cities to dedicate real property for use as recreation centers and for other recreational purposes was expressly conferred by former § 160-156, and the exercise of this power was in the public interest and for a public purpose. Brumley v. Baxter, 225 N. C. 691, 36 S. E. (2d) 281, 162 A. L. R. 930 (1945), citing White v. Charlotte, 209 N. C. 573, 183 S. E. 730 (1936); Atkins v. Durham, 210 N. C. 295, 186 S. E. 330 (1936). See § 160-200, subsection 12.

Issuance of Bonds.—Municipal corporations were given authority by former § 160-156 and by §§ 160-200, subsection 12 and 160-229, to establish parks and playgrounds necessary to the maintenance of the health of their inhabitants, and an ordinance of a populous industrial city which provides for the issuance of bonds to establish and maintain parks and playgrounds for the children of the city was held a valid exercise of its police power under legislative authority for the promotion of the public health, safety, and morals. Atkins v. Durham, 210 N. C. 295, 186 S. E. 330 (1936).

§ **160-159. Funds.**—If the governing body of any unit, as defined in § 160-157, finds it necessary for the purpose of carrying out the provisions of this article, the governing body is hereby authorized to call a special election without a petition for that purpose as provided by § 160-163, and submit as therein provided to the qualified voters of said unit the question of whether or not a special tax shall be levied and/or bonds issued for the purpose of acquiring lands for parks, playgrounds and buildings, and the improvement thereof, and for equipping and operating same. (1945, c. 1052.)

Cited in Purser v. Ledbetter, 227 N. C. 1, 40 S. E. (2d) 702 (1946).

§ **160-160. System conducted by unit or recreation board.**—If a recreational system is established, it may be conducted by the unit as any other department of the unit is conducted, or if the governing body of the unit determines that it is for the best interest of the system that it be supervised and directed by a recreation board or commission, then such governing body may create such board or commission by ordinance or resolution to be known as the "recreation board or commission of the unit" and may vest such board or commission with the authority to provide, maintain, conduct and operate the recreational system with authority to employ directors, supervisors and play leaders and such other officers or employees as may be deemed best within the budget provided for the commission or board by the unit or from appropriations made by it, or from other funds in the hands of the commission or board. The board or commission may be vested with such powers and duties as to the governing body may seem proper. (1945, c. 1052.)

§ **160-161. Appointment of members to board.**—The board or commission shall be appointed by the governing body of the unit and shall consist of five or more members. After the governing body of the unit has determined the number of members to compose the recreation board or commission, a plan shall be worked out whereby at least one-third of the members shall serve for a term of one year, at least one-third for a term of two years and the remainder for a term of three years. Upon the expiration of their original terms of office, each succeeding term shall be for three years and until their successors qualify

for office. Vacancies in the board or commission shall be filled for the unexpired term by appointment of the governing body of the unit. The members shall serve without compensation. Members, one of whom may represent the governing body of the unit, one the school system serving the unit, one the welfare department serving the unit, and one the health department serving the unit, may serve as ex officio members of the recreation boards or commissions and may vote and perform the same duties as other members of the boards or commissions. The recreation board or commission at its first meeting shall appoint a chairman and such other officers as may be deemed proper for the conduct of its business and shall adopt rules and regulations to govern its procedures, and may adopt rules and regulations from time to time for the purpose of governing the use of parks, playgrounds, recreation centers and facilities. (1945, c. 1052; 1949, c. 1204; 1951, c. 126.)

Editor's Note.—The 1949 and 1951 amendments rewrote this section.

§ 160-162. Power to accept gifts and hold property.—The recreation board or commission may accept any grant, lease, loan, or devise of real estate or any gift or bequest of money or other personal property, or any donation to be applied, principal or income, for either temporary, immediate or permanent recreational use; but if the acceptance of any grant or devise of real estate, or gift or bequest of money or other personal property will subject the unit to expense for improvement or maintenance, the acceptance thereof shall be subject to the approval of the governing body of such unit. Lands or devises, gifts or bequests, may be accepted and held subject to the terms under which such land or devise, gift or bequest, is made, given or received. (1945, c. 1052.)

§ 160-163. Petition for establishment of system and levy of tax; election.—A petition signed by at least fifteen per cent of the qualified and registered voters in the unit may be filed in the office of the clerk or other proper officer of such unit requesting the governing body of such unit to do any one or all of the following things:

(1) Provide, establish, maintain and conduct a supervised recreation system for the unit.

(2) Levy an annual tax of not less than three cents (3c.) nor more than ten cents (10c.) on each one hundred dollars of assessed valuation of the taxable property within such unit for providing, conducting and maintaining a supervised recreation system.

(3) Issue bonds of the unit in an amount specified therein and levy a tax for the payment thereof, for the purpose of acquiring, improving and equipping lands or buildings or both for parks, playgrounds, recreation centers and other recreational facilities.

When the petition is filed, it shall be the duty of the governing body of such unit to cause the question petitioned for to be submitted to the voters at a special election to be held in such unit within ninety days from the date of the filing, which election shall be held as now provided by law for the holding of general elections in such units.

If the proposition submitted at such election shall receive a majority vote of the qualified registered voters who shall vote thereon at such election, the governing body of the unit shall, by appropriate ordinance or resolution, put into effect such proposition as soon as practicable. (1923, c. 83, s. 8; C. S., s. 2776(h); 1945, c. 1052; 1951, c. 933, s. 1.)

Editor's Note.—The 1951 amendment deleted the words "except in all such elections a special registration shall be provided" formerly appearing at the end of the second paragraph in clause (3), and substituted "voters who shall vote thereon" in lieu of "electors" formerly appearing in the third paragraph of clause (3).

Cited in Purser v. Ledbetter, 227 N. C. 1, 40 S. E. (2d) 702 (1946).

§ **160-163.1. Validation of bond elections.**—All elections heretofore held approving the issuance of bonds under the authority of the Recreation Enabling Law are hereby ratified, approved, confirmed and validated. (1951, c. 933, s. 2.)

§ **160-164. Joint playgrounds or neighborhood recreation centers.** —Any two or more units may jointly provide and establish, operate and conduct and maintain a supervised recreation system and acquire, operate, improve and maintain property, both real and personal, for parks, playgrounds, recreation centers and other recreational facilities and activities, the expense thereof to be proportioned between the units participating as may to them seem just and proper. (1945, c. 1052.)

§§ **160-165, 160-166:** Deleted by Session Laws 1945, c. 1052.

Editor's Note.—The above numbered sections appeared in this article before it was rewritten by the 1945 Act. See note to § 160-155.

Article 12A.

Bird Sanctuaries.

§ **160-166.1. Municipalities authorized to create bird sanctuaries within their territorial limits.**—From and after March 27, 1951, the governing body of any municipality in the State of North Carolina may, in its discretion, by ordinance, create and establish a bird sanctuary within the territorial limits of such municipality: Provided, no ordinance of any governing body of any municipality adopted pursuant hereto may protect any birds classed as predatory by the Wild Life Resources Commission or by the General Statutes of North Carolina nor may the protection of such ordinance extend to pigeons, crows, starlings or English sparrows. (1951, c. 411, s. 1.)

§ **160-166.2. Penalty for violation.** — Upon the creation and establishment of a bird sanctuary by any municipality in this State under the provisions of § 160-166.1, it shall be unlawful for any person to hunt, kill or trap any birds within the territorial limits of such municipality. Any person violating the provisions of an ordinance passed by any municipality under the provisions of § 160-166.1 shall be guilty of a misdemeanor and, upon conviction, shall be fined not more than fifty dollars ($50.00) or imprisoned not more than 30 days. (1951, c. 411, s. 2.)

Article 13.

Market Houses.

§ **160-167. Municipalties and counties authorized to act jointly; location of house, etc.** — The governing body of any city or town of over five thousand inhabitants and the county commissioners of the county in which such city or town is situated shall have the right, and they are fully authorized and empowered to jointly establish, own, maintain and operate a market house or market houses within the corporate limits of such city or town. For the purposes aforesaid such city or town and county may lease, purchase or otherwise acquire, and own and hold as tenants in common of equal interest, land necessary as a site for such market house or houses, and build and erect thereon such market house or houses, the cost thereof to be borne and paid equally by such city or town and county: Provided, however, that the cost of any such building or buildings shall not be less than two thousand five hundred dollars ($2,500.00) nor more than one hundred thousand dollars ($100,000.00). In connection with and as a part of such market house or houses, the governing body of such city or town and the commissioners of such county may also provide, establish, maintain and operate open-air market places, slaughter places or abattoirs, a cold storage plant and a canning plant for the purpose of 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 market requirements, or which may be bought, and they are authorized to establish, maintain and operate places, scales, and equipment for the weighing, measuring and grading of corn, grain, fodder, vegetables, fruits and other like farm products, and for such purposes to appoint an official weigher, fix his fees and make reasonable rules, regulations and charges covering such services. (1923, c. 158, s. 1; C. S., s. 2776(m).)

Cross Reference.—As to power of municipalities acting alone to establish markets, see §§ 160-53, 160-200, subsection 20, and 160-228.

Editor's Note.—This act is summarized in 1 N. C. Law Rev. 272.

Cited in Murphy v. High Point, 218 N. C. 597, 12 S. E. (2d) 1 (1940).

§ **160-168. Control and management; regulations; leasing space; inspection; keeper.**—Such market house or houses and appurtenances shall be under the joint control and management of such city or town and such county, and they shall make all necessary rules and regulations covering the maintenance and operation thereof not inconsistent with this article; they may provide for the leasing or letting of stalls or space therein to persons, firms or corporations, and fix the rental thereof, and may prescribe the time, place and manner of sale of fish, meats, fruits, vegetables and other produce therein, and provide for the inspection of all foodstuffs offered for sale therein and the condemnation of such as may be unfit for sale and consumption; they may elect or employ a keeper of such market house or houses and fix his compensation: Provided, the term of office of such keeper shall not exceed two years. (1923, c. 158, s. 2; C. S., s. 2776(n).)

§ **160-169. Directors; organization of board; powers; accounts.**—The entire direct management and operation of such market house or houses established under this article shall be vested in a board of directors to consist of six members, and the mayor of the city and the chairman of the commissioners of the county in which such market house or houses are located shall be ex officio members of said board; of the other four members of said board, two, one of whom shall be a man and one a woman, shall be elected and appointed by the governing body of the city immediately following the time of the regular biennial May election of city officials, by said governing body, and the other two members, one of whom shall be a man and one a woman, shall be elected and appointed by the county commissioners at their regular meeting in May of the same year, and the four members so elected shall serve for terms of two years, and until their successors shall have been elected and qualified: Provided, that the first board of directors may be elected at any time after establishment of such market house or houses, to serve until the time of the next regular municipal election. The said board shall organize and elect a chairman, secretary and treasurer from among its membership, may adopt bylaws for its own government and exercise the usual powers inherent in such bodies; they shall keep accurate minutes of their transactions and meetings, and keep or have kept accurate accounts of all moneys and property coming into their hands. Said board shall make and promulgate such rules and regulations for the operation, management and use of such market house or houses as it may deem advisable, not inconsistent with this article and not inconsistent with such rules and regulations as may be adopted from time to time by the governing bodies of such city or town and county, and employ such help as may be necessary in the operation thereof. (1923, c. 158, s. 3; C. S., s. 2776(o).)

§ **160-170. Special tax; specific appropriation.**—To assist in and provide funds for the carrying out of the provisions and purposes of this article, the county commissioners of the county and the governing body of the city in which any market house or houses may be established under this article may each levy annually, as a part of their general levy for general purposes and not

as a specially authorized tax, a tax of not exceeding two cents on each one hundred dollars ($100.00) value of real and personal property within their respective jurisdictions, which shall be collected as other taxes, kept in a separate fund and be used exclusively for the purposes contemplated and set forth in this article: Provided, however, that nothing in this section contained shall be held or construed to authorize or allow any city, town or county to levy any tax in excess of the amount now or hereafter limited by any general law or special charter. (1923, c. 158, s. 4; C. S., s. 2776(p).)

§ 160-171. Repeal of inconsistent laws; effect.—This article shall in no way affect any laws now in force in reference to market house or houses now in existence or the establishment or maintenance of market house or houses in towns of less than five thousand inhabitants under the laws now in force. (1923, c. 158, s. 5; C. S., s. 2776(q).)

Article 14.

Zoning Regulations.

§ 160-172. Grant of power.—For the purpose of promoting health, safety, morals or the general welfare of the community, the legislative body of cities and incorporated towns is hereby empowered to regulate and restrict the height, number of stories and size of buildings and other structures, the percentage of lot that may be occupied, the size of yards, courts and other open spaces, the density of population, and the location and use of buildings, structures and land for trade, industry, residence or other purposes. 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. (1923, c. 250, s. 1; C. S., s. 2776(r).)

Cross References.—As to provision that housing authorities are subject to zoning laws of municipality, see § 157-13. As to power of municipality to abate nuisances, see § 160-55.

Editor's Note.—For an article on the constitutionality of zoning laws, see 5 N. C. L. Rev. 241.

Purpose of Article.—This article is comprehensive; it contains a grant of powers not contained in other acts. For the purpose of promoting health, safety, morals, and the general welfare, the General Assembly delegated the powers prescribed to the legislative body of cities and towns. Harden v. Raleigh, 192 N. C. 395, 135 S. E. 151 (1926).

Origin and Necessity.—Building zone laws are of modern origin, and began in this country about fifty years ago. With the great increase and concentration of population, problems have developed, and constantly are developing, which require, and will continue to require, additional restrictions in respect of the use and occupation of private lands in urban communities. Regulations, which are now uniformly sustained, a century ago, or even less, probably would have been rejected as arbitrary and oppressive. Such regulations are sustained, under the complex conditions of our day, for reasons analogous to those which justify traffic regulations. While the meaning of constitutional guaranties never varies, the scope of their application must expand or contract to meet the new and different conditions which are constantly coming within the field of their operation. In a changing world, it is impossible that it should be otherwise. But although a degree of elasticity is thus imparted to the application of constitutional principles, statutes and ordinances, which are found clearly not to conform to the Constitution, of course, must fall. Euclid v. Ambler Realty Co., 272 U. S. 365, 47 S. Ct. 114, 71 L. Ed. 303 (1926).

"A regulatory zoning ordinance, which would be clearly valid as applied to the great cities, might be clearly invalid as applied to rural communities." Euclid v. Ambler Realty Co., 272 U. S. 365, 47 S. Ct. 114, 71 L. Ed. 303 (1926).

Building Inspector Must Follow Literal Provisions of Regulations.—In the issuing of building permits the building inspector, a purely administrative agent, must follow the literal provisions of the zoning regulations. Lee v. Board of Adjustment, 226 N. C. 107, 37 S. E. (2d) 128 (1946).

Power to Zone Cannot Be Delegated.—The power to zone is conferred upon the

governing body of the municipality and cannot be delegated to the board of adjustment. Hence a board of adjustment has no power either under this section or under ordinance to permit a type of business or building prohibited by the ordinance, for to do so would be an amendment of the law and not a variance of its regulations. James v. Sutton, 229 N. C. 515, 50 S. E. (2d) 300 (1948).

Variance and Nonconforming Buildings.—The privilege of erecting a nonconforming building or a building for a nonconforming use may not be granted under the guise of a variance permit, and action to that effect is in direct conflict with the general purpose and intent of the ordinance and does violence to its spirit. Lee v. Board of Adjustment, 226 N. C. 107, 37 S. E. (2d) 128 (1946).

Validity of Ordinances.—An ordinance passed under this statute following its provisions and carrying it into effect in the city passing it, prescribing uniform regulations for each zone or district and giving an inspector certain judicial functions with respect to the kind or class of buildings under a board of adjustment and review, and providing for certiorari is a valid exercise of power and not repugnant to the organic law prohibiting discriminations. Harden v. Raleigh, 192 N. C. 395, 135 S. E. 151 (1926).

A zoning ordinance limiting the uses of property solely on the basis of race is beyond the scope of police power, since the reserved police power of the State must stop when it encroaches on the protection afforded the citizen by the federal Constitution. Clinard v. Winston-Salem, 217 N. C. 119, 6 S. E. (2d) 867, 126 A. L. R. 634 (1940).

A zoning ordinance covering all land within the municipality and separating commercial and industrial districts of the city from those set apart for residences, schools, parks, libraries, churches, etc., and which is uniform and operates alike on all territory within the respective zones, bears a reasonable relation to the health, safety, morals and general welfare of the entire community and is a valid and constitutional exercise of the delegated police power of the municipality. Kinney v. Sutton, 230 N. C. 404, 53 S. E. (2d) 306 (1949).

The fact that a lot would be more valuable if devoted to a nonconforming use does not deprive the owner of property without due process of law when the zoning regulations are uniform in their application to all within the respective districts, and the differentiation of the uses of property within the respective districts is in accordance with a comprehensive plan in the interest of the health, safety, morals or general welfare of the entire community. Kinney v. Sutton, 230 N. C. 404, 53 S. E. (2d) 306 (1949).

Storage of Gasoline.—A municipal ordinance prohibiting storage of gasoline within the fire district of the city in tanks with a capacity greater than 4,400 gallons bears sufficient relationship to the public safety to come within the police power of the municipality, at least for the purpose of sustaining a finding to that effect upon the hearing of an order to show cause why a temporary order restraining the violation of the ordinance should not be continued to the hearing. Fayetteville v. Spur Distributing Co., 216 N. C. 596, 5 S. E. 838 (1939).

City May Limit Use of Property in Residential District.—This section authorizes municipalities to enact zoning ordinances prohibiting the use of property within a residential district for business or commercial purposes. Kinney v. Sutton, 230 N. C. 404, 53 S. E. (2d) 306 (1949).

Ordinance Held Not Discriminatory.—Provisions of a zoning ordinance which permits commercial and industrial activities within a residential district provided such activities are carried on by members of the immediate family and not more than two persons are employed therein, does not render the ordinance void as being discriminatory, since the commercial activities permitted thereunder in a residential district are so intrinsically different from unlimited commercial and industrial activities in general as to permit their separate classification. Kinney v. Sutton, 230 N. C. 404, 53 S. E. (2d) 306 (1949).

Applied in Kass v. Hedgpeth, 226 N. C. 405, 38 S. E. (2d) 164 (1946).

Cited in State v. Roberson, 198 N. C. 70, 150 S. E. 674 (1929); Shuford v. Waynesville, 214 N. C. 135, 198 S. E. 585 (1938); Ornoff v. Durham, 221 N. C. 457, 20 S. E. (2d) 380 (1942).

§ **160-173. Districts.**—For any or all said purposes 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: Provided, however, that when at any intersection of streets in the corporate limits of any city or town the said legislative body of the said city or town promulgates any certain regulations and/or restrictions for the erection, construction, reconstruction, alteration, repair or use of buildings, structures or land on two or more of said corners at said intersection, it shall be the duty of such legislative body upon written application from the owner of the other corners of said intersection to redistrict, restrict and regulate the remaining said corners of said intersecting streets in the same manner as is prescribed for the erection, construction, reconstruction, alteration, repair or use of buildings, structure or land of the other said corners for a distance not to exceed one hundred and fifty feet from the property line of said intersecting additional corners. (1923, c. 250, s. 2; C. S., s. 2776(s); 1931, c. 176, s. 1; 1933, c. 7.)

Local Modification. — Cleveland, Durham: 1931, c. 176; Forsyth: 1933, c. 7; Guilford: 1931, c. 176; Pasquotank: 1933, c. 263; Perquimans, Rockingham, Rowan: 1931, c. 176; Wake: 1945, c. 532; Wayne: 1931, c. 176; Elizabeth City: 1933, c. 263; 1945, c. 301; town of Asheboro: 1947, c. 428.

Editor's Note. — The 1931 amendment added the proviso.

Nature of Uniformity of Law.—In one part of a district a filling station may be noxious or offensive to the public within the purview of the ordinance, and in another part it may not be; at one place it may menace the public safety and at another it may not. Conditions and probable results must be taken into account. This is the principle on which the board of adjustment has acted; it passes on individual cases, of course; but each case is determined in the contemplation of the statute and the ordinance by a uniform rule. Harden v. Raleigh, 192 N. C. 395, 135 S. E. 151 (1926).

Application Where Ordinance Invalid.—Under the provisions of this statute, the regulations prescribed shall be uniform for each class or kind of building throughout each district, and the regulations of one district may differ from those of the others, and can have no application to the question of the rights of the governmental body of the city refusing to issue a permit for a gasoline filling station, in denial of the right of an applicant for such license under an invalid ordinance. Bizzell v. Board, 192 N. C. 364, 135 S. E. 58 (1926).

§ 160-174. Purposes in view.—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 the 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 municipality. (1923, c. 250, s. 3; C. S., s. 2776(t).)

§ 160-175. Method of procedure.—The legislative body of such municipality shall provide for the manner in which such regulations and restrictions and the boundaries of such districts shall be determined, established and enforced, and from time to time amended, supplemented or changed. However, no such regulation, restriction or boundary shall become effective until after a public hearing in relation thereto, at which parties in interest and citizens shall have 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 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 prior to the date fixed for said hearing. (1923, c. 250, s. 4; C. S., s. 2776(u); 1927, c. 90.)

Local Modification.—Granville: 1949, c. 598.

Editor's Note. — Prior to the 1927 amendment the last sentence read, "At

least fifteen days' notice of the time and place of such hearing shall be published in an official paper or a paper of general circulation in such municipality."

Effect of Noncompliance with Section.—Where original zoning ordinances, which did not include defendant's land within area prohibited for business structures, and amendment thereto which purported to do so, were not adopted in accordance with the enabling provisions of this and the following sections, such ordinances were invalid and ineffective as zoning regulations. Kass v. Hedgpeth, 226 N. C. 405, 38 S. E. (2d) 164 (1946), citing Eldridge v. Mangum, 216 N. C. 532, 5 S. E. (2d) 721 (1939); Lee v. Board of Adjustment, 226 N. C. 107, 37 S. E. (2d) 128 (1946).

§ 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 in the rear 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).)

This section prevails over a municipal ordinance providing that a change in zoning regulations could be approved by a majority of the city commissioners. Eldridge v. Mangum, 216 N. C. 532, 5 S. E. (2d) 721 (1939).

§ 160-177. Zoning commission.—In order to avail itself of the powers conferred by this article, such legislative body shall appoint a commission to be known as the zoning commission to recommend the boundaries of the various original districts and appropriate regulations to be enforced therein. Such commission shall make a preliminary report and hold public hearings thereon before submitting its final report, and such legislative body shall not hold its public hearings or take action until it has received the final report of such commission. Where a city planning commission already exists, it may be appointed as the zoning commission. (1923, c. 250, s. 6; C. S., s. 2776(w).)

§ 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 con-

curring 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 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. (1923, c. 250, s. 7; C. S., s. 2776(x); 1929, c. 94, s. 1; 1947, c. 311; 1949, c. 979, ss. 1, 2.)

Local Modification.—City of Winston-Salem: 1951, c. 157.

Cross Reference.—As to power of board of adjustment to permit nonconforming use, see note to § 160-172.

Editor's Note.—The 1929 amendment added the proviso to the first sentence of this section. The 1947 amendment inserted the second, third and fourth sentences. The 1949 amendment inserted the words "not more than" in the second sentence. It also substituted the words "alternate member or" for the words "two alternate" near the beginning of the third sentence.

The provisions of this section relating to the stay of proceedings thereon seem to be patterned after the general law of appeals. See § 1-294 where many constructions of the language here used will be found in the note.

Purpose of Section.—The plain intent and purpose of this section is to permit, through the board of adjustment the amelioration of the rigors of necessarily general zoning regulations by eliminating the necessity for a slavish adherence to the precise letter of the regulations where, in a given case, little or no good on the one side and undue hardship on the other would result from a literal enforcement. Lee v. Board of Adjustment, 226 N. C. 107, 37 S. E. (2d) 128 (1946).

Section Grants No Legislative Power.—This section and § 160-172 do not grant to board of adjustment legislative authority, and therefore, board is without power to amend an ordinance under which it functions. Lee v. Board of Adjustment, 226 N. C. 107, 37 S. E. (2d) 128 (1946).

Nature of Power.—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 dis-

cretion of a judicial nature. These are not mere ministerial duties. Harden v. Raleigh, 192 N. C. 395, 135 S. E. 151 (1926).

Within the class of quasi-judicial acts fall the board's conclusions as to whether the proposed building would be noxious or offensive or detrimental to the public safety or welfare by reason of its situation or the surrounding conditions; also in this class is the legal discretion to be exercised by the board upon the conclusions reached. Harden v. Raleigh, 192 N. C. 395, 135 S. E. 151 (1926).

Ordinances in Conflict with Section Are Void. — Municipal ordinances prescribing procedure for the enforcement of zoning regulations in conflict with those prescribed by this section are void, since this section contemplates that enforcement procedure shall be uniform. Mitchell v. Barfield, 232 N. C. 325, 59 S. E. (2d) 810 (1950).

Board Cannot Permit Nonconforming Use or Structure.—Board of adjustment cannot permit type of business or building prohibited by zoning ordinance, for to do so would be an amendment of law and not a variance of its regulations. Lee v. Board of Adjustment, 226 N. C. 107, 37 S. E. (2d) 128 (1946).

But Can Merely "Vary" Regulations.—The board of adjustment cannot disregard the provisions of this article or regulations enacted in accordance with zoning law, but can merely "vary" them to prevent injustice when the strict letter of the provisions would work "unnecessary hardship." Lee v. Board of Adjustment, 226 N. C. 107, 37 S. E. (2d) 128 (1946).

Who May Appeal from Order.—Any owner whose property is affected has the right to apply to the courts for review of on order of a municipal board of adjustment. Lee v. Board of Adjustment, 226 N. C. 107, 37 S. E. (2d) 128 (1946).

Extent of Review.—Quasi-judicial functions, when exercised, not arbitrarily, but in subordination to a uniform rule prescribed by statute, ordinarily are not subject to judicial control. It is only in extreme cases, those which are arbitrary, oppressive, or attended with manifest abuse, that the courts will interfere. In Rosenthal v. Goldsboro, 149 N. C. 128, 62 S. E. 905 (1908), it is said: "It may now be considered as established with us, that our courts will always be most reluctant to interfere with these municipal governments in the exercise of discretionary powers, conferred upon them for the public weal, and will never do so unless their action should be so clearly unreasonable as to amount to an oppressive and manifest abuse of their discretion. This position is, we think, supported by the better reason, and is in accord with the decided weight of authority." Harden v. Raleigh, 192 N. C. 395, 135 S. E. 151 (1926).

The decisions of the board of adjustment are final, subject to the right of the courts to review errors in law and to give relief against its orders which are arbitrary, oppressive, or attended with manifest abuse of authority. Lee v. Board of Adjustment, 226 N. C. 107, 37 S. E. (2d) 128 (1946).

Optionee.—Since an optionee has no present right to erect a building on the land, the withholding of a building permit from him cannot in law impose an "undue and unnecessary hardship" upon him as a predicate for relief from an order of a municipal board of adjustment. Lee v. Board of Adjustment, 226 N. C. 107, 37 S. E. (2d) 128 (1946).

"Unnecessary hardship" as used in this section, does not mean a pecuniary loss to a single owner in being denied a building permit for a nonconforming structure pursuant to zoning regulations binding upon all alike. Lee v. Board of Adjustment, 226 N. C. 107, 37 S. E. (2d) 128 (1946).

Where Action of Board Does Not Constitute Res Judicata upon Second Application.—The approval by the board of adjustment of a denial of a permit to erect a filling station on certain land does not constitute res judicata upon a second application made therefor three years after the first application upon substantial change of the traffic conditions. In re Application of Broughton Estate, 210 N. C. 62, 185 S. E. 434 (1936).

Review of Questions of Fact.—The writ of certiorari, as permitted by this section, is a writ to bring the matter before the court, upon the evidence presented by the record itself, for review of alleged errors of law. It does not lie to review questions of fact to be determined by evidence outside the record. In re Pine Hill Cemeteries, 219 N. C. 735, 15 S. E. (2d) 1 (1941). See Lee v. Board of Adjustment, 226 N. C. 107, 37 S. E. (2d) 128 (1946).

Cited in State v. Roberson, 198 N. C. 70, 150 S. E. 674 (1929).

§ 160-179. Remedies.—In case any building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained, or any build-

ing, structure or land is used in violation of this article or of any ordinance or other regulation made under authority conferred thereby, the proper local authorities of the municipality, in addition to other remedies, may institute any appropriate action or proceedings to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use, to restrain, correct or abate such violation, to prevent the occupancy of said building, structure or land, or to prevent any illegal act, conduct, business or use in or about such premises. (1923, c. 250, s. 8; C. S., s. 2776(y).)

Editor's Note.—See 13 N. C. Law Rev. 235.

This section confers jurisdiction beyond the scope of the ordinary equity jurisdiction in enjoining the creation of a nuisance and provides a statutory injunction to prevent the violation of municipal ordinances enacted in the exercise of the police power. Fayetteville v. Spur Distributing Co., 216 N. C. 596, 5 S. E. (2d) 838 (1939). For note on this case, see 18 N. C. Law Rev. 255.

Section Applies Only to Regulations Promulgated under Article.—The equitable remedy of injunction authorized applies only to the enforcement of zoning regulations promulgated under this article. Clinton v. Ross, 226 N. C. 682, 40 S. E. (2d) 593 (1946).

An ordinance prohibiting the operation of tobacco sales warehouses in certain sections of a municipality cannot be enforced by injunction under this section as to a warehouse in operation prior to the adoption of zoning regulations by the municipality even if the ordinance be deemed a part of the later adopted zoning regulations where zoning ordinance expressly excludes from its operation nonconforming uses existing prior to its adoption. Clinton v. Ross, 226 N. C. 682, 40 S. E. (2d) 593 (1946).

A municipal corporation was held not to be estopped from enforcing a valid zoning regulation by obtaining an injunction under this section because of the conduct of its officials in permitting or even encouraging its violation by issuing a permit for a permissive use with knowledge that the owner intended to use it for a prohibited purpose or by acquiescing in such unlawful use over a period of years. Raleigh v. Fisher, 232 N. C. 629, 61 S. E. (2d) 897 (1950).

Cited in Mitchell v. Barfield, 232 N. C. 325, 59 S. E. (2d) 810 (1950).

§ 160-180. Conflict with other laws.—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. (1923, c. 250, s. 9; C. S., s. 2776(z).)

§ 160-181. Other statutes not repealed.—This article shall not have the effect of repealing any zoning act or city planning act, local or general, now in force, except as to such provisions thereof as are repugnant to or inconsistent herewith; 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 city planning commissions or zoning commissions by any city or town in the State of North Carolina. (1923, c. 250, s. 11; C. S., s. 2776(aa).)

§ 160-181.1. Article applicable to buildings constructed by State and its subdivisions.—All of the provisions of this article are hereby made applicable to the erection and construction of buildings by the State of North Carolina and its political subdivisions. (1951, c. 1203, s. 1.)

Article 15.

Repair, Closing and Demolition of Unfit Dwellings.

§ 160-182. Exercise of police power authorized.—It is hereby found and declared that the existence and occupation of dwellings in municipalities of this State which are unfit for human habitation are inimical to the welfare, and dangerous and injurious to the health, safety and morals of the people of this State, and that a public necessity exists for the repair, closing or demolition of such dwellings. Whenever any municipality of this State finds that there exists in such municipality dwellings which are unfit for human habitation due to dilapidation, defects increasing the hazards of fire, accidents or other calamities, lack of ventilation, light or sanitary facilities, or due to other conditions rendering such dwellings unsafe or insanitary, or dangerous or detrimental to the health, safety or morals, or otherwise inimical to the welfare of the residents of such municipality, power is hereby conferred upon such municipality to exercise its police powers to repair, close or demolish the aforesaid dwellings in the manner herein provided. (1939, c. 287, s. 1.)

Cross References. — See § 160-200, subsection 28. As to condemnation of buildings dangerous to life in case of fire, see § 160-151.

Editor's Note. — For comment on this enactment, see 17 N. C. Law Rev. 367.

§ 160-183. Definitions.—The following terms whenever used or referred to in this article shall have the following respective meanings for the purposes of this article, unless a different meaning clearly appears from the context:

(a) "Municipality" shall mean any city or town having a population of five thousand or more, according to the federal census of the year one thousand nine hundred and forty.

(b) "Governing body" shall mean the council, board of commissioners, board of aldermen, or other legislative body, charged with governing a municipality.

(c) "Public officer" shall mean the officer or officers who are authorized by ordinances adopted hereunder to exercise the powers prescribed by such ordinance and by this article.

(d) "Public authority" shall mean any housing authority or any officer who is in charge of any department or branch of the government of the municipality, county or State relating to health, fire, building regulations, or to other activities concerning dwellings in the municipality.

(e) "Owner" shall mean the holder of the title in fee simple and every mortgagee of record.

(f) "Parties in interest" shall mean all individuals, associations and corporations who have interests of record in a dwelling and any who are in possession thereof.

(g) "Dwelling" shall mean any building, or structure, or part thereof, used and occupied for human habitation or intended to be so used, and includes any outhouses and appurtenances belonging thereto or usually enjoyed therewith. (1939, c. 287, s. 2; 1941, c. 140.)

Editor's Note.—Prior to the 1941 amendment, the population required for a "municipality" was 25,000.

§ 160-184. Ordinance authorized as to repair, closing and demolition; order of public officer.—Upon the adoption of an ordinance finding that dwelling conditions of the character described in § 160-182 exist within a municipality, the governing body of such municipality is hereby authorized to adopt ordinances relating to the dwellings within such municipality which are unfit for human habitation. Such ordinances shall include the following provisions:

(a) That a public officer be designated or appointed to exercise the powers prescribed by the ordinances.

(b) That whenever a petition is filed with the public officer by a public authority or by at least five residents of the municipality charging that any dwelling is unfit for human habitation or whenever it appears to the public officer (on his own motion) that any dwelling is unfit for human habitation, the public officer shall, if his preliminary investigation discloses a basis for such charges, issue and cause to be served upon the owner of and parties in interest in such dwelling a complaint stating the charges in that respect and containing a notice that a hearing will be held before the public officer (or his designated agent) at a place within the county in which the property is located therein fixed not less than ten days nor more than thirty days after the serving of said complaint; that the owner and parties in interest shall be given the right to file an answer to the complaint and to appear in person, or otherwise, and give testimony at the place and time fixed in the complaint; and that the rules of evidence prevailing in courts of law or equity shall not be controlling in hearings before the public officer.

(c) That if, after such notice and hearing, the public officer determines that the dwelling under consideration is unfit for human habitation he shall state in writing his findings of fact in support of such determination and shall issue and cause to be served upon the owner thereof an order, (1) if the repair, alteration or improvement of the said dwelling can be made at a reasonable cost in relation to the value of the dwelling (the ordinance of the municipality may fix a certain percentage of such cost as being reasonable for such purpose), requiring the owner, within the time specified, to repair, alter or improve such dwelling to render it fit for human habitation or to vacate and close the dwelling as a human habitation; or (2) if the repair, alteration or improvement of the said dwelling cannot be made at a reasonable cost in relation to the value of the dwelling (the ordinance of the municipality may fix a certain percentage of such cost as being reasonable for such purpose), requiring the owner, within the time specified in the order, to remove or demolish such dwelling.

(d) That, if the owner fails to comply with an order to repair, alter or improve or to vacate and close the dwelling, the public officer may cause such dwelling to be repaired, altered or improved or to be vacated and closed; that the public officer may cause to be posted on the main entrance of any dwelling so closed, a placard with the following words: "This building is unfit for human habitation; the use or occupation of this building for human habitation is prohibited and unlawful."

(e) That, if the owner fails to comply with an order to remove or demolish the dwelling, the public officer may cause such dwelling to be removed or demolished: Provided, however, that the duties of the public officer set forth in subsections (d) and (e) shall not be exercised until the governing body shall have by ordinance ordered the public officer to proceed to effectuate the purpose of this article with respect to the particular property or properties which the public officer shall have found to be unfit for human habitation and which property or properties shall be described in the ordinance.

(f) That, the amount of the cost of such repairs, alterations or improvements, or vacating and closing, or removal or demolition by the public officer shall be a lien against the real property upon which such cost was incurred. If the dwelling is removed or demolished by the public officer, he shall sell the materials of such dwellings and shall credit the proceeds of such sale against the cost of the removal or demolition and any balance remaining shall be deposited in the superior court by the public officer, shall be secured in such manner as may be directed by such court, and shall be disbursed by such court to the persons found to be entitled thereto by final order or decree of such court: Provided, however, that nothing in this section shall be construed to impair or limit in any way the power of the municipality to define and declare nuisances and to cause their removal or abatement by summary proceedings, or otherwise. (1939, c. 287, s. 3.)

§ 160-185. Standards.—An ordinance adopted by a municipality under

this article shall provide that the public officer may determine that a dwelling is unfit for human habitation if he finds that conditions exist in such dwelling which are dangerous or injurious to the health, safety or morals of the occupants of such dwelling, the occupants of neighboring dwellings or other residents of such municipality; such conditions may include the following (without limiting the generality of the foregoing): Defects therein increasing the hazards of fire, accident, or other calamities, lack of adequate ventilation, light, or sanitary facilities; dilapidation; disrepair; structural defects; uncleanliness. Such ordinance may provide additional standards to guide the public officer, or his agents, in determining the fitness of a dwelling for human habitation. (1939, c. 287, s. 4.)

§ **160-186. Service of complaints and orders.** — Complaints or orders issued by a public officer pursuant to an ordinance adopted under this article shall be served upon persons either personally or by registered mail; but if the whereabouts of such persons is unknown and the same cannot be ascertained by the public officer in the exercise of reasonable diligence, and the public officer shall make an affidavit to that effect, then the serving of such complaint or order upon such persons may be made by publishing the same once each week for two successive weeks in a newspaper printed and published in the municipality, or, in the absence of such newspaper, in one printed and published in the county and circulating in the municipality in which the dwellings are located. A copy of such complaint or order shall be posted in a conspicuous place on premises affected by the complaint or order. A copy of such complaint or order shall also be filed in the proper office or offices for the filing of lis pendens notices in the county in which the dwelling is located and such filing of the complaint shall have the same force and effect as other lis pendens notices provided by law. (1939, c. 287, s. 5.)

§ **160-187. Remedies.**—Any person affected by an order issued by the public officer may petition to the superior court for an injunction restraining the public officer from carrying out the provisions of the order and the court may, upon such petition, issue a temporary injunction restraining the public officer pending the final disposition of the cause: Provided, however, that within sixty days after the posting and service of the order of the public officer, such person shall present such petition to the court. Hearings shall be had by the court on such petitions within twenty days, or as soon thereafter as possible, and shall be given preference over other matters on the court's calendar. The court shall hear and determine the issues raised and shall enter such final order or decree as law and justice may require: Provided, however, that it shall not be necessary to file bond in any amount before obtaining a temporary injunction under this section. (1939, c. 287, s. 6; 1939, c. 386.)

§ **160-188. Compensation to owners of condemned property.** — Nothing in this article shall be construed as preventing the owner or owners of any property from receiving just compensation for the taking of such property by the power of eminent domain under the laws of this State, nor as permitting any property to be condemned or destroyed except in accordance with the police power of the State. (1939, c. 386; 1943, c. 196.)

Editor's Note. — The 1943 amendment rewrote this section and added the reference to police power.

§ **160-189. Additional powers of public officer.**—An ordinance adopted by the governing body of the municipality may authorize the public officer to exercise such powers as may be necessary or convenient to carry out and effectuate the purpose and provisions of this article, including the following powers in addition to others herein granted: (a) To investigate the dwelling conditions in the municipality in order to determine which dwellings therein are unfit for

human habitations; (b) to administer oaths, affirmations, examine witnesses and receive evidence; (c) to enter upon premises for the purpose of making examinations: Provided, that such entries shall be made in such manner as to cause the least possible inconvenience to the persons in possession; (d) to appoint and fix the duties of such officers, agents and employees as he deems necessary to carry out the purposes of the ordinances; and (e) to delegate any of his functions and powers under the ordinance to such officers and agents as he may designate. (1939, c. 287, s. 7.)

§ 160-190. Administration of ordinance.—The governing body of any municipality adopting an ordinance under this article shall, as soon as possible thereafter, prepare an estimate of the annual expenses or costs to provide the equipment, personnel and supplies necessary for periodic examinations and investigations of the dwellings in such municipality for the purpose of determining the fitness of such dwellings for human habitation, and for the enforcement and administration of its ordinances adopted under this article; and any such municipality is authorized to make such appropriations from its revenues as it may deem necessary for this purpose and may accept and apply grants or donations to assist it in carrying out the provisions of such ordinances. (1939, c. 287, s. 8.)

§ 160-191. Supplemental nature of article.—Nothing in this article shall be construed to abrogate or impair the powers of the courts or of any department of any municipality to enforce any provisions of its charter or its ordinances or regulations, nor to prevent or punish violations thereof; and the powers conferred by this article shall be in addition and supplemental to the powers conferred by any other law. (1939, c. 287, s. 9.)

Article 15A.

Liability for Negligent Operation of Motor Vehicles.

§ 160-191.1. Municipality empowered to waive governmental immunity.—The governing body of any incorporated city or town, by securing liability insurance as hereinafter provided, is hereby authorized and empowered, but not required, to waive its governmental immunity from liability for any damage by reason of death, or injury to person or property, proximately caused by the negligent operation of any motor vehicle by an officer, agent or employee of such city or town when acting within the scope of his authority or within the course of his employment. Such immunity is waived only to the extent of the amount of the insurance so obtained. Such immunity shall be deemed to have been waived in the absence of affirmative action by such governing body. (1951, c. 1015, s. 1.)

Cross Reference.—For further provisions as to financing parking facilities, see §§ 160-497 through 160-507.

§ 160-191.2. Contract of insurance; payment of premiums. — The contract of insurance purchased pursuant to this article must be one issued by a company or corporation duly licensed and authorized to execute insurance contracts in this State, and must by its terms adequately insure such city or town against any and all liability for any damage by reason of death, or injury to person or property, proximately caused by the negligent operation of any motor vehicle by an officer, agent or employee of such city or town when acting within the scope of his authority or within the course of his employment. Any company or corporation which enters into a contract of insurance as above described with an incorporated city or town, by such act, waives any defense based upon the governmental immunity of the incorporated city or town from liability.

Every incorporated city and town is authorized and empowered to pay, as a necessary expense, the lawful premiums for such insurance out of the general

tax revenues or other appropriate funds of such incorporated city or town. (1951, c. 1015, s. 2.)

§ **160-191.3. Action for negligence in performance of governmental, etc., function authorized; other defenses not affected.**—Any person sustaining damage, or in case of death, his personal representative, may sue an incorporated city or town insured as provided by this article for the recovery of such damages in any court of competent jurisdiction in this State, in the county where such city or town is located; and it shall be no defense to any such action that the operation of such motor vehicle by such officer, agent or employee, was in pursuance of a governmental, municipal, or discretionary function of said city or town if, and to the extent, such city or town has insurance coverage as provided by this article.

Except as hereinbefore expressly provided, nothing in this article shall be construed to deprive any city or town of any defense whatsoever to any such action for damages, or to restrict, limit or otherwise affect any such defense, which said city or town may have at common law or by virtue of any statute (whether general, special, private or local); and nothing in this article 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 the incorporated city or town, or to commence any civil action for the recovery of damages, within the applicable period of time prescribed or limited by statute. (1951, c. 1015, s. 3.)

§ **160-191.4. Municipality liable only upon claims arising after procurement of insurance.**—An incorporated city or town may incur liability pursuant to this article only with respect to a claim arising after such city or town has procured liability insurance pursuant to this article and during the time when such insurance is in force. (1951, c. 1015, s. 4.)

§ **160-191.5. Knowledge of insurance to be kept from jury.**—No part of the pleadings which relate 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 article. 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.

No plaintiff to an action brought pursuant to this article nor counsel, nor witness therefor, shall make any statement, ask any question, read any pleadings or do any other act in the presence of the trial jury in such case so as to indicate to any member of the jury that the defendant's liability would be covered by insurance, and if such is done order shall be entered of mistrial. (1951, c. 1015, s. 5.)

SUBCHAPTER II. MUNICIPAL CORPORATION ACT OF 1917.

Article 16.

Operation of Subchapter.

§ **160-192. Explanation of terms.**—The following words and phrases as used in this subchapter shall, unless a contrary intention clearly appears, have the following meanings, respectively:

The phrase "regular municipal election" shall mean the biennial election of municipal officers for which provision is made in this subchapter.

The phrase "qualified voter" shall mean any registered qualified voter.

The words "officer" and "officers," when used without further qualification or

description, shall mean any person or persons holding any office in the city or in charge of any department or division of the city. The said words when used in contrast with a board or members of a board, or with division heads, shall mean any of the persons in sole charge of a department of the city.

The word "ordinance" shall mean an order of the governing body entitled "ordinance," and designed for the regulation of any matter within the jurisdiction of the governing body as laid down in this subchapter.

The word "city" shall mean any city, town, or incorporated village. (1917, c. 136, sub-ch. 15, s. 1; C. S., s. 2777.)

§ 160-193. Effect upon prior laws.—Nothing in this subchapter shall operate to repeal any local or special act of the General Assembly of North Carolina relating to cities, towns, and incorporated villages, but all such acts shall continue in full force and effect and in concurrence herewith, unless hereafter repealed or amended in manner provided for in this subchapter. The provisions of this subchapter shall not be construed to repeal the provisions as to cities and towns contained in subchapter I of this chapter, except in case they are inconsistent with this subchapter. The provisions of this subchapter, so far as they are the same as those of existing general laws, are intended as a continuation of said laws and not as new enactments, and so far as they give general powers to cities are supplementary to and additional to the special charters of cities which have not such powers, unless inconsistent with or repugnant thereto, and a repetition of such powers if already possessed by cities by virtue of special charters. The provisions of this subchapter shall not affect any act heretofore done, liability incurred, or right accrued or vested, or affect any suit or prosecution now pending or to be instituted to enforce any right or penalty or punish any offense. Subject to the foregoing provisions hereof, all laws or parts of laws in conflict with this subchapter are hereby to the extent of such conflict repealed. (1917, c. 136, sub-ch. 1, s. 1; C. S., s. 2778.)

Effect upon Existing Charters.—In case of a conflict between this subchapter and a city charter the charter must prevail as this subchapter is intended only to add to already existing powers, and not to repeal them. Clinton v. Johnson, 174 N. C. 286, 93 S. E. 776 (1917); Kendall v. Stafford, 178 N. C. 461, 101 S. E. 15 (1919).

§ 160-194. Not to repeal Municipal Finance Act.—Nothing in this subchapter contained shall be construed to amend or repeal any provisions of the "Municipal Finance Act," and wherever this subchapter and the "Municipal Finance Act" conflict, the "Municipal Finance Act" shall control. (1917, c. 136, sub-ch. 16, Part VII, s. 4; C. S., s. 2916.)

Article 17.

Organization under the Subchapter.

§ 160-195. Municipal Board of Control; changing name of municipality.—The Municipal Board of Control shall be composed of the Secretary of State, the Attorney General, and the chairman of the Utilities Commission. The Attorney General shall be chairman and the Secretary of State shall be secretary of such Board. The said Municipal Board of Control shall have power and privilege of changing the name of any said town or municipal corporation within the bounds of the State of North Carolina; and the procedure for changing the name of any municipal corporation shall be the same as prescribed by §§ 160-197 and 160-198. (1917, c. 136, sub-ch. 2, s. 4; C. S., s. 2779; 1935, c. 440; 1941, c. 97.)

Editor's Note. — The 1935 amendment substituted "Public Utilities Commissioner" for "chairman of the Corporation Commission." It also added the last sentence relative to changing the name of a municipality.

Restraining Execution of Order Changing Name.—Where the complaint contains

no allegation that the Board of Municipal Control has failed to observe and follow the requirements of the statutes and no allegation that the Board has acted capriciously or in bad faith, in a civil action to restrain the execution of an order changing the name of a town, demurrer to the complaint for failure to state a cause of action was properly sustained, and there was no error in the court's dissolving a restraining order theretofore granted and dismissing the action. Hunsucker v. Winborne, 223 N. C. 650, 27 S. E. (2d) 817 (1943).

Cited in Burnsville v. Boone, 231 N. C. 577, 58 S. E. (2d) 351 (1950).

§ 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 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.)

An act of the legislature expressly validating and confirming a municipality as established cures all objections under this section. Starmount Co. v. Ohio Sav. Bank, etc., Co., 55 F. (2d) 649 (1932).

§ 160-197. Petition filed.—1. What Petition Must Show.—A petition signed by a majority of the resident qualified electors and a majority of the resident freeholders or homesteaders of the territory proposed to be so organized shall be presented to the Secretary of State of North Carolina, accurately describing such territory, with map attached, containing the names of all qualified voters therein, the assessed valuation of such territory, and the proposed name of the new town. The petition shall further be signed by at least twenty-five resident freeholders or homesteaders of the age of twenty-one years or over, at least twenty of whom are qualified voters; and further, the petition shall show the valuation of the real property of the proposed town to be at least twenty-five thousand dollars, according to the last preceding tax assessment; and the petition shall be verified by at least three of the signers who are qualified voters.

2. Order and Notice for Hearing.—The Secretary of State shall thereupon make an order prescribing the time and place for the hearing of said petition before the Municipal Board of Control. At least thirty days before the hearing, notice of such hearing shall be published once a week for four weeks in a newspaper published in the county where such territory is situate, designated as most likely to give notice to the people of the territory proposed to be so organized or incorporated into a town; or, if no newspaper is so published, then in some newspaper of general circulation in such proposed city, town, or incorporated village; and such notice shall also be posted at the county courthouse door of such county for a like period. Such notice shall be signed by at least three of the freeholders signing the petition for the organization of the town. (1917, c. 136, sub-ch. 2, s. 2; C. S., s. 2781.)

Determining Compliance with Statutory Requirements.—Upon the hearing by the Board of Municipal Control of a petition to change the name of a town, the Board has power to investigate and determine whether or not the requirements of this and the following section have been complied with. Hunsucker v. Winborne, 223 N. C. 650, 27 S. E. (2d) 817 (1943).

§ 160-198. Hearing of petition and order made.—1. Manner of Hearing.—Any qualified voter or taxpayer of such territory proposed to be incorporated into a town may appear at the hearing of such petition, and the matter shall be tried as an issue of fact by the Municipal Board of Control, and no formal answer to the petition need be filed. The Board may adjourn the hearing from time to time, in its discretion.

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, and that the organization of such city, town, or incorporated village will better subserve the interests of said persons and the public, the Board shall enter an order creating such territory into a town, giving it the name proposed in the petition.

3. Election of Officers Provided for.—The Board of Control shall provide for the place of holding the first election for mayor and commissioners; and shall designate how many commissioners shall serve, as set forth in subchapter I of this chapter, naming the number of commissioners, not less than three nor more than seven. The election of mayor and commissioners shall be under the same laws as now govern the election of mayor and commissioners in subchapter I of this chapter. The Board of Control shall appoint a registrar and two judges of election to hold the first election for mayor and commissioners and make such order as may be deemed proper and necessary for the holding of said first election and the certification of persons elected as mayor and commissioners. The list of the names of qualified voters attached to the petition shall be treated as the registration of qualified voters for said election, but the Board may provide for the registration of any other qualified voters in the territory on or before the day of election.

4. Filing Papers; Fees.—All the papers in reference to the organization of any town under this article shall be filed and recorded in the office of the Secretary of State, and certified copies thereof shall be filed and recorded in the office of the clerk of the superior court of the county in which the town organized is situated. The fees shall be the same as are now provided for the organization of private corporations and shall be paid out of the treasury of the city, town, or incorporated village.

5. When Organization Complete.—Upon the approval of the Board of Control and the recording of the papers in the offices above mentioned, the said town shall become a municipal corporation with all the powers and subject to all the laws governing towns as set forth in subchapter I of this chapter and as in this subchapter set forth. (1917, c. 136, sub-ch. 2, s. 3; C. S., s. 2782; 1949, c. 1083.)

Cross Reference.—See note to § 160-197.

Editor's Note. — The 1949 amendment added the last two sentences of subsection 3.

Article 18.

Powers of Municipal Corporations.

Part 1. General Powers Enumerated.

§ 160-199. Powers applicable to all cities and towns.—All the provisions of this article, conferring powers upon cities and towns, shall apply to all cities and towns, whether they have adopted a plan of government under this subchapter or not. And the powers herein granted are in addition to and not in substitution for existing powers of cities and towns. (1919, c. 296; C. S., s. 2786.)

Cited in Hailey v. Winston-Salem, 196 N. C. 17, 144 S. E. 377 (1928).

§ 160-200. Corporate powers.—In addition to and co-ordinate with the power granted to cities in subchapter I of this chapter, and any acts affecting such cities, all cities shall have the following powers:

1. To acquire property in fee simple or a lesser interest or estate therein by purchase, gift, devise, bequest, appropriation, lease, or lease with privilege to purchase.

2. To sell, lease, hold, manage, and control such property and make all rules and regulations by ordinance or resolution which may be required to carry out fully the provisions of any conveyance, deed, or will in relation to any gift or

bequest, or the provisions of any lease by which the city may acquire property.

3. To purchase, conduct, own, lease, and acquire public utilities.

Cross Reference.—See § 160-282 et seq.

4. To appropriate the money of the city for all lawful purposes.

5. To create, provide for, construct, regulate, and maintain all things in the nature of public works, buildings, and improvements, including public libraries and equipment for the same.

6. To supervise, regulate, or suppress, in the interest of public morals, public recreations, amusements and entertainments, and to define, prohibit, abate, or suppress all things detrimental to the health, morals, comfort, safety, convenience, and welfare of the people, and all nuisances and causes thereof.

7. To pass such ordinances as are expedient for maintaining and promoting the peace, good government, and welfare of the city, and the morals and happiness of its citizens, and for the performance of all municipal functions.

8. To provide for the destruction of noxious weeds, and for payment of the expense thereof by assessment or otherwise.

9. To regulate the erection of fences, billboards, signs, and other structures, and provide for the removal or repair of insecure billboards, signs, and other structures.

10. To make and enforce local police, sanitary, and other regulations.

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.

12. To acquire, lay out, establish, and regulate parks within or without the corporate limits of the city for the use of the inhabitants of the same.

Cross Reference.—See § 160-155 et seq.

13. To erect, repair, and alter all public buildings.

14. To regulate, restrain, and prohibit the running or going at large of horses, mules, cattle, sheep, swine, goats, chickens, and all other animals and fowl of whatsoever description, and to authorize the distraining and impounding and sale of the same for the costs of the proceedings and the penalty incurred and to order their destruction when they cannot be sold, and to impose penalties on the owners or keepers thereof for the violation of any ordinance or regulation of said governing body, and to prevent, regulate, and control the driving of cattle, horses, and all other animals into or through the streets of the city.

15. To regulate and control plumbers and plumbing work, and to enforce efficiency in the same by examination of such plumbers and inspection of such plumbing work.

16. To regulate, control, and prohibit the keeping and management of houses or any building for the storage of gunpowder and other combustible, explosive, or dangerous materials within the city, and to regulate the keeping and conveying of the same, and to authorize and regulate the laying of pipes and the location and construction of houses, tanks, reservoirs, and pumping stations for the storage of oil and gas.

17. To regulate, control, restrict, and prohibit the use and explosion of dynamite, firecrackers, or other explosives or fireworks of any and every kind, whether included in the above enumeration or not, and the sale of same, and all noises, amusements, or other practices or performances tending to annoy or frighten persons or teams, and the collection of persons on the streets or sidewalks or other public places in the city, whether for purposes of amusement, business, curiosity, or otherwise.

18. To direct, control, and prohibit the laying of railroad and street railway tracks, turnouts, and switches in the streets, avenues, and alleys of the city unless the same shall have been authorized by ordinance, and to require that all railroads, street railways, turnouts and switches shall be so constructed as not to interfere with the drainage of the city and with the ordinary travel and use of the streets, avenues, and alleys in the city, and to construct and keep in repair suitable crossings at the intersection of streets, avenues, and alleys and ditches, sewer and culverts, where the governing body shall deem it necessary, and to direct the use and regulate the speed of locomotive engines, trains, and cars within the city.

19. To make all suitable and proper regulations in regard to the use of the streets for street cars, and to regulate the speed, running, and operation of the same so as to prevent injury or inconvenience to the public.

20. To make such rules and regulations in relation to butchers as may be necessary and proper; to establish and erect market houses, and designate, control, and regulate market places and privileges.

Cross Reference. — As to power of municipalities to establish and maintain meat inspection, see § 106-161.

21. To prohibit and punish the abuse of animals.

22. To acquire, establish, and maintain cemeteries and to regulate the burial of the dead and the registration of deaths, marriages, and births.

Cross References.—As to registration of marriages by the register of deeds, see § 51-18. As to registration of births and deaths generally, see § 130-69 et seq.

23. To prohibit prize fighting, cock and dog fighting.

24. To regulate, restrict, and prohibit theaters, carnivals, circuses, shows, parades, exhibitions of showmen, and shows of any kind, and the exhibition of natural or artificial curiosities, caravans, menageries, musical and hypnotic exhibitions and performances.

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 two 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.—Cities and towns in Halifax: 1949, c. 1123.

Cross References.—As to retirement system for counties, cities, and towns, see § 128-21 et seq. As to the firemen's relief fund of North Carolina, see § 118-12 et seq.

26. To prevent and abate nuisances, whether on public or private property.

27. To regulate and prohibit the carrying on of any business which may be dangerous or detrimental to health.

28. To condemn and remove any and all buildings 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.

Cross References.—See § 160-182 et seq. As to zoning regulations, see § 160-172 et seq.

29. To provide for all inspections which may be expedient, proper, or necessary for the welfare, safety, and health of the city and its citizens, and regulate the fees for such inspection.

Cross Reference.—As to power of municipality to establish and maintain meat inspection, see § 106-161.

30. To require any or all articles of commerce or traffic to be guaged, inspected, measured, weighed, or metered, and to require every merchant, retail trader or dealer in merchandise of property of any description which is sold by weight or measure to have such weights and measures sealed and to be subject to inspection.

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. 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.

Local Modification. — Cumberland and cities therein: 1941, c. 153, s. 2(a); Surry: 1947, c. 178; cities and towns in Orange: 1941, c. 319; city of Greensboro: 1947, c. 392; city of Kings Mountain: 1951, c. 626; city of Roanoke Rapids: 1949, c. 3; city of Winston-Salem: 1947, c. 392; town of Bryson City: 1947, c. 655; town of Warrenton: 1951, c. 631.

32. To regulate the emission of smoke within the city but no regulation relative to the emission of smoke shall extend to the acts of an employee or servant of a railroad company in making necessary smoke when stoking or operating a coal burning locomotive.

33. To license, prohibit, and regulate pool and billiard rooms and dance halls, and in the interest of public morals provide for the revocation of such licenses.

34. To regulate and control electricians and electrical work and to enforce efficiency in the same by examination of such electricians and inspection of such electrical work.

35. To license and regulate all vehicles operated for hire in the city. To require that the operator of every jitney bus or taxicab and of every other motor vehicle, (other than jitney buses and taxicabs, operated under the jurisdiction

of the Utilities Commission of North Carolina), engaged in the business of transporting passengers for hire over the public streets of such city or town shall furnish and keep in effect for each such jitney bus, taxicab or other such motor vehicle so operated a policy of insurance or surety bond with sureties whose solvency shall at all times be subject to the approval of the governing body of such city or town, said policy of insurance or surety bond to be in such amount as may be fixed by the governing body of such city or town, not to exceed the sum of ten thousand dollars ($10,000.00), and to be conditioned on such operator responding in damages for any liability incurred on account of any injury to persons or damage to property resulting from the operation of any such jitney bus, taxicab or other such motor vehicle, and to be filed with the governing body of such city or town as a condition precedent to the operation of any such jitney bus, taxicab or other such motor vehicle over the streets of such city or town.

Local Modification.—Buncombe: 1939, c. 302.

36. To acquire property in fee simple and to use the lands now owned in fee simple or otherwise for the purpose of establishing and maintaining new cemeteries. To abandon any cemetery which has not been used for interment purposes within ten years, and to remove or consolidate such cemetery, so abandoned, and the monuments, tombstones, fences, walls and enclosures, and the contents of any graves therein, or any part of either, at its own expense, to or with any established cemetery maintained for interment purposes; to take possession of, convey or utilize the lands in such abandoned cemetery, or any part thereof, as may best subserve the interests of the city or town.

Cross References.—See § 160-2, subsection 3. As to the care of cemeteries, see §§ 160-258, 160-259 and 160-260.

36a. To require that drivers and operators of taxicabs engaged in the business of transporting passengers for hire over the public streets of any city or town, make application to and receive from the governing board of any such city or town a driver's or operator's permit before operating or driving any such vehicle. The governing board may refuse to issue such permit to any person who has been convicted of: a felony; a violation of any federal or State statute relating to the use, possession, or sale of intoxicating liquors; any federal or State statute relating to prostitution; any federal or State statute relating to the use, possession, or sale of narcotic drugs; or to any person who is not a citizen of the United States; or to any person who is a habitual user of intoxicating liquors or narcotic drugs; or to a person who has been a habitual violator of traffic laws or ordinances.

The governing body may revoke any such driver's or operator's permit if the person holding such permit is convicted of: a felony; or violation of any federal or State statute relating to the possession or sale of intoxicating liquors; or violation of any federal or State statute relating to prostitution; or any federal or State statute relating to the use, possession or sale of narcotic drugs; or repeated violations of traffic laws or ordinances; or becomes a habitual user of intoxicating liquors or narcotic drugs.

The governing body may also require operators and drivers of taxicabs to prominently post and display in each taxicab, so as to be visible to the passengers therein, permit, rates and/or fares, fingerprints, photographs, and such other identification matter as deemed proper and advisable. The governing body is also authorized to establish the rates which may be charged by taxicab operators, and may grant franchises to taxicab operators on such terms as it deems advisable.

Local Modification.—Cherokee: 1951, c. 216.

37. In cities or towns having a population of not less than twenty thousand

inhabitants, the governing bodies may, in their discretion, create and establish a civil service with reference to any and all of the employees of such municipalities, and prescribe rules and regulations for the conduct and government of such civil service.

Cross Reference. — As to merit system for certain departments and agencies of city, district, county, and State, see § 126-1 et seq.

38. Every incorporated city or town in the State, in addition to the other powers granted unto it by this chapter, shall have the following enumerated powers:

Whenever there shall be in any incorporated city or town a lot or lots owned by one or more persons, upon which water shall collect, either by falling upon the said lot or lots or collected thereon by drainage or otherwise from adjacent lots, no adequate drainage from which is provided by natural means, the governing body of any such city or town, upon being advised by the health officer of the said city or town, or the health officer of the county in which the town is located, that the conditions so existing are, or are liable to become, a nuisance and a menace to health in such city or town, is authorized to abate the nuisance, and to that end may proceed to abate it in the following manner:

Such city or town shall cause a survey to be made by a competent engineer to ascertain the means and methods and costs of providing an adequate drainage from such lot or lots and such engineer shall prepare plans and specifications to provide such drainage, with the estimated cost thereof and in making such survey he shall include therein the area of adjoining and adjacent lots which will be drained by such system of drainage. He shall also include in such survey the area of all adjoining and adjacent lots from which water flows and is gathered upon the lot or lots which are to be drained. The city or town shall thereupon cause notice to be published once in a newspaper published in the municipality, or if no newspaper is published in the municipality, then in a newspaper published in the county and of general circulation in the municipality, or if no newspaper is published in the county, said notice shall be posted in three public places in the municipality, which notice shall state in general and briefly the fact that a nuisance has been created and so declared, and that it is the purpose of the city or town to abate the same by causing a system of drainage to be put in, and that the cost thereof is to be paid or assessed in one of the ways hereinafter provided, that the report of the engineer is on file and subject to inspection, and that on a date to be named in the notice a hearing will be had before the board as to whether the plan shall be adopted and the assessment made, at which hearing the persons affected may be present and present such objections as they may have to the adoption of the report of the engineer and the doing of the work. Said notice shall also contain the names of the owners of the property affected in so far as the same can be ascertained on reasonable inquiry. Said notice shall be published or posted at least ten days before the hearing.

At the hearing provided for, if the governing body of the city or town shall determine that the work shall be done, and that the plans and specifications of the engineer are proper, it may adopt the said plans and specifications, and have the work done, either by letting a contract therefor or otherwise, and in the event a contract is let, it shall be advertised as is provided for in other cases of municipal work.

At the hearing above provided for, the governing body shall also determine the manner in which the cost of said work shall be paid or assessed, which shall be in either of the following ways: (a) Each and every lot affected by the plan or system shall be assessed with the cost thereof upon the following basis: that is to say, such proportion of the total cost of the survey and construction as the area of said lot bears to the total area as shown by the plans of the engineer when adopted by the governing body, which sum shall be due in such annual install-

ments as the governing body may determine, which shall not exceed five in number, and such installments shall bear interest; (b) The cost of the survey and the construction of the main drains shall be borne by the municipality, and the cost of the construction of tributary drains assessed against the lots on which such tributary drains are constructed so that each lot shall bear the expense of tributary drains constructed on it. Said assessments shall be due in such annual installments as the governing body may determine, which shall not exceed five in number, and such installments shall bear interest.

The area which shall be included within and drained by the plans and specifications as herein provided for is hereby declared to be a "special improvement district."

The full faith and credit of such city or town shall be pledged for the payment of the said notes and interest when due.

The powers herein contained and hereby conferred are additional to any other powers conferred by any other law or laws, and are not affected by any limitations imposed by any other law.

The assessments, when made, shall be a lien upon the property benefited, and shall be collectible by the same means and methods as are other assessments for local or special improvements as is provided for in article nine of this chapter.

All acts or proceedings done or taken under this subdivision of this section prior to February 17, 1923, shall be valid.

Cross Reference.—As to letting of contract by municipality, county, etc., see § 143-129 et seq.

39. The governing authorities of all cities and towns of North Carolina shall have the power to pass, alter, amend and repeal ordinances regulating the opening and closing hours of barber shops. (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; 1941, c. 272; 1943, c. 639, s. 1; 1945, c. 564, s. 2; 1947, c. 7; 1949, cc. 103, 352; 1949, c. 594, s. 2.)

I. General Consideration.
II. Streets and Parking.
III. Operators and Drivers of Taxicabs.
IV. Sunday Ordinances.
V. Powers as to Particular Matters.

I. GENERAL CONSIDERATION.

Cross References.—As to power to pass ordinances prior to the passage of this act, see § 160-52 et seq. As to power to appropriate money for local development, see § 158-1. As to power to avail itself of provisions of the bankruptcy law, see § 23-48. As to authority to aid and co-operate with the federal government and housing authorities in the planning, construction and operation of housing projects, see § 157-40 et seq.

Editor's Note.—The second 1921 amendment added subsection 38. The first 1923 amendment added to subsection 25 the provision for group insurance, and the second 1923 amendment made changes in subsection 38.

The 1925 amendment made subsection 11 applicable to alleys, and provided for the purchase of land necessary for closing streets or alleys.

The 1935 amendment added all of subsection 35 except the first sentence, and the 1939 amendment added subsection 39. The 1941 amendments added that part of subsection 31 which appears after the word "city" in the first paragraph thereof.

The 1943 amendment inserted subsection 36a, and the 1945 amendment added the last sentence thereof. Prior to the 1947 amendment the second paragraph of subsection 31 was not applicable to municipalities of 20,000 or less.

The first 1949 amendment added the last sentence of subsection 25. The second 1949 amendment added at the end of subsection 5 the words "including public libraries and equipment for the same." And the third 1949 amendment rewrote subsection 32.

Session Laws 1945, c. 176, made subsections 35, 36 and 36(a) of this section applicable to the town of Rockingham in Richmond County.

For acts relating to parking meters in certain localities not affected by chapters 20 and 136 of the General Statutes, see Session Laws 1947, c. 54 (city of Shelby); c. 66 (town of Laurinburg); c. 735 (town

of Mooresville); c. 1035 (Cabarrus county). And see Session Laws 1947, c. 675, amended by Session Laws 1949, c. 573, relating to city of Statesville.

For comment on the 1923 amendments see 1 N. C. Law Rev. 274, 277; on the 1943 amendment, see 21 N. C. Law Rev. 358; on the 1949 amendment, see 27 N. C. Law Rev. 474. As to comment in regard to control over grade crossings, see 2 N. C. Law Rev. 102.

Control of Municipal Territory and Affairs.—"When a municipal corporation is established it takes control of the territory and affairs over which it is given authority to the exclusion of other governmental agencies. The object of incorporating a town or city is to invest the inhabitants of the municipality with the government of all matters that are of special municipal concern, and certainly the streets are as much of a special and local concern as anything connected with a town or city can well be. It ought, therefore, to be presumed that they pass under the exclusive control of the municipality so soon as it comes into existence under the law. Gunter v. Sanford, 186 N. C. 452, 120 S. E. 41 (1923)." Parsons v. Wright, 223 N. C. 520, 27 S. E. (2d) 534 (1943).

General Statutes Supplement Charter Provisions.—The provisions of a municipal charter are supplemented by the General Statutes of the State. Parsons v. Wright, 223 N. C. 520, 27 S. E. (2d) 534 (1943).

Municipal corporations have no inherent police powers and can exercise only those conferred by this section and such powers as are conferred are subject to strict construction. Kass v. Hedgpeth, 226 N. C. 405, 38 S. E. (2d) 164 (1946).

Incinerator for Disposition of Garbage.—An incinerator operated by a city for the burning of its garbage comes within the authority conferred upon it by statute and, its operation being a purely governmental function, exercised as a local agency of State government, the city is not liable for an injury caused by defect therein to an employee, in the absence of statutory provision to the contrary. Scales v. Winston-Salem, 189 N. C. 469, 127 S. E. 543 (1925).

Recovery of Excess Tax.—In order to recover money paid a municipality as a license tax in excess of the amount the town was lawfully authorized to collect, and in the absence of statutory regulations, or under the common law, it is necessary that the one so paying should have done so under protest at the time or under circumstances of duress or such as would endanger his person or property; and where the payment has been voluntarily made, the action may not be successfully maintained. Blackwell v. Gastonia, 181 N. C. 378, 107 S. E. 218 (1921).

Cited in Mewborn v. Kinston, 199 N. C. 72, 154 S. E. 76 (1930); Williamson v. High Point, 213 N. C. 96, 195 S. E. 90 (1938); Shuford v. Waynesville, 214 N. C. 135, 198 S. E. 585 (1938); Hodges v. Charlotte, 214 N. C. 737, 200 S. E. 889 (1939); Petty v. Lemmons, 217 N. C. 492, 8 S. E. (2d) 616 (1940); Murphy v. High Point, 218 N. C. 597, 12 S. E. (2d) 1 (1940); Sanders v. Smithfield, 221 N. C. 166, 19 S. E. (2d) 630 (1942); Suddreth v. Charlotte, 223 N. C. 629, 27 S. E. (2d) 650 (1943).

II. STREETS AND PARKING.

Authority to Lay Out and Open Streets.—A municipal corporation is usually given express power by its charter to lay out and open streets. Such charter provisions are supplemented by our general statutes. Under the power thus conferred the municipal authorities are the sole judges of the necessity or expediency of exercising that right. Its power over its streets is exclusive. Waynesville v. Satterthwait, 136 N. C. 226, 48 S. E. 661 (1904); Moore v. Meroney, 154 N. C. 158, 69 S. E. 838 (1910); Michaux v. Rocky Mount, 193 N. C. 550, 137 S. E. 663 (1927). Authorities of the county embracing such municipality are precluded from exercising the same power within the same territory. Parsons v. Wright, 223 N. C. 520, 27 S. E. (2d) 534 (1943).

Closing Streets.—Defendant town, in co-operation with the federal and State authorities in procuring the construction of an underpass and the elimination of two grade crossings, closed two of its streets at the railroad crossings. This action was instituted by property holders adjacent to the railroad tracks and along one of the closed streets, alleging that the order closing the streets was ultra vires and resulted in the creation of a nuisance causing injury to plaintiffs' property. It was held that defendant town had authority, under express provision of its charter and under this section to close the said streets at the crossings in the interest of public welfare, and therefore the closing of the streets was in the exercise of a discretionary governmental power with which the courts can interfere only in instances of fraud or oppression constituting a manifest abuse of discretion, and did not constitute a nuisance, and, in the absence of an allegation of abuse of discretion, defendant town's demurrer to the

complaint was properly sustained. Sanders v. Atlantic Coast Line R. Co., 216 N. C. 312, 4 S. E. (2d) 902 (1939).

Narrowing Sidewalk.—An abutting owner may not recover from a city damages resulting to his property by reason of the fact that the abutting sidewalk has been narrowed in order to widen the street under orders of the city commissioners, the width of the street and sidewalk being within the sound discretion of the commissioners. See also, § 160-78. Ham v. Durham, 205 N. C. 107, 170 S. E. 137 (1933).

License to Beg or Solicit Contributions on Streets.—A city ordinance in pursuance of subsection 11 of this section requiring a license to be issued by the municipal authorities to beg upon the city streets or to solicit contributions for charitable or religious purposes, in accordance with whether the person or purpose is ascertained by such authorities as worthy or whether the moneys solicited will be properly applied, is a valid and undiscriminating exercise of a police power, and not unlawful as an interference with the religious liberties of our people, or an obstruction to the lawful pursuit of their business. State v. Hundley, 195 N. C. 377, 142 S. E. 330 (1928).

The installation and maintenance of traffic lights by a municipality under authority of subsections 11 and 31, is in the interest of the public safety in the exercise of the police power, and is a discretionary governmental function. Hodges v. Charlotte, 214 N. C. 737, 200 S. E. 889 (1939).

Regulation of Parking of Vehicles.—A city ordinance prohibiting parking of automobiles on one side of a street on certain blocks where, because of the narrowness of the street, there is insufficient room for cars to pass between parked cars and a street-car track in the street, is valid in the light of subsection 31 of this section. State v. Carter, 205 N. C. 761, 172 S. E. 415 (1934).

This section, prior to the 1941 amendment of subsection 31, did not confer upon a municipality authority to enact ordinances imposing a parking fee or charge for a parking space. Rhodes v. Raleigh, 217 N. C. 627, 9 S. E. (2d) 389 (1940).

III. OPERATORS AND DRIVERS OF TAXICABS.

Licensing and Regulation in General.—The legislature has deemed it to be the part of wisdom to delegate to the various municipalities of the State the power to license, regulate and control the operators and drivers of taxicabs. In the exercise of this delegated power, it is the duty of the municipal authorities, in their sound discretion, to determine what ordinances or regulations are reasonably necessary for the protection of the public or the better government of the town; and when in the exercise of such discretion an ordinance is adopted, it is presumed to be valid; and, the courts will not declare it invalid unless it is clearly shown to be so. State v. Stallings, 230 N. C. 252, 52 S. E. (2d) 901 (1949); Victory Cab Co. v. Shaw, 232 N. C. 138, 59 S. E. (2d) 573 (1950).

Requiring Taxicab Drivers to Wear Distinctive Insignia.—It is not an unlawful, unreasonable or an arbitrary exercise of the police power which has been delegated to local municipal authorities by the legislature, for a city to require, as a condition incident to the privilege of operating a taxicab on its streets, that the driver of such taxicab shall wear a distinctive cap or other insignia while operating a taxicab, to show that he is a duly licensed taxicab driver. Such a requirement would seem to be reasonable and a protection to the public against unlicensed drivers or operators. State v. Stallings, 230 N. C. 252, 52 S. E. (2d) 901 (1949).

Requiring Taxicab Operators to Secure Liability Insurance.—An ordinance requiring operators of taxicabs or other motor vehicles for hire to secure liability insurance or enter into bond with personal or corporate surety is a valid exercise of the police power and expressly authorized by this section and does not violate the Fourteenth Amendment of the Federal Constitution, the operation of vehicles for gain being a special and extraordinary use of the city's streets, which it has the power to condition by ordinance uniform upon all coming within the classification. Watkins v. Iseley, 209 N. C. 256, 183 S. E. 365 (1936), citing Packard v. Banton, 264 U. S. 140, 44 S. Ct. 257, 68 L. Ed. 596 (1924).

Coverage of Indemnity Bond.—An indemnity bond for a taxi corporation did not cover liability for injuries inflicted prior to the execution of the bond. Manheim v. Virginia Surety Co., 215 N. C. 693, 3 S. E. (2d) 16 (1939).

IV. SUNDAY ORDINANCES.

Municipalities May Enact.—By virtue of this section the power to enact Sunday ordinances has been delegated to the municipalities of the State. State v. Tran-

tham, 230 N. C. 641, 55 S. E. (2d) 198 (1949).

Regulating the sale of merchandise, drinks, etc., on Sunday is a valid exercise of the police powers of an incorporated city or town. And while the service of meals within the municipality at restaurants, etc., is a necessity, permitting the sale of coffee, tea, etc., the sale of coca-cola as a part of the meals is not included, and a sale thereof as a part of the meal may be prohibited by ordinance. State v. Weddington, 188 N. C. 643, 125 S. E. 257 (1924).

V. POWERS AS TO PARTICULAR MATTERS.

Acquisition and Maintenance of Parks.—Under the provision of our general statutes, a city or town is given authority to acquire and maintain parks for the use of its citizens beyond its corporate limits, and to provide suitable streets or ways of access thereto for the purpose. Berry v. Durham, 186 N. C. 421, 119 S. E. 748 (1923).

Lease of Part of Municipal Building.—A city has authority under this section to lease an auditorium in its municipal building which was equipped at the time the building was erected with a ticket booth and a moving picture projecting equipment, it appearing that the lease does not involve property held in trust for the use of the city, or property devoted to governmental purposes, although administrative offices of the city are located elsewhere in the building. Cline v. Hickory, 207 N. C. 125, 176 S. E. 250 (1934).

License Tax on Automobiles.—Section 20-97 provides for a city automobile license of one dollar, and a license for more than that amount is invalid, if levied on ownership alone, for this section is not contrary to § 20-97 and they must be construed together. State v. Jones, 191 N. C. 371, 131 S. E. 734 (1926).

Regulation of Dance Halls.—Cities have power, among other things, to license, prohibit, and regulate dance halls, by express provisions of this section, and in the interest of public morals provide for the revocation of such licenses, as valid exercise of the State's inherent police power, made applicable to cities and towns generally. State v. Vanhook, 182 N. C. 831, 109 S. E. 65 (1921).

An ordinance requiring the consent of the board of directors of the city before keeping a dance hall therein is not objectionable as an arbitrary exercise of power, or as being at the pleasure of the board, but comes within its limited legal discretion, which the courts will not permit it to abuse, but will not disturb in the absence of its abusive use. State v. Vanhook, 182 N. C. 831, 109 S. E. 65 (1921).

Regulation of Markets.—A city in the exercise of statutory authority may enact a valid penal ordinance as affecting the health of its citizens, and under its police power, require that meats, fish, oysters and perishable matter be sold at a sanitary market building containing refrigeration and other sanitary methods, under proper inspection, where adequate accommodation may be obtained at a reasonable rental, not for profit, and may exclude such business within a prescribed territory therefrom, the location of the market-house being reasonably suitable to the business or trades specified. Angelo v. Winston-Salem, 193 N. C. 207, 136 S. E. 489 (1927).

Ordinance against Keeping Cows.—An ordinance forbidding the keeping of cows within a certain portion of the city is valid. State v. Stowe, 190 N. C. 79, 128 S. E. 481 (1925).

Forbidding Lumber Yards in Residential Sections.—In Turner v. New Bern, 187 N. C. 541, 122 S. E. 469 (1924), the principle was laid down: "Under the provision of this section and under the provision of its charter authorizing a city to pass needful ordinances for its government not inconsistent with the law to secure the health, quiet, safety—general welfare clause—within its limits, etc., it is within the valid discretionary exercise of the police powers of the municipality to pass an ordinance forbidding the erection of lumber yards within a long established, exclusively residential portion, and when this discretionary power has not been abused the courts will not interfere." Angelo v. Winston-Salem, 193 N. C. 207, 136 S. E. 489 (1927).

§ 160-201. Salary of mayor and other officers.—The governing body of any city may by ordinance fix the salary of the mayor of such city or heads of departments or other officers. (1917, c. 136, sub-ch. 5, s. 6; C. S., s. 2788.)

Cross References.—As to provisions as to salary of mayor and other officers under Plan A, see § 160-311; under Plan B, see § 160-320; under Plan C, see § 160-337; and under Plan D, see § 160-346.

§ **160-202. Enumeration of powers not exclusive.** — The enumeration of particular powers by this subchapter shall not be held or deemed to be exclusive; but in addition to the powers enumerated or implied therein, or appropriate to the exercise thereof, the city shall have and may exercise all other powers which under the Constitution and laws of North Carolina now are or hereafter may be granted to cities. Powers proper to be exercised, and not specially enumerated herein, shall be exercised and enforced in the manner prescribed by this subchapter; or when not prescribed herein, in such manner as shall be provided by ordinance or resolution of the governing body. (1917, c. 136, sub-ch. 5, s. 3; C. S., s. 2789.)

Cited in Rhodes v. Raleigh, 217 N. C. 627, 9 S. E. (2d) 389 (1940).

§ **160-203. Police power extended to outside territory.** — All ordinances, rules, and regulations of the city now in force, or that may hereafter be enacted by the governing body in the exercise of the police powers given to it for sanitary purposes, or for the protection of the property of the city, unless otherwise provided by the governing body, shall, in addition to applying to the territory within the city limits, apply with equal force to the territory outside of the city limits within one mile in all directions of same, and to the rights of way of all water, sewer, and electric light lines of the city without the corporate limits, and to the rights of way without the city limits, of any street railway company, or extension thereof, operating under a franchise granted by the city, and upon all property and rights of way of the city outside the corporate limits and the above-mentioned territorial limits, wheresoever the same may be located. (1917, c. 136, sub-ch. 5, s. 2; C. S., s. 2790.)

Cited in Murphy v. High Point, 218 N. C. 597, 12 S. E. (2d) 1 (1940).

§ **160-203.1. Powers over cemetery outside corporate limits.**—Any incorporated city or town which owns a cemetery situated outside the corporate limits of said city or town is hereby authorized to exercise the same powers in the same manner and to the same extent with respect to such cemetery as if such cemetery were located within the corporate limits thereof. (1951, c. 1044.)

Cross Reference.—As to care of cemeteries, see §§ 160-258 through 160-260.

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, 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.)

Cross Reference.—As to power to purchase real estate generally, see § 160-2, subsection 2.

Editor's Note.—The peculiar feature of this proceeding is the combination of a condemnation under eminent domain and special assessments for improvements in assessment districts. It is not intended to

supplant any powers given in special charters, but gives an alternative method of procedure. Another plan for making such improvements is contained in the local improvement statutes, § 160-78 et seq., in which the assessment plan is used but only for part of the expense, and the amounts of the assessments are determined through the governing body instead of by a special proceeding in court; and the condemnation of property would be a separate proceeding under the law of eminent domain. 1 N. C. Law Rev. 275.

Power Discretionary. — See note to § 160-205. Where it appears that the governing authorities of a town have taken lands to widen a street intersecting with other streets so as to lessen the danger to traffic thereon, and it is made to appear that doing so was a reasonable exercise of the discretion vested in them, the findings that such course was unnecessary is not binding on the Supreme Court, the question being, primarily, whether the administrative authorities of the town have so grossly and manifestly abused the exercise of their discretionary powers as to render their action ineffectual. Lee v. Waynesville, 184 N. C. 565, 115 S. E. 51 (1922).

The power to construct power lines and plants outside corporate limits is limited by the provisions of the Revenue Bond Act of 1935, since the Act expressly repeals inconsistent provisions of any prior general or special law, and under the provisions of the Revenue Bond Act a municipality may construct such lines and plants only in consonance with the policy of the Act and the authority therein given municipalities to provide such conveniences for the health, safety, and benefit of the citizens of the municipality. Williamson v. High Point, 213 N. C. 96, 195 S. E. 90 (1938).

Power of Extraterritorial Condemnation.—This and the following section expressly confer the power of extraterritorial condemnation where municipality has right to acquire property. Charlotte v. Heath, 226 N. C. 750, 40 S. E. (2d) 600, 169 A. L. R. 569 (1946).

Parks Outside of City.—The General Statutes giving power to cities and towns to acquire parks for its citizens outside of the corporate limits, and provide access for the public thereto, prevail whenever and to the extent there is no irreconcilable repugnancy with special charter provisions on the same subject. Berry v. Durham, 186 N. C. 421, 119 S. E. 748 (1923).

Paving of Dedicated Streets Outside City Limits.—This section gives a city the right to acquire streets "within or outside the city," and to "exercise the management and control of the streets," etc. The language is broad enough to give a city authority to pave streets outside the city that were dedicated to the city, there being no necessity to purchase same. High Point v. Clark, 211 N. C. 607, 191 S. E. 318 (1937).

Quoted in Raleigh v. Hatcher, 220 N. C. 613, 18 S. E. (2d) 207 (1942).

Cited in Durham v. Sou. R. Co., 185 N. C. 240, 117 S. E. 17 (1923); Winston-Salem v. Ashley, 194 N. C. 388, 139 S. E. 764 (1927); Winston-Salem v. Smith, 216 N. C. 1, 3 S. E. (2d) 328 (1939); Murphy v. High Point, 218 N. C. 597, 12 S. E. (2d) 1 (1940).

§ **160-205. By condemnation.**—If such governing body, board, commission or department of the government of such city are unable to agree with the owners thereof for the purchase of such land, right of way, privilege, or easement, for the purposes mentioned in the preceding section, or for a site for city hall purposes, condemnation of the same for such public use may be made in the same manner and under the same procedure as is provided in chapter Eminent Domain, article 2; and the determination of the governing body, board, commission, or department of government of such city of the land necessary for such purposes shall be conclusive. (1917, c. 136, sub-ch. 4, s. 1; 1919, c. 262; C. S.,. s. 2792; 1923, c. 181.)

Cross Reference.—As to condemnation proceedings, see § 40-11 et seq.

Editor's Note.—The 1923 amendment changed this section by empowering municipalities to condemn land for a site for a city hall, as well as for the various purposes mentioned in § 160-204. 1 N. C. Law Rev. 277.

Attempt to Acquire under § 160-204 Prerequisite to Condemnation.—Under the provisions of this section before a city may take lands by condemnation to widen its streets it is necessary for it to allege and prove that it has first attempted to acquire them by purchase as provided by § 160-204. Winston-Salem v. Ashby, 194 N. C. 388, 139 S. E. 764 (1927).

Same—Property of Persons under Disability.—Under this section an attempt by a city to acquire lands of owners before proceeding to condemn the lands is a preliminary jurisdictional fact. But the stat-

ute does not contemplate the useless formality of attempting to acquire the property of persons under disability, such as minors. Winston-Salem v. Ashby, 194 N. C. 388, 139 S. E. 764 (1927).

City Charter Inconsistent with Section.—The right of eminent domain of a municipality can be exercised only in the mode pointed out in the statute conferring it; and where the method prescribed for the city or town in its charter is inconsistent with or repugnant to this section by the express terms the proceedings given under the municipal charter will have to be followed in condemnation of lands for the use of its streets. Clinton v. Johnson, 174 N. C. 286, 93 S. E. 776 (1917).

Improvements No Bar to Condemnation.—The governing authorities of a town are not estopped to condemn land for the widening or improvement of its streets by reason of an owner having put extensive improvements on his land a long time prior to the time it was condemned for that purpose, the power of condemnation, in cases of this character, being a continuing one to be exercised when and to the extent that the public good may require it. Lee v. Waynesville, 184 N. C. 565, 115 S. E. 51 (1922).

Condemnation to Widen State Highway within City.—A petition by a municipality to condemn land upon allegations that the land sought to be condemned was necessary to widen a part of the State highway within the city limits, which project had been approved by an ordinance for the acquisition of such land under an agreement with the State Highway Commission providing that the city should secure and dedicate the right of way and the Highway Commission should perform the construction work, was held to state a cause of action, since the city is given express authority by this and the following section to condemn land for such purpose. Raleigh v. Hatcher, 220 N. C. 613, 18 S. E. (2d) 207 (1942).

County Highway May Not Be Condemned.—This section does not imply legislative authority upon a municipality to condemn portions of county highways in the construction of a hydroelectric generating system. Yadkin County v. High Point, 217 N. C. 462, 8 S. E. (2d) 470 (1940).

Condemnation for Pipe Lines Outside of City Limits.—The city of Charlotte was authorized by its charter to extend its public services, including that of water and sewerage, to those living beyond the city limits, and to acquire the facilities used for said purposes, including pipe lines, and this right being existent, under this section city had the right to exercise its power of eminent domain to condemn lands and property rights for said purposes. Charlotte v. Heath, 226 N. C. 750, 40 S. E. (2d) 600, 169 A. L. R. 569 (1946).

Constitutionality of Private Statutes.—The acquisition of land to be used to connect a railroad in which the State and counties own an interest with the city's public wharves and docks for water commerce, and necessary to continue or develop the industries of its citizens, is for a public use, and not subject to the exception that the city, in taking the right of way by condemnation from the owner, according to the provisions of its charter and the General Statutes, was acting in violation of the Constitution in taking private property for a public use; and the private statutes specifically authorizing the proceedings are constitutional and valid. Hartsfield v. New Bern, 186 N. C. 136, 119 S. E. 15 (1923).

Cited in Williamson v. High Point, 213 N. C. 96, 195 S. E. 90 (1938).

§ 160-206. Powers in addition and supplementary to powers in charters.—It is the intention of §§ 160-206 to 160-221 that the powers herein granted to cities for the purpose of improving their streets and improving their drainage and sewer conditions shall be in addition and supplementary to those powers granted in their charters, and in any case in which the provisions of these sections are in conflict with the provisions of any local statute or charter, then the governing body of any such municipality may in its discretion proceed in accordance with the provisions of such local statute or charter, or, as an alternative method of procedure, in accordance with the provisions of these sections. (1923, c. 220, s. 1; C. S., s. 2792(a).)

Quoted in Raleigh v. Hatcher, 220 N. C. 613, 18 S. E. (2d) 207 (1942).

Cited in Greensboro v. Bishop, 197 N. C. 748, 150 S. E. 495 (1929).

§ 160-207. Order for condemnation of land; assessment districts; maps and surveys; hearing.—When it is proposed by any municipal corpora-

tion to condemn any land, rights, privileges or easements for the purpose of opening, extending, widening, altering or improving any street or alley, or changing or improving the channel of any branch or watercourse, for the purpose of improving the drainage conditions, or the laying and construction of sanitary, storm or trunk sewer lines in such municipality, an order or resolution of the governing body of the municipality at a regular or special meeting shall be made stating generally, or as nearly as may be, the nature of the proposed improvement for which the land is required, and shall lay out, constitute and create an assessment district extending in every direction to the limits of the area or zone of damage or special benefits to property resulting from said improvement, in the best judgment of said governing body. Said governing body shall cause such maps and surveys to be made showing the area of such assessment district and improvements proposed to be made, and of all the lands located in said assessment district, as it may deem necessary. The governing body shall appoint a time and place for its final determination thereof, and cause notice of such time and a brief description of such proposed improvement to be published in some newspaper published in said municipality for not less than ten days prior to said meeting. At said time and place said governing body shall hear such reasons as shall be given for or against the making of such proposed improvement, and it may adjourn such hearing to a subsequent time: Provided, however, that no district shall be declared as an assessment district by the governing body of any municipality, where the purpose of the proposed improvements contemplates the opening of a new or the widening of an existing street and the destruction or removal of buildings abutting thereon and where as much or more than fifty per cent of the costs of such proposed improvement is to be charged against the property within such district, unless and until a petition therefor signed by the owners of a majority of the street frontage to be assessed within said district shall be filed with the governing body of the municipality: Provided, further, that for the purpose of this section the word "owners" shall be considered to mean the owners of a life estate or estate by the entirety or the estate of inheritance, and shall not include mortgagees, trustees of a naked trust, trustees under deeds of trust to secure the payment of money, lienholders, or persons having inchoate rights of curtesy or dower, and that the owners of undivided interests in any land shall be deemed and treated as one person, and such land shall be sufficiently signed for when the petition is signed by the owner or owners of a majority in amount of such undivided interest: Provided, further, that the owner of a leasehold estate of ninety-nine years or longer shall be deemed to be the owner within the meaning of this section: Provided, further, that the governing bodies of municipalities and the officers, trustees, or boards of all incorporated or unincorporated bodies in whom is vested the right to hold and dispose of real property shall have the right by authority duly given to sign such petition. The determination of the governing body upon the sufficiency of the petition shall be final and conclusive. (1923, c. 220, s. 2; C. S., s. 2792(b); Ex. Sess. 1924, c. 107; 1927, c. 115.)

Construed with Other Sections. — This section should be construed in pari materia with the other sections relating to this subject so as to reasonably harmonize them, and when so construed it is in harmony with § 160-205. Winston-Salem v. Ashby, 194 N. C. 388, 139 S. E. 764 (1927).

Acquiring Land and Assessment for Improvements in Same Action. — Under the provisions of §§ 160-206 through 160-221 a city may in the same action proceed to acquire land for a street by condemnation and to have the assessment made for street improvements on the lands of the abutting owner. Efird v. Winston-Salem, 199 N. C. 33, 153 S. E. 632 (1930).

Who Must Sign Petition.—Where the abutting owners along a street of a city proposed to be widened by a municipality are to pay more than 50 per cent of its costs, the petition required by the statute to be filed with the municipality must show that it was signed by a majority of the owners along the street, including those who have the beneficial interest, and the majority of such persons must own a majority of the frontage of the lots along the street. Winston-Salem v. Coble, 192 N. C. 776, 136 S. E. 123 (1926).

Manner of Determining Equality.—The fact that the commissioners adopted a so-called "frontage rule" in fixing the value of the benefits or advantages to the different lots within the assessment district, is not sufficient to upset the apportionment made, without an additional finding that the application of such a rule resulted in hardship or injustice to the property owners in the particular case. It is only such practical equality as is reasonably attainable under the circumstances, and not absolute mathematical accuracy, that is to be expected in a matter of this kind. Durham v. Proctor, 191 N. C. 119, 131 S. E. 276 (1926).

Cited in Parsons v. Wright, 223 N. C. 520, 27 S. E. (2d) 534 (1943).

§ 160-208. Final order; petition for appointment of commissioners.—Whenever a final order shall be made by such governing body creating such assessment district and directing the laying out, opening, extending, altering, straightening or widening any street or alley, or the changing or otherwise improving any channel or watercourse for the purpose of improving the drainage conditions, or the building and construction of any sanitary, storm or trunk sewer lines in any such municipality, also its determination to condemn land, rights, privileges or easements for the purpose of making such proposed improvement, it shall determine what proportion of the estimated cost thereof, if any, shall be assessed against the city at large. After the adoption of such final order, as aforesaid, the governing body of such municipality shall file with the clerk of the superior court its petition, praying for the appointment of three commissioners to estimate and assess the expenses of the proposed improvement and to appraise and value the real property, rights, privileges or easements proposed to be taken or condemned for public use, also to appraise the value of the benefits accruing from such improvement to all property as shown and described on the maps or surveys of such assessment district. The petition shall set forth and describe the particular property, rights, privileges or easements proposed to be taken or condemned for the purposes, as aforesaid, also all other property situated and located in said assessment district, as shown on the maps or surveys of same, a copy or copies of which maps or surveys shall be filed with such petition, and such petition shall state the names and addresses of the owner or owners who have any interest in the lands therein which may be affected by the said condemnation or the said assessment of benefits, and whether any of the said owners are minors or without guardians. (1923, c. 220, s. 3; C. S., s. 2792(c).)

§ 160-209. Summons; return day; conduct of proceedings.—Upon the filing of said petition the clerk of the superior court shall issue a summons to the parties interested in the lands, rights, privileges or easements sought to be taken for public use and benefits proposed to be assessed, described in such petition, requiring them to appear at his office in the courthouse of said county on a day at least ten and not more than twenty days after the service of said summons, and answer or otherwise plead to the petition, or show cause why such condemnation, improvement and assessment of benefits should not be made. The said proceeding shall be conducted in all respects as are other special proceedings, and the clerk may issue process and make publication for parties and appoint guardians in like manner as is provided by law in the case of special proceedings. (1923, c. 220, s. 4; C. S., s. 2792(d).)

§ 160-210. Hearing; appointment of commissioners; damages and benefits.—The clerk of the superior court shall hear the proofs and allegations of the parties, and if no sufficient cause is shown against granting the prayer of the petition, he shall make an order appointing three disinterested competent freeholders of the county as such commissioners. The clerk shall issue a notice of their appointment to the said freeholders, to be served upon them by the sheriff of the county, and when so notified, they shall, within five days after being sworn to perform the duties which shall devolve upon them, go upon the premises and ascertain the value of the land, rights, privileges or easements to be taken for public use, determine by a majority vote the amount of damages, if any, to be paid for the

same. Said commissioners shall also go upon the lots or lands described in the petition and shown on such maps or survey of such assessment district, including the land condemned or any remainder thereof, and ascertain and determine by a majority vote the value of the benefits or advantages to such lots or lands accruing from the opening, extending, widening or improving said street or alley, or the changing or improving the channel of any branch or watercourse, or the building and construction of such sanitary, storm or trunk line sewers, both such benefits or advantages as are special to such lots and the benefits or advantages in common with other lots located in said assessment district: Provided, that if, in the judgment of the commissioners, any portion of the benefits accrue to the city at large, then a part of the estimated cost of such improvement, not exceeding the proportion fixed by said governing body in its final order or resolution, shall be assessed upon the city at large. Before making the reports hereinafter referred to the commissioners may take the evidence of witnesses as to the estimated cost of such improvement, the damage to such land or lands so condemned for public use, and the amount that should be paid therefor, and the benefits accruing to all other lands within such assessment district, either special or in common with others, as shown on such map or survey. In making the valuation and assessments aforesaid, the commissioners shall consider the loss or damage that may accrue to the owner or owners of the land condemned by reason of the surrender of the land or easement, and also any benefit or advantage such owner or owners may receive by reason of the making of such improvements, special to his land or in common with other lots located in said assessment district. (1923, c. 220, s. 5; C. S., s. 2792(e).)

§ **160-211. Written reports; land acquired on deposit of award.**—The said commissioners shall make a separate written report of their findings to the clerk of the superior court within ten days after notice of their appointment, relative to the land, rights, privileges or easements so condemned, together with the amount to be paid each owner thereof, and upon deposit with the said clerk of the amount determined by said commissioners to be due said owners by such municipality, such land, rights, privileges or easements shall be deemed to be acquired for public use. (1923, c. 220, s. 6; C. S., s. 2792(f).)

§ **160-212. Report of benefits or advantages; assessment; hearing; confirmation; lien.**—The said commissioners shall make a separate written report of their findings to the clerk of the superior court within ten days after notice of their appointment, relative to the benefits or advantages so appraised against said lands located in said assessment district, if any, giving the names of the owners thereof and the amount so appraised against each, with a brief description of the lots or parcels of land so appraised. The clerk shall thereupon deliver to the said governing body of such municipality a certified copy of such appraisal of benefits, which certified copy of appraisal of benefits, upon such receipt by said governing body, shall thereupon become an assessment roll, which the governing body shall cause to be deposited in the office of the clerk of the municipality for inspection by parties interested, and shall cause to be published a notice of the completion of such assessment roll, setting forth a description in general terms of the local improvement, and the time fixed for the meeting of the governing body for the hearing of allegations and objections relative to the adoption of such assessment roll, such meeting not to be earlier than ten days from the first publication of such notice, which publication shall be made in a newspaper published in such municipality. At the time appointed for the purpose, or at some other time to which it may adjourn, the governing body, or a committee thereof, must hear the allegations and objections of all persons interested who appear and make proof in relation thereto. The governing body may thereupon correct such assessment roll and either confirm the same or may set it aside and provide for a new appraisal of benefits in such proceeding pending before the clerk of the superior court. Whenever the governing body may confirm an assessment for such improvement the clerk of the municipality shall enter on the minutes of the governing body the date, hour and

minute of such confirmation, and from the time of such confirmation the assessments embraced in the assessment roll shall be a lien on the real property against which the same are assessed, superior to all other liens and encumbrances. Such governing body shall have the power and authority to provide, either in proceedings already completed or in those instituted after March 9, 1927, that such assessment shall be paid in cash of not less than five nor more than ten equal annual installments. (1923, c. 220, s. 7; C. S., s. 2792(g); 1927, c. 241.)

§ 160-213. Appeal; correction, etc., of assessment; interest; collection.—If a person assessed is dissatisfied with the amount of the charge, he may give notice of appeal in said proceeding pending before the clerk of superior court as hereinafter provided for. The governing body may correct, cancel or remit any assessment in connection with such improvement. After the assessment roll is confirmed a copy of the same must be delivered to the tax collector or other officer charged with the duty of collecting taxes, and such assessments shall be due and payable on the date on which taxes are payable and shall be collected like other taxes. In the event the governing body authorizes the payment of any assessment by installment, such installments shall bear interest at the rate of six per centum from the date of the confirmation of the assessment roll, and in case of the failure or neglect of any person to pay any such installments when the same shall become due and payable, then and in that event all of the installments remaining unpaid shall at once become due and payable. (1923, c. 220, s. 8; C. S., s. 2792(h).)

§ 160-214. Limit of assessments; exceptions; transfer to court for trial; appeal to Supreme Court.—The total value of the benefits assessed against the lots or land situated and located in said assessment district shall not exceed the total net amount of damages to be paid by the municipality to the owner or owners of the land or right condemned, together with the cost of such improvement as estimated by said commissioners. If any party to the proceedings shall be dissatisfied with the report of the commissioners, or the assessment levied by the said governing body [on either benefits or damages], he may file exceptions thereto with the clerk of the superior court within ten days after the filing of said report with said clerk, or in the event the appeal be from the levying of the assessment by said governing body, within ten days after the confirmation of such assessment roll by such governing body, and the issues of fact and law raised before the clerk in the said proceedings and upon the said exceptions shall be transferred to the superior court for trial [before a jury on issues of fact relating either to damages or to benefits] in like manner as provided in the case of other special proceedings pending before the clerk; and the said issues shall be tried at the first term after they are transferred, unless for a good cause shown a trial or hearing of the matter may be continued by the court: Provided, however, that the words in brackets in the preceding sentence shall not apply to the city of Greensboro, or to any city, town or municipality in any of the following counties: Alexander, Buncombe, Cabarrus, Cleveland, Davidson, Forsyth, Halifax, Harnett, Haywood, Hertford, Lincoln, Madison, Mitchell, Moore, Nash, Pender, Pitt, Rockingham, Rutherford, Stanly, Transylvania, Wake and Watauga. From the judgment of the superior court rendered in said proceeding any of the parties may appeal to the Supreme Court, as in other cases pending in the superior court: Provided, that if such municipality, at the time of the appraisal, shall pay into the court the sum appraised by the commissioners as being due any person for land so condemned and taken for public use, then and in that event such municipality may enter, take possession of and hold said lands notwithstanding the pendency of any appeal, and no appeal either to the superior court or to the Supreme Court shall hinder or delay such municipality in proceeding with such proposed improvement. (1923, c. 220, s. 9; C. S., s. 2792(i); 1931, c. 258.)

Editor's Note.—The 1931 amendment inserted the words in brackets and the proviso that it should not apply to the municipalities enumerated.

§ **160-215. Power of courts; practice and procedure.**—In all cases of appraisal under §§ 160-206 to 160-221, where the mode or manner of procedure is not expressly or sufficiently provided for herein, the court before which such proceedings may be pending shall have the power to make all necessary orders and give proper directions to carry into effect the object and intent of said sections, and the practice and procedure in such cases shall conform as nearly as may be to the ordinary practice and procedure in such court. (1923, c. 220, s. 10; C. S., s. 2792(j).)

§ **160-216. Change of ownership or transfer of property; effect.**—When any proceedings for appraisal of property or rights under §§ 160-206 to 160-221 shall have been instituted, no change of ownership or transfer of the real estate, or any interest therein, or of the subject matter of the appraisal, or any part thereof, shall in any manner affect such proceedings, but the same may be carried on and perfected as if no such conveyance or transfer had been made, or attempted to be made. (1923, c. 220, s. 11; C. S., s. 2792(k).)

§ **160-217. Proceedings to perfect title; possession by municipality; parties.** — If at any time after proceedings under §§ 160-206 to 160-221 shall have been instituted it shall be found that the title to any property or right proposed to be condemned, or which has been acquired or condemned, is defective, said municipality may proceed anew to acquire or perfect such title in the same manner as if no appraisal had been made, and at any stage of the new proceeding the court may authorize the municipality, if in possession of said property or rights, to continue in possession of the same, and if not in possession, to take possession and use such property or rights during the pendency and until the final conclusion of such new proceedings, and may stay all actions or proceedings against the municipality on account thereof, and in every case any party interested may conduct the proceedings to a conclusion if the municipality delays or omits to prosecute the same. (1923, c. 220, s. 12; C. S., s. 2792(l).)

§ **160-218. Recovery by municipality if title defective; limit of recovery.**—If the title to any property, rights, privileges or easements condemned in any proceedings instituted under §§ 160-206 to 160-221 shall prove to be defective, such municipality may by action recover of the person or persons who have received compensation for the property or rights so condemned any loss or damage the city may have sustained by reason of said defect of title, not exceeding the amount paid as compensation for the taking of said property or rights. (1923, c. 220, s. 13; C. S., s. 2792(m).)

§ **160-219. Notice served on nonresidents.**—Where any notice is required to be given in said proceeding before the court and the person to be notified is a nonresident of the county in which said proceedings are pending, the notice may be served by the sheriff or other lawful officer of any county in which the said person may be, and if the said person is a nonresident of the State, the notice may be served by the publication thereof once a week for four weeks in a newspaper published in such municipality, and the affidavit of the publisher, proprietor or foreman of said newspaper that said notice was so published shall be sufficient prima facie evidence or proof of such publication, and the time of notice shall be counted from the last day on which the notice was inserted in said newspaper. (1923, c. 220, s. 14; C. S., s. 2792(n).)

§ **160-220. Registration of final judgment; evidence; certificate under seal.**—A copy of the final judgment of the court, duly certified by its clerk, may be registered in the office of the register of deeds for said county, and said copy so certified, or a copy of the registry of such judgment duly certified by the register of deeds, shall be received as evidence in all courts of the State, and where the said copy is offered in evidence in any court not held in the county in which the

judgment is rendered, the certificate shall have affixed the official seal of the certifying officer. (1923, c. 220, s. 15; C. S., s. 2792(o).)

§ 160-221. Pay of appraisal commissioners; taxation as costs.—The commissioners appointed by the clerk of the superior court to make the appraisals provided for herein shall receive compensation at the rate of five dollars ($5.00) per day each, which compensation shall be taxed in the court costs of such proceedings. (1923, c. 220, s. 16; C. S., s. 2792(p).)

Part 3. Streets and Sidewalks.

§ 160-222. Power to make, improve and control.—The governing body of the city shall have power to control, grade, macadamize, cleanse, and pave and repair the streets and sidewalks of the city and make such improvements thereon as it may deem best for the public good, and may provide for and regulate the lighting of the public parks, and regulate, control, license, prohibit, and prevent digging in said streets and sidewalks, or placing therein of pipes, poles, wires, fixtures, and appliances of every kind, whether on, above, or below the surface thereof, and regulate and control the use thereof by persons, animals and vehicles; to prevent, abate, and remove obstructions, encroachments, pollution or litter therein; and shall have under its government, management, and control all parks and squares within or without the city limits established by the governing body for the use of the city except as otherwise provided. (1917, c. 136, sub-ch. 10, s. 1; C. S., s. 2793.)

Cross References.—See §§ 160-54 and 160-78 et seq. As to power of municipal governing body to close streets, etc., see subsection 17 of § 153-9.

Cited in Rhodes v. Raleigh, 217 N. C. 627, 9 S. E. (2d) 389 (1940); Murphy v. High Point, 218 N. C. 597, 12 S. E. (2d) 1 (1940).

§ 160-223. Increasing width of streets.—Any incorporated city or town in North Carolina where the State Highway and Public Works Commission or governing body of any city, town or county has constructed a road or street, or any part of any road or street through such city or town in North Carolina, and the governing body of said city or town desires to increase the width of said road or street or either, or both sides of same, so as to make such road or street conform to such width as the said governing body of said city or town may determine, the governing body of such city or town may increase the width of such road or street, on either side of same, such number of feet as may be necessary and may be determined by the governing body of such city or town: Provided, however, that the expense and cost of such increase in width to such road or street shall be borne by the city or town through which such road or street may run and without any expense or obligation, in any way, to the State Highway and Public Works Commission. (1925, c. 71, s. 1.)

§ 160-224. Right of eminent domain.—Whenever the governing body of any city or town in North Carolina deems it necessary to extend the width of any road or street in such city or town, and it becomes necessary for such governing body of such city or town to exercise the right of eminent domain, such governing body of such city or town shall have the power to exercise the right of eminent domain to the extent that the same is given such city or town, or governing body of such city or town, in the charter and amendments to the charter of such city or town or under the general law pertaining to such matters. (1925, c. 71, s. 2.)

§ 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 and Public Works Commission when such city or town undertakes to exercise any of the privileges by such sections granted. (1925, c. 71, s. 3.)

§ 160-226. Maps of streets and sidewalks in subdivisions within one mile of city or town limits to be approved by such city or town. — No lands, lying within a distance of one mile of the corporate limits of any town or city in North Carolina, shall be subdivided and proposed streets and sidewalks laid out, until a map of said subdivision, showing the location of the lots and the proposed streets and sidewalks, shall have been submitted to the governing body of such town or city, and approved by it as to the location of the streets and sidewalks. After approval of the map as provided in this section, the map shall be placed on the records of the county in which the land is situated. (1929, c. 186, s. 1.)

Cross Reference.—As to control corners in real estate developments, see §§ 39-32.1 through 39-32.4.

§ 160-227. Effect of laying out of streets and sidewalks without approval.—Should any lands, lying within a distance of one mile of the corporate limits of any town or city in North Carolina, be subdivided and streets and sidewalks laid out, without the approval of the governing body of the town and city as provided in § 160-226, upon the incorporation of such subdivision into the limits of such town and city, the said town or city shall have the right to extend its streets and sidewalks into and through said subdivision in conformity with the general plan of the town or city; and there shall be no damage recovered against the said town or city for so extending its streets and sidewalks except for purchase or condemnation value of lands so taken without regard to improvements or betterments placed thereon in contravention of this section and § 160-226: Provided, that this section and § 160-226 shall not apply to any subdivisions which have been laid out or are on March 16, 1929, in the process of being laid out. (1929, c. 186, s. 2.)

Part 4. Markets.

§ 160-228. Power to establish and control.—The governing body of the city shall have power to provide for the establishment, maintenance, and regulation of open-air or enclosed markets and slaughter places; may prescribe the time and place of sale of fresh meats, fish, and other marketable products therein; may rent the stalls in such manner and at such prices as it may deem best; may appoint a keeper of the market or other persons, who may summarily condemn all unsound products offered for sale in the city for food, and cause the same to be removed at the expense of the person offering it for sale. (1917, c. 136, sub-ch. 12, s. 1; C. S., s. 2794.)

Cross References.—See § 160-53. As to establishment and maintenance of market house in co-operation with county, see § 160-167 et seq.

Part 5. Protection of Public Health.

§ 160-229. Ordinances for protection of health; contracts for medical treatment and hospitalization of poor.—The governing body of cities is hereby given, within the city limits, all the power and authority that is now or may hereafter be given by law to the county health officer or county physician, and such further powers and authority as will best preserve the health of the citizens. The governing body is hereby given power to make such rules and regulations, not inconsistent with the Constitution and laws of the State, for the preservation of the health of the inhabitants of the city, as to them may seem right and proper.

The governing body of any city or town, when deemed for the best interest of the city or town, is hereby given authority to contract for periods not to exceed thirty years with public or private hospitals or institutions within or without the city or town for the medical treatment and hospitalization of the sick and afflicted poor of the city or town upon such terms and conditions as may be

agreed; provided, that the annual payments required under such contract shall not be in excess of ten thousand dollars ($10,000.00). The full faith and credit of each city or town shall be deemed to be pledged for the payment of the amounts due under said contracts. The contracts provided for in this paragraph and the appropriations and taxes therefor are hereby declared to be for necessary expenses within the meaning of the Constitution of North Carolina and shall be valid and binding without a vote of the majority of the qualified voters of each city and town and are hereby expressly exempted from any limitation, restriction or provisions contained in the County Fiscal Control Act and acts amendatory thereof as it may be applicable to cities or towns by virtue of § 160-409. No limitation, restriction or provision contained in any general, special, private or public-local law or charter of any city or town relating to the execution of contracts and the appropriation of money and levying of taxes therefor shall apply to the contracts authorized and executed under this paragraph: Provided, that the town of Lincolnton shall not enter into any such contract except after a public hearing at the county courthouse in Lincoln County, notice of which hearing shall be published for two successive weeks in a newspaper published in the county. The provisions of this paragraph shall not apply to the municipalities of Asheville, Charlotte, East Spencer, Gibsonville, Greensboro, Hamlet, High Point, Jamestown, Leaksville, Madison, Rockingham, Rocky Mount, Salisbury, Spencer, Tarboro and Wilmington. This paragraph shall not apply to the city of High Point in Guilford County; to the city of Elizabeth City in Pasquotank County; nor to the counties of Beaufort, Camden and Lee or any city or town therein; nor to any city or town in the counties of Ashe, Avery, Columbus, Davidson, Durham, Gates, Jackson, Martin and Rockingham, save and except the city of Reidsville; nor to the counties of Alexander, Ashe, Brunswick, Catawba, Clay, Cumberland, Davie, Edgecombe, Forsyth, Gaston, Halifax, Harnett, Haywood, Henderson, Iredell, Johnston, Jones, Lincoln, Macon, Montgomery, Moore, Pasquotank, Pitt, Robeson, Rowan, Stanly, Surry, Transylvania, Union, Vance, Warren, Washington, Wilkes and Yadkin. Before this paragraph shall apply to any city or town in Catawba County it must be submitted to a vote of the people of said Catawba County. (1917, c. 136, sub-ch. 5, s. 4; C. S., s. 2795; 1935, c. 64; 1943, c. 215; 1947, cc. 101, 160.)

Cross References.—As to duties of county health officer, see § 130-22; of county physicians, see § 130-23. As to authority to act jointly with the county board of health, see § 130-30.

Editor's Note.—The 1935 amendment added the second paragrapn, and the 1943 amendment made it applicable to the city of Reidsville.

The first 1947 amendment struck out "Edenton" from the list of municipalities in the third sentence from the end of the section. The second 1947 amendment struck out "Sampson" from the list of counties in the next to last sentence.

Taxes under This Section for Necessary Expense.—In accordance with the provisions of the last paragraph of this section the commissioners of a city proposed to enter into a contract with a public hospital providing for the payment by the city of the sum of $10,000 a year for thirty years, in consideration of the agreement of the hospital to give medical care and hospitalization to the indigent sick and afflicted poor of the city, and to levy a tax to raise revenue sufficient to meet such payments. It was held that the proposed tax was for a necessary municipal expense, and the approval of the qualified voters of the city was not a prerequisite to the validity of the tax. Martin v. Raleigh, 208 N. C. 369, 180 S. E. 786 (1935).

Cited in Brumley v. Baxter, 225 N. C. 691, 36 S. E. (2d) 281, 162 A. L. R. 930 (1945).

§ 160-230. Establish hospitals, pesthouses, quarantine, etc.—The governing body may acquire, establish, and maintain a hospital or hospitals, or pesthouses, slaughterhouses, rendering plants, incinerators and crematories in the city limits or within three miles thereof; may stop, detain, examine, or keep in a pesthouse or house of detention persons having or suspected of having any infectious, contagious, or other communicable disease; may quarantine the city or any part thereof; may cause all persons in the city limits to be vaccinated;

may, without incurring liabilities to the owner, remove, fumigate, or destroy furniture, bedding, clothing, or other property which may be found to be tainted or infected with any contagious or infectious disease, and may do all other proper and reasonable things to prevent or stamp out any contagious or infectious disease, and to preserve better the health of the citizens. All expenses incurred by the city in disinfecting or caring for any person or persons, by authority of this section, may be recovered by it from the person, persons, or property cared for; and when expense is incurred in caring for property, the same shall become a lien on such property. Any person who shall attempt by force, or by threat of violence, to prevent his removal or that of any other persons to the pesthouse, house of detention, or hospital, or who shall in any way interfere with any officer while performing any of the duties allowed by this article, shall be guilty of a misdemeanor. The governing body of any municipality, in order to provide for the management of a municipally owned hospital may lease such a hospital to a local, non-stock, non-profit corporation or association chartered to maintain and operate a community-type hospital upon such terms as the governing bodies of the municipality and of the hospital, corporation or association may agree, for a term of years, with or without consideration, and in the sound discretion of the governing body of said municipality. (1917, c. 136, sub-ch. 5, s. 4; C. S., s. 2796; Ex. Sess. 1938, c. 2, s. 13.)

Cross Reference.—As to joint county and municipal tuberculosis hospitals, see § 131-46 et seq.

Editor's Note.—The 1938 amendment added the last sentence.

Chapter 1081 of Session Laws 1949, which amended §§ 160-417 through 160-421 and struck out § 160-423, re-enacted all of chapter 2 of the Public Laws of 1938, as thereby amended.

Cited in Murphy v. High Point, 218 N. C. 597, 12 S. E. (2d) 1 (1940).

§ **160-231. Elect health officer.**—The governing body of any city may elect a health officer and create such other offices and employments as to them may seem right and proper, and fill the same and fix their compensation. (1917, c. 136, sub-ch. 5, s. 4; C. S., s. 2797.)

Cross Reference.—As to election of municipal health officer and his duties, see §§ 130-31 and 130-32.

§ **160-232. Regulate the management of hospitals.** — The governing body is hereby empowered to make rules and regulations for the management and conduct of all hospitals and sanatoriums which may have for treatment any patient afflicted with any infectious, contagious, or other communicable disease, and prescribe penalties for any violation of same. Any person violating any rule or regulation of the governing body shall be guilty of a misdemeanor, and upon conviction, except as herein otherwise provided, shall be fined not more than fifty dollars or imprisoned not more than thirty days. (1917, c. 136, sub-ch. 5, s. 5; C. S., s. 2798.)

§ **160-233. Provide for removal of garbage.**—The governing body may by ordinance provide for the removal, by wagon or carts, of all garbage, slops, and trash from the city; and when the same is not removed by the private individual in obedience to such ordinance, may require the wagons or carts to visit the houses used as residences, stores, and other places of habitation in the city, and also may require all owners or occupants of such houses who fail to remove such garbage or trash from their premises to have the garbage, slops, and trash ready and in convenient places and receptacles, and may charge for such removal the actual expense thereof. (1917, c. 136, sub-ch. 7, s. 3; C. S., s. 2799.)

Liability Growing from Power.—A city in exercising the governmental duty passed in accordance with this section is not liable in a civil action to one injured by the negligence of its drivers of the carts or wagons when so engaged, there being no provision of law conferring such right.

The fact that the city is permitted to charge the cost of such service does not

change its act from a governmental function to a business for profit, or affect its liability for the negligent acts of its agents or employees therein. James v. Charlotte, 183 N. C. 630, 112 S. E. 423 (1922).

§ **160-234. Abate or remedy menaces to health.**—The governing body, or officer or officers who may be designated for this purpose by the governing body, shall have power summarily to remove, abate, or remedy, or cause to be removed, abated, or remedied, everything in the city limits, or within a mile of such limits, which is dangerous or prejudicial to the public health; and the expense of such action shall be paid by the person in default, and, if not paid, shall be a lien upon the land or premises where the trouble arose, and shall be collected as unpaid taxes. (1917, c. 136, sub-ch. 7, s. 4; C. S., s. 2800.)

Cross References. — As to power to abate nuisances, see § 160-55. As to power of county physician or county health officer to abate nuisances, see § 130-25 et seq.

Part 6. Fire Protection.

§ **160-235. Establish and maintain fire department.**—The governing body shall have power to provide for the organization, equipment, maintenance and government of fire companies and a fire department; and, in its discretion, may provide for a paid fire department, and for this purpose may create any offices and employments and fix their compensation as to the governing body may seem right and proper. (1917, c. 136, sub-ch. 8, s. 1; C. S., s. 2801.)

Cross References.—As to power to provide for the relief of indigent and helpless members of the fire department, see § 160-200, subsection 25. As to election, compensation, duties, etc., of chief of fire department, see § 160-115 et seq. As to control of fire department under Plan C, see § 160-330, subsection 2.

Liability for Failure to Furnish.—The maintenance of a fire department for extinguishing fire without cost to the property owner is a governmental function, and there is no liability for failure to provide adequate pressure or service in extinguishing a fire. Howland v. Asheville, 174 N. C. 749, 94 S. E. 524 (1917).

Liability for Negligence.—A city, in the absence of statutory provision to the contrary, is not liable for any damage occasioned by the negligence of its fire department. Mack v. City Water Works, 181 N. C. 383, 107 S. E. 244 (1921). The extinguishment of fires is a function which a municipal corporation undertakes in its governmental capacity, and in connection with which, in the absence of statutory provision to the contrary, it incurs no civil liability, either for inadequacy in equipment or for the negligence of its employees. See Seales v. Winston-Salem, 189 N. C. 469, 127 S. E. 543 (1925); Mabe v. Winston-Salem, 190 N. C. 486, 130 S. E. 169 (1925).

Liability for Injuries to Firemen.—A city is not liable to firemen for injuries sustained in the performance of their duties, although the appliances used were defective, and known to be defective, by the city, for the maintenance of a fire department is a governmental function. Peterson v. Wilmington, 130 N. C. 76, 40 S. E. 853 (1902).

§ **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. (1917, c. 136, sub-ch. 8, s. 2; C. S., s. 2802.)

Cross Reference.—As to punishment for failure to establish fire limits, see § 160-125.

§ **160-237. Regulate construction of buildings.**—The governing body may make rules and regulations governing the erection and construction of buildings in the city so as to make them as safe as possible from fire. (1917, c. 136, sub-ch. 8, s. 3; C. S., s. 2803.)

Cross Reference.—See § 160-126 et seq.

§ 160-238. Fire protection for property outside city limits; injury to employee of fire department.—The governing body may provide, install, and maintain water mains, pipes, hydrants, and buildings and equipment, either inside or outside of the city limits, for protection against fire of property outside of the city limits, and within such area as the governing body may determine, not exceeding a boundary of two miles from the city limits, under such terms and conditions as the governing body may prescribe. Such governing body is hereby authorized to agree to furnish and to furnish protection against fire of property within an area of not more than twelve miles from the city limits upon such terms as such governing body may determine.

Any employee of a municipal fire department, while engaged in any duty or activity in connection with the provisions of this section, or pursuant to orders or instructions from his officers or superiors, shall have the same rights under the Workmen's Compensation Law, and shall be entitled to all such other rights, privileges, exemptions and immunities, as if such duty or activity were performed within the corporate limits of the municipality by which he was employed; and all such employees shall be entitled to all such rights, privileges, immunities and exemptions, irrespective of where such duties or activities are performed. In authorizing or permitting its fire department to answer fire calls outside the twelve-mile limit, and in answering such calls, the municipality and its employees in the fire department shall be considered as acting in a governmental capacity. (1919, c. 244; C. S., s. 2804; 1941, c. 188; 1947, c. 669; 1949, c. 89.)

Editor's Note.—The 1941 amendment added the second sentence of the first paragraph.

The 1947 amendment added the second paragraph, and the 1949 amendment rewrote the paragraph.

For comment on the 1941 amendment, see 19 N. C. Law Rev. 498.

Part 7. Sewerage.

§ 160-239. Establish and maintain sewerage system.—The governing body shall have power to acquire, provide, construct, establish, maintain and operate a system of sewerage for the city, and protect and regulate the same by adequate rules and regulations; and if it shall be necessary in obtaining proper outlets to such system to extend the same beyond the corporate limits, the governing body may condemn a right of way or rights of way to and for such outlets, and the proceedings for such condemnation shall be as herein provided for opening new streets and other purposes. It is the intention of this subchapter that the powers herein granted to municipalities shall not repeal any special or local law or affect any proceedings under any special or local law relative to providing, constructing, establishing, maintaining or operating any system of sewerage in any municipality, or for the raising of funds therefor, but shall be deemed to be additional and independent legislation for such purposes and to provide an alternative method of procedure for such purposes, and supplementary to those powers granted municipalities in their charters. In any case in which the provisions of this subchapter are in conflict with the provision of any local statute or charter, then the governing body of any such municipality may, in its discretion, proceed in accordance with the provisions of such local statute or charter, or as an alternative method of procedure in accordance with the provisions of this subchapter. (1917, c. 136, sub-ch. 7, s. 1; C. S., s. 2805; 1923, c. 166, s. 1.)

Cross References.—As to condemnation proceedings, see § 160-205. As to control of sewerage system under Plan C, see § 160-330, subsection 5.

Editor's Note.—All of this section except the first sentence was added by the amendment of 1923.

"These sections provide in a general way for the construction of a sewerage system in cities and towns, and the amending statute adds an alternative method of procedure to this general law and to any similar provision in special charters. The plan devised in the amend-

ing statute is for ascertaining the actual expense of constructing a sewerage system and assessing the same against the abutting property according to the front-foot rule. The method of procedure is given in detail, as to the ordinance or resolution by the governing body, publication of notice, assessment against property and a hearing thereon with right of appeal, and how the assessments are to be collected. The plan is somewhat similar to that contained in the local improvements statutes, § 160-78 et seq., except that this contemplates the payment of the whole expense by assessments instead of only a part thereof, as in case of local improvements. The plan is only alternative and supplementary, and is not intended to change any other method now provided for in general laws or special charters." 1 N. C. Law Rev. 274.

Effect on Prior Rights.—The fact that the General Assembly has authorized an alternative method of financing an installation of sewerage does not in anywise militate against the plan the town may adopt. This section, while giving towns the privilege of adopting a different system, does not deprive them of the power to proceed in the manner which its authorities see fit to adopt. Indeed, the statute is careful to provide that it shall not repeal any other method of proceeding that has been authorized or adopted for providing sewerage. McNeill v. Whiteville, 186 N. C. 163, 119 S. E. 6 (1923).

Liable for Maintenance of Nuisance.—In one case it was held that the maintenance of a free public sewer system by a city is an exercise of its police power for the public benefit, so that a city would not be liable for the death of a citizen from illness caused by the pollution of a stream by the sewer which emptied into it. Metz v. Asheville, 150 N. C. 748, 64 S. E. 881, 22 L. R. A. (N. S.) 940 (1909).

But this case seems to be contrary to the weight of authority both in North Carolina and elsewhere, and the rule sustained by the greater number of cases is that a municipal corporation, empowered to construct and maintain a sewerage system, may not exercise its power in such a way as to create a private nuisance without making compensation for the injury inflicted or being liable in damages therefor or to equitable restraint in a proper case, and it is a nuisance to pollute a stream by emptying sewage therein. Moser v. Burlington, 162 N. C. 141, 78 S. E. 74 (1913). It should be observed, however, that this case is concerned with damage to property whereas the Metz Case was concerned with injury to health.

Cited in Abbott Realty Co. v. Charlotte, 198 N. C. 564, 152 S. E. 686 (1930); Murphy v. High Point, 218 N. C. 597, 12 S. E. (2d) 1 (1940).

§ 160-240. Require connections to be made.—The governing body may require all owners of improved property which may be located upon or near any line of such system of sewerage to connect with such sewerage all water closets, bathtubs, lavatories, sinks, or drains upon their respective properties or premises, so that their contents may be made to empty into such sewer, and fix charges for such connections. (1917, c. 136, sub-ch. 7, s. 2; C. S., s. 2806.)

Section Does Not Apply to Property Located Outside City.—A municipality is not authorized by this section to compel owners of improved property located outside the city, but which may be located upon or near one of its sewer lines, or a line which empties into the city's sewerage system, to connect with the sewer line. Atlantic Constr. Co. v. Raleigh, 230 N. C. 365, 53 S. E. (2d) 165 (1949). See § 160-256 and note.

§ 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 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 system, or any extension thereof, shall be assessed upon the lots and parcels of land abutting directly on the lateral mains of such sewerage 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 five 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).)

§ **160-242. Ascertainment of cost; assessment.**—Upon the completion of the construction and establishment of any such sewerage 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).)

§ **160-243. Deposit for inspection; publication of completion; time for hearing objections.** — Immediately after such assessment roll has been completed, the governing body shall cause it to be deposited in the office of the clerk of the municipality for inspection by parties interested, and shall cause to be published in the same manner as the order or resolution authorizing such work, a notice of the completion of the assessment roll, setting forth a description in general terms of the improvement, and the time fixed for the meeting of the governing body for a hearing of allegations and objections in respect of the special assessment, such meeting not to be earlier than ten days from the first publication or posting of said notice. (1923, c. 166, s. 4; C. S., s. 2806(c).)

§ **160-244. Hearing on objections; action; entry of confirmation; lien of assessment; copy of roll to tax collector.**—At the time appointed for that purpose, or at some other time to which it may adjourn, the governing body, or a committee thereof, must hear the allegations and objections of all persons interested, who appear and make proof in relation thereto. The governing body may thereupon correct such assessment roll, either confirm the same or may set it aside, and provide for a new assessment. Whenever the governing body shall confirm an assessment for such a local improvement, the clerk of the municipality shall enter on the minutes of the governing body the date, hour and minute of such confirmation, and from the time of such confirmation the assessments embraced in the assessment roll shall be a lien on the real property against which the same are assessed, superior to all other liens and encumbrances. After the assessment roll is confirmed a copy of the same must be delivered to the tax collector, or other officer charged with the duty of collecting taxes. (1923, c. 166, s. 5; C. S., s. 2806(d).)

§ **160-245. Notice of appeal; service of statement; no stay of work; trial of appeal.**—If a person assessed is dissatisfied with the amount of the charge, he may give notice within ten days after such confirmation that he takes an appeal to the next term of the superior court of the county in which the municipality is located, and shall within five days thereafter serve a statement of facts upon which he bases his appeal; but the appeal shall not delay or stop the improvements. The appeal shall be tried at the term of court as other actions at law. (1923, c. 166, s. 6; C. S., s. 2806(e).)

§ **160-246. Correction, etc., of assessment; interest and penalties; power to set aside assessment.**—The governing body may correct, cancel or remit any assessment for a local improvement, and may remit, cancel or adjust the

interest or penalties on any such assessment. The governing body has 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 the local assessment made by it, and thereupon to make a reassessment. (1923, c. 166, s. 7; C. S., s. 2806(f).)

Editor's Note.—See note under § 160-90.

§ **160-247. Cash payment; installment payments; rate of interest; sale of property.**—In the event such governing body of such municipality shall provide that said assessment may be paid in equal annual installments, then and in that event the property owners shall have the option and privilege of paying for the improvement as hereinbefore provided for, in cash, or if they should elect and give notice of the fact in writing to the municipality within thirty days after the notice mentioned in the next succeeding section, they shall have the option and privilege of paying the assessment in not less than the number of equal annual installments as may have been determined by the governing body in the original order or resolution authorizing the improvement. Such installments shall bear interest at the rate of six per cent per annum from the date of the confirmation of the assessment roll, and in case of the failure or neglect of any property owner to pay any installment when the same shall become due and payable, then and in that event all of the installments remaining unpaid shall at once become due and payable, and such property shall be sold by the municipality under the same rules, regulations, rights of redemption and savings as are now prescribed by law for the sale of land for unpaid taxes. The whole assessment may be paid at the time of paying any installment by the payment of the principal and the interest accrued to that date. (1923, c. 166, s. 8; C. S., s. 2806(g).)

§ **160-248. Notice for payment of assessment; interest for nonpayment; maturity of installments; penalties.**—After the expiration of twenty days from the confirmation of an assessment roll the tax collector, or such other officer of the municipality as the governing body may direct so to do, shall cause to be published in a newspaper, or, if there is no such newspaper, shall cause to be posted in at least three public places therein a notice that any assessment contained in the assessment roll, naming and describing it, may be paid to him at any time before the expiration of thirty days from the first publication of the notice, without any addition. In the event the assessment be not paid within such time the same shall bear interest at the rate of six per cent per annum from the date of the confirmation of the assessment roll and shall become due and payable on the date on which taxes are payable: Provided, that when an assessment is divided into installments, one installment shall become due and payable each year on the date on which taxes are due and payable. If any assessment or installment thereof is not paid when due, it shall be subject to the same penalties as are now prescribed for unpaid taxes, in addition to the interest herein provided for. (1923, c. 166, s. 9; C. S., s. 2806(h).)

§ **160-249. Sewerage charges and penalties; no lien acquired.**—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. (1933, c. 322, s. 1; 1941, c. 106.)

Local Modification.—Mecklenburg, Transylvania: 1933, c. 322, s. 1.

Charges for Sewer Service Outside Corporate Limits.—A city is free to establish by contract or by ordinance such fees and charges for services rendered to residents outside its corporate limits as it may deem reasonable and proper. Atlantic Constr. Co. v. Raleigh, 230 N. C. 365, 53 S. E. (2d) 165 (1949). See note to § 160-255.

§ 160-250. Joint construction, operation, etc., of sewerage works by adjacent municipal corporations.—Two or more adjoining or adjacent municipal corporations shall have authority as hereinafter provided and set forth, by the adoption of resolutions to be passed by the governing body of each of said municipal corporations, to acquire, construct, improve, maintain and operate jointly, either within or without their corporate limits, sewerage works, including sewage treatment facilities, or any integral part of such works. In order to render more effectual the exercise of the authority herein granted, such municipal corporations may enter into any and all contracts which may be appropriate to that end, among or between themselves, or with other parties. (1939, c. 205, s. 1.)

§ 160-251. Power of corporations to issue bonds.—Municipal corporations so determining upon such sewerage works are hereby granted the same authority to issue bonds for the acquisition, construction and improvement of such works as is now given to any municipal corporation under the general laws of North Carolina, and particularly under the Municipal Finance Act, as amended. (1939, c. 205, s. 2.)

Cross Reference. — As to issuance of bonds under the Municipal Finance Act, see § 160-377 et seq.

§ 160-252. Apportionment of cost; establishment of charges.—The cost of any such joint acquisition, construction, improvement, maintenance and operation shall be apportioned between or among the participating municipal corporations in a manner to be by them agreed upon and determined. In order to pay such cost, such adjoining or adjacent municipal corporations may, by agreement between or among themselves, fix and establish reasonable charges for the use of such sewerage works. Any person, firm or corporation or other municipal corporation not participating in such joint construction and operation, who or which are living or are located outside of the corporate limits of such municipal corporations and desire to use such sewerage works, may be charged a reasonably higher rate for the use of such said works than that charged the users of the same who are living or located within the corporate limits of said participating municipal corporations. (1939, c. 205, s. 3.)

§ 160-253. Charges declared lien upon property.—The charges made for the use of said works shall be a lien upon the property served, and if any such charge shall not be paid within fifteen days after the same becomes payable, suit may be brought therefor in the name of the municipal corporation in which the property served is located, or the property, subject to the lien thereof, may be sold by the municipal corporation under the same rules and regulations, rights of redemption and savings, as are now or may hereafter be prescribed by law for the sale of land for unpaid taxes. Such municipal corporations shall have the right to establish reasonable rules and regulations for the use of said sewerage works and the collection of charges therefor, and said municipal corporations, through their officers or agents, are hereby authorized and empowered, in accordance with such reasonable regulations, to enter upon the premises of any person, firm or corporation using said sewerage works and failing to pay the charges therefor, and to disconnect the sewer line of such person, firm, or corporation

from the public sewer line or disposal plant; and any person, firm or corporation who shall connect with such public sewer line or disposal plant, or reconnect his or their property therewith, without a permit from the officer authorized to give the same, shall be guilty of a misdemeanor and shall be fined or imprisoned at the discretion of any court of competent jurisdiction. (1939, c. 205, s. 4.)

§ 160-254. Law applicable to joint works initiated or completed prior to effective date.—The authority to issue bonds for the purpose of financing in whole or in part works of the type herein made provision for, and the authority to perform any other acts authorized hereunder, may be exercised in connection with sewerage works the construction of which may have been jointly initiated or completed by two or more adjoining or adjacent municipal corporations prior to the effective date of this act; and all acts done and proceedings had in relation to such joint construction of such works, and all acts, resolutions or ordinances heretofore performed, adopted or enacted in connection with the authorization or issuance of bonds to finance such joint construction, if such bonds are otherwise authorized or issued under and in substantial compliance with any applicable general law of North Carolina, are hereby ratified, validated and confirmed. (1939, c. 205, s. 5; effective March 28, 1939.)

Part 8. Water and Lights.

§ 160-255. Establish and maintain water and light plants.—The city may own and maintain its own light and waterworks system to furnish water for fire and other purposes, and light to the city and its citizens and to any person, firm or corporation desiring the same outside the corporate limits, where the service is available, but shall in no case be liable for damages for a failure to furnish a sufficient supply of either water or light. And the governing body shall have power to acquire and hold rights of way, water rights, and other property, within and without the city limits. (1917, c. 136, sub-ch. 11, ss. 1, 2; C. S., s. 2807; 1929, c. 285, s. 1.)

Cross References.—As to control of light system under Plan C, see § 160-330, subsection 5. As to control of water system under Plan C, see § 160-329, subsection 4. As to report to Utilities Commission by municipality supplying gas or electricity, see § 62-98. As to co-operation with the Board of Conservation and Development in locating water supplies, see § 113-20.

Editor's Note. — The 1929 amendment inserted in this section the words "and to any person, firm or corporation desiring the same outside the corporate limits, where the service is available."

For comments on statute, see 12 N. C. Law Rev. 324; 13 N. C. Law Rev. 96.

This section is valid. Kennerly v. Dallas, 215 N. C. 532, 2 S. E. (2d) 538 (1939).

Power to Sell Electricity within Three-Mile Zone.—A municipality has the power to purchase electricity for its own use and the use of its citizens, and where it is authorized by general and special statutes to purchase current from a power company and to resell and distribute it at a profit to its citizens and to those within a three-mile zone therefrom, the grant of power to do so is effective in law under the authority of the legislature to grant municipal corporations any powers which promote the welfare of the public and the communities in which they are established unless prohibited by the organic law. Holmes v. Fayetteville, 197 N. C. 740, 150 S. E. 624 (1929).

Electricity May Be Distributed Beyond Corporate Limits.—A municipality has the power to purchase, generate, or distribute electricity for its own use and the use of its inhabitants, and is given legislative authority to extend its lines beyond its corporate limits for the purpose of selling electricity to nonresidents, and therefore a complaint in an action against a municipality alleging injury from negligent maintenance of power lines outside the corporate limits is not demurrable on the ground that the alleged negligence of its officers and employees was ultra vires the city. Kennerly v. Dallas, 215 N. C. 532, 2 S. E. (2d) 538 (1939).

City May Impose Conditions on Residents Outside Corporate Limits. — "Since it is optional with the city as to whether or not it will furnish water to residents outside its corporate limits and permit such residents to connect their sewer facilities with the sewerage system of the city, or with any other sewerage system which connects with the city system, it may fix the terms upon which the service may be ren-

dered and its facilities used. G. S. 160-255; G. S. 160-256; Williamson v. High Point, 213 N. C. 96, 195 S. E. 90 (1938); Kennerly v. Dallas, 215 N. C. 532, 2 S. E. (2d) 538 (1939); George v. Asheville, 80 F. (2d) 50, 103 A. L. R. 568 (1935)." Atlantic Constr. Co. v. Raleigh, 230 N. C. 365, 53 S. E. (2d) 165 (1949).

Liability of City.—In Mabe v. Winston-Salem, 190 N. C. 486, 130 S. E. 169 (1925), the question of a city's liability for loss by fire arose. The plaintiff contended that the city was liable as the position of the curb which kept the trucks from the hydrant was the proximate cause of the loss and that the loss was occasioned directly by the negligence of the city in repairing the streets. For a discussion of this case, see 4 N. C. Law Rev. 137, 140.

A city, which owns a municipal light and waterworks system, and operates the same in its governmental capacity, cannot be held liable in damages for failure to furnish a sufficient supply of either water or light. Harrington v. Greenville, 159 N. C. 632, 75 S. E. 849 (1912); Howland v. Asheville, 174 N. C. 749, 94 S. E. 524 (1917); Mabe v. Winston-Salem, 190 N. C. 486, 130 S. E. 169 (1925).

In Munick v. Durham, 181 N. C. 188, 106 S. E. 665 (1921), a recovery against the city was sustained, but that was a suit growing out of the settlement of claimant's water bill, and involving only the business relations between the individual and the city as vendor of water for profit, and not a matter concerning the water supply for general fire protection. Mack v. City Water Works, 181 N. C. 383, 107 S. E. 244 (1921).

Quoted in McGuinn v. High Point, 219 N. C. 56, 13 S. E. (2d) 48 (1941).

Cited in Williamson v. High Point, 213 N. C. 96, 195 S. E. 90 (1938); Murphy v. High Point, 218 N. C. 597, 12 S. E. (2d) 1 (1940); Tennessee Elec. Power Co. v. Tennessee Valley Authority, 306 U. S. 118, 59 S. Ct. 366, 83 L. Ed. 543 (1939).

§ **160-256. Fix and enforce rates.**—The governing body, or such board or body which has the management and control of the waterworks system in charge, may fix such uniform rents or rates for water or water service as will provide for the payment of the annual interest on existing bonded debt for such waterworks system, for the payment of the annual installment necessary to be raised for the amortization of the debt, and the necessary allowance for repairs, maintenance, and operation, and when the city shall own and maintain both waterworks and sewerage systems, including sewerage disposal plants, if any, the governing body shall have the right to operate such system as a combined and consolidated system, and when so operated to include in the rates adopted for the waterworks a sufficient amount to provide for the payment of the annual interest on the existing bonded debt for such sewerage system or systems, for the payment of the annual installment necessary to be raised for the amortization of such debt, and the necessary allowance for repairs, maintenance and operation. Such body shall fix the times when the water rents shall become due and payable, and in case such rent is not paid within ten days after it becomes due and payable, 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 the owner of property for which water is furnished under the rules and regulations of such body to pay the water rents when due, then the body, or its agents or employees, may cut off the water from such property; and when so cut off it shall be unlawful for any person, firm, or corporation, other than the body or its agents or employees, to turn on the water to such property, or to use the same in connection with the property, without first having paid the water rent and obtained permission to turn on the water: Provided, however, that for service supplied outside the corporate limits of the city, the governing body, board or body having such waterworks or lighting system 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 water may be cut off under the provision of this section for the failure of the occupant of the premises to pay his water bill, and such occupant is not the owner of the premises but occupies said premises as a tenant, it shall not be lawful for the board in charge or management of the waterworks to require the payment of such delinquent bill before turning on the water at the instance of a new and different tenant or occupant of said premises. This

proviso shall not apply in cases where the premises are occupied by two or more tenants serviced by the same water meter. (1917, c. 136, sub-ch. 11, s. 3; C. S., s. 2808; 1929, c. 285, s. 2; 1933, cc. 140, 353.)

Local Modification. — Ashe, Haywood, Mecklenburg, Transylvania: 1933, c. 353; Caldwell: 1933, c. 368.

Cross Reference.—As to general supervision of Utilities Commission over rates charged and services rendered by persons, companies, or corporations other than municipal furnishing electricity, water, etc., see §§ 62-30 and 62-122.

Editor's Note. — The 1929 amendment added the first proviso to this section, and the first 1933 amendment added the second proviso. Prior to the second 1933 amendment the first sentence of this section merely provided that the governing board should fix "such uniform rates for water as is deemed best."

Cited in Williamson v. High Point, 213 N. C. 96, 195 S. E. 90 (1938); Atlantic Constr. Co. v. Raleigh, 230 N. C. 365, 53 S. E. (2d) 165 (1949).

§ 160-257. Separate accounts for water system.—It shall be the duty of the governing body to keep a separate statement and account of the money received by the city from the waterworks system, and it shall be the duty of the said body to give preference to the waterworks system over the other departments of the city in such funds, and to provide for the proper upkeep of the waterworks system and an amount necessary for the enlargement of the waterworks system before turning over to the other departments the money so received. (1917, c. 136, sub-ch. 11, s. 4; C. S., s. 2809.)

Part 9. Care of Cemeteries.

§ 160-258. Care fund established.—The governing body is authorized to create a fund to be known as the perpetual care fund for the cemeteries, for the purpose of perpetually caring for and beautifying the cemeteries, and such fund shall be kept by the city as is provided for bequests and gifts for cemetery purposes; and the governing body may make contracts with lot or space owners in the cemeteries, obligating the city to keep up and maintain said lots or spaces in perpetuity upon payment of such sum as may be fixed by the governing body; and the governing body is further authorized and empowered to accept gifts and bequests for such purposes, or upon such other trusts as the donors may prescribe; and the governing body is authorized to set aside for such perpetual care fund such portion of the proceeds of sale of cemetery lots as the governing body may deem advisable. (1917, c. 136, sub-ch. 9, s. 1; C. S., s. 2810; 1927, c. 254.)

Cross References.—As to trust funds for the care of cemeteries, see §§ 65-7 through 65-12. As to power over cemetery outside corporate limits, see § 160-203.1.

Editor's Note. — The 1927 amendment changed the amount to be set aside from "an amount not exceeding twenty-five per cent" to "such portions as the governing body may deem advisable."

§ 160-259. Application of fund.—The principal of the funds appropriated by the governing body for caring for the cemeteries shall be held by the governing body for caring for and beautifying the cemeteries and improving the same. The income from the fund heretofore or hereafter made shall be used for the purpose of carrying out contracts with the individual or space owners for the perpetual care of individual plats and spaces. Any gifts heretofore or hereafter made to and received by the city or any of its officers shall be held and used as a sacred trust fund for the purposes and upon the conditions named in such gifts or bequests, and all such funds shall be kept and invested separately and shall not be used for any other purpose, or by the city in its affairs. (1917, c. 136, sub-ch. 9, s. 1; C. S., s. 2811.)

§ 160-260. Separate accounts kept.—The city treasurer shall keep a separate account of the cemetery funds, and a still further separate account of all special gifts or bequests made by persons for and in connection with the cemeteries and particular lots therein. The governing body has the power to make rules and regulations and adopt ordinances for the carrying out of the duties imposed by

this and the two preceding sections in regard to the care of cemeteries. (1917, c. 136, sub-ch. 9, s. 1; C. S., s. 2812.)

§ 160-260.1. Right to condemn and take over cemeteries adjoining municipal cemeteries.—When, in the opinion of the governing authority of any city or town, it is deemed advisable and desirable to acquire and take over any cemetery, graveyard or burial place adjoining any cemetery heretofore established by any city or town, then such governing authority of said city or town shall have the right to take over or acquire by condemnation or the right of eminent domain such adjoining cemetery, graveyard or burial place and in the acquisition of such adjoining cemetery, graveyard or burial place, the governing authority of any city or town shall exercise such authority according to the procedure and rights set forth in article 1 and article 2 of chapter 40 of the General Statutes entitled "Eminent Domain", as amended. The governing authority of such city or town shall have the right to acquire the title in fee simple to such adjoining cemetery, graveyard or burial place, and, in addition, shall have the right to establish perpetual care for such adjoining cemetery or cemeteries, including the right to adopt rules and regulations for decorating and beautifying said cemeteries, establishing walkways, care of graves and any and all other things necessary to be done for the care, preservation and upkeep of such cemeteries. As used in this section, the word "adjoining" shall be construed to mean not only cemeteries immediately adjacent to, bordering on or contiguous to the boundaries of a cemetery already established by a city or town but also shall include other cemeteries, graveyards and burial places which are immediately connected together successively or in a series of contiguous tracts or boundaries, and which when taken together constitute one unified body or tract of land. (1951, c. 385, s. 1.)

Editor's Note. — Section 2½ of the act inserting this and the following section provides that it "does not apply to any cemetery to which article 7 of chapter 65 of the General Statutes is applicable."

§ 160-260.2. Right to condemn easement for perpetual care.—In lieu of acquiring by condemnation a title in fee simple to the adjoining cemeteries as set forth in § 160-260.1, the governing authorities of said cities or towns shall have the right to condemn or acquire an easement or privilege for the purpose of establishing a system of perpetual care for such adjoining cemeteries. In condemning or acquiring such easement or privilege, the authority and procedure conferred by articles 1 and 2 of chapter 40 of the General Statutes entitled "Eminent Domain", as amended, shall be used for such purpose and shall be applicable to the exercise of the acquisition of the easement or privilege herein established. The proceedings under this section shall be limited to the acquisition of an easement or privilege for establishing perpetual care of such adjoining cemeteries, and the governing authority of any city or town exercising such rights shall have the authority to make reasonable rules and regulations for the decoration, adornment and upkeep of said adjoining cemeteries and to establish a perpetual care system or plan for such purpose. The word "adjoining", as used in this section, shall be construed and defined in the same way and manner as construed and defined in § 160-260.1. The governing authority of any city or town shall have the right to discontinue or take a nonsuit in such condemnation proceedings, whether exercised under § 160-260.1 or under this section, at any time prior to the entering of said final order or decree in such proceedings. Any condemnation proceedings instituted under this section shall not divest any person, firm or corporaton of any title held in fee simple but shall confer upon the governing authority of such city or town the right to establish perpetual care as herein set forth. The authority to acquire such adjoining cemeteries as set forth in § 160-260.1, as well as the authority to acquire the easement or privilege set forth in this section, and the exercise of same, are declared to be for a public purpose, and the governing authority of such city or town is authorized to expend public funds for such acquisition and for such perpetual care. (1951, c. 385, s. 2.)

Part 10. Municipal Taxes.

§ 160-261. Provision for listing and collecting taxes.—The governing body shall provide by an ordinance or otherwise means for the collection of taxes in the city and shall cause property to be listed for taxation which has not otherwise been listed as required by law. The governing bodies of cities and towns are in all respects vested with the same powers and authority as is now, or may hereafter be, vested in the board of county commissioners of the county in which such city or town is located, with respect to the allowance of discounts and charging penalties in the collection of taxes. (1917, c. 136, sub-ch. 6, s. 2; C. S., s. 2813; 1925, c. 183.)

Cross References. — As to taxes which may be levied by the governing body of the municipality, see § 160-56. As to assessment procedure for municipalities, see § 105-332 et seq.

Editor's Note. — The 1925 amendment added the second sentence.

§ 160-262. Unlisted taxables entered.—The officer who has charge of the collection of taxes in any city shall, after the most diligent inquiry, and by comparing his book with the county tax books, make out a list of all persons liable for poll tax, or for taxes on property, who have failed to return a list in the manner and in the time prescribed, together with the estimated value of all the property not listed, and shall enter such persons in a separate part of his book. (1917, c. 136, sub-ch. 6, s. 4; C. S., s. 2814.)

§ 160-263. Power and duties of tax collector.—The officer who has charge of the collection of taxes in any city shall, in the collection of taxes, be vested with the same power and authority as is given by the State to sheriffs for like purpose, and shall be subject to the same fines and penalties on failure or neglect of duty. It shall be his duty to collect all taxes levied by the governing body, and he shall be charged with the sums appearing on the tax list as due for city taxes. He shall at no time retain in his hands over three hundred dollars for a longer time than seven days, under a penalty of ten per cent per month to be paid to the city upon all sums so unlawfully retained. (1917, c. 136, sub-ch. 6, s. 1; C. S., s. 2816.)

Cross Reference.—As to general duties of a tax collector, see § 105-375.

§ 160-264. Settlement with tax collector.—In settlement with the city the tax collector shall be credited with all poll taxes and taxes on personal property which the governing body shall declare to be insolvent and uncollectible, and with such amounts as may be involved in suit by appeal from the ruling of the board, and he shall be charged with and shall pay over all other sums appearing on the tax list. After the accounts of the tax collector shall be audited and settled, the same shall be reported to the governing body, and when approved by it the same shall be recorded in the minute book of such body, and shall be prima facie evidence of correctness, and impeachable only for fraud or specified error. (1917, c. 136, sub-ch. 6, s. 1; C. S., s. 2817.)

§ 160-265. Bond of tax collector and other officers.—The governing body of the city shall require of the tax collector of the city, and any and all officers and employees, such bonds as it may deem necessary, and may pay the expenses of providing such bonds, including the bond of the mayor. (1917, c. 136, sub-ch. 6, s. 3; C. S., s. 2818.)

§ 160-266. License to plumbers and electricians.—The governing body may regulate and license plumbers and those engaged in the electrical wiring of buildings for light, power, or heat, and before issuing a license may require the applicant to be examined and to give bond in such sum and upon such conditions as the governing body may determine, and with such sureties as it may approve;

and such body may, for incompetency on the part of such licensees or for refusal to comply with the ordinances relating to such business, or for any other good cause, revoke any license issued hereunder. No person, firm, or corporation shall do any kind of plumbing or electrical wiring of buildings without first having obtained a license from the governing body. No license issued hereunder by the governing body shall be for more than one year, and same shall not be transferable or assignable except by the permission of the governing body. And no license shall be issued, as herein provided, before the license tax shall have been paid. (1917, c. 136, sub-ch. 6, ss. 6, 7, 8, 9; C. S., s. 2819.)

Article 19.

Exercise of Powers by Governing Body.

Part 1. Municipal Meetings.

§ **160-267. Legislative powers; how exercised.**—Except as otherwise specially provided, the legislative powers of the governing body may be exercised as provided by ordinance or rule adopted by it. (1917, c. 136, sub-ch. 13, s. 1; C. S., s. 2820.)

§ **160-268. Quorum and vote required.**—Every member of the governing body shall have the right to vote on any question coming before it. A majority shall constitute a quorum, and a majority vote of all members present shall be necessary to adopt any motion, resolution or ordinance. (1917, c. 136, sub-ch. 13, s. 1; C. S., s. 2821.)

§ **160-269. Meetings regulated, and journal kept.**—The city governing body shall from time to time establish rules for its proceedings. Regular and special meetings shall be held at a time and place fixed by ordinance. All legislative sessions shall be open to the public, and every matter shall be put to a vote, the result of which shall be duly recorded. The governing body shall not by executive session or otherwise consider or vote on any question in private session. A full and accurate journal of the proceedings shall be kept, and shall be open to the inspection of any qualified registered voter of the city. (1917, c. 136, sub-ch. 13, s. 1; C. S., s. 2822.)

Stated in State v. Baynes, 222 N. C. 425, 23 S. E. (2d) 344 (1942).

Part 2. Ordinances.

§ **160-270. How adopted.**—No ordinance shall be passed finally on the date on which it is introduced, unless by two-thirds vote of those present. No ordinance making a grant, renewal, or extension, whatever its kind or nature, of any franchise or special privilege shall be passed until voted on at two regular meetings, and no such grant, renewal, or extension shall be made otherwise than by ordinance. (1917, c. 136, sub-ch. 13, s. 3; C. S., s. 2823.)

Cross Reference. — As to the enforcement of ordinances, see § 160-14.

Cited in State v. Baynes, 222 N. C. 425, 23 S. E. (2d) 344 (1942).

§ **160-271. Ordinances amended or repealed.**—No ordinance or part thereof shall be amended or annulled except by an ordinance adopted in accordance with the provisions of this subchapter. (1917, c. 136, sub-ch. 13, s. 4; C. S., s. 2824.)

§ **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 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.)

Cross References. — As to mayor certifying ordinance on appeal, see § 160-16. As to ordinance certified by mayor being prima facie evidence as to its existence, see § 8-5.

In General.—The introduction of an ordinance of a town regulating the speed of trains backing upon the track, and properly proven, under this section, will not be regarded as error on appeal, when it is proved that upon the evidence in the case the jury has found, upon a trial without legal error, the negligence of the defendant's employees proximately caused the personal injury for which damages were sought in the action. Parker v. Seaboard, etc., Railway, 181 N. C. 95, 106 S. E. 755 (1921).

Where the ordinances of a city have not been published in book form, it is necessary in order to prove the existence of an ordinance, over an objection, to produce by the proper official the official records of the city or town, showing its passage and the entry on the records of the ordinance itself. Toler v. Savage, 226 N. C. 208, 37 S. E. (2d) 485 (1946), citing State v. Razook, 179 N. C. 708, 103 S. E. 67 (1920).

Cited in Hudson v. Gulf Oil Co., 215 N. C. 422, 2 S. E. (2d) 26 (1939).

Part 3. Officers.

§ 160-273. City clerk elected; appointment of deputy clerk; powers and duties. — The governing body shall, by a majority vote, elect a city clerk to hold office for the term of two years and until his successor is elected and qualified. He shall have such powers and perform such duties as the governing body may from time to time prescribe in addition to such duties as may be prescribed by law. He shall keep the records of the meetings. The person holding the office of city clerk at the time when any of the plans set forth in this subchapter shall be adopted by such city shall continue to hold office for the term for which he was elected, and until his successor is elected and qualified. The governing body shall also have the authority to appoint a deputy city clerk to act during the absence or disability of the city clerk, and may assign to said deputy the same powers, authority, and duties as are assigned to the city clerk.

The governing body may also provide that the city clerk shall have the powers and perform the duties of city treasurer, such powers and duties to be prescribed from time to time by the governing body and to be in addition to all powers and duties as may be prescribed by law, and in such event the city clerk shall be known as the "city clerk and treasurer." The powers conferred by the next preceding sentence are in addition to and not in substitution for those conferred by any other act, whether general, special, private or local, and every municipality may proceed under the provisions of said next preceding sentence, notwithstanding any conditions, restrictions or limitations contained in any other act, whether general, special, private or local. (1917, c. 136, sub-ch. 13, s. 1; C. S., s. 2826; 1941, c. 103; 1949, c. 14.)

Editor's Note. — The 1941 amendment added the second paragraph, and the 1949 amendment added the last sentence of the first paragraph.

§ 160-274. Vacancies filled; mayor pro tem.—If a vacancy occurs in the office of the mayor or governing body, the vacancy shall be filled by the governing body of the city. If the mayor is absent or unable from any cause temporarily to perform his duties, they shall be performed by one elected by the governing body of the city for that purpose, who shall be called "mayor pro tem.," and he shall possess the powers of mayor only in matters not admitting delay, but shall have no power to make permanent appointments. (1917, c. 136, sub-ch. 13, s. 6; C. S., s. 2827.)

Cross References.—As to powers of the governing body to fill vacancy in the office of mayor, see § 160-10. As to election of mayor pro tempore for a municipality under Plan A, see § 160-310; under Plan B, see § 160-317; under Plan D, see § 160-341.

§ 160-275. Accountant for each city and town required.—It shall be the duty of the governing body of every city and town in this State on or before

the first day of June, one thousand nine hundred thirty-one, and biennially thereafter before the first day of June in each odd year, to appoint some person of honesty and ability whose experience, training and qualifications have been approved by the Commission, as accountant for the municipality (or city accountant or town accountant or municipality accountant), to hold such office, or position at the will of the governing body or until such approval has been revoked by the Commission or until the appointment of his successor. The governing body in lieu of appointing an accountant as hereinabove required may impose and confer upon any municipal officer all the powers and duties herein imposed and conferred upon the municipal accountant and may revise and adjust the salary or compensation of any such officer upon whom such duties and powers are imposed or conferred: Provided, however, that if such officer upon whom such duties and powers are imposed or conferred should be a tax collecting officer of the unit, it shall be the duty of the governing body to require all his books and accounts to be audited semiannually by a certified public accountant or a public accountant, registered under §§ 93-1 to 93-13, and amendments thereto: Provided further, that in towns of less than one thousand inhabitants, according to the census of one thousand nine hundred thirty, such books and accounts shall not be required to be audited more often than once each year. (1931, c. 60, s. 70; 1931, c. 269; 1931, c. 296, s. 9.)

Cross Reference. — As to nature of accounting system, see § 160-290.

§ **160-276. Bond of accountant.**—The municipal accountant may be required to furnish bond in some surety company authorized to do business in North Carolina, the amount to be fixed by the governing body, which bond shall be approved by the governing body and by the Commission and shall be conditioned for the faithful performance of his duties imposed by law. (1931, c. 60, s. 71.)

§ **160-277. Bonds required.**—Every official, employee, or agent of any city who handles or has custody of more than one hundred dollars of such city's funds at any time shall, before assuming his duties as such, be required to enter into bond with good sureties, in an amount sufficient to protect such city, payable to such city, and conditioned upon the faithful performance of his duties and a true accounting for all funds of the city which may come into his hands, custody, or control, which bond shall be approved by the mayor and board of aldermen or other governing body and deposited with the city, except that such bond of any employee or employees may, in the discretion of the mayor and governing body, be conditioned only upon a true accounting for funds of the city. (1917, c. 136, sub-ch. 13, s. 15; C. S., s. 2828; 1945, c. 619.)

Editor's Note. — The 1945 amendment added the exception clause at the end of the section.

§ **160-278. Information requested from mayor.**—The governing body at any time may request from the mayor specific information on any municipal matter within its jurisdiction, and may request him to be present to answer written questions relating thereto at a meeting to be held not earlier than one week from the date of the receipt by the mayor of such questions. (1917, c. 136, sub-ch. 13, s. 2; C. S., s. 2829.)

Part 4. Contracts Regulated.

§ **160-279. Certain contracts in writing and secured.**—All contracts made by any department, board, or commission in which the amount involved is two hundred dollars or more shall be in writing, and no such contract shall be deemed to have been made or executed until signed by the officer authorized by law to sign such contract, approved by the governing body. Any contract made

as aforesaid may be required to be accompanied by a bond with sureties, or by a deposit of money, certified check, or other security for the faithful performance thereof, satisfactory to the board or official having the matter in charge, and such bonds or other securities shall be deposited with the city treasurer until the contract has been carried out in all respects; and no such contract shall be altered except by a written agreement of the contractor, the sureties on his bond, and the officer, department, or board making the contract, with the approval of the governing body. (1917, c. 136, sub-ch. 13, s. 8; C. S., s. 2831.)

Cross Reference.—As to procedure for letting a public contract, see § 143-129 et seq.

Cited in Abbott Realty Co. v. Charlotte, 198 N. C. 564, 152 S. E. 686 (1930).

§ 160-280. Separate specifications for contracts; responsible contractors; liability of separate contractors. — Every officer, board, department, commission or commissions charged with the duty of preparing specifications or awarding or entering into contract for the erection, construction or alteration of buildings in any county or city, when the entire cost of such work shall exceed ten thousand dollars, must have prepared separate specifications for each of the following branches of work to be performed: 1. Heating and ventilating and accessories. 2. Plumbing and gas fitting and accessories. 3. Electrical installations. 4. Air conditioning, for the purpose of comfort cooling by the lowering of temperature, and accessories. All such specifications must be so drawn as to permit separate and independent bidding upon each of the classes of work enumerated in the above subdivisions. All contracts hereafter awarded by any county, or city, or a department, board, commission, or commissioner, or officer thereof, for the erection, construction or alteration of buildings or any part thereof, shall award respective work specified in the above subdivisions separately to responsible persons, firms or corporations regularly engaged in their respective line of work.

Each separate contractor shall be directly liable to the county or city and to the other separate contractors for the full performance of all duties and obligations due respectively under the terms of the separate contracts and in accordance with the plans and specifications, which shall specifically set forth the duties and obligations of each separate contractor. For the purpose of this section, the wording, "separate contractor" is hereby deemed and held to mean any person, firm or corporation who shall enter into a contract with any county or city for the erection, construction or alteration of any building or buildings. (1925, c. 141, s. 1; 1929, c. 339, s. 1; 1931, c. 46; 1943, c. 387; 1945, c. 852.)

Cross References.—As to separate specifications for contracts awarded by the State, see § 143-128. As to bond given by contractor on municipal building, see § 44-14.

Editor's Note. — The 1929 amendment which substituted the word "may" for the words "must" and "shall" was repealed by the 1931 amendment. The 1943 amendment added the words "and accessories" at the end of subdivisions 1 and 2, and inserted subdivisions 3 and 4. The 1945 amendment added the second paragraph.

For comment on this section, see 4 N. C. Law Rev. 14.

§ 160-281. Validating certain conveyances.—All deeds made, executed, and delivered prior to August 23, 1924, for a good and valuable consideration, by incorporated cities and towns conveying lands used for park purposes, without authority to make and deliver such deed having been first granted by the General Assembly, are hereby in all respects validated, ratified, and confirmed as fully and completely as if said cities and towns had been granted authority of the General Assembly to make and deliver said deeds, and said deeds are hereby declared to be valid conveyances of the land and premises therein described. (Ex. Sess. 1924, c. 95.)

§ 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. (1951, c. 44.)

Part 5. Control of Public Utilities, Institutions, and Charities.

§ 160-282. Power to establish and control public utilities, institutions, and charities.—Any city shall have the right to acquire, establish, and operate waterworks, electric lighting systems, gas systems, schools, libraries, cemeteries, market houses, wharves, play or recreation grounds, athletic grounds, parks, abattoirs, slaughterhouses, sewer systems, garbage and sewage disposal plants, auditoriums or places of amusement or entertainment, and armories. The city shall have the further right to make a civic survey of the city, establish hospitals, clinics, or dispensaries for the poor, and dispense milk for babies; shall have the power to establish a system of public charities and benevolence for the aid of the poor and destitute of the city; for the welfare of visitors from the country and elsewhere, to establish rest rooms, public water closets and urinals, open sales places for the sale of produce, places for hitching and caring for animals and parking automobiles; and all reasonable appropriations made for the purposes above mentioned shall be binding obligations upon the city, subject to the provisions of the Constitution of the State. (1917, c. 136, sub-ch. 13, s. 11; C. S., s. 2832.)

Editor's Note.—See 12 N. C. Law Rev. 324.

Granting Exclusive Franchises. — No grant of franchise by a city is deemed exclusive unless so expressed by the grant, and by granting a franchise to a light and sewerage company the city does not deprive itself of its rights under this section, except as set out in the grant. Hill v. Elizabeth City, 291 F. 194 (1923).

Schools.—The power given by this section to acquire, establish and operate schools applies to any city whether or not it has adopted a plan of government under this chapter. And the grant of the power is by implication the grant of such power as is necessary to exercise the power expressly granted. Hailey v. Winston-Salem, 196 N. C. 17, 144 S. E. 377 (1928).

Quoted in McGuinn v. High Point, 219 N. C. 56, 13 S. E. (2d) 48 (1941).

Cited in Brumley v. Baxter, 225 N. C. 691, 36 S. E. (2d) 281, 162 A. L. R. 930 (1945).

§ 160-283. How control exercised.—1. Control over Departments.—The waterworks department, electric or gas light system, sewerage system, library system, park or park and tree commission system, or playground system, or any other public service owned, operated, or conducted by any city under separate organization or as a separate corporation under the control of any city in the State, which has been heretofore under the separate management and control of separate boards or corporations, may henceforth be under the management and control of the governing body of such city in the State.

2. Departments May Be Abolished.—In all cities except those which have adopted Plan C or Plan D, hereafter set forth, before the governing body shall have control or management of the waterworks, electric light, sewerage system, library system, park or park and tree commission system, or playground system, or any other public service owned, operated, or conducted by such city under separate organization or corporation, the governing body of the city, by two-thirds vote taken at two separate regular meetings of such governing body, shall pass an ordinance to the effect that the waterworks, electric or gas light system, sewerage system, library, park or park and tree commission system, or playground system, or any other public service owned, operated, or conducted by such city

under separate organization or corporation, or either of them, shall be abolished and the control and management shall be under the governing body of the city.

3. Property Vested in the City.—Upon the passage by the governing body of any city of such ordinance, the waterworks, electric or gas light system, sewerage system, the library system, and the park or park and tree commission system, and any other public service owned, operated, or conducted by such city under separate organization or corporation then in existence either under separate organization or under separate management or control or under separate corporation, shall immediately become the property of the city, and all land, real estate, rights, easements, franchises, choses, and property of every kind, whether real or personal, tangible or intangible, the title of which is vested in such separate corporation or board, shall be and become vested in such city, and the boards of water commissioners, electric light commissioners, sewerage commissioners, library boards, park boards, or park and tree commission boards, or the board or commission of any other public service owned, operated, or conducted by or on behalf of such city under separate organization or corporation shall cease to exist as a corporation; and all indebtedness, bonds, or other contracts and obligations of any nature incurred by, for, or on account of the waterworks, electric or gas light system, sewerage system, library system, park or park and tree commission system, or other public utility in the name of or by such corporation, or by such city in its behalf, or by the corporation and such city jointly, shall be and become the sole obligations of such city.

4. Same Procedure in Other Cases.—There shall be the same procedure with reference to the library system, park or park and tree commission system, or playground system by the governing body of all cities which shall have adopted Plan C or Plan D before such control and title shall become vested as hereinbefore stated.

5. Popular Vote Required.—In all cities, except those which have adopted Plan C or Plan D, hereafter set forth, before the foregoing provisions of this section shall become effective, such changes in the control and management of the waterworks, electric light, sewerage, etc., shall first be approved by a majority of the qualified voters of such municipality at any regular or special election held under the provisions of this subchapter., (1917, c. 136, sub-ch. 13, s. 9; C. S., s. 2833.)

§ **160-284. Ordinances to regulate management.**—The governing body of any city in the exercise of its control and management of the waterworks, electric light, sewerage system, library system, park or park and tree commission system, or any other public service owned, operated, or conducted by such city, shall have power to make rules, regulations, and ordinances in connection with the management thereof as they may deem necessary, and shall have power to enforce such rules, regulations, and ordinances. (1917, c. 136, sub-ch. 13, s. 10; C. S., s. 2834.)

Rates for Sewer Service Outside Corporate Limits.—A city is free to establish by contract or by ordinance such fees and charges for services rendered to residents outside its corporate limits as it may deem reasonable and proper. Atlantic Constr. Co. v. Raleigh, 230 N. C. 365, 53 S. E. (2d) 165 (1949).

§ **160-285. Additional property acquired.**—The governing body of any city shall have power to acquire such additional property as it may deem necessary for a better system of waterworks, electric light, sewerage, library, park or parks, or other public service owned, operated, or conducted by such city. Upon the adoption by the governing body of any city of any one of the plans of government provided for in this subchapter, the laws now in force in reference to the waterworks, electric light, sewerage, parks, libraries, or other public service owned, operated, or conducted by such city, shall not be repealed by this subchapter, but shall be construed with this subchapter and only repealed in so far as they are inconsistent with the provisions of this subchapter. (1917, c. 136, sub-ch. 13, s. 10; C. S., s. 2835.)

Part 6. Effect upon Existing Regulations.

§ **160-286. Existing rights and obligations not affected.**—All official bonds, recognizances, obligations, contracts, and all other instruments entered into or executed by or to the city before this subchapter takes effect in any city, and all taxes, special assessments, fines, penalties, forfeitures incurred or imposed, due or owing to the city, shall be enforced and collected, and all writs, prosecutions, actions and causes of action, except as is herein otherwise provided, shall continue without abatement and remain unaffected by this subchapter; and no legal act done by or in favor of the city shall be rendered invalid by its adoption of any plan of government provided for by this subchapter. (1917, c. 136, sub-ch. 13, s. 5; C. S., s. 2836.)

§ **160-287. Existing ordinances remain in force.**—All valid ordinances and resolutions of any city in force on March 6, 1917, and not inconsistent with the provisions of this subchapter, and all rules of procedure adopted by the governing body of any city, shall be and remain in full force and effect until repealed, annulled, or amended under the provisions of this subchapter, or under the provisions of the charter of such city, and all laws relative to any city, not in conflict with the provisions of this subchapter shall be and remain in full force and effect. (1917, c. 136, sub-ch. 13, s. 5; C. S., s. 2837.)

§ **160-288. Existing election laws remain in force.**—This subchapter shall not repeal or impair any general, special, or local election laws now in force in any city, but such general, special, or local laws shall be and continue in full force and effect except where clearly inconsistent with and repugnant to the provisions of this subchapter; and the municipal elections of such city shall continue to be held under and subject to the provisions of such special election laws except as herein otherwise provided: Provided, however, that in every case the governing body of any city shall have the right and power in its discretion and by an ordinance adopted by a two-thirds vote of the members of the entire governing body, to order a new registration of the voters of such city for any general, regular, or special municipal election held in such city for any purpose, unless excepted in this subchapter. (1917, c. 136, sub-ch. 13, s. 12; C. S., s. 2838.)

§ **160-289. General laws apply.** — All questions arising in the administration of the government of any city, and not provided for in this subchapter, shall be governed by the laws of the State in such cases made and provided. (1917, c. 136, sub-ch. 13, s. 13; C. S., s. 2839.)

Article 20.

Accounting System.

§ **160-290. Nature of accounting system.**—Accounting systems shall be devised and maintained which shall exhibit the condition of the city's assets and liabilities, the value of its several properties, and state of its several funds. Such systems shall be adequate to record in detail all transactions affecting the acquisition, custodianship, and disposition of values, including cash receipts and disbursements. The recorded facts shall be presented periodically to officials and to the public in such summaries and analytical schedules as shall be necessary to show the full effect of such transactions for each fiscal year upon the finances of the city and in relation to each department of the city government; and there shall be included distinct summaries and schedules for each public utility owned and operated by the city. In all respects, as far as the nature of the city's business permits, the accounting systems maintained shall conform to those employed by progressive business concerns and approved by the best usage. The

governing body shall have power to employ accountants to assist in devising such accounting systems. (1917, c. 136, sub-ch. 14, s. 1; C. S., s. 2840.)

Cross References.—As to duty of governing body to appoint an accountant, see § 160-275. As to separate accounts for water system, see § 160-257. As to separate accounts for cemetery, see § 160-260.

Article 21.

Adoption of New Plan of Government.

Part 1. Effect of Adoption.

§ **160-291. Continues corporation with powers according to plan.**—Any city which shall adopt, in the manner hereinafter prescribed, one of the plans of government provided in this subchapter shall thereafter be governed by the provisions thereof; and the inhabitants of such city shall continue to be a municipal corporation under the name existing at the time of such adoption, and shall have, exercise, and enjoy all the rights, immunities, powers, and privileges, and shall be subject to all the duties, liabilities, and obligations provided for herein or otherwise pertaining to or incumbent upon such city as a municipal corporation. (1917, c. 136, sub-ch. 16, s. 1; C. S., s. 2842.)

§ **160-292. Legislative powers not restricted.**—None of the legislative powers of a city shall be abridged or impaired by the provisions of this subchapter, but all such legislative powers shall be possessed and exercised by such body as shall be the legislative body of the city under the provisions of this subchapter. (1917, c. 136, sub-ch. 16, s. 2; C. S., s. 2843.)

§ **160-293. Ordinances remain in force.**—All ordinances, resolutions, orders, or other regulations of a city or of any authorized body or official thereof existing at the time when such city adopts a plan of government set forth in this subchapter shall continue in full force and effect until annulled, repealed, modified, or superseded. (1917, c. 136, sub-ch. 16, s. 3; C. S., s. 2844.)

§ **160-294. Mayor and aldermen to hold no other offices.**—The mayor or any member of the board of aldermen shall not hold any other office or position of profit, trust, or honor, or perform any other duties or functions than mayor or aldermen under the city government unless it shall be submitted to and approved by a majority of the qualified voters of the city at a regular or special election. (1917, c. 136, sub-ch. 16, s. 4; C. S., s. 2845.)

§ **160-295. Wards regulated.**—The territory of any city adopting any one of the plans of government provided for in this subchapter shall continue to be divided into the same number of wards existing at the time of such adoption, which wards shall retain their boundaries until same shall be changed under the provisions of this subchapter: Provided, that if the plan so adopted provides for a different number and arrangement of wards from that existing at the time of such adoption, then in such event the wards of such city shall be so changed and arranged as to conform to the provisions of the plan so adopted. (1917, c. 136, sub-ch. 16, s. 5; C. S., s. 2846.)

Part 2. Manner of Adoption.

§ **160-296. Petition filed.**—A petition addressed to the board of elections of the county in which the city is situated, in the form and signed and certified as provided in the next section, may be filed with the county board of elections. The petition shall be signed by qualified voters of the city to a number equal to at least twenty-five per cent of the qualified voters at the last election next preceding the filing of the petition. In cities having a population of eighty thousand (80,000), as shown by the last census, in which it is proposed to adopt plan

"B," the petition shall be signed by ten per cent of the qualified voters of said city. (1917, c. 136, sub-ch. 16, s. 6; C. S., s. 2847; 1933, c. 80, s. 5.)

Local Modification. — City of Fayetteville: 1945, c. 120.

Editor's Note. — The 1933 amendment added the last sentence relating to cities having a population of 80,000.

§ **160-297. Form of petition.**—The petition shall be in substantially the following form:

To the County Board of Elections of ..... County:

We, the undersigned qualified voters of the city, respectfully petition your honorable body to cause to be submitted to a vote of the voters of the city of ..... the following question: "Shall the city of ..... adopt the form of government defined as Plan (A, B, C, or D), as it is desired by petitioners and consisting of (describe plan briefly, as government by a mayor and councilors elected at large, or government by a mayor and councilors elected partly at large and partly from wards or districts, or government by three commissioners, one of whom shall be the mayor, or government by a mayor and four councilors with a city manager), according to the provisions of the chapter, Municipal Corporations, articles 22 to 25 inclusive."

Or, in case it shall be desired by such petitioners that two of such plans shall be submitted, then the question may be stated as follows:

"Shall the city of ..... adopt the form of government defined as Plan ..... or ..... (naming two of such plans as stated above), or remain under the present form of government?"

The petition may be in the form of separate sheets, each sheet containing at the top thereof the heading above set forth, and when attached together and offered for filing the several papers shall be deemed to constitute one petition, and there shall be endorsed thereon the name and address of the person presenting the same for filing. (1917, c. 136, sub-ch. 16, s. 7; C. S., s. 2848.)

§ **160-298. Election held.**—Within five days after the petition has been filed with the county board of elections, if the petition shall contain twenty-five per cent of the qualified voters as before set forth, the board of elections shall call an election in accordance with such petition. The board of elections shall cause notice of such election to be given at least once a week for four weeks in some newspaper of general circulation in the county in which the election is to be held, or at the courthouse door of the county in which the city is situated or at the door of the city or town hall, and the date of such election shall be fixed by the board not later than forty days from the receipt of such petition. The notice shall be signed by the chairman of the county board of elections, and the cost of publication thereof paid by the city. The election shall be held under, and governed and controlled by, the laws in force at the time of such election governing regular elections of such city. (1917, c. 136, sub-ch. 16, s. 8; C. S., s. 2849.)

§ **160-299. Petitions for more than one plan.**—Separate petitions for the submission of more than one of such plans may be filed in the form and manner hereinbefore provided, but if petitions for the submission of more than two of such plans shall be submitted at such election, those two plans shall be submitted at the election, petitions for which shall be first filed with the county board of elections. (1917, c. 136, sub-ch. 16, s. 9; C. S., s. 2850.)

§ **160-300. What the ballots shall contain.**—All ballots used in elections held upon the adoption of the plans of government herein set forth shall contain the name of the plan submitted, as Plan A, B, C, or D, or any two of such plans submitted, as the case may be, with a brief description of each plan submitted, as described in the petition, and shall also contain the existing form of government under the name "present form of government." The names of the plans and forms shall be so printed that in appropriate squares the voter may designate by a cross

(X) mark only the plan or form of government for which he casts his vote; if there shall be only one plan submitted, the letter and description of such plan and the "present form of government" only shall appear, and the voter shall express his preference between such plan and the "present form of government." If there shall be two plans submitted, then each of the plans shall be denominated and described on the ballot as herein set forth, and the "present form of government" shall also appear upon the ballot, and the ballot shall be so printed that in appropriate squares the voter may designate by a cross (X) mark only the plan or form of his first choice and the plan and form of his second choice. (1917, c. 136, sub-ch. 16, s. 10; C. S., s. 2851.)

§ **160-301. Form of ballots.**—Except that the crosses here shown shall be omitted, the ballots shall be printed substantially as follows:

(Form of ballot when only one plan is submitted:)

Special Municipal Election

Plan ..... (with brief description). ☒
Present Form of Government. ☐

(Form of ballot when two plans are submitted:)

Special Municipal Election

To vote for any plan or form of government, make a cross in the appropriate square to the right of the name of such plan or form.

Note your first choice in the first column.
Note your second choice in the second column.

Names of plans or forms	First Choice.	Second Choice.
Plan—(with brief description).	X	
Plan—(with brief description).		X
Present Form of Government.		

(1917, c. 136, sub-ch. 16, s. 11; C. S., s. 2852.)

§ **160-302. Series of ballots.**—The plans and forms on all ballots shall be printed in rotation as follows: The ballots shall be printed in as many series as there are plans or forms. The whole number of ballots to be printed shall be divided by number of series and the quotient so obtained shall be the number of ballots in each series. In printing the first series of ballots the names of each plan or form shall be arranged in the alphabetical order of the letters of the plans submitted, followed by the "present form of government." After printing the first series, the first plan or form shall be placed last and the next series printed, and the process shall be so repeated until each plan shall have been printed first an equal number of times. The ballots so printed shall be then combined in tablets or packages so as to have the fewest possible ballots having the same order of plans or forms printed thereon together in the same tablet or package. (1917, c. 136, sub-ch. 16, s. 12; C. S., s. 2853.)

§ **160-303. How choice determined.**—1. One Plan Submitted.—If only one of the plans herein set forth and the "present form of government" are submitted, the plan or form of government receiving a majority of the votes cast shall be declared the plan or form selected.

2. More than One Plan Submitted.—If two of the plans herein set forth and the "present form of government" are submitted, the plan or form receiving a

majority of first choice votes equal to a majority of all the ballots cast shall be declared the plan or form selected. If no plan or form shall receive such a majority, then the second choice votes received for each plan or form shall be added to its first choice votes, and the plan or form receiving the highest total of first and second choice votes equal to a majority of all ballots cast shall be declared the plan or form selected.

3. How Ballots Are Counted.—In counting the ballots, if two plans and the "present form of government" are submitted, the precinct officers shall enter the total number of ballots on a tally-sheet printed therefor. They shall also carefully enter on such sheet the number of first choice and second choice votes for each plan or form of government. Only one vote shall be counted for any one plan or form on any one ballot. If two votes are cast for the same plan or form, the higher choice only shall be counted. If but one choice is voted on a ballot, it shall be counted as a first choice. If more than one cross appears in the same choice column on any ballot, they shall be counted as choices with priority as between each other in the order in which they appear in the choice column. Ballots marked with more than two crosses shall be declared void. A tie between two or more plans or forms shall be decided in favor of the one having the largest number of first choice votes. (1917, c. 136, sub-ch. 16, ss. 13, 14; C. S., s. 2854.)

Part 3. Result of Adoption.

§ **160-304. Plan to continue for two years.** — Should any one of the plans of government provided for in this subchapter be adopted, the plan shall continue in force for the period of at least two years after beginning of the term of office of the officials elected thereunder; and no petition proposing a different plan shall be filed during the period of one year and six months after such adoption. (1917, c. 136, sub-ch. 16, s. 15; C. S., s. 2855.)

§ **160-305. City officers to carry out plan.**—It shall be the duty of the mayor, the governing body, and the city clerk and other city officials in office, and all boards of election and all election officials, when any plan of government set forth in this subchapter has been adopted by the qualified voters of any city or is proposed for adoption, to comply with all requirements of this subchapter relating to such proposed adoption and to the election of the officers specified in such plan, to the end that all things may be done which are necessary for the nomination and election of the officers first to be elected under the provisions of this subchapter and of the plan so adopted. (1917, c. 136, sub-ch. 16, s. 16; C. S., s. 2856.)

§ **160-306. First election of officers.**—The first election next succeeding the adoption of any of the plans provided for by this subchapter shall take place on Tuesday after the first Monday in May next succeeding such adoption, and thereafter the city election shall take place biennially on the Tuesday next following the first Monday in May, and the municipal year shall begin and end at ten o'clock in the morning following the day of election. (1917, c. 136, sub-ch. 16, s. 17; C. S., s. 2857.)

§ **160-307. Time for officers to qualify.**—On Wednesday after the first Monday in May following the adoption of any of the plans herein provided for, and biennially thereafter, the mayor-elect and the councilors-elect or commissioners shall meet and be sworn to the faithful discharge of their duties. The oath may be administered by the city clerk or by any justice of the peace, and a certificate that such oath has been taken shall be entered on the journal of the city council. At any meeting thereafter the oath may be administered in the presence of the city council to the mayor, or to any councilor or commissioner absent from the meeting on the first Wednesday after the first Monday in May. (1917, c. 136, sub-ch. 16, s. 18; C. S., s. 2858.)

Article 22.

Different Forms of Municipal Government.

Part 1. Plan "A." Mayor and City Council Elected at Large.

§ **160-308. How it becomes operative.**—The method of city government herein provided for shall be known as Plan A. Upon the adoption of Plan A by a city in the manner prescribed by this subchapter, such plan shall become operative, and its powers of government shall be exercised, as prescribed herein and in article 21 of this chapter. (1917, c. 136, sub-ch. 16, Part II, Plan A, ss. 1, 2; C. S., s. 2859.)

§ **160-309. Mayor's election and term of office.**—There shall be a mayor, elected by and from the qualified voters of the city, who shall be the chief executive officer of the city. He shall hold office for the term of two years from Wednesday after the first Monday in May following his election and until his successor is elected and qualified. (1917, c. 136, sub-ch. 16, Part II, Plan A, s. 3; C. S., s. 2860.)

Cross Reference. — As to election of mayor in municipalities not operating under one of the forms of government provided by the 1917 act, see § 160-10.

§ **160-310. Number and election of city council.** — The legislative powers of the city shall be vested in a city council. In cities of five thousand inhabitants and under the city council shall consist of three; in cities of five thousand to ten thousand the city council shall consist of five; in cities of ten thousand to twenty thousand inhabitants, the city council shall consist of seven; and in all over twenty thousand inhabitants the city council shall consist of nine. The councilmen shall be elected at large and from the qualified voters of the city. One of its members shall be elected by the council biennially as mayor pro tem. At the first election held in a city after its adoption of Plan A, the councilors shall be elected to serve for two years from Wednesday after the Monday in May following their election and until their successors are elected and qualified, and at each biennial city election thereafter the councilors elected to fill vacancies caused by the expiration of the terms of councilors shall be elected to serve for two years. The number of inhabitants shall be determined by the last United States government census or estimate. (1917, c. 136, sub-ch. 16, Part II, Plan A, s. 4; C. S., s. 2861.)

§ **160-311. Salaries of mayor and councilmen.**—The mayor shall receive for his services such salary as the city council shall by ordinance determine: Provided, however, that the salary of the mayor shall be within the following limits: In cities of five thousand inhabitants and under, not less than three hundred nor more than one thousand dollars. In cities of five thousand to ten thousand inhabitants, not less than five hundred dollars nor more than fifteen hundred dollars. In cities of ten thousand to twenty-five thousand inhabitants, not less than one thousand nor more than three thousand dollars. In cities of over twenty-five thousand inhabitants, not less than two thousand nor more than thirty-five hundred dollars. The number of inhabitants shall be determined by the last United States government census or estimate. The mayor shall receive no other compensation from the city, and his salary shall not be increased or diminished during the term for which he is elected: Provided, however, that the council first elected under this plan shall fix by ordinance the salary within the above limits of the mayor first elected hereunder and shall six months prior to the time of the expiration of its term fix by ordinance the salary within the above limits of the mayor who shall succeed the first mayor under this plan, and each council shall thereafter fix by ordinance the salary of succeeding mayors, but such ordinance shall not be binding in case another plan shall be adopted during the term of office of such council. The council may by a two-thirds vote of all its members, taken by call of the "yeas" and "nays," establish a salary for its members not exceeding two hundred dollars

each a year. Such salary may be reduced, but no increase therein shall be made to take effect during the year in which the increase is voted. (1917, c. 136; sub-ch. 16, Part II, Plan A, s. 5; C. S., s. 2862.)

§ **160-312. Officers elected by city council.**—All heads of departments and members of municipal boards, as their present terms of office expire, shall be elected by the city council: Provided, that the city council may by two-thirds vote at any time abolish, alter, or establish such departments and boards as it may by ordinance determine. A city attorney shall be elected by the city council, and the council may also elect a city solicitor. (1917, c. 136, sub-ch. 16, Part II, Plan A, s. 5; C. S., s. 2863.)

Cross Reference.—As to election of officers by governing bodies of municipalities not operating under one of the forms of government provided by the 1917 act, see § 160-9.

§ **160-313. Power of removal in mayor.**—The mayor may, with the approval of a majority of the members of the city council, remove any head of a department or member of a board, other than governing board, before the expiration of his term of office. The person so removed shall receive a copy of the reasons for his removal, and he may, if he desires, contest the same before the city council. He shall have the right to be represented by counsel at such hearing. (1917, c. 136, sub-ch. 16, Part II, Plan A, s. 7; C. S., s. 2864.)

§ **160-314. Veto power of mayor.** — Every order, ordinance, resolution, and vote relative to the affairs of the city, adopted or passed by the city council, shall be presented to the mayor for his approval. If he approves it, he shall sign it; if he disapproves it, he shall return it, with his objections in writing, to the city council, which shall enter the objections at large on its records, and again consider it. If the city council, notwithstanding such disapproval of the mayor, shall again pass such order, ordinance, resolution, or vote by a two-thirds vote of all the members of the city council, it shall then be in force; but such vote shall not be taken for seven days after its return to the city council. Every such order, ordinance, resolution, and vote shall be in force if it is not returned by the mayor within ten days after it has been presented to him. (1917, c. 136, sub-ch. 16, Part II, Plan A, s. 8; C. S., s. 2865.)

Part 2. Plan "B," Mayor and Council Elected by Districts and at Large.

§ **160-315. How it becomes operative.** — The method of city government herein provided for shall be known as Plan B. Upon the adoption of Plan B by a city in the manner prescribed by this subchapter, such plan shall become operative, and its powers of government shall be exercised, as is prescribed herein and in article 21 of this chapter. (1917, c. 136, sub-ch. 16, Part III, Plan B, ss. 1, 2; C. S., s. 2866.)

§ **160-316. Mayor's election and term of office.**—There shall be a mayor elected by and from the qualified voters of the city, who shall be the chief executive officer of the city. He shall hold office for the term of two years from Wednesday after first Monday in May following his election and until his successor is elected and qualified, and at each biennial city election thereafter the mayor shall be elected to serve for two years. (1917, c. 136, sub-ch. 16, Part III, Plan B, s. 3; C. S., s. 2867.)

Cross Reference.—As to election of mayor in municipalities not operating under a form of government provided by the 1917 act, see § 160-10.

§ **160-317. City council; election and term of office.**—The legislative powers of the city shall be vested in a city council. One of its members shall be elected biennially as its mayor pro tem. In cities of over eighty thousand (80,000) population, as shown by the last census, the city council or aldermen shall consist

of twelve members; one shall be elected from each ward by and from the qualified voters of that ward. On or before March 1, 1933, the governing body of each city of over eighty thousand (80,000) inhabitants shall, and it is made mandatory on them to divide the said city into twelve wards as nearly equal as possible as to population. In cities having more than seven wards the city council shall be composed of twelve members, of whom one shall be elected from each ward by and from the qualified voters of that ward, and the remaining members shall be elected by and from the qualified voters of the city. In cities having seven wards or less, the city council shall be composed of eleven members, of whom one shall be elected from each ward by and from the qualified voters of that ward, and the remaining members shall be elected by and from the qualified voters of the city. At the first election held in a city after its adoption of Plan B, the councilors elected from each ward shall be elected to serve for two years from Wednesday after first Monday in May following their election and until their successors are elected and qualified; and at each biennial city election thereafter the councilors elected to fill vacancies caused by the expiration of the terms of councilors shall be elected to serve for two years. (1917, c. 136, sub-ch. 16, Part III, Plan B, s. 4; C. S., s. 2868; 1933, c. 80, s. 1.)

Cross Reference.—As to election of commissioners in municipality not operating under one of the forms of government provided by the 1917 act, see § 160-5.

Editor's Note.—Public Laws 1933, c. 80, added the third and fourth sentences relating to cities of over 80,000.

§ 160-318. Officers elected by city council.—All heads of departments and members of municipal boards, as their terms of office expire, shall be elected by the city council: Provided, that the city council may by two-thirds vote at any time abolish, alter, or establish such departments and boards as it may by ordinance determine. A city attorney shall be elected by the city council, and the council may also elect a city solicitor. (1917, c. 136, sub-ch. 16, Part III, Plan B, s. 5; C. S., s. 2869.)

Cross Reference.—As to election of officers by commissioners of municipality not operating under the form of government provided by the 1917 act, see § 160-9.

§ 160-319. Power of removal in mayor.—The mayor may, with the approval of a majority of the members of the city council, remove any head of a department or member of a board before the expiration of his term of office. The person so removed shall receive a copy of the reasons for his removal, and he may, if he desires, contest the same before the city council. He shall have the right to be represented by counsel at such hearing. (1917, c. 136, sub-ch. 16, Part III, Plan B, s. 6; C. S., s. 2870.)

§ 160-320. Salaries of mayor and council. — The mayor shall receive for his services such salary as the city council shall by ordinance determine: Provided, however, that the salary of the mayor shall be within the following limits: In cities of five thousand inhabitants and under, not less than three hundred dollars nor more than one thousand dollars. In cities of five thousand to ten thousand inhabitants, not less than five hundred nor more than fifteen hundred dollars. In cities of ten thousand to twenty-five thousand inhabitants, not less than one thousand nor more than three thousand dollars. In cities of over twenty-five thousand inhabitants, not less than two thousand nor more than five thousand dollars, and it shall be mandatory that the mayor shall give his entire time and attention to the affairs of the city. The number of inhabitants shall be determined by the last United States government census or estimate. The mayor shall receive no other compensation from the city, and his salary shall not be increased or diminished during the term for which he is elected: Provided, however, that the council first elected under this plan shall fix by ordinance the salary within the above limits of the mayor first elected hereunder, and shall six months prior to the time of the expiration of its term fix by ordinance the salary, within the above

limits, of the mayor who shall succeed the first mayor under this plan, and each council shall thereafter fix by ordinance the salary of the succeeding mayors; but such ordinance shall not be binding as to succeeding mayors in case another plan shall be adopted during the term of office of such council. The council may be by two-thirds vote of all its members, taken by call of the "yeas" and "nays," establish a salary for its members not exceeding one hundred dollars each per year. Such salary may be reduced, but no increase therein shall be made to take effect during the year in which the increase is voted. (1917, c. 136, sub-ch. 16, Part III, Plan B, s. 7; C. S., s. 2871; 1933, c. 80, s. 2.)

Editor's Note.—Public Laws 1933, c. 80, increased the maximum salary in a city of over 25,000 inhabitants from $3,500 to $5,000, and made it mandatory that the mayor should devote his entire time to city affairs.

§ **160-321. Supervisory power of mayor.**—All heads of departments after their election by the city council or alderman, as provided for by § 160-318, shall be under the direction, control and supervision of the mayor during their tenure of office and until discharged by law. (1933, c. 80, s. 3.)

§ **160-322. Approval of contracts.**—No contract or obligation of whatever nature shall be binding upon the city until first approved by the majority of the city council or aldermen, and approved and countersigned by the mayor. (1933, c. 80, s. 4.)

§ **160-323. Veto power in mayor.**—Every order, ordinance, resolution, and vote relative to the affairs of the city, adopted or passed by the city council, shall be presented to the mayor for his approval. If he approves it, he shall sign it; if he disapproves it, he shall return it, with his objections in writing, to the city council, which shall enter his objections at large on its records, and again consider it. If the city council, notwithstanding such disapproval of the mayor, shall again pass such order, ordinance, resolution, or vote by a majority vote of all the members of the city council, it shall be in force; but such vote shall not be taken for seven days after its return to the city council. Every such order, ordinance, resolution, or vote shall be in force if it is not returned by the mayor within ten days after it has been presented to him. (1917, c. 136, sub-ch. 16, Part III, Plan B, s. 8; C. S., s. 2872.)

Part 3. Plan "C." Commission Form of Government.

§ **160-324. How it becomes operative.**—The method of city government herein provided for shall be known as Plan C. Upon the adoption of Plan C by any city in the manner prescribed by this subchapter, such plan shall become operative, and its powers of government shall be exercised, as is prescribed herein and in article 21 of this chapter. (1917, c. 136, sub-ch. 16, Part IV, Plan C, c. 1, ss. 1, 2; C. S., s. 2873.)

§ **160-325. Board of commissioners governing body.**—The government of the city and the general management and control of all of its affairs shall be vested in a board of commissioners, which shall be elected and shall exercise its powers in the manner hereinafter set forth; and such board shall have full power and authority to enact laws and ordinances for the government and management of the city and all its departments. (1917, c. 136, sub-ch. 16, Part IV, Plan C, c. 1, s. 3; C. S., s. 2874.)

Cited in Abbott Realty Co. v. Charlotte, 198 N. C. 564, 152 S. E. 686 (1930).

§ **160-326. Number, power and duties of commissioners.**—The board of commissioners shall consist of three members, one of whom shall be mayor, and all of whom shall be elected by a vote of the people as hereinafter provided. One of the commissioners shall be elected and known as commissioner of public works; one of the commissioners shall be elected and known as commissioner of public

safety; and the mayor shall be known as commissioner of administration and finance. And the commissioners are hereby empowered to appoint, elect, employ, suspend, and discharge all other officers and employees necessary for the operation and management of the city government and its various departments and activities, and to make all necessary rules and regulations for their government; and full power and authority is hereby granted the board of commissioners to enact all laws and ordinances for the proper government of the city. (1917, c. 136, sub-ch. 16, Part IV, Plan C, c. 2, s. 4; C. S., s. 2875.)

Cited in Abbott Realty Co. v. Charlotte, 198 N. C. 564, 152 S. E. 686 (1930).

§ **160-327. Power and duties of mayor.**—The mayor shall be the chief executive officer of the city, and subject to the supervision of the board of commissioners, shall perform all duties pertaining to such office. He shall do and perform all duties provided or prescribed by law or by the ordinances of the city not expressly delegated to any other person. He shall have general supervision and oversight over the departments and officers of the city government, and shall be the chief representative of the city, and shall report to the board any failure on the part of any of the officers of his or any other department to perform their duties, and shall preside at all meetings of the board of commissioners. He shall sign all contracts on behalf of the city unless otherwise provided by law, ordinance or resolution of the board of commissioners; he shall have charge of and cause to be prepared and published all statements and reports required by law or ordinance or by resolution of the board of commissioners. (1917, c. 136, sub-ch. 16, Part IV, Plan C, c. 2, s. 5; C. S., s. 2876.)

§ **160-328. Commissioner of administration and finance.**—1. Purchasing Agent.—The commissioner of administration and finance (who is also mayor) shall be the purchasing agent of the board of commissioners of the city, and all property, supplies, and material of every kind whatsoever shall, upon the order of the board of commissioners, be purchased by him; and when so purchased by him, the bills therefor shall be submitted to and approved by the board of commissioners before warrants are issued therefor. When such warrants are issued, they shall be signed by the commissioners and countersigned by some other person designated by the board of commissioners.

2. Collector of Taxes and Other Dues.—He shall collect all taxes, water rents, license fees, franchise taxes, rentals, and all other moneys which may be due or become due to the city; he shall issue license or permits as provided by law, ordinance, or resolution adopted by the board of commissioners; he shall report the failure on the part of any person, firm or corporation to pay money due the city; and he shall report to the board of commissioners any failure on the part of any person, firm, or corporation to make such reports as are required by law, ordinance, or order of the board of commissioners to be made, and he shall make such recommendations with reference thereto as he may deem proper.

3. Supervision of Accounts.—He shall have charge of and supervision over all accounts and records of the city, and accounts of all officers, agents, and departments required by law or by the board of commissioners to be kept or made. He shall regularly, at least once in three months, inspect or superintend inspection of all records or accounts required to be kept in any of the offices or departments of the city, and shall cause proper accounts and records to be kept, and proper reports to be made. He shall recommend to the board methods of modern bookkeeping for all departments, employees, and agents of the city, and shall, acting for the board of commissioners, audit or cause to be audited by an expert accountant, quarterly, the accounts of every officer or employee who does or may receive or disburse money, and shall publish or cause to be published quarterly statements showing the financial condition of the city. He shall examine or cause to be examined all accounts, payrolls, and claims before they are acted on or allowed, unless otherwise provided by law or by order of the board of commissioners.

4. Control of Employees.—He shall have control of all employees of his department, and of all other officers and employees not by law, ordinance, or resolution of the board of commissioners apportioned or assigned to some other department. The assessor, auditor, city clerk, city attorney, and their respective offices or departments, and all employees therein, and all bookkeepers and accountants are apportioned and assigned to the department of administration and finance, and shall be under the direction and supervision of the commissioner thereof.

5. General Duties.—In the absence or inability of any commissioner to act, he shall exercise temporary supervision over the department assigned to such commissioner, subject, however, to the power of the board to substitute someone else temporarily to perform any of such duties. He shall do and perform any and all other services ordered by the board and not herein expressly conferred upon some other department. (1917, c. 136, sub-ch. 16, Part IV, Plan C, c. 2, s. 8; C. S., s. 2877.)

§ **160-329. Commissioner of public works.** — 1. Construction of Public Works.—The commissioner of public works shall have authority and charge over all the public works not herein expressly given to some other department; the construction, cleansing, sprinkling, and repair of the streets and public places, the erection of buildings for the city, the making and construction of all other improvements, paving, curbing, sidewalks, bridges, viaducts, and the repair thereof. He shall approve all estimates of the city engineer of the cost of public works, and recommend to the board of commissioners the acceptance of the work done or improvement made, when completed according to contract, and perform such other duties with reference to such other matters as may be required by law, ordinance, or order of the board of commissioners.

2. Control of Streets and Public Places.—The commissioner shall have supervision and control, and it shall be his duty to keep in good condition the streets, cemeteries, and public parks in the city or belonging to the city, subject to the supervision and control of the board of commissioners; he shall have control, management and direction of all public grounds, bridges, viaducts, subways, and buildings not otherwise assigned herein to some other department; he shall have supervision of the enforcement of the provisions of law and the ordinances relating to streets, public squares and places, cemeteries, and the control of the placing of billboards and street wastepaper receptacles.

3. Control over Public Utilities.—He shall have supervision over the public-service utilities not otherwise assigned to some other department, and all persons, firms, or corporations rendering service in the city under any franchise, contracts, or grant made by the city or State, not otherwise assigned to some other department. He shall have control of the location of streetcar tracks, telephone and telegraph wires, and other things placed by public-service corporations in, along, under, or over the streets, and shall report to the board of commissioners or city officers, as may be appointed by them to receive his reports, any failure of such person or corporation to render proper services under a franchise granted by the city or State, and shall report any failure on the part of such person, firm, or corporation to observe the requirements or conditions of such franchise, contract, or grant.

4. Control of Water System.—He shall have charge of the watersheds from which the city takes its supply of water, pumping stations, pipe lines, filtering apparatus, and all other things connected with or incident to the proper supply of water for the city; it shall be his duty to act for the city, subject to the control of the board of commissioners, in securing all rights of way and easements connected with and necessary to the supply of water for the city; he shall have supervision and control of all buildings, grounds, and apparatus connected therewith and incident to the furnishing of water for the city; he shall superintend the erection of water tanks and laying of water lines and the operation thereof.

5. Control of Departments.—The department of the city engineer, and all employees therein, the departments of streets, parks, cemeteries, buildings, and all

employees in said departments, shall be under the supervision and control of the commissioner of public works; and he shall do and perform all other services ordered by the board, or that may be ordered by the board, not herein expressly conferred upon some other department. (1917, c. 136, sub-ch. 16, Part IV, Plan C, c. 2, s. 7; C. S., s. 2878.)

§ 160-330. Commissioner of public safety.—1. Charge of Police Force.—The commissioner of public safety shall have charge of the police force, subject to the supervision and control of the board of commissioners, and shall have power temporarily to supplant the chief of police and take charge of the department, and shall at all times have power to give directions to the officers and all employees in the police department, and his directions shall be binding upon all such officers and employees, subject only to the control of the board of commissioners. He shall have charge of the police stations, jails, and property and apparatus connected therewith, including city ambulance and patrol wagons used in connection with his department.

2. Control of Fire Department.—He shall have the supervision and control, subject to the control of the board of commissioners, of the fire department, of all firemen, officers, and employees therein or connected therewith, and of all fire stations, property and apparatus connected therewith; he shall have power to supersede temporarily the chief of the fire department, and his orders to such department and all employees therein shall be binding upon the department.

3. Traffic Regulations.—He shall be charged with the duty of enforcing all ordinances and resolutions relating to traffic on the public streets, alleys, and public ways, on and across railway lines and through and over the cemetery ways, public parks, and other public places.

4. Health Regulations.—He shall, subject to the supervision of the board of commissioners, have control of the laws, ordinances, and orders relating to the public health and sanitation, and all health officers, employees of the city, connected with and under his department; and it shall be the duty of the board of commissioners to pass such ordinances and prescribe such rules and regulations and employ such persons as will be necessary to protect and preserve public health. He shall have control and supervision, through the health officer under his department, over public dumping grounds and dumps and city scavengers; he shall be charged, through his department, with the enforcement of all quarantine regulations, of keeping clean all streets, alleys, and public places, and with suppressing and removing conditions on private property within the city that are a menace to health or public safety. He shall be authorized to enter upon private premises for the purpose of discharging the duties imposed upon him, and he shall cause to be abated all nuisances which may endanger or affect the health of the city, and generally do all things, subject to the control of the board of commissioners, that may be necessary and expedient for the promotion of health and suppression of disease.

5. Sewer and Light Systems.—He shall have control and supervision over the sewer system, and shall have charge and control over the sewer inspector and all other officers and employees connected with the department of lights and sewers. He shall have supervision and control over the lighting system of the city, and the management and direction of the lighting of the streets, alleys, and all other public places and grounds and all other places where city lights are placed; he shall be charged with the duty of seeing that all persons, firms, and corporations charged with the duty of supplying lights or waterpower perform the obligation imposed upon them by law, ordinance, or order of the board of commissioners.

6. Control over Officers.—He shall have charge of the electrical inspector, plumbing inspector, building inspector, market house and the employees connected therewith and of all apparatus and property used therein; he shall have charge, supervision and direction of all officers and employees of the city connected with and under his department. He shall perform all other services ordered by the board of commissioners, or that may be ordered by the board of commissioners,

not herein expressly conferred upon some other department. (1917, c. 136, sub-ch. 16, Part IV, Plan C, c. 2, s. 8; C. S., s. 2879.)

§ **160-331. Recommendations as to purchases.**—It shall be the duty of each commissioner to recommend to the city purchasing agent the purchase of goods and the contract for all things necessary to be contracted for in his department, and these recommendations shall be submitted to the board of commissioners for its orders with respect thereto. (1917, c. 136, sub-ch. 16, Part IV, Plan C, c. 2, s. 9; C. S., s. 2880.)

Cross Reference.—As to purchasing agent, see § 160-328, subsection 1.

§ **160-332. General powers of board of commissioners.**—The board of commissioners shall exercise all legislative powers, functions, and duties conferred upon the city or its officers. It shall make all orders for the doing of work or the making or construction of any improvements, bridges, or buildings. It shall levy all taxes, apportion and appropriate all funds, audit and allow all bills and accounts, payrolls, and claims, and order payment thereof. It shall make all assessments for the cost of street improvements, sidewalks, sewers, and other work, improvements, or repairs which may be specially assessed. It shall make or authorize the making of all contracts, and no contracts shall bind or be obligatory upon the city unless either made by ordinance or resolution adopted by the board of commissioners or reduced to writing and approved by the board or expressly authorized by ordinance or resolution adopted by the board. All contracts and all ordinances and resolutions making contracts or authorizing the making of contracts shall be drawn by the city attorney, or submitted to such officer before the same are made or passed. All heads of departments, agents, and employees are the agents of the board of commissioners only, and all their acts shall be subject to review and to approval or revocation by the board of commissioners. Every head of department, superintendent, agent, employee, or officer shall from time to time, as required by law or ordinance, or when requested by the board of commissioners, or whenever he shall deem necessary for the good of the public service, report to the board of commissioners in writing respecting the business of his department, office, or employment, all matters connected therewith. The board of commissioners may by ordinance or resolution assign to a head of a department, a superintendent, officer, agent, or employee, duties in respect to the business of any other department, office, or employment, and such service shall be rendered without additional compensation. The board of commissioners shall elect and have authority over the city clerk, who shall be the clerk of the board of commissioners. The board of commissioners shall have charge of all matters pertaining to public health, and shall perform all duties belonging thereto. (1917, c. 136, sub-ch. 16, Part IV, Plan C, c. 2, ss. 10, 11; C. S., s. 2881.)

Cited in Abbott Realty Co. v. Charlotte, 198 N. C. 564, 152 S. E. 686 (1930).

§ **160-333. Commissioners' service exclusive.**—Each member of the board of commissioners shall devote his time and attention to the performance of the public duties to the exclusion of all other occupations, professions, or callings. (1917, c. 136, sub-ch. 16, Part IV, Plan C, c. 2, s. 12; C. S., s. 2882.)

§ **160-334. The initiative and referendum.** — 1. Ordinances Submitted by Petition.—Any proposed ordinance may be submitted to the board of commissioners by petition signed by electors of the city equal to the number provided herein for recall of any official. The signatures, verifications, authentications, inspections, certification, amendments, and submission of such petition shall be the same as provided for the removal of officials.

2. Duty of the Board.—If the petition accompanying the proposed ordinance

be signed by the requisite number of electors, and contains a request that the ordinance be passed, or submitted to a vote of the people if not passed by the board of commissioners, such board shall either:

a. Pass such ordinance without alteration within twenty days after attachment of the clerk's certificate to the accompanying petition, or

b. After the clerk shall attach to the petition accompanying such ordinance his certificate of sufficiency, the board of commissioners shall forthwith submit the question to the qualified voters at a special election called for that purpose, or to a general election occurring within ninety days after the date of the clerk's certificate. If the petition is signed by not less than ten and less than twenty-five per cent of the electors as above defined, then the board of commissioners shall within twenty days pass such ordinance without change or submit the same at the next general city election.

3. Popular Vote Taken.—The ballots used when voting upon such ordinance shall contain these words: "For the Ordinance" (stating the nature of the proposed ordinance) and "Against the Ordinance" (stating the nature of the proposed ordinance). If the majority of the qualified electors voting on the proposed ordinance shall vote in favor thereof, such ordinance shall thereupon become a valid and binding ordinance of the city; and any ordinance proposed by petition, or which shall be adopted by a vote of the people, cannot be repealed or amended except by a vote of the people. Any number of proposed ordinances may be voted upon at the same election, in accordance with the provisions of this section, but there shall not be more than one special election in any period of six months for such purpose.

4. Proposition for Repeal.—The board of commissioners may submit a proposition for the repeal of any such ordinance, or for amendments thereto, to be voted upon at any succeeding general election; and should any such proposition so submitted receive a majority of the votes cast thereon at such election, such ordinance shall thereby be repealed or amended accordingly.

5. Publication.—Whenever any ordinance or proposition is required by this subchapter to be submitted to the voters of the city at any election, the city shall cause such ordinance or proposition to be published once in a newspaper of general circulation in the city, such publication to be not more than twenty nor less than five days before the submission of such proposition or ordinance to be voted on.

6. When Ordinance Takes Effect.—No ordinance passed by the board of commissioners, unless otherwise expressly provided, except an ordinance for the immediate preservation of the public peace, health, or safety, which contains a statement of its urgency and is passed by a two-thirds vote of the board of commissioners, shall go into effect before twenty days from the time of its final passage and publication, as herein provided.

7. Action upon Protest Filed.—If during the twenty days a petition, signed by electors of the city equal to the number prescribed herein to be signed to a petition for the recall of any official, protesting against the passage of such ordinance, be presented to the board of commissioners, the operation of such ordinance shall thereupon be suspended, and it shall be the duty of the board of commissioners to consider such ordinance, and if the same is not entirely repealed, the board of commissioners shall submit to the qualified voters the question of the repeal of such ordinance at an election to be held for that purpose in the manner and under the conditions herein provided for reference to voters of the question of recall of an official. (1917, c. 136, sub-ch. 16, Part IV, Plan C, c. 3, s. 1; C. S., s. 2883.)

§ 160-335. Nomination of candidates. — 1. Nomination by Primaries. —All candidates to be voted for at all general municipal elections, at which time a mayor, commissioners, or any other elective officers are to be elected under the provisions of this subchapter, shall be nominated by a primary election, and no

other names shall be placed upon the general ballot except those nominated in such primary in the manner hereinafter prescribed.

2. How Primaries Held.—The primary election for such nominations shall be held on the second Monday preceding all general municipal elections. The judges and other officers of election appointed for the general municipal election shall, whenever practicable, be the judges of the primary election, and it shall be held at the same place and in the same manner and under the same rules and regulations and subject to the same conditions, and the polls to be opened and closed at the same hours, as are required for the general election.

3. Notice of Candidacy.—Any person desiring to become a candidate for nomination by the primary for the office of mayor or commissioner of either of the other two departments or any other elective office shall, at least ten days prior to the primary election, file with the clerk a statement of such candidacy in substantially the following form:

State of North Carolina—County of .....

I, ..., hereby give notice that I reside at ..... street, city of ....., county of ....., State of North Carolina; that I am a candidate for nomination to the office of (mayor, or commissioner of a particular department, or other office) to be voted upon at the primary election to be held on the ..... Monday of ....., 19.., and I hereby request that my name be printed upon the official ballot for the nomination by such primary election for such office.

(Signed) .....

And he shall at the same time pay to the clerk, to be turned over to the city treasurer, the sum of five dollars.

4. Publication of Names.—Immediately upon the expiration of the time for filing the petition of candidates, the city clerk shall cause to be published for three successive days in a daily newspaper of general circulation in the city, in proper form, the names of the persons as they are to appear upon the primary ballots.

5. Ballots Prepared.—The clerk shall thereupon cause the primary ballots to be printed, authenticated with a facsimile of his signature. Upon the ballot the names of the candidates for mayor, arranged alphabetically, shall be placed, with a square at the left of each name, and immediately below the words, "vote for one." Following the names, likewise arranged in alphabetical order, shall appear the names of the candidates for the commissioners of the two other departments, respectively, with a square at the left of each name, and below the names of such candidates for each of the departments shall appear the words, "vote for one." Like provision shall be made for the names of candidates for each other elective office provided by law. The ballots shall be printed upon plain, substantial white paper, and shall be headed: "Candidates for nomination for mayor and commissioners of two other offices (naming them), of the city of ....., North Carolina, at the primary election," but shall have no party designation or mark whatever.

6. Form of Ballots.—The ballots shall be in substantially the following form:

(Place a cross in the square preceding the names of parties you favor as candidates for the respective positions.)

Official primary ballot. Candidates for nomination for mayor and commissioners and other offices (naming them) of the city of ....., North Carolina, at the primary election.

For Mayor (naming candidates). (Vote for one.)

For Commissioner of the Department of Public Safety (names of candidates). (Vote for one.)

For Commissioner of the Department of Public Works (names of candidates). (Vote for one.)

Official ballot. Attest:

(Signature) ..... City Clerk.

7. Distribution of Ballots.—Having caused ballots to be printed, the city clerk shall cause to be delivered at each polling place a number of ballots equal to twice the number of votes cast in such polling precinct at the last general municipal election for mayor.

8. Who Entitled to Vote.—The persons who are qualified to vote at the succeeding municipal election shall be qualified to vote at such primary election, and shall be subject to challenge made by any resident of the city, under such rules as may be prescribed by the board of commissioners, and such challenge shall be passed upon by the judges of election and registrars: Provided, however, that the law applicable to challenge at a general municipal election shall be applicable to challenge made at such primary election.

9. Ballots Counted.—Judges of election shall, immediately upon the closing of the polls, count the ballots and ascertain the number of votes cast in such precincts for each of the candidates, and make return thereof to the city clerk, upon blanks to be furnished by the clerk, within six hours of the closing of the polls.

10. Returns Canvassed.—On the day following the primary election the city clerk, under the supervision and direction of the mayor, shall canvass such returns so received from all the polling precincts, and shall make and publish in some newspaper of general circulation in the city, at least once, the result thereof. The canvass by the city clerk shall be publicly made.

11. Who to Be Candidates.—The two candidates receiving the highest number of votes for mayor, and the two candidates receiving the highest number of votes for commissioners for each of the respective departments, and the two candidates receiving the highest number of votes for any other elective office, shall be the candidates, and the only candidates whose names shall be placed upon the ballot for mayor, commissioners, and other elective offices at the next succeeding general municipal election: Provided, however, if any candidate for mayor receives a majority of all the votes cast for the office of mayor, or if any candidate for commissioner receives a majority of all the votes cast for the office of commissioner of the department for which such person is a candidate, then only the name of the candidate receiving a majority of all the votes cast for such position shall be placed upon the ballot for mayor or commissioner of such department at the next succeeding general municipal election. (1917, c. 136, subch. 16, Part IV, Plan C, c. 4; C. S., s. 2884; 1929, c. 32, s. 1.)

Editor's Note. — The 1929 amendment added the proviso to subsection 11 of this section.

§ 160-336. Recall of officials by the people.—1. Who May Be Removed. —The holder of any elective office may be removed at any time by the electors qualified to vote for a successor of such incumbent.

2. Petition Filed and Verified.—The procedure to effect the removal of an incumbent of an elective office shall be as follows: A petition signed by electors entitled to vote for a successor to the incumbent sought to be removed, equal in number to at least twenty-five per centum of the entire vote for all candidates for the office of mayor cast at the last preceding general municipal election, demanding an election of a successor of the person sought to be removed, shall be filed with the clerk; which petition shall contain a general statement of the ground for which the removal is sought. The signatures to the petition need not all be appended to one paper, but each signer shall add to his signature his place of residence, giving the street and number. One of the signers of each such paper shall make oath before an officer competent to administer oaths that the statements therein made are true, as he believes, and that each signature to the paper appended is the genuine signature of the person whose name it purports to be.

3. Clerk to Examine and Certify Sufficiency.—Within ten days from the date

of filing such petition the city clerk shall examine and from the voters' register ascertain whether or not the petition is signed by the requisite number of qualified electors, and he shall attach to the petition his certificate, showing the results of such examination. If by the clerk's certificate the petition is shown to be insufficient, it may be amended within ten days from the date of the certificate. The clerk shall, within ten days after such amendment, make like examination of the amended petition, and if his certificate shall show the same to be insufficient, it shall be returned to the person filing the same; without prejudice, however, to the filing of a new petition to the same effect. If the petition shall be deemed to be sufficient, the clerk shall submit the same to the board of commissioners without delay.

4. Board to Order Primary.—If the petition shall be found to be sufficient, the board of commissioners shall order and fix a date for holding a primary, as provided in cases preceding regular elections, the primary to be held not less than ten days or more than twenty days from the date of the clerk's certificate to the board of commissioners that a sufficient petition is filed. If in the primary election any candidate receives a majority of all the votes cast, he shall be declared to be elected to fill out the remainder of the term of the officer who is sought to be recalled. If there be more than two candidates in such primary and no one received a majority of all the votes cast therein, then there shall be an election held within twenty days from the date of the primary, at which election the two candidates receiving the highest vote in the primary shall be voted for. Candidates' names shall be placed on the ticket in the primary and election held, and the results canvassed, under the same rules, conditions, and regulations as are prescribed for the primaries preceding regular elections. The board of commissioners shall make or cause to be made publication for ten days of notice and all arrangements for holding such election, and the same shall be conducted, returned, and the results thereof declared in all respects as other city elections.

5. Candidate Elected Succeeds to Office.—The successor of any officer so removed shall hold office during the unexpired term of his predecessor. Any person sought to be removed may be a candidate to succeed himself, and unless he requests otherwise in writing, the clerk shall place his name on the official ballot without nomination. At such election, if some other person than the incumbent is elected, the incumbent shall thereupon be deemed removed from the office upon qualification of his successor.

6. Vacancy Filled.—In case the party elected should fail to qualify within ten days after receiving notification of election, the office shall be deemed vacant, and in that event the unexpired term shall be filled by election by the board, but the commissioner removed shall not be eligible to election by the board, and the person so elected by the board shall be subject to recall as other commissioners. If the incumbent receives a majority of votes in the primary election he shall continue his office.

7. Application of Method of Removal.—Such method of removal shall be cumulative and additional to any other method provided by law. In the event any officer is recalled and any person is elected as his successor, the right of recall of such successor so elected shall be as in case of an officer originally elected. (1917, c. 136, sub-ch. 16, Part IV, Plan C, c. 5; C. S., s. 2885.)

Power to Remove Officers.—The power to remove a corporate officer for reasonable and just cause is one of the common-law incidents of all corporations. State v. Jenkins, 148 N. C. 25, 61 S. E. 608 (1908).

§ **160-337. Salaries of officers.**—The mayor and commissioners shall have offices at the city hall. The compensation of the mayor and commissioners shall be as follows: In cities of five thousand inhabitants and under, the mayor shall receive one thousand dollars and the commissioners each seven hundred and fifty dollars. In cities of five to ten thousand inhabitants the mayor shall re-

ceive fifteen hundred dollars and the commissioners each one thousand dollars. In cities of ten to fifteen thousand inhabitants the mayor shall receive two thousand dollars and the commissioners each fifteen hundred dollars. In cities of fifteen to twenty-five thousand inhabitants the mayor shall receive twenty-six hundred dollars and the commissioners each twenty-four hundred dollars. In cities of twenty-five to forty thousand inhabitants the mayor shall receive three thousand five hundred dollars ($3,500.00), and the commissioners each three thousand two hundred and fifty dollars ($3,250.00). In cities over forty thousand inhabitants the mayor shall receive six thousand dollars ($6,000.00) and the commissioners each five thousand five hundred dollars ($5,500.00). The number of inhabitants shall be determined by the last United States government census or estimate. Every other officer, agent, employee, and assistant of the city government shall receive such salary or compensation as the board of commissioners shall by ordinance provide, payable in equal monthly installments, unless the board shall order payments to be made at other intervals. (1917, c. 136, sub-ch. 16, Part IV, Plan C, c. 6; C. S., s. 2886; 1923, c. 203; 1927, c. 243.)

Editor's Note.—The amendments of 1923 and 1927 increased the salaries.

Part 4. Plan "D." Mayor, City Council, and City Manager.

§ **160-338. How it becomes operative.**—The method of city government herein provided for shall be known as Plan D. Upon the adoption of Plan D by a city in the manner prescribed by article 21 of this subchapter, such plan shall become operative, and the powers of government of such city shall be exercised, as provided herein and in article 21. (1917, c. 136, sub-ch. 16, Part V, Plan D, ss. 1, 2; C. S., s. 2887.)

§ **160-339. Governing body.**—The government of the city and the general management and control of all its affairs shall be vested in a city council, which shall be elected and shall exercise its powers in the manner herein and in article 21 set forth, except that the city manager shall have the authority hereinafter specified. (1917, c. 136, sub-ch. 16, Part V, Plan D, s. 3; C. S., s. 2888.)

§ **160-340. Number and election of city councils.**—The city council shall consist of five members, who shall be elected at large by and from the qualified voters of the city for a term of two years and until their successors are elected and qualified. (1917, c. 136, sub-ch. 16, Part V, Plan D, s. 4; C. S., s. 2889.)

Local Modification.—Mecklenburg, city of Charlotte: 1935, cc. 94, 187; city of Fayetteville (effective on approval by voters): 1951, c. 131, s. 1.

§ **160-341. Power and organization of city council.** — All the legislative powers of the city shall be vested in the city council. The city council elected as aforesaid shall meet at ten o'clock in the forenoon on Wednesday after the first Monday of May in each year, and the members of the city council whose terms of office then begin shall severally make oath before the city clerk or justice of the peace to perform faithfully the duties of their respective offices. The city council shall thereupon be organized by the choice from its members of a mayor, who shall hold his office during the term for which he was elected a member of the city council, and a mayor pro tem., who shall hold his office during the pleasure of the city council. The organization of the city council shall take place as aforesaid, notwithstanding the absence, death, refusal to serve, or nonelection of one or more of the members: Provided, that at least three of the persons entitled to be members of the city council are present and make oath as aforesaid. Any member entitled to make the aforesaid oath, who was not present at the time fixed therefor,

may make oath at any time thereafter. (1917, c. 136, sub-ch. 16, Part V, Plan D, s. 5; 1919, c. 270, s. 1; C. S., s. 2890.)

Local Modification.—Mecklenburg, city of Charlotte: 1935, c. 94.

§ **160-342. Meetings regulated.**—The city council shall fix suitable times for its regular meetings. The mayor, the mayor pro tem. of the city council, or any two members thereof, may at any time call a special meeting by causing a written notice, stating the time of holding such meeting and signed by a person or persons calling the same, to be delivered in hand to each member or left at his usual dwelling place at least six hours before the time of such meeting. Meetings of the city council may also be held at any time when all the members of the council are present and consent thereto. (1917, c. 136, sub-ch. 16, Part V, Plan D, s. 6; C. S., s. 2891.)

Local Modification.—Mecklenburg, city of Charlotte: 1935, c. 94.

§ **160-343. Quorum and conduct of business.**—A majority of the members of the city council shall constitute a quorum. Its meetings shall be public, and the mayor, who shall be the official head of the city, shall, if present, preside and shall have the same power as the other members of the council to vote upon all measures coming before it, but shall have no power of veto. In the absence of the mayor, the mayor pro tem. of the city council shall preside, and in the absence of both, a chairman pro tempore shall be chosen. The city clerk shall be ex officio clerk of the city council, and shall keep records of its proceedings; but in case of his temporary absence, or in case of a vacancy in the office, the city council may elect by ballot a temporary clerk, who shall be sworn to the faithful discharge of his duties, and may act as clerk of the city council until a city clerk is chosen and qualified. All final votes of the city council involving the expenditure of fifty dollars or over shall be by yeas and nays and shall be entered on the records. On request of one member, the vote shall be by yeas and nays, and shall be entered upon the records. Three affirmative votes at least shall be necessary for the passage of any order, ordinance, resolution, or vote. (1917, c. 136, sub-ch. 16, Part V, Plan D, s. 7; C. S., s. 2892.)

Local Modification.—Mecklenburg, city of Charlotte: 1935, c. 94.

§ **160-344. Vacancies in council.**—Vacancies in the city council shall be filled by the council for the remainder of the unexpired terms. (1917, c. 136, sub-ch. 16, Part V, Plan D, s. 8; C. S., s. 2893.)

Local Modification.—Mecklenburg, city of Charlotte: 1935, c. 94.

§ **160-345. Election of mayor.**—The mayor shall be elected by the city council from among its own members, and shall hold office during the term for which he has been elected to the council. In case of a vacancy in the office of mayor, the remaining members of the council shall choose from their own number his successor for the unexpired term. (1917, c. 136, sub-ch. 16, Part V, Plan D, s. 9; 1919, c. 60, s. 1; 1919, c. 270, s. 2; C. S., s. 2894.)

Local Modification.—Mecklenburg, city of Charlotte: 1935, c. 94; city of Fayetteville (effective on approval of voters): 1951, c. 131, s. 2.

§ **160-346. Salaries of mayor and council.**—The mayor shall receive for his services such salary as the city council shall by ordinance determine, not exceeding eighteen hundred dollars a year, and he shall receive no other compensation from the city. His salary shall not be increased or diminished during the term for which he is elected. The council may, by a vote of not less than three members, taken by call of the yeas and nays, establish a salary for its members not exceeding six hundred dollars a year for each. Such salary may be reduced,

but no increase therein shall be made to take effect during the year in which the increase is voted. (1917, c. 136, sub-ch. 16, Part V, Plan D, s. 10; C. S., s. 2895; 1951, c. 153, s. 1.)

Local Modification.—Mecklenburg, city of Charlotte: 1935, c. 94.

Editor's Note. — The 1951 amendment increased the maximum salary of mayor from seven hundred to eighteen hundred dollars a year, and that of a council member from two hundred to six hundred dollars a year.

§ 160-347. Election of treasurer; salary.—The mayor and council may elect from their membership a treasurer by the method outlined above, and in addition to the salary allowed as a member of the council, such treasurer may be paid for his services as treasurer not exceeding nine hundred dollars per annum. (1935, c. 180; 1951, c. 153, s. 2.)

Local Modification.—City of Fayetteville: 1947, c. 41.

Editor's Note. — The 1951 amendment increased the maximum salary from three hundred to nine hundred a year.

§ 160-348. City manager appointed.—The city council shall appoint a city manager, who shall be the administrative head of the city government, and shall be responsible for the administration of all departments. He shall be appointed with regard to merit only, and he need not be a resident of the city when appointed. He shall hold office during the pleasure of the city council, and shall receive such compensation as it shall fix by ordinance. (1917, c. 136, sub-ch. 16, Part V, Plan D, s. 11; C. S., s. 2896.)

§ 160-349. Power and duties of manager.—The city manager shall (1) be the administrative head of the city government; (2) see that within the city the laws of the State and the ordinances, resolutions, and regulations of the council are faithfully executed; (3) attend all meetings of the council, and recommend for adoption such measures as he shall deem expedient; (4) make reports to the council from time to time upon the affairs of the city, keep the council fully advised of the city's financial condition and its future financial needs; (5) appoint and remove all heads of departments, superintendents, and other employees of the city. (1917, c. 136, sub-ch. 16, Part V, Plan D, s. 12; C. S., s. 2897.)

Local Modification.—City of Fayetteville: 1947, c. 41.

Duties Can Be Performed Ex Officio by Council Member.—Conceding that the city manager is an officer in the meaning of the Constitution, Art. XIV, § 7, yet the duties of his office in the cases set forth in this section for the time being can be performed ex officio by one of the council "as mere auxiliary duties." State v. Holmes, 207 N. C. 293, 176 S. E. 746 (1934).

Cited in Nevins v. Lexington, 212 N. C. 616, 194 S. E. 293 (1937).

§ 160-350. Appointment and removal of officers.—Such city officers and employees as the council shall determine are necessary for the proper administration of the city shall be appointed by the city manager, and any such officer or employee may be removed by him; but the city manager shall report every such appointment and removal to the council at the next meeting thereof following any such appointment or removal. (1917, c. 136, sub-ch. 16, Part V, Plan D, s. 13; C. S., s. 2898.)

Commissioner of Police or Public Safety.—The city of Charlotte has power to create the office of commissioner of police or public safety. Riddle v. Ledbetter, 216 N. C. 491, 5 S. E. (2d) 542 (1939).

§ 160-351. Control of officers and employees.—The officers and employees of the city shall perform such duties as may be required of them by the city manager, under general regulations of the city council. (1917, c. 136, sub-ch. 16, Part V, Plan D, s. 14; C. S., s. 2899.)

Part 5. Plans "A" and "D," with Initiative, Referendum and Recall.

§ 160-352. How submitted, and effect of adoption.—There may be

submitted as an addition to Plans A or D "The Initiative and Referendum" and "Recall of Officials by the People," as set forth in Plan C, in which case all references to the board of commissioners shall apply to the mayor and council, and the petition for election and the ballots shall contain the name of the plan as "Plan A, with Initiative, Referendum, and Recall"; "Plan D, with Initiative, Referendum and Recall," and such plans shall be submitted with such additions as provided in this subchapter for the submission of such plans. (1917, c. 136, sub-ch. 16, Part VI; C. S., s. 2901.)

Article 23.

Amendment and Repeal of Charter.

§ **160-353. "Home rule" or "local self-government."**—Within the limitations prescribed by the Constitution and now existing or hereafter enacted general laws, any municipality may amend or repeal its charter or any part thereof or adopt a new charter. The proposal to amend, repeal, or adopt may be initiated: (a) By the governing body of such municipality; (b) By any number of the qualified electors of such municipality not less than twenty-five per centum of qualified electors entitled to vote at the next preceding regular municipal election in such municipality. (1917, c. 136, sub-ch. 16, Part VII, s. 1; C. S., s. 2902.)

§ **160-354. Ordinances to amend or repeal charter.**—1. How Adopted.—If any amendment, repeal, or adoption be initiated by the governing body of any municipality, the governing body shall at one of its regular meetings, and not less than six days after the introduction thereof, adopt by not less than a two-thirds vote of all its members an ordinance in which shall be recited in full the amendment, repeal, or adoption proposed; such ordinance shall also recite that such amendment, repeal, or adoption is, in the opinion of the governing body, for the best interest of the municipality.

2. Publication Made.—It shall direct publication over the name of the mayor or other chief officer of the municipality of a notice in substantially the following form (the blank spaces to be properly filled in):

Notice of Amendment to Charter of

.....

(here insert name of municipality.)

The governing body of (here insert name of municipality) at a regular meeting held on the .. day of ....., 19.., adopted a resolution as follows (here copy verbatim the resolution).

Dated this .... day of ....., 19...

....., Mayor.

3. Submitted to Vote.—The governing body shall in its resolution provide that the amendment, repeal, or adoption therein proposed shall not become effective until submitted to and approved by a majority of the votes cast at a regular municipal election or a special election called for that purpose, and such amendment, repeal or adoption shall be submitted to the qualified voters of the city at an election called and held for such purpose, or at a regular municipal election. Thereupon, if such amendment, repeal, or adoption shall have been approved by a majority of the votes cast as hereinbefore provided, such amendment, repeal, or adoption shall become effective.

4. Manner of Publication.—The notice required shall be published once a week for four successive weeks in a newspaper of general circulation in the municipality. (1917, c. 136, sub-ch. 16, Part VII, ss. 2, 8; C. S., s. 2903.)

§ **160-355. Officers to be voted for.**—The governing body of the town, if it submits the question of amending the charter of the town at a regular election so as to provide for a different number of members constituting the governing

body of the town from that number provided for in the old charter, may also order an election to be held at said regular municipal election for the commissioners or members of the governing body provided for in the proposed amended charter, and at said election commissioners shall also be voted for as provided for under the old charter. If the proposed amendment is adopted, then the commissioners or members of the governing body elected under the proposed amendment shall constitute the governing body of the town for the ensuing term. If the proposed amendment is not adopted, the commissioners or the members of the governing body of said town elected under the provisions of the old charter shall constitute the governing body of the town for the ensuing term. (1919, c. 334; C. S., s. 2904.)

§ **160-356. Petition for amendment or repeal of charter.**—1. Nature of Petition.—If any amendment, repeal, or adoption be initiated by the qualified electors of such municipality the same shall be by a petition signed by not less than twenty-five per centum of the qualified electors entitled to vote at the next preceding regular election in such municipality. The petition shall be appropriately entitled and shall be addressed to the governing board of such municipality, and shall state in exact language the amendment, repeal, or adoption proposed; the petition need not be all on one sheet, and if on one or more than one sheet shall be verified by a freeholder in such municipality who is also a signer of such petition. The petition shall contain a request to the governing body of the municipality to submit to the qualified electors thereof the amendment, repeal, or adoption as therein stated, either at a regular election or at a special election to be called for that purpose. It shall thereupon be the duty of the clerk of such municipality to examine the petition for the purpose of ascertaining whether the same has been signed by the required number of qualified electors of the municipality, and the clerk shall certify to the governing body the result of his investigation.

2. Submitted to Vote.—Upon such certificate, it shall be the duty of the governing body to provide for submission to a vote of the amendment, repeal, or adoption proposed in the petition, either at a regular election or at a special election to be called for that purpose, and if the amendment, repeal, or adoption shall be approved by a majority of the votes cast, as hereinbefore provided, such amendment, repeal, or adoption shall become effective. (1917, c. 136, sub-ch. 16, Part VII, s. 3; C. S., s. 2905.)

§ **160-357. Nature of verification.**—Whenever verification of any petition is provided or required to be made by this article, such verification shall consist of a written oath signed by the person making the same, which shall state in substance that the persons whose names appear signed to such petition were so signed by such persons respectively in the presence of the person making oath, and that, to the best of the knowledge and belief of the person making the oath, each of such persons is a qualified elector entitled to vote at the next preceding regular election in the municipality. (1917, c. 136, sub-ch. 16, Part VII, s. 4; C. S., s. 2906.)

§ **160-358. Laws controlling elections.**—Whenever any election, either regular or special, is provided or required to be held under this article, such election shall be held under such laws, either general or special, as are at the time of the holding of such election in force and effect with reference to such municipality. (1917, c. 136, sub-ch. 16, Part VII, s. 5; C. S., s. 2907.)

§ **160-359. Several propositions voted on.** — Any number of amendments or repeals may be initiated by one and the same resolution or petition, and whenever under this article an election is provided or required to be held, any number of such amendments or repeals may be submitted and voted upon at one and the same election. (1917, c. 136, sub-ch. 16, Part VII, s. 6; C. S., s. 2908.)

§ **160-360. Limitations as to holding special elections.** — No special election provided or required by this article shall, except as otherwise provided in this subchapter, be held within two months of the time of holding any regular municipal election in any municipality; not more than two special elections may be held under this article in any municipality within any one year. The elections, subject to the other provisions of this section, shall be held within three months from the date of the filing of the petition. Any election heretofore called within three months from the date of filing any petition under this section and related sections is hereby validated. (1917, c. 136, sub-ch. 16, Part VII, s. 7; C. S., s. 2909; 1921, c. 56.)

Editor's Note.—The 1921 amendment added the last sentence, and substituted the words "within three months" in the second sentence for the words "not less than three months."

§ **160-361. Adoption or change certified and recorded.** — Upon the amendment, repeal, or adoption of a charter of any municipality as provided in this article, the governing body shall cause to be certified to the secretary of the Municipal Board of Control a copy of such amendment, repeal, or adoption duly certified by its clerk and under the seal of such municipality; the copy so certified shall be recorded in the office of the Secretary of State, and a copy shall be so certified by the Secretary of State to the clerk of the superior court of the county in which such municipality is situated and recorded in the office of the clerk; the record therein provided for, either in the office of the Secretary of State or in the office of the clerk of the superior court, shall be evidence in all the courts of this State. (1917, c. 136, sub-ch. 16, Part VII, s. 9; C. S., s. 2910.)

§ **160-362. Adoption or change ratified by vote.** — Whenever any amendment, repeal, or adoption of a charter of any municipality is submitted under the provisions of this article to the qualified electors of such municipality, such amendment, repeal, or adoption shall not become effective unless and until the same shall have been approved by a majority of the votes cast at the election and the result of the election thereon canvassed, determined, and declared as provided by law. (1917, c. 136, sub-ch. 16, Part VII, s. 10; C. S., s. 2911.)

§ **160-363. Plan not changed for two years.**—When any municipality shall, as provided in this subchapter, adopt any one of the plans as set forth in this subchapter, no amendment, repeal, or adoption of such plans shall be made until and after the expiration of two years from the date of the adoption of such plan. (1917, c. 136, sub-ch. 16, Part VII, s. 3; C. S., s. 2912.)

Article 24.

Elections Regulated.

§ **160-364. Laws governing elections.**—All elections called and held by any city for any purpose under the provisions of this subchapter shall be held under, governed and controlled by the laws in force at the time of such election governing and controlling regular and special municipal elections of such city in so far as they are applicable and not inconsistent with the provisions of this subchapter, and where not otherwise provided by law. (1917, c. 136, sub-ch. 16, Part VIII, s. 1; C. S., s. 2913.)

§ **160-365. Publication of notice.**—Except as otherwise provided in this subchapter, notice of every special election held in any city shall be published in a newspaper of general circulation in such city at least once a week for four weeks preceding the date of such election, and posted for thirty days at the door of the building in which the governing body holds its meetings and three other public places in the city. Such notice shall set forth the date and hours of such elections, the proposition to be voted on thereat, the location of the polling places, and, in

the event a new registration is ordered for such election, shall so state and set forth the dates of opening and closing the registration books and the names and addresses of the several registrars in charge thereof. (1917, c. 136, sub-ch. 16, Part VIII, s. 1; C. S., s. 2914.)

§ 160-366. Time for holding elections.—If any city shall adopt any one of the plans of government provided for in this subchapter during the year nineteen hundred and seventeen, the election of city officers under such plan shall be held on Tuesday after the first Monday in May following the adoption of such plan, and the regular municipal elections of such city shall take place biennially thereafter. (1917, c. 136, sub-ch. 16, Part VIII, s. 1; C. S., s. 2915.)

SUBCHAPTER III. MUNICIPAL FINANCE ACT.

Article 25.

General Provisions.

§ 160-367. Short title.—This subchapter may be cited as "The Municipal Finance Act, 1921." (1917, c. 138, s. 1; 1919, c. 178, s. 3 (1); C. S., s. 2918; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1.)

Cross References.—As to validation of municipal bonds, see § 159-50 et seq. As to local government acts, see chapter 159. As to application of sinking funds to purchase of municipality's own bonds, see §§ 153-148 and 153-150.

Editor's Note.—The attempt to amend and re-enact the Municipal Finance Act by Public Laws 1921, c. 8, was declared unconstitutional in Allen v. Raleigh, 181 N. C. 453, 107 S. E. 463 (1921), for failure of the General Assembly to comply with Art. II, § 14 of the Constitution. However, the amendment and re-enactment was successfully accomplished by Public Laws, Ex. Sess. 1921, c. 106.

Applicability to School Districts.—This does not deal with school districts. It, therefore, does not repeal the Acts of 1915, ch. 722. Waters v. Com'rs, 186 N. C. 719, 120 S. E. 450 (1923).

§ 160-368. Meaning of terms.—In this subchapter, unless the context otherwise requires, the expressions:

"Bond ordinance" means an ordinance authorizing the issuance of bonds of a municipality;

"Clerk" means the person occupying the position of clerk or secretary of a municipality;

"Financial officer" means the chief financial officer of a municipality;

"Funding bonds" means bonds issued to pay or extend the time of payment of debts not evidenced by bonds;

"Governing body" means the board or body in which the general legislative powers of a municipality are vested;

"Local improvement" means any improvements on property the cost of which has been or is to be specially assessed in whole or in part;

"Municipality" means and includes any city, town, or incorporated village in this State, now or hereafter incorporated;

"Necessary expenses" means the necessary expenses referred to in section seven of article seven of the Constitution of North Carolina;

"Publication" includes posting in cases where posting is authorized by this subchapter as a substitute for publication in a newspaper;

"Refunding bonds" means bonds issued to pay or extend the time of payment of debts evidenced by bonds;

"Special assessments" means special assessments for local improvements, levied on abutting property or other property specially benefited, or on street railroad companies or other companies or individuals having tracks in streets or highways, and "specially assessed" has a corresponding meaning. (1917, c. 138, s.

2; 1919, c. 178, s. 3 (2); 1919, c. 285, s. 1; C. S., s. 2919; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1931, c. 60, s. 46; 1933, c. 259, s. 1.)

Editor's Note.—The second 1921 amendment deleted the former provision relating to the determination of who is chief financial officer.

Prior to the 1933 amendment "funding bonds" and "refunding bonds" limited funding and refunding bonds to those issued for the payment of debts "incurred before July first, one thousand nine hundred and thirty-one." The quoted clause was deleted by the amendment.

§ **160-369. Publication of ordinance and notices.** — An ordinance or notice required by this subchapter to be published by a municipality shall be published in a newspaper published in the municipality, or, if no newspaper is published therein, in a newspaper published in the county and circulating in the municipality, or, if there is no such newspaper, the ordinance or notice shall be posted at the door of the building in which the governing body usually holds its meetings and at three other public places in the municipality. (1917, c. 138, s. 3; 1919, c. 178, s. 3 (3); C. S., s. 2920; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1.)

§ **160-370. Application and construction of subchapter.** — This subchapter shall apply to all municipalities. Every provision of this subchapter shall be construed as being qualified by constitutional provisions, whenever such construction shall be necessary in order to sustain the constitutionality of any portion of this subchapter. If any portion of this subchapter shall be declared unconstitutional, the remainder shall stand, and the portion declared unconstitutional shall be exscinded. (1917, c. 138, ss. 4, 5; 1919, c. 178, s. 3 (4), (5); C. S., s. 2921; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1.)

Article 26.

Budget and Appropriations.

§ **160-371. The fiscal year.**—The fiscal year of every municipality shall begin on the first day of July, one thousand nine hundred thirty-one, and on the first day of July in each year thereafter. (1917, c. 138, s. 6; 1919, c. 178, s. 3 (6); C. S., s. 2922; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1931, c. 60, s. 66.)

Editor's Note.—Prior to the 1931 amendment the fiscal year of a municipality began either on the first day of June or September as the governing body might determine.

§ **160-372. Special revolving fund for municipalities to avoid borrowing money on anticipations.**—In order to avoid the necessity of borrowing money in anticipation of the receipt of taxes and revenues or the proceeds of the sale of bonds, a municipality may by ordinance create a special revolving fund and with the consent of the Local Government Commission, provide for raising the same to be used in anticipation of the receipt of such moneys and to be replenished by means of such moneys when received. Withdrawals of money from said fund shall be made only for the purposes and within the amounts and for the periods and upon the conditions stated in §§ 160-373, 160-374 and/or 160-375, in respect to the borrowing of the money. Such withdrawals shall not be made unless approved by the Local Government Commission in the same manner as loans made under said sections. No ordinance creating such a fund shall be repealed or amended so as to divert or reduce the amount of the fund, without the approval of said Commission as to necessity or expediency. (1931, c. 60, s. 47.)

Cited in Bryson City Bank v. Bryson City, 213 N. C. 165, 195 S. E. 398 (1938).

Article 27.

Temporary Loans.

§ 160-373. Money borrowed to meet appropriations.—A municipality may borrow money for the purpose of meeting appropriations made for the current fiscal year, in anticipation of the collection of the taxes and revenues of such fiscal year, and within the amount of such appropriations. Such loans shall be paid not later than the tenth day of October in the next succeeding fiscal year. Provision shall be made in the annual budget and annual appropriation ordinance of each fiscal year for the payment of all unpaid loans predicated upon the taxes and revenues of the previous fiscal year. (1917, c. 138, s. 12; 1919, c. 178, s. 3 (12); 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1.)

Cross References.—As to the power of the governing body to delegate authority to fix face amount, rate of interest, time of maturity, place of payment, etc., see § 159-43. As to application to Local Government Commission for issuance of notes, see § 159-7 et seq.

§ 160-374. Money borrowed to pay judgments or interest.—For the purpose of paying a judgment recovered against a municipality, or paying the principal or interest of bonds due or to become due within two months and not otherwise adequately provided for, a municipality may borrow money in anticipation of the receipt of either the revenues of the fiscal year in which the money is borrowed or the revenues of the next succeeding fiscal year. Such loans shall be paid not later than the end of such next succeeding fiscal year. In the event, however, that a judgment or judgments against a municipality amount to more than one cent per hundred dollars of the assessed valuation of taxable property of the municipality for the year in which taxes were last levied before the recovery of the judgment, a loan to pay the judgment may be made payable in not more than five substantially equal annual installments, beginning within one year after the loan is made. For the purpose of paying or renewing notes evidencing indebtedness incurred before July first, one thousand nine hundred thirty-three, and authorized by this subchapter as amended, to be funded, any municipality may issue new notes from time to time until such indebtedness is paid out of revenues or funded into bonds. Such new notes may be made payable at any time or times not later than five years after the first day of July, one thousand nine hundred thirty-three, notwithstanding anything to the contrary in this section.

In addition to the foregoing powers, a municipality may borrow money for the purpose of refunding or funding the principal or interest of bonds due or to become due within two months and not otherwise adequately provided for, and such loans shall be paid not later than the end of the next succeeding fiscal year following the fiscal year within which they are made: Provided, however, if such loans, or any renewals thereof, shall not be paid within the fiscal year in which the same are made, the governing body shall in the next succeeding fiscal year levy and collect a tax ad valorem upon the taxable property in the municipality sufficient to pay the principal and interest thereof. (1919, c. 178, s. 3 (12); C. S., s. 2933; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1931, c. 60, s. 64; 1933, c. 259, s. 1; 1939, c. 231, s. 1.)

Editor's Note.—By the second 1921 amendment this section was made applicable to a judgment or judgments and bonds, where before the amendment it provided for a judgment and debts.

The 1931 amendment added the last two sentences of the first paragraph, and the 1933 amendment changed the date in said sentences from January 1, 1931, to July 1, 1933. The 1939 amendment added the second paragraph.

City May Anticipate Collection of Taxes.—Where the levy of taxes had been approved by the qualified voters of the city, the city, under this section, has the authority to borrow money to pay judgments in anticipation of the collection of taxes validly levied for that purpose. Hammond v. Charlotte, 206 N. C. 604, 175 S. E. 148 (1934).

§ **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 three 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.)

Editor's Note.—This section was reenacted without change by the second 1921 amendment.

§ **160-376. Notes issued for temporary loans.**—Negotiable notes shall be issued for all moneys borrowed under the last three sections. Such notes may be renewed from time to time and money may be borrowed upon notes from time to time for the payment for any indebtedness evidenced thereby, but all such notes shall mature within the time limited by said sections for the payment of the original loan. No money shall be borrowed under said sections 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 within the limitations prescribed by said resolution. All such notes shall be executed in the manner provided in § 160-393 of this subchapter in relation to bonds. They shall be submitted to and approved by the attorney for the municipality before they are issued, and his written approval endorsed on the notes. The resolution authorizing issuance of notes for money borrowed under § 160-374 for the purpose of refunding or funding principal or interest of bonds shall contain a description of the bonds the principal or interest of which is to be so paid, including the respective amounts of such principal or interest and the date or dates on which the same is due and payable. (1917, c. 138, s. 14; 1919, c. 178, s. 3 (14); C. S., s. 2935; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1931, c. 293; 1939, c. 231, s. 1.)

Cross Reference.—As to sale of notes at public or private sale, see §§ 159-13, 159-14 and 159-15.

Editor's Note.—By the second 1921 amendment negotiable notes were provided for instead of "notes", and provision was made for maximum rate of interest instead of six per cent. Provision was also made for private or public negotiation, and the power to fix the face amount was vested in "any officer" appointed by the governing body instead of "the financial officer or chief executive officer."

The 1931 amendment substituted "three" for "two" in the first sentence of this section, and the 1939 amendment added the last sentence.

Article 28.

Permanent Financing.

§ **160-377. Not applied to temporary loans.** — The provisions of this article shall not apply to temporary loans made under article 27, unless otherwise

provided in said article. (1917, c. 138, s. 15; 1919, c. 178, s. 3 (15); C. S., s. 2936; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1.)

Editor's Note.—By the second 1921 amendment the application of this article was qualified by adding the last six words.

In General.—Prior to the decision in Fawcett v. Mt. Airy, 134 N. C. 125, 45 S. E. 1029, 101 Am. St. Rep. 825, 63 L. R. A. 870 (1903), it was held that the construction and maintenance of a system of light, water and sewerage was not within the meaning of the words, "necessary expenses," as used in the State Constitution, Art. 7, § 7. In that case the court expressly overruled the earlier cases. Mayo v. Commissioners, 122 N. C. 5, 29 S. E. 343, 40 L. R. A. 163 (1898). This decision has been uniformly approved and is now the accepted law of the State. In accordance with these decisions the legislature enacted the Municipal Finance Act. Hill v. Elizabeth City, 291 F. 194 (1923).

Cited in Twining v. Wilmington, 214 N. C. 655, 200 S. E. 416 (1939).

§ 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 subsection two 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 not 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. (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.)

Local Modification.—Town of Columbus: 1949, c. 987; town of Walnut Cove: 1949, c. 987.

Cross Reference.—As to necessity of application to Local Government Commission for issuance of bonds, see § 159-7.

Editor's Note.—The 1921 amendment inserted "negotiable" before "bonds" in the preliminary paragraph and made other changes. The 1933 amendment struck out the provision changed by the 1931 amendment and inserted the third and fourth sentences of subsection 2.

The 1935 amendment substituted the word "incurred" for the word "issued" in the second sentence of subsection 2. It also added the last four sentences of the subsection.

The 1939 amendment changed the year in the last sentence of the section from 1938 to 1940. The 1943 amendment changed the year to 1942, and the 1945 amendment changed it to 1946.

Power to Hold Election Implied.—This section impliedly confers the power to hold the necessary election. Hailey v. Winston-Salem, 196 N. C. 17, 144 S. E. 377 (1928).

Bonds Issued by School Trustees. — The board of trustees of a city school is

an official board of the city and under this section bonds may be issued to pay the indebtedness they have incurred in operating the school. Jones v. New Bern, 184 N. C. 131, 113 S. E. 663 (1922).

Refunding Bonds.—Under the provisions of this and the following section an ordinance authorizing the issuance of refunding bonds need not be submitted to the voters. A municipal corporation does not contract a debt, within the meaning of Art. VII, § 7, of the Constitution, when under statutory authority it issues bonds to refund bonds which at the date of the issuance of the refunding bonds are valid and enforceable obligations of the municipality. Bolich v. Winston-Salem, 202 N. C. 786, 164 S. E. 361 (1932).

Issuance of Bonds Pursuant to Section Not Enjoined.—The authority to issue valid bonds for the erection and maintenance of a public hospital with the approval of its voters is conferred on a municipality by this section and § 160-230, and where the other statutes relevant have been duly followed, the bonds so issued are a valid obligation of the town issuing them, and their issuance will not be enjoined by the courts. Burleson v. Spruce Pine Board of Aldermen, 200 N. C. 30, 156 S. E. 241 (1930).

§ 160-379. Ordinance for bond issue. — 1. Ordinance Required. — All bonds of a municipality shall be authorized by an ordinance passed by the governing body.

2. What Ordinance Must Show.—The ordinance shall state:

a. 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;

b. The maximum aggregate principal amount of the bonds;

c. 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;

d. That a statement of the debt of the municipality has been filed with the clerk and is open to public inspection;

e. One of the following provisions:

(1) 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

(2) 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

(3) 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.

3. 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.

4. 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.

5. 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.)

Cross References.—As to provisions which may, upon the approval of the Local Government Commission, be included in the ordinance for bond issue, see § 159-46. As to provision for accelerating the maturity of bonds and notes, see § 153-81.

Editor's Note.—The 1921 amendment made changes in subsection 2. The 1933 amendment changed subsection 2 by adding the requirement for a brief description of indebtedness in subdivision a and the proviso to subdivision c. It also deleted from subsection 5 the former limitation that the indebtedness must have been incurred before July 1, 1931. The 1935 amendment added the last two sentences of subsection 5. And the 1949 amendment rewrote paragraph (2) of subdivision e of subsection 2.

Ordinance Must Comply with Statutes.—It is not required by the various statutes on the subject that a bond ordinance of a municipality set forth in express terms the proportion of the cost of the proposed improvements which has been, or is to be, assessed against the property of each owner abutting upon the streets to be improved or the terms and method of making the payment, if the procedure follow the direction of the statutes relating to the subject. Leak v. Wadesboro, 186 N. C. 683, 121 S. E. 12 (1923).

Subsequent Ratification of Bond Issue.—If a school board borrows money and the debt is taken up by an election this ratification renders unimportant the question of whether or not the money was borrowed for necessary purposes. Jones v. New Bern, 184 N. C. 131, 113 S. E. 663 (1922).

Cited in Adcock v. Fuquay Springs, 194 N. C. 423, 140 S. E. 24 (1927).

§ **160-380. Ordinance not to include unrelated purposes.**—Bonds for two or more unrelated purposes, not of the same general class or character, shall not be authorized by the same ordinance: Provided, however, that bonds for two or more improvements or properties mentioned together in any one clause of subsection 4 of § 160-382 of this subchapter may be treated as being but for one purpose, and may be authorized by the same bond ordinance. After two or more bond ordinances have been passed, the governing body may, in its discretion, direct all or any of the bonds authorized by the ordinances to be actually issued as one consolidated bond issue. Separate issues of funding and/or refunding bonds may be made under authority of the same bond ordinance for the retirement of two or more different debts or classes of debts. (1919, c. 178, s. 3 (17); 1919, c. 285, s. 3; C. S., s. 2939; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1933, c. 259, s. 1.)

Editor's Note.—The second 1921 amendment deleted a provision in next to the last sentence which required the bond ordinance to "have taken effect," before a consolidated bond issue could be had. And the 1933 amendment added the last sentence.

§ **160-381. Ordinance and bond issue; when petition required.**—In cases where a petition of property owners is required by law for the making of local improvements, a bond ordinance authorizing bonds for such local improvements may be passed before any such petition is made, but no bonds for the local

improvements in respect of which such petitions are required shall be issued under the ordinance, nor shall any temporary loan be contracted in anticipation of the issuance of such bonds, unless and until such petitions are made, and then only up to the actual or estimated amount of the cost of the work petitioned for. The determination of the governing body as to the actual or estimated cost of work so petitioned for shall be conclusive in any action involving the validity of bonds or notes or other indebtedness. The bond ordinance may be made to take effect upon its passage, notwithstanding that the necessary petitions for the local improvements have not been filed: Provided, that it appears upon the face of the ordinance that one-fourth or some greater proportion of the cost, exclusive of the cost of work at street intersections, has been or is to be assessed. (1919, c. 178, s. 3 (17); 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1.)

Editor's Note.—This section was reenacted without change by the second 1921 amendment.

§ **160-382. Determining periods for bonds to run.** — 1. How Periods Estimated.—Either in the bond ordinance or in a resolution passed after the bond ordinance but before any bonds are issued thereunder, the governing body shall, within the limits prescribed by subsection four of this section, determine and declare:

a. The probable period of usefulness of the improvements or properties for which the bonds are to be issued; or

b. If the bonds are to be funding or refunding bonds, either the shortest period in which the debt to be funded or refunded can be finally paid without making it unduly burdensome upon the taxpayers of the municipality, or, at the option of the governing body, the probable unexpired period of usefulness of the improvement or property for which the debt was incurred.

2. Average of Periods Determined.—In the case of a consolidated bond issue comprising bonds authorized by different ordinances for different purposes, and in the case of a bond issue authorized by but one ordinance for several related purposes in respect of which several different periods are determined as aforesaid, the governing body shall also determine the average of the different periods so determined, taking into consideration the amount of bonds to be issued on account of each purpose or item in respect of which a period is determined.

The period required to be determined as aforesaid shall be computed from a date not more than one year after the time of passage of any bond ordinance authorizing the issuance of the bonds. The determination of any such period by the governing body shall be conclusive.

3. Maturity of Bonds.—The bonds must mature within the period determined as aforesaid, or, if several different periods are so determined, then within said average period.

4. Periods of Usefulness.—In determining, for the purpose of this section, the probable period of the usefulness of an improvement or property, the governing body shall not deem said period to exceed the following periods for the following improvements and properties, respectively, viz.:

a. Sewer systems (either sanitary or surface drainage), forty years.

b. Water supply systems, or combined water and electric light systems, or combined water, electric light, and power systems, forty years.

c. Gas systems, thirty years.

d. Electric light and power systems, separate or combined, thirty years.

e. Plants for the incineration or disposal of ashes, or garbage, or refuse (other than sewage), twenty years.

f. Public parks (including or not including a playground, as a part thereof, and any buildings thereon at the time of acquisition thereof, or to be erected thereon, with the proceeds of the bonds issued for such public parks), fifty years.

g. Playgrounds, fifty years.

h. Buildings for purposes not stated in this section, if they are:

(1) Of fireproof construction, that is, a building the walls of which are constructed of brick, stone, iron, or other hard, incombustible materials, and in which there are no wood beams or lintels, and in which the floors, roofs, stair halls, and public halls are built entirely of brick, stone, iron, or other hard, incombustible materials, and in which no woodwork or other inflammable materials are used in any of the partitions, floorings, or ceiling (but the building shall be deemed to be of fireproof construction notwithstanding that elsewhere than in the stair halls and entrance halls there is a wooden flooring on top of the fireproof floor, and that wooden sleepers are used, and that it contains wooden handrails and treads, made of hardwood, not less than two inches thick), forty years.

(2) Of nonfireproof construction, that is, a building the outer walls of which are constructed of brick, stone, iron, or other hard, incombustible materials, but which in any other respect differs from a fireproof building as defined in this section, thirty years.

(3) Of other construction, twenty years.

i. Bridges and culverts (including retaining walls and approaches), forty years, unless constructed of wood, and in that case, ten years.

j. Land for purposes not stated in this section, fifty years.

k. Constructing or reconstructing the surface of roads, streets, or highways, whether including or not including contemporaneous constructing or reconstructing of sidewalks, curbs, gutters, or drains, and whether including or not including grading, if such surface:

(1) Is constructed of sand and gravel, five years;

(2) Is of waterbound macadam or penetration process, ten years;

(3) Is of bricks, blocks, sheet asphalt, bitulithic, or bituminous concrete, laid on a solid foundation, or is of concrete, twenty years.

l. Land for roads, streets, highways, or sidewalks, or grading, or constructing or reconstructing culverts, or retaining walls, or surface, or subsurface drains, fifty years.

m. Constructing sidewalks, curbs, or gutters of brick, stone, concrete, or other material of similar lasting character, twenty years.

n. Installing fire or police alarms, telegraph or telephone service, or other system of communication for municipal use, thirty years.

o. Fire engines, fire trucks, hose carts, ambulances, patrol wagons, or any vehicles for use in any department of the municipality, or for the use of municipal officials, ten years.

p. Land for cemeteries, or the improvement thereof, thirty years.

q. Constructing sewer, water, gas, or other service connections, from the service main in the street to the curb or property line, when the work is done by the municipality in connection with any permanent improvement of or in any street, ten years.

r. The elimination of any grade crossing or crossings and improvements incident thereto, thirty years.

s. Equipment, apparatus, or furnishings not included in the foregoing clauses of this subsection, ten years.

t. Any improvement or property not included in other clauses of the subsection, forty years.

u. Land for airports or landing fields, including grading and drainage, forty years.

v. Buildings and equipment and other improvements of airports or landing fields, other than grading and drainage, ten years.

5. Improvements and Properties Defined.—The maximum periods fixed herein for the improvements and properties mentioned in clauses numbered from a to i, both inclusive, of subsection 4 of this section shall be applied thereto whether such

improvements or properties are to be acquired, constructed, reconstructed, enlarged, or extended, in whole or in part, and whether the same are to include or are not to include buildings, lands, rights in lands, furnishings, equipment, machinery, or apparatus constituting a part of said improvements or properties at the time of acquisition, construction, or reconstruction. If the improvements of properties are to be an enlargement or extension of existing properties or improvements, the probable period of usefulness to be determined as aforesaid may be either that of the existing properties or improvements; or that of the enlargement or extension. Bonds for any or all improvements or properties included in any one clause of subsection 4 above may for the purposes of this section be deemed by the governing body to be for but one improvement or property.

6. Kind of Construction Determined.—If the bonds are for a building referred to in clause h of subsection 4 above, and the bond ordinance does not state the kind of construction of the building, or if the bonds are for street improvements mentioned in clause k of subsection 4 above, and the bond ordinance does not state the kind or kinds of pavement or other material to be used, then the kind of construction, or the kind or kinds of pavement or other material, as the case may be, shall be determined by resolution before any of the bonds are issued.

7. Period of Payment.—In determining for the purpose of this section the shortest period in which a debt to be funded or refunded hereunder can be finally paid without making it unduly burdensome upon the taxpayers of the municipality, the governing body shall not deem said period to be greater than fifty years. (1917, c. 138, s. 18; 1919, c. 178, s. 3 (18); C. S., s. 2942; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1929, c. 170; 1931, c. 60, s. 50; 1931, cc. 188, 301; 1933, c. 259, s. 1.)

Editor's Note.—The second 1921 amendment rewrote this section. The 1929 amendment, which inadvertently referred to the wrong section, added the last two paragraphs under subsection 4. The first 1931 amendment rewrote subsection 7, the second 1931 amendment corrected the erroneous reference in the 1929 act, and the third 1931 amendment also added the two paragraphs inserted by the 1929 act.

The only change effected by the 1933 amendment occurs in subsection 7. The limitation was formerly thirty years if the gross debt of the county was less than twelve per cent of the assessed valuation, and fifty years in other cases. The amendment made the limitation fifty years in all cases.

Maturity of Refunding Bonds.—Under this section the period for maturity of refunding bonds is in the discretion of the governing body of the city issuing them. Bolich v. Winston-Salem, 202 N. C. 786, 164 S. E. 361 (1932).

Cited in Jones v. Durham, 197 N. C. 127, 147 S. E. 824 (1929).

§ 160-383. Sworn statement of indebtedness. — 1. What Shall Be Shown.—After the introduction and before the final passage of a bond ordinance an officer designated by the governing body for that purpose shall file with the clerk a statement showing the following:

(a) The gross debt (which shall not include debt incurred or to be incurred in anticipation of the collection of taxes or in anticipation of the sale of bonds other than funding and refunding bonds), which gross debt shall be as follows:

(1) Outstanding debt not evidenced by bonds.

(2) Outstanding bonded debts.

(3) Bonded debt to be incurred under ordinances passed or introduced.

(b) The deductions to be made from gross debt in computing net debt, which deductions shall be as follows:

(1) Amount of unissued funding or refunding bonds included in gross debt.

(2) Amount of sinking funds or other funds held for the payment of any part of the gross debt other than debt incurred for water, gas, electric light, or power purposes or two or more of said purposes.

(3) The amount of uncollected special assessments theretofore levied on account of local improvements for which any part of the gross debt was or is to

be incurred which will be applied when collected to the payment of any part of the gross debt.

(4) The amount, as estimated by the engineer of the municipality or officer designated for that purpose by the governing body or by the governing body itself, of special assessments to be levied on account of local improvements for which any part of the gross debt was or is to be incurred, and which, when collected, will be applied to the payment of any part of the gross debt.

(5) The amount of bonded debt included in the gross debt and incurred, or to be incurred, for water, gas, electric light or power purposes, or two or more of said purposes.

(6) The amount of existing bonded debt included in the gross debt, and incurred or to be incurred for the construction of sewerage systems or sewage disposal plants where said sewerage system is entirely supported by sewerage service charges or when said systems or plants are operated together with the waterworks as a combined and consolidated system and as an integral part thereof, and when the amount necessary to meet the annual interest payable on the debt, and the annual installment necessary for the amortization of the debt, and the amount necessary for repairs, maintenance and operation of said system or systems is included in the rate for waterworks service and so collected by the municipality.

(7) The amount which the municipality shall be entitled to receive from any railroad or street railway company under contract theretofore made for payment by such company of all or a portion of the cost of eliminating a grade crossing or crossings within the municipality, which amount will be applied when received to the payment of any part of the gross debt.

(8) Indebtedness for school purposes.

(c) The net debt, being the difference between the gross debt and the deductions.

(d) The assessed valuation of property as last fixed for municipal taxation.

(e) The percentage that the net debt bears to said assessed valuation.

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 Board of Health 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.

3. Statement Filed for Inspection.—Such statements shall remain on file with the clerk and be open to public inspection. In any action or proceeding in any court involving the validity of bonds, said statement shall be deemed to be true and to comply with the provisions of this subchapter, unless it appears (in an action or proceeding commenced within the time limited by § 160-385 for the commencement thereof), first, that the representations contained therein could not by any reasonable method of computation be true; and second, that a true statement would show that the ordinance authorizing the bonds could not be passed. (1917, c. 138, s. 19; 1919, c. 178, s. 3 (19); 1919, c. 285, s. 4; C. S., s. 2943; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1927, c. 102, s. 1; 1931, c. 60, s. 51; 1933, c. 259, s. 1; 1933, c. 321; Ex. Sess. 1938, c. 3.)

Local Modification.—Alamance, city of Burlington: 1933, c. 334; Columbus, town of Whiteville: 1947, c. 42; Mecklenburg, Transylvania: 1933, c. 321.

Cross Reference.—As to limitation of debts prior to this section, see § 160-64.

Editor's Note.—The second 1921 amendment rewrote this section. The 1927 amendment inserted paragraphs (7) and (8) of 1, (b). The 1931 amendment changed the date in paragraph (a) (1) of subsection 1, and the first 1933 amendment eliminated the provision containing the date. The second 1933 amendment inserted paragraph (6) of 1, (b).

The 1938 amendment made subsection

2 applicable to bonds for erosion control and bonds for erecting jetties, etc.

Bonds Including Amount of Assessment.—Where a town has issued bonds for general street improvements under legislative authority, and includes the amount required for local improvements by assessment of owners of lands abutting a particular street improved, it may charge off from the proceeds of the sale of the bonds the estimated amount to be realized by the special assessments under the provisions of subsection 1, (b) of this section. Brown v. Hillsboro, 185 N. C. 368, 117 S. E. 41 (1923).

Bonds issued by a municipality for water and sewer systems should be deducted from the gross debt in computing the net debt of the municipality in relation to the prohibition against incurring debt in excess of eight per cent of the assessed valuation of property for taxation, bonds for sewer systems being necessarily included in bonds for "water purposes" within the meaning of subsection 1, (b) (5). Lamb v. Randleman, 206 N. C. 837, 175 S. E. 293 (1934).

Such bonds do not come within the inhibition of subsection 2, against incurring debt in excess of eight per cent of the assessed valuation. Lamb v. Randleman, 206 N. C. 837, 175 S. E. 293 (1934).

§ **160-384. Publication of bond ordinance.**—A bond ordinance shall be published once in each of two successive weeks after its final passage. A notice substantially in the following form (the blanks being first properly filled in), with the printed or written signature of the clerk appended thereto, shall be published with the ordinance:

The foregoing ordinance was passed on the .... day of ....., 19.., and was first published (or posted), on the .... day of ....., 19...

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

....,
Clerk (or Secretary).

(1917, c. 138, s. 20; 1919, c. 49, s. 1; 1919, c. 178, s. 3 (20); C. S., s. 2944; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1.)

Editor's Note.—By the second 1921 amendment publication is required only twice where formerly it was required four times, except that when it was to take effect at once, then only one publication was required.

§ **160-385. Limitation of action to set aside ordinance.**—Any action or proceeding in any court to set aside a bond ordinance, or to obtain any other relief upon the ground that the ordinance is invalid, must be commenced within thirty days after the first publication of the notice aforesaid and the ordinance or supposed ordinance referred to in the notice. After the expiration of such period of limitation, no right of action or defense founded upon the invalidity of the ordinance shall be asserted, nor shall the validity of the ordinance be open to question in any court upon any ground whatever, except in an action or proceeding commenced within such period. (1917, c. 138, s. 20; 1919, c. 49, s. 1; 1919, c. 178, s. 3 (20); C. S., s. 2945; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1.)

Editor's Note. — This section was reenacted without change by the second 1921 amendment.

Right to Test Constitutionality Not Affected.—In construing a similar provision with reference to bond issues by counties, it was held that the statute did not prevent a suit to determine the constitutionality of the bond issue. Sessions v. Columbus County, 214 N. C. 634, 200 S. E. 418 (1939).

§ **160-386. Ordinance requiring popular vote.**—1. When Vote Required.—If a bond ordinance provides that it shall take effect thirty days after its first publication unless a petition for its submission to the voters shall be filed in the meantime, the ordinance shall be inoperative without the approval of the voters of the municipality at an election if a petition shall be filed as provided in this section.

2. Petition Filed.—A petition demanding that a bond ordinance be submitted to the voters may be filed with the clerk within thirty days after the first publication of the ordinance. The petition shall be in writing and signed by voters of the municipality equal in number to at least twenty-five per centum of the total

number of registered voters in the municipality as shown by the registration books for the last preceding election for municipal officers therein. The residence address of each signer shall be written after his signature. Each signature to the petition shall be verified by a statement (which may relate to a specified number of signatures), made by some adult resident freeholder of the municipality, under oath before an officer competent to administer oaths, to the effect that the signature was made in his presence and is the genuine signature of the person whose name it purports to be. The petition need not contain the text of the ordinance to which it refers. The petition need not be all on one sheet, and if on more than one sheet, it shall be verified as to each sheet.

3. Sufficiency of Petition.—The clerk shall investigate the sufficiency of the petition and present it to the governing body with a certificate stating the result of his investigation. The governing body shall thereupon determine the sufficiency of the petition and the determination of the governing body shall be conclusive. (1917, c. 138, s. 21; 1919, c. 49, ss. 1, 2; 1919, c. 178, s. 3 (21); C. S., s. 2947; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1927, c. 102, s. 2.)

Editor's Note.—The second 1921 amendment changed the required number of petitioning voters from thirty-three and one-third per centum to twenty-five per centum.

Where Vote of Qualified Electors Not Necessary. — Where an ordinance for the issuance of bonds to establish and maintain playgrounds for children contained a provision which afforded the prescribed time for filing a petition under this section, and no petition was filed during such time, it was held that irrespective of such provision a vote of the qualified electors was not necessary, the bonds being a necessary expense within the meaning of Art. VII, § 7 of the Constitution. Atkins v. Durham, 210 N. C. 295, 186 S. E. 330 (1936).

Injunction against Bond Issue.—See Hill v. Elizabeth City, 291 F. 194 (1923), construing subsection 1, and holding that there was no valid objection to proceedings taken by board of aldermen, entitling plaintiff to enjoin issuance of bonds.

Cited in Smith v. Carolina Beach, 206 N. C. 834, 175 S. E. 313 (1934).

§ **160-387. Elections on bond issue.**—1. What Majority Required.—If a bond ordinance provides that it shall take effect when approved by the voters of the municipality, the affirmative vote of a majority of those who shall vote on the bond ordinance shall be required to make it operative.

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.

3. New Registration.—The governing body of the city or town in which such election is held may, in their discretion, order a new registration of the voters for such election. The books for such new registration shall remain open in each precinct from nine a. m. to six p. m. on each day, except Sundays and holidays, for three weeks, beginning on a Monday morning and ending on the second Saturday evening before the election. A registrar and two judges of election shall be appointed by the governing body for each precinct: Provided, that the books shall be open at the polling places on each Saturday during the registration period. Sufficient notice shall be deemed to have been given of such new registration and of the appointment of the election officers if a notice thereof be published at least thirty (30) days before the closing of the registration books, stating the hours and days for registration. It shall not be necessary to specify in said notice the places for registration. In case the registrar shall fail or refuse for any cause to perform his duties, it shall be lawful for the clerk to appoint another person to perform such duties, and no notice of such appointment shall be necessary.

4. Notice of Election.—A notice of the election shall be deemed sufficiently published if published once not later than twenty days before the election. Such notice shall state the maximum amount of the proposed bonds and the purpose thereof, and the fact that a tax will be levied for the payment thereof. The date of the election shall be stated therein.

5. Ballots.—A ballot shall be furnished to each qualified voter at said election, which ballot may contain the words "for the ordinance authorizing $..... bonds (briefly stating the purpose), and a tax therefor," and "against the ordinance authorizing $..... bonds (briefly stating the purpose), and a tax therefor," with squares in front of each proposition, in one of which squares the voter may make an (X) mark, but this form of ballot is not prescribed.

6. Returns Canvassed.—The officers appointed to hold the election, in making return of the result thereof, shall incorporate therein not only the number of votes cast for and against each ordinance submitted, but also the number of voters registered and qualified to vote in the election. The governing body shall canvass the returns, and shall include in their canvass the votes cast and the number of voters registered and qualified to vote in the election, and shall judicially determine and declare the result of the election.

7. Application of Other Laws.—Except as herein otherwise provided, the registration and election shall be conducted in accordance with the laws then governing elections for municipal officers in such municipality, and governing the registration of the electors for such election of officers.

8. Statement of Result.—The board shall prepare a statement showing the number of votes cast for and against each ordinance submitted, and the number of voters qualified to vote in the election, and declaring the result of the election, which statement shall be signed by a majority of the members of the board and delivered to the clerk of the municipality, who shall record it in the book of ordinances of the municipality and file the original in his office and publish it once.

9. Limitation as to Actions.—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: Provided, that §§ 160-386 and 160-387 shall not apply to the incorporated towns of Madison County. (1917, c. 138, s. 22; 1919, c. 178, s. 3 (22); 1919, c. 291; C. S., s. 2948; 1921, c. 8, s. 1; Ex Sess. 1921, c. 106, s. 1; 1949, c. 497, s. 4.)

Editor's Note.—The second 1921 amendment substituted "one month" for "two months" in the second sentence of subsection 2, added all of subsection 3 except the first sentence, inserted subsection 7, and changed the time in subsection 9 from twenty to thirty days. The 1949 amendment rewrote subsection 1.

For brief comment on the 1949 amendment, see 27 N. C. Law Rev. 454.

When Election Held.—The requirement of subsection 2, that a special bond election shall not be held within one month before or after a regular municipal election, is mandatory and refers to a month according to the designation in the calendar without regard to the number of days it may contain, § 12-3, subsection 3, and is computed by excluding the first and including the last day thereof as provided in § 1-593. Adcock v. Fuquay Springs, 194 N. C. 423, 140 S. E. 24 (1927).

And the term "regular election" is interpreted with the antecedent words of the statute "municipal election," and excludes a general State or national election. Adcock v. Fuquay Springs, 194 N. C. 423, 140 S. E. 24 (1927).

Necessity of Notice.—In Hill v. Skinner, 169 N. C. 405, 86 S. E. 351 (1915), it is said: "While, so far as the officers are concerned who are charged with the duty of giving notice, the requirement as to notice is imperative, yet it will be regarded, otherwise, as directory, if the result would not be changed by a departure from the provisions of the statute. The law looks more to the substance than to the form, and if it appears that a clear majority of the qualified voters have cast their votes in favor of the proposition submitted to them, and that there has been a fair and full opportunity for all to vote, and that there has been no fraud, and the election is in all re-

spects free from taint of any sort, so that no well founded suspicion can be cast upon it, it would be idle to say that this free and untrammeled expression of the popular will should be disregarded and set aside." Board of Com'rs v. Malone & Co., 179 N. C. 604, 103 S. E. 134 (1920).

Form of Ballot Directory.—There being nothing in the statute making the exact language essential to the validity of a ballot, and the words used carrying practically the same meaning the requirement is directory and not mandatory, and a substantial compliance, is all that is necessary. Board of Com'rs v. Malone & Co., 179 N. C. 604, 103 S. E. 134 (1920).

Publication of Returns.—It is not necessary to the validity of an election that the returns be published as required by this section if it appears that no prejudice was sustained because of such failure. Board of Com'rs v. Malone & Co., 179 N. C. 604, 103 S. E. 134 (1920).

Applied in Twining v. Wilmington, 214 N. C. 655, 200 S. E. 416 (1939).

§ **160-388. Preparation for issuing bonds.**—At any time after the passage of a bond ordinance, all steps preliminary to the actual issuance of bonds under the ordinance may be taken, but the bonds shall not be actually issued unless and until the ordinance takes effect. (1917, c. 138, s. 23; 1919, c. 178, s. 3 (23); C. S., s. 2949; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1.)

Editor's Note. — This section was reenacted without change by the second 1921 amendment.

§ **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 three 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, however, that funding or refunding bonds heretofore or hereafter authorized may be issued at any time within five years after the ordinance takes effect.

Notwithstanding the foregoing limitation of time which might otherwise prevent the issuance of bonds, bonds authorized by an ordinance which took effect prior to July 1st, 1950, and which have not been issued by July 1st, 1951, may be issued in accordance with all other provisions of law at any time prior to July 1st, 1953, unless such ordinance shall have been repealed, and any loans made under authority of § 160-375 of article 27 of this chapter 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, 1953, 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.)

Local Modification.—Buncombe, and municipalities therein: 1943, c. 56.

Editor's Note.—The second 1921 amendment inserted the qualification following the second comma in the first paragraph, and the 1939 amendment added the proviso. The 1947 amendment added the second paragraph, and the 1949 and 1951 amendments changed the dates therein.

It seems that the word "appeal" in line five should read "repeal" in order to carry out the probable legislative intent.

For a brief comment on the 1947 amendment, see 25 N. C. Law Rev. 453.

§ **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. 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.)

Cross Reference.—As to power to fix the face amount, the rate of interest, time of maturity and place of payment of temporary loans and notes, see § 159-43.

Editor's Note. — This section was reenacted without change by the second 1921 amendment, and the 1933 amendment inserted in the first sentence the words "or otherwise".

The 1951 amendatory act, effective March 28, 1951, which rewrote the second sentence, provides that its provisions shall apply to the bonds of any county or municipality heretofore authorized, notwithstanding the fact that a part of such authorized bonds may have heretofore been issued.

§ **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. (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.)

Editor's Note. — This section was reenacted without change in meaning by the second 1921 amendment.

The 1933 amendment added the last sentence stating that the section shall not apply to funding or refunding bonds. Prior to the amendment the section was applicable to such bonds in municipalities having a debt of less than twelve per cent of the assessed valuation.

The 1951 amendment rewrote this section. The amendatory act, effective March 28, 1951, provides that its provisions shall apply to the bonds of any county or municipality heretofore authorized, notwithstanding the fact that a part of such authorized bonds may have heretofore been issued.

§ **160-392. Medium and place of payment.**—The bonds may be made payable in such kinds of money and at such place or places within or without the State of North Carolina as the governing body may by resolution provide. (1917, c. 138, s. 27; 1919, c. 178, s. 3 (27); C. S., s. 2953; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1.)

Editor's Note. — This section was reenacted without change by the second 1921 amendment.

§ **160-393. Formal execution of bonds.** — The bonds shall be issued in such form as the officers who execute them shall adopt, except as otherwise provided by the governing body. They shall be signed by two or more officers designated by the governing body, or, if the governing body makes no such designation, then by the mayor or other chief executive officer and by the clerk, and the corporate seal of the municipality shall be affixed to the bonds. The bonds may have coupons attached for the interest to be paid thereon, which coupons shall bear a facsimile signature of the clerk in office, at the date of the bonds or at the date of delivery thereof. The delivery of bonds so executed shall be valid notwithstanding any change in the officers or in the seal of the municipality occur-

ring after the signing and sealing of the bonds. (1917, c. 138, s. 28; 1919, c. 178, s. 3 (28); C. S., s. 2954; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1.)

Cross Reference. — As to requirement that bond be on a single sheet of paper, see § 159-17.

Editor's Note.—The second 1921 amendment provided that in case no one was designated the mayor and clerk should sign the bonds. Formerly it was provided that the mayor and financial officer sign, and the clerk affix the seal of the municipality and attest it.

§ **160-394. Registration and transfer of bonds.**—1. Bonds Payable to Bearer.—Bonds issued under this subchapter shall be payable to the bearer unless they are registered as provided in this section; and each coupon appertaining to a bond shall be payable to the bearer of the coupon.

2. Registration and Effect.—A municipality may keep in the office of its financial officer or in the office of a bank or trust company appointed by the governing body as bond registrar or transfer agent, a register or registers for the registration and transfer of its bonds, in which it may register any bond at the time of its issue, or, at the request of the holder, thereafter. After such registration the principal and interest of the bond shall be payable to the person in whose name it is registered except in the case of a coupon bond registered as to principal only, in which case the principal shall be payable to such person, unless the bond shall be discharged from registry by being registered as payable to bearer. After registration a bond may be transferred on such register by the registered owner in person or by attorney, upon presentation to the bond registrar, accompanied by delivery of a written instrument of transfer in a form approved by the bond registrar, executed by the registered owner.

3. Registration and Transfer Noted on Bond.—Upon the registration or transfer of a bond as aforesaid, the bond registrar shall note such registration or transfer on the back of the bond. Upon the registration of a coupon bond as to both principal and interest he shall also cut off and cancel the coupons.

4. Agreement for Registration.—A municipality may, by recital in its bonds, agree to register the bonds as to principal only, or agree to register them either as to principal only or as to both principal and interest at the option of the bondholder. (1917, c. 138, s. 29; 1919, c. 178, s. 3 (29); C. S., s. 2955; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1.)

Editor's Note. — By the second 1921 amendment, in subsection 2, the appointment of registrar or transfer agent is designated as appointed by the "governing body," where formerly it was by the "governing board." The amendment deleted from subsection 4 a former provision for agreeing by a recital in the bonds to register them as to both principal and interest.

See 13 N. C. Law Rev. 76.

§ **160-395. Application of funds.**—The proceeds of the sale of bonds under this subchapter shall be used only for the purposes specified in the ordinance authorizing said bonds, and for the payment of the principal and interest of temporary loans made in anticipation of the sale of bonds: Provided, however, that if for any reason any part of such proceeds are not applied to or are not necessary for such purposes, such unexpended part of the proceeds shall be applied to the payment of the principal or interest of said bonds. The cost of preparing, issuing, and marketing bonds shall be deemed to be one of the purposes for which the bonds are issued. (1917, c. 138, s. 31; 1919, c. 178, s. 3 (31); C. S., s. 2957; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1.)

Cross References. — As to penalty for misappropriating funds, see § 159-36. As to authority to invest proceeds of bonds which cannot be used for purpose of issue, see § 159-49.1.

Editor's Note. — This section was reenacted without change by the second 1921 amendment.

§ **160-396. Bonds incontestable after delivery.** — Any bonds reciting that they are issued pursuant to this subchapter shall in any action or proceeding involving their validity be conclusively deemed to be fully authorized by this

subchapter and to have been issued, sold, executed, and delivered in conformity herewith, and with all other provisions of statutes applicable thereto, and shall be incontestable, anything herein or in other statutes to the contrary notwithstanding, unless such action or proceeding is begun prior to the delivery of such bonds. (1917, c. 138, s. 32; 1919, c. 178, s. 3 (32); C. S., s. 2958; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1.)

Cross Reference.—As to method of testing the validity of bonds, see § 159-52.

Editor's Note. — This section was reenacted without change by the second 1921 amendment.

§ 160-397. Taxes levied for payment of bonds. — The full faith and credit of the municipality shall be deemed to be pledged for the punctual payment of the principal of and interest on every bond and note issued under this subchapter, including assessment bonds or other bonds for which special funds are provided. The governing body shall annually levy and collect a tax ad valorem upon all the taxable property in the municipality sufficient to pay the principal and interest of all bonds issued under this subchapter as such principal and interest become due: Provided, however, that such tax may be reduced by the amount of other moneys appropriated and actually available for such purpose.

So much of the net revenue derived by the municipality in any fiscal year from the operation of any revenue producing enterprise owned by the municipality after paying all expenses of operating, managing, maintaining, repairing, enlarging and extending such enterprise, shall be applied, first to the payment of the interest, payable in the next succeeding year on bonds issued for such enterprise, and next, to the payment of the amount necessary to be raised by tax in such succeeding year for the payment of the principal of said bonds. All money derived from the collection of special assessments for local improvements for which bonds or notes were issued shall be placed in a special fund and used only for the payment of bonds or notes issued for the same or other local improvements.

Every municipality shall have the power to levy taxes ad valorem upon all taxable property therein for the purpose of paying the principal of or the interest on any bonds or notes for the payment of which the municipality is liable, issued under any act other than this subchapter, or for the purpose of providing a sinking fund for the payment of said principal, or for the purpose of paying the principal of or interest on any notes issued under this subchapter.

The powers stated in this section in respect of the levy of taxes for the payment of the principal and interest of bonds and notes shall not be subject to any limitation prescribed by law upon the amount or rate of taxes which a municipality may levy. Taxes levied under this section shall be levied and collected in the same manner as other taxes are levied and collected upon property in the municipality: Provided, in the case of funding or refunding bonds which do not mature in installments, as provided in § 160-391 of this subchapter, a tax for the payment of the principal of said bonds need not be levied prior to the fiscal year or years said bonds mature unless it is so provided for in an ordinance or resolution passed before the issuance of said bonds, in which case such tax shall be levied in accordance with the provisions of such ordinance or resolution. (1917, c. 138, s. 33; 1919, c. 178, s. 3 (33); C. S., s. 2959; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1933, c. 259, s. 1.)

Cross References. — See § 159-34. As to municipality applying sinking fund to purchase of its own bonds, see § 153-148 et seq.

Editor's Note. — By the second 1921 amendment the provision in the last sentence of the second paragraph for local improvement and collection of assessments therefor replaced a former provision for "special assessments upon which assessment bonds or other bonds or notes are predicated."

The 1933 amendment inserted the proviso in the last paragraph.

Net Revenue Derived from Revenue-Producing Enterprise Should Be Applied to Bonds.—It is clear from a reading of this section that the legislature intended

that, where bonds were issued to enable a municipality to carry on a revenue-producing enterprise, the net revenue derived from such enterprise should be applied to the payment of the interest and principal of such bonds. George v. Asheville, 80 F. (2d) 50, 103 A. L. R. 568 (1935).

After Paying Operation and Maintenance Expenses. — Where a waterworks system produces revenue, it is a revenue-producing enterprise; and, if net revenues are derived from it, after paying all expenses of operating, managing, maintaining, repairing, enlarging, and extending such system, this section requires that they be applied to the payment of the principal and interest due on the bonds issued "for such enterprise." George v. Asheville, 80 F. (2d) 50, 103 A. L. R. 568 (1935).

The requirement that net revenues after paying the expenses of operation shall be applied on bonds does not mean that the discretionary control of waterworks vested in the city authorities by § 160-256 is in anywise limited. George v. Asheville, 80 F. (2d) 50, 103 A. L. R. 568 (1935).

Without Regard as to Time Bonds Are Issued. — There is nothing in this section which limits the application of the net revenue of a revenue-producing enterprise to bonds thereafter issued and there is no reason why the section should be so interpreted. The language of the section provides in the broadest possible terms that the net revenue from such an enterprise shall be applied on the principal and interest of bonds "issued for such enterprise," without limitation as to when such bonds may have been issued. George v. Asheville, 80 F. (2d) 50, 103 A. L. R. 568 (1935).

Where Bonds Share Alike.—As this section clearly intended that such net revenues should be applied on the principal and interest of all bonds which were issued for the system, where the sewer system is an integral and essential part of the waterworks system and with it constitutes one revenue-producing enterprise, sewer bonds should share along with waterworks bonds in the net revenues of the waterworks system. George v. Asheville, 80 F. (2d) 50, 103 A. L. R. 568 (1935).

A revenue-producing enterprise is manifestly one which produces revenue, not necessarily one which produces profit or net revenue. George v. Asheville, 80 F. (2d) 50, 103 A. L. R. 568 (1935).

Injunction to Restrain Diversion of Gross Revenues.—As net revenues can be effectively diverted in advance of their ascertainment by diversion of gross revenues, injunction should be granted to restrain the diversion of gross revenues, if it appears that net revenues are in danger of being diverted in this way. However, care should be taken so as not to trench upon the discretion of the municipal authorities in the management of the water and sewer system. George v. Asheville, 80 F. (2d) 50, 103 A. L. R. 568 (1935).

If net revenue remains after payment of operating expenses such funds are thereafter held in trust to be applied as the statute directs, and any threatened diversion or misapplication should be enjoined. George v. Asheville, 80 F. (2d) 50, 103 A. L. R. 568 (1935).

Bonds Not a Charge upon the Taxing Power of City.—As bonds in aid of the ordinary revenue-producing enterprises of a city, i. e., enterprises for furnishing water, gas, electric light, or power, were exempted from the debt limitation of § 160-383, this shows that it was thought that, while the credit of the municipality would be pledged for bonds of this character, they would not be a charge upon the taxing power of the city but would be taken care of by the revenues of the enterprises for which they were issued. George v. Asheville, 80 F. (2d) 50, 103 A. L. R. 568 (1935).

§ 160-398. Destruction of surrendered bonds of cities and towns.— All surrendered bonds of a city or town may, in the discretion of the governing board of such city or town, be destroyed. Before such bonds are destroyed the treasurer of the municipality shall make a correct descriptive list of all surrendered bonds of the municipality, in a substantially bound book to be kept by him for that purpose, which list shall include the number, date and amount of each bond and the purpose for which it was issued, when this can be ascertained; and after such list shall be made, such surrendered bonds shall be destroyed by burning in the presence of the mayor, treasurer or auditor, city attorney and secretary of the governing board of the city or town, who shall each certify under his hand in such book that he saw the described bonds so burned and destroyed. (1941, c. 203.)

Article 29.

Restrictions upon the Exercise of Municipal Powers.

§ **160-399. In borrowing or expending moneys.**—1. No municipality shall:

a. Make an appropriation of money except as provided in this subchapter;

b. Borrow money or issue bonds or notes except as provided in this subchapter;

c. Make an expenditure of money unless the money shall have been appropriated as provided in this subchapter, or unless the expenditure is a payment of a judgment against the municipality or is a payment of the principal or interest of a bond or note of the municipality; or,

d. Enter into any contract involving the expenditure of money unless a sufficient appropriation shall have been made therefor, except a continuing contract to be performed in whole or in part in an ensuing fiscal year, in which case an appropriation shall be made sufficient to meet the amount to be paid in the fiscal year in which the contract is made.

2. The authorization of bonds by a municipality shall be deemed to be an appropriation of the maximum authorized amount of the bonds for the purposes for which they are to be issued. (1917, c. 138, s. 34; 1919, c. 178, s. 3 (34); C. S., s. 2960; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1.)

Editor's Note.—This section was re-enacted without change by the second 1921 amendment.

A city purchasing a cemetery in excess of the acreage allowed by § 160-2, subsection 3, although the act is ultra vires and no provision is made in the city's budget for payment, takes a good title, and only the State in direct proceedings can question it. Harrison v. New Bern, 193 N. C. 555, 137 S. E. 582 (1927).

Continuing Contract.—The definition of a "continuing contract" as used in subsection 1, d of this section depends largely upon the facts of particular cases. The governing principle in such contracts is successive transactions between the parties over a definite or indefinite period of time. White Co. v. Hickory, 195 N. C. 42, 141 S. E. 494 (1928).

A contract with an engineer to furnish services in connection with the construction of a city's water supply, the completion of which will extend beyond the period of one year, is a continuing one under this section. White Co. v. Hickory, 195 N. C. 42, 141 S. E. 494 (1928).

§ **160-400. Manner of passing ordinances and resolutions.** — Ordinances and resolutions passed pursuant to this subchapter shall be passed in the manner provided by other laws for the passage of ordinances and resolutions, but shall not be subject to the provisions of other laws prescribing conditions, acts, or things necessary to exist, happen, or be performed precedent to or after the passage of ordinances or resolutions in order to give them full force and effect: Provided, however, that in any municipality in which the acts of the governing body thereof involving the raising or expenditure of money are required by law to be approved by some other official board or officer of the municipality in order to make them effective, all ordinances and resolutions passed by the governing body under this subchapter shall, unless they relate solely to elections held under this subchapter, be so approved before they take effect. (1917, c. 138, s. 35; 1919, c. 178, s. 3 (35); C. S., s. 2961; 1921, c. 8, s. 4; Ex. Sess. 1921, c. 106, s. 1.)

Editor's Note.—By the second 1921 amendment a part of the proviso reading "expenditure of money as required by law" was changed to read "expenditure of money is required by law."

§ **160-401. Enforcement of subchapter.**—If any board or officer of a municipality shall be ordered by a court of competent jurisdiction to levy or collect a tax to pay a judgment or other debt, or to perform any duty required by this subchapter to be performed by such board or officer, and shall fail to

carry out such order, the court, in addition to all other remedies, may appoint its own officers or other persons to carry out such order. (1917, c. 138, s. 36; 1919, c. 178, s. 3 (36); C. S., s. 2962; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1.)

Editor's Note.—By the second 1921 amendment there was deleted from this section a provision for officers, creditors and taxpayers to maintain an action to declare invalid any illegal official act, and a provision for jurisdiction of the superior court to enforce by mandamus or injunction the provision of the act.

§ 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. (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.)

Local Modification.—Town of Nashville: 1945, c. 122; town of Raeford: 1949, c. 134; town of Warrenton: 1951, c. 108.

Editor's Note.—The second 1921 amendment changed the maximum rate from $1.25 to $1.00 on the one hundred dollar valuation of property, and added that part of the section beginning with "notwithstanding". The 1947 amendment increased the rate from $1.00 to $1.50, and deleted the former proviso relating to certain cities.

Cited in Burnsville v. Boone, 231 N. C. 577, 58 S. E. (2d) 351 (1950).

Article 30.

General Effect of Municipal Finance Act.

§ 160-403. Effect upon prior laws and proceedings taken.—All acts and parts of acts, whether general, special, private or local, regulating or relating in any way to the issuance of bonds or other obligations of a municipality, or relating to the subject matter of this subchapter, are hereby repealed: Provided, however, that this subchapter shall not affect any local or private act enacted at the extraordinary session, 1921, of the General Assembly, or regular session of one thousand nine hundred and twenty-one, but the powers hereby conferred and the methods of procedure hereby provided shall be deemed to be conferred and provided in addition to and not in substitution for those conferred or provided by any such local or private act enacted at the extraordinary session, 1921, of the General Assembly, or regular session of one thousand nine hundred and twenty-one, so that any municipality may, at its option, proceed under any such local or private act applicable to it enacted at the extraordinary session, 1921, of the General Assembly or regular session of one thousand nine hundred and twenty-one without regard to the restrictions imposed by this subchapter, or may proceed under this subchapter without regard to the restrictions imposed by any other act: Provided further, that this subchapter shall not affect any of the provisions of article nine of subchapter one of chapter 160, except those provisions which prescribe methods of procedure for borrowing money or issuing bonds or other obligations, and said article shall apply to all municipalities in this State, notwithstanding any inconsistent, general, special, local or private laws: Provided further, that this subchapter shall not affect any acts or proceedings heretofore done or taken for the issuance of bonds or other obligations under the Municipal Finance Act, as it stood prior to December 20, 1921, or under any other law, and every municipality is hereby authorized to complete said acts and proceedings pursuant to the laws under which they were done or taken, and to issue said bonds or other obligations under such acts

in the same manner as if this subchapter had not been passed: Provided further, that this subchapter shall not render invalid any bonds or notes or proceedings for the issuance of bonds or notes in cases when such bonds, notes or proceedings have been validated by any other act. (Ex. Sess. 1921, c. 106, s. 2; C. S., s. 2969(a).)

Article 31.

Municipal Fiscal Agency Act.

§ **160-404. Title of article.**—This article shall be known as "The Municipal Fiscal Agency Act." (1925, c. 195, s. 1.)

§ **160-405. Payment of fees to bank.**—Whenever any county, city, town, township, school district or school taxing district is or shall be authorized or permitted to make payments of bonds or coupons issued by it or in its behalf at any place other than within such county, city, town, township, school district or school taxing district, and such bonds or coupons are by their terms payable at such other place, it shall be lawful for the officer disbursing the funds for such payment to pay the reasonable fees of the bank, trust company or other agency making payment at such place, and to agree to pay such fees at a fixed rate throughout the term of the bonds as to which such payment is to be made at such place, but no fee in excess of one-fourth of one per cent of the amount of interest paid and one-eighth of one per cent of the amount of principal paid shall be deemed reasonable. (1925, c. 195, s. 2.)

Local Modification.—Buncombe: 1937, c. 320.

Article 32.

Municipal Bond Registration Act.

§ **160-406. Title of article.**—This article shall be known as "The Municipal Bond Registration Act". (1925, c. 129, s. 1.)

§ **160-407. Registration.**—Each county, city, town, school district and school taxing district which has issued or shall hereafter issue bonds in its own name, and each county, city and town, which has issued or shall hereafter issue bonds in behalf of a school district or a school taxing district, is hereby authorized to keep in the office of its treasurer or financial agent or its clerk, or in the office of the bank or trust company appointed by its governing body as bond registrar, a register or registers for the registration as to principal of such bonds in the name of the owner thereof, in which it may register any such bond as to principal at the time of its issue, or at the request of the holder thereafter. Such registration shall not affect the payment of interest, but such interest shall continue to be made upon the presentation and surrender of interest coupons if issued, but after such registration as to principal, the principal shall be payable to the person in whose name registered or to the person in whose name the bonds registered may be transferred on such register by the registered owner in person or by attorney, upon presentation to the bond registrar, accompanied by delivery of a written instrument of transfer in a form approved by the bond registrar, executed by the registered owner: Provided, however, that a registered bond may be discharged from registry by a transfer to bearer registered as herein provided. Upon the registration or transfer of a bond as aforesaid the bond registrar shall note such registration or transfer on the back of the bond. (1925, c. 129, s. 2.)

§ **160-408. Powers in addition to existing powers.**—The powers herein granted are not in substitution of existing powers but in addition thereto. (1925, c. 129, s. 3.)

SUBCHAPTER IV. FISCAL CONTROL.

Article 33.

Fiscal Control.

§ 160-409. Municipalities brought under terms of County Fiscal Control Act.—All cities and towns shall be subject to and be governed by all of the provisions of the County Fiscal Control Act [§§ 153-114 to 153-141] and acts amendatory thereof and supplemental thereto, including acts ratified at the 1931 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. (1931, c. 60, s. 65.)

Cross Reference.—As to County Fiscal Control Act, see § 153-114 et seq.

Cited in Sing v. Charlotte, 213 N. C. 60, 195 S. E. 271 (1938).

§ 160-410. Terms in County Fiscal Control 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 Fiscal Control Act to cities and towns, the following words and phrases in the County Fiscal Control Act, and acts amendatory thereof and supplemental thereto, shall be deemed to have the following meanings when applied to cities and towns:

County accountant, county treasurer, county auditor, county depository and county treasury shall mean municipal accountant, municipal treasurer, municipal auditor, municipal depository and municipal treasury; the board of county commissioners shall mean the governing body of a municipality; subdivision shall mean 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; county as a noun shall mean municipality; county as an adjective shall mean municipal; clerk of the board of county commissioners shall mean clerk of the municipality or of its governing body; courthouse door shall mean door of the municipal building; appropriation resolution and resolution making tax levy shall mean appropriation ordinance and ordinance making tax levy, respectively; County Fiscal Control Act shall mean Local Government Act, being Public Laws 1931, chapter 60, and acts amendatory thereof and supplemental thereto; County Government Advisory Commission shall mean the Director of Local Government whose office is created by the Local Government Act; Monday shall mean the first regular meeting day of the governing body of a municipality on or after the Monday mentioned in the County Fiscal Control Act. (1931, c. 60, s. 67; 1945, c. 203.)

Editor's Note.—The 1945 amendment added the last sentence.

Applied in Standard Inv. Co. v. Snow Hill, 78 F. (2d) 33 (1935).

Cited in Sing v. Charlotte, 213 N. C. 60, 195 S. E. 271 (1938); Bryson City Bank v. Bryson City, 213 N. C. 165, 195 S. E. 398 (1938).

§ 160-411. Purposes of municipal funds required by article.—The municipal funds required by this article for cities and towns are not those funds required by the County Fiscal Control Act for counties, but are funds for each of the following functions of municipal government:

(1) Current operating expense of the municipality.

(2) School expenses of the municipality supplemental to constitutional school maintenance.

(3) Municipal debt service.

(4) Each special purpose to which the General Assembly has given its special approval, separately stated.

(5) Debt service of each subdivision, separately stated.

(6) Maintenance of each subdivision, separately stated.

(7) Permanent improvements in each subdivision, separately stated.

(8) Such other funds as may be established by the governing body, separately stated. (1931, c. 60, s. 68.)

Cited in Sing v. Charlotte, 213 N. C. 60, 195 S. E. 271 (1938).

§ **160-412. Exceptions.**—Notwithstanding the foregoing, none of the provisions of the County Fiscal Control Act or acts amendatory thereof or supplemental thereto in relation to maintenance of schools for the constitutional term, depositories and security for deposits, abolition of the office of county treasurer or appointment of financial agents to perform functions of the county treasurer shall be applicable to or govern cities or towns. (1931, c. 60, s. 69.)

Article 34.

Revenue Bond Act of 1938.

§ **160-413. Title of article.**—This article may be cited as the "Revenue Bond Act of One Thousand Nine Hundred and Thirty-Eight." (Ex. Sess. 1938, c. 2, s. 1.)

Editor's Note.—Session Laws 1949, c. 1081, which amended §§ 160-417 and 160-421 and struck out § 160-423, re-enacted this article in its entirety as so changed. For comment on this article, see 17 N. C. Law Rev. 370.

§ **160-414. Definitions.**—Wherever used in this article, unless a different meaning clearly appears from the context:

(a) The term "undertaking" shall include the following revenue-producing undertakings or any combination of two or more of such undertakings, whether now existing or hereafter acquired or constructed:

(1) Airports, docks, piers, wharves, terminals and other transit facilities, abattoirs, armories, auditoria, community buildings, cold storage plants, gymnasia, markets, stadia, swimming pools, hospitals, processing plants and sea products, warehouses, highways, causeways, parkways, viaducts, bridges, and other crossings, teacherages or homes for teachers of public schools, school dormitories and teacherages, club houses and golf courses, and parking facilities.

(2) Systems, plants, works, instrumentalities, and properties: (i) used or useful in connection with the obtaining of a water supply and the conservation, treatment, and disposal of water for public and private uses, (ii) used or useful in connection with the collection, treatment, and disposal of sewage, garbage, waste and storm water, (iii) 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, together with all parts of any such undertaking and all appurtenances thereto including lands, easements, rights in land, water rights, contract rights, franchises, approaches, dams, reservoirs, generating stations, sewage disposal plants, plants for the incineration of garbage, intercepting sewers, trunk connection and other sewer and water mains, filtration works, pumping stations, and equipment.

(b) The term "municipality" as used in this article shall mean any county, city, town, incorporated village, or sanitary district of this State now or hereafter incorporated.

(c) The term "governing body" shall mean the board or body in which the general legislative powers of the municipality are vested.

(d) The term "parking facilities" shall mean and shall include lots, garages, parking terminals or other structures (either single or multi-level and either at, above or below the surface) to be used solely for the off-street parking of motor vehicles, open to public use for a fee, including on-street parking meters if so provided by the governing body, and all property, rights, easements and interests relating thereto which are deemed necessary for the construction or the operation thereof. The term "cost" as applied to parking facilities or to extensions

thereto shall include the cost of acquisition, construction, reconstruction, improvement, betterment, or extension, the cost of all labor, materials, machinery and equipment, the cost of all lands, easements, rights in lands and interests acquired by the municipality for such parking facilities or the operation thereof, the cost of demolishing or removing any buildings or structures on lands so acquired, including the cost of acquiring any lands to which such buildings or structures may be moved, and may include, in addition to the items of cost specified in § 160-416, financing charges, cost of plans, specifications, surveys and estimates of cost and of revenues, administrative expense, and such other expense as may be necessary or incident to such acquisition, construction or reconstruction, improvement, betterment or extension, the financing thereof and the placing of the parking facilities in operation. (Ex. Sess. 1938, c. 2, s. 2; 1939, c. 295; 1941, c. 207, s. 2; 1951, c. 703, s. 1.)

Local Modification.—Cabarrus: 1939, c. 288.

Editor's Note.—The 1939 amendment added to paragraph (1) of subsection (a) the words "teacherages or homes for teachers of public schools." And the 1941 amendment added after the words quoted the words "school dormitories and teacherages, club houses and golf courses." The 1951 amendment made this section applicable to "parking facilities."

§ 160-415. Additional powers.—In addition to the powers which it may now have, any municipality shall have power under this article:

(a) To acquire by gift, purchase, or the exercise of the right of eminent domain, to construct, to improve, to better, and to extend any undertaking wholly within or wholly without the municipality, or partially within and partially without the municipality; and to acquire by gift, purchase, or the exercise of the right of eminent domain, lands, easements, rights in lands, and water rights in connection therewith;

(b) To operate and maintain any undertaking for its own use, for the use of public and private consumers, and when operated primarily for its own use and users within the territorial boundaries of the municipality, such undertaking may be operated incidentally for users outside of the territorial boundaries of the municipality;

(c) To prescribe, revise, and collect (such collection, in the case of parking facilities, to be made by the use of parking meters therein, if deemed desirable by the governing body) rates, fees, tolls, or charges for the services, facilities, or commodities furnished by such undertaking; and in anticipation of the collection of the revenues of such undertaking, to issue revenue bonds to finance in whole or in part the cost of the acquisition, construction, reconstruction, improvement, betterment, or extension of any undertaking;

(d) To pledge to the punctual payment of said bonds and interest thereon all or any part of the revenues of such undertaking (including the revenues of improvements, betterments, or extensions thereto thereafter constructed or acquired as well as the revenues of existing systems, plants, works, instrumentalities, and properties of the undertaking so improved, bettered, or extended) or of any part of such undertaking;

(e) To make all contracts, execute other instruments, and do all things necessary or convenient in the exercise of the powers herein granted, or in the performance of its covenants or duties, or in order to secure the payment of its bonds: Provided, no encumbrance, mortgage, or other pledge of property of the municipality is created thereby; and provided, no property of the municipality is liable to be forfeited or taken in payment of said bonds; and provided, no debt on the credit of the municipality is thereby incurred in any manner for any purpose;

(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;

(g) In the case of authorizing and issuing bonds for parking facilities, to install parking meters, or cause the same to be installed, at or near the curbs of the streets within the municipality and to adopt such regulations and impose such charges in connection with any such parking meters heretofore or hereafter installed as it may deem advisable, and to combine into a single undertaking for financing purposes and for the more adequate regulation of traffic and relief of congestion such parking meters or any portion thereof with any parking facilities financed by revenue bonds issued under the provisions of this article and to pledge to the payment of such revenue bonds all or any part of the revenues derived from such parking meters. (Ex. Sess. 1938, c. 2, s. 3; 1951, c. 703, ss. 2, 3.)

Editor's Note.—The 1951 amendment inserted the parenthetical clause immediately following the word "collect" in line one of subsection (c) and added subsections (f) and (g).

§ 160-416. Procedure for authorization of undertaking and revenue bonds.—The acquisition, construction, reconstruction, improvement, betterment, or extension of any undertaking, and the issuance, in anticipation of the collection of the revenues of such undertaking, of bonds to provide funds to pay the cost thereof, may be authorized under this article by resolution or resolutions of the governing body which may be adopted at a regular or special meeting by a majority of the members of the governing body. Unless otherwise provided therein, such resolution or resolutions shall take effect immediately and need not be laid over or published or posted. The governing body in determining such cost may include all costs and estimated costs of the issuance of said bonds; all engineering, inspection, fiscal, and legal expenses, and interest, which it is estimated will accrue during the construction period and for six months thereafter, on money borrowed or which it is estimated will be borrowed pursuant to this article. (Ex. Sess. 1938, c. 2, s. 4.)

§ 160-417. Bond provisions.—Revenue bonds may be issued under this article in one or more series; may bear such date or dates, may mature at such time or times, not exceeding thirty-five years from their respective dates; may bear interest at such rate or rates, not exceeding six per centum (6%) per annum, payable at such time or times; may be payable in such medium of payment; at such place or places; may be in such denomination or denominations; may be in such form either coupon or registered; may carry such registration, conversion, and exchangeability privileges; may be subject to such terms of redemption with or without premium; may be declared or become due before the maturity date thereof; may be executed in such manner, and may contain such terms, covenants, assignments, and conditions as the resolution or resolutions authorizing the issuance of such bonds may provide. All bonds issued under this article bearing the signature of officers in office on the date of the signing thereof shall be valid and binding notwithstanding that before the delivery thereof and payment therefor, such officers whose signatures appear thereon shall have ceased to be officers of the municipality issuing the same. Pending the preparation of the definitive bonds, interim receipts, in such form and with such provisions as the governing body may determine, may be issued to the purchaser or purchasers of bonds to be issued under this article. Said bonds and coupons and said interim receipts shall be negotiable for all purposes, except as restricted by registration, and shall be and are hereby declared to be nontaxable for any and all purposes. (Ex. Sess. 1938, c. 2, s. 5; 1949, c. 1081.)

Editor's Note.—The 1949 amendment rewrote this section.

§ 160-418. Covenants in resolutions.—Any resolution or resolutions authorizing the issuance of bonds under this article to finance in whole or in part

the acquisition, construction, reconstruction, improvement, betterment, or extension of an undertaking may contain covenants (notwithstanding that such covenants may limit the exercise of powers conferred by this article) as to:

(a) The rates, fees, tolls, or charges to be charged for the services, facilities, and commodities of such undertaking;

(b) The use and disposition of the revenue of said undertaking;

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

(d) 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;

(e) Events of default and the rights and liabilities arising thereupon, the terms and conditions upon which 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;

(f) A fair and reasonable payment by the municipality to the account of said undertaking for the services, facilities, or commodities furnished said municipality or any of its departments by said undertaking;

(g) The issuance of other or additional bonds or instruments payable from or a charge against the revenue of such undertaking;

(h) The insurance to be carried thereon, and the use and disposition of insurance moneys;

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

(j) Limitations or restrictions as to the leasing or otherwise disposing of the undertaking while any of the bonds or interest thereon remain outstanding and unpaid; and

(k) The continuous operation and maintenance of the undertaking.

The provisions of this article and of any such resolution or resolutions shall be a contract with every holder of said bonds; and the duties of the municipality and the governing body and the officers of the municipality under this article and under any such resolution or resolutions shall be enforceable by any bondholder by mandamus or other appropriate suit, action, or proceeding at law or in equity. (Ex. Sess. 1938, c. 2, s. 6.)

§ 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. 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.)

Indirect Invocation of Taxing Power.— Defendant municipality proposed to issue bonds to obtain funds for the construction of a municipal hydroelectric generating plant. The city owned and operated its own electric distributing system, and the proposed generating system was to be operated separate and apart therefrom. The resolution of the city authorizing the issuance of the bonds provided that they should be payable solely out of the revenues of the system and the bonds themselves are to contain like provision. It was held that the bonds are not a general indebtedness of the municipality and its taxing power may not be invoked to provide for their payment, and the provision that the city, if it should voluntarily elect to take energy from its generating system for its own uses, should pay the cost

of furnishing the energy so taken, which in no event should exceed a fair and reasonable charge therefor, does not indirectly provide for the invocating of the taxing power for the payment of the bonds. McGuinn v. High Point, 217 N. C. 449, 8 S. E. (2d) 462, 128 A. L. R. 608 (1940).

§ 160-420. Right to receivership upon default.—(a) In the event that the municipality shall default in the payment of the principal or interest on any of the bonds after the same shall become due, whether at maturity or upon call for redemption, and such default shall continue for a period of thirty days; or in the event that the municipality or the governing body, or officers, agents, or employees thereof shall fail or refuse to comply with the provisions of this article or shall default in any agreement made with the holders of the bonds, any holders of bonds or trustee therefor shall have the right to apply in an appropriate judicial proceeding to the superior court of the county in which the municipality is located or any court of competent jurisdiction for the appointment of a receiver of the undertaking, whether or not all bonds have been declared due and payable and whether or not such holder, or trustee therefor, is seeking or has sought to enforce any other right, or exercise any remedy in connection with such bonds. Upon such application the superior court or any other court of competent jurisdiction may appoint, and if the application is made by the holders of twenty-five per centum in principal amount of such bonds then outstanding, or any trustee for holders of such bonds in such principal amount, shall appoint a receiver of the undertaking.

(b) The receiver so appointed shall forthwith, directly or by his agents and attorneys, enter into and upon and take possession of the undertaking and each and every part thereof and may exclude the municipality, its governing body, officers, agents, and employees and all persons claiming under them wholly therefrom and shall have, hold, use, operate, manage and control the same and each and every part thereof, and, in the name of the municipality or otherwise, as the receiver may deem best, and shall exercise all the rights and powers of the municipality with respect to the undertaking as the municipality itself might do. Such receiver shall maintain, restore, insure and keep insured, the undertaking, and from time to time shall make all such necessary or proper repairs as to such receiver may seem expedient and shall establish, levy, maintain and collect such fees, tolls, rentals, and other charges in connection with the undertaking as such receiver may deem necessary or proper and reasonable, and shall collect and receive all revenues and shall deposit the same in a separate account and apply such revenues so collected and received in such manner as the court shall direct.

(c) Whenever all that is due upon the bonds and interest thereon, and upon any other notes, or other obligations, and interest thereon, having a charge, lien, or other encumbrance on the revenues of the undertaking and under any of the terms of any covenants or agreements with holders of bonds shall have been paid or deposited as provided therein, and all defaults shall have been cured and made good, the court may in its discretion, and after such notice and hearing as it deems reasonable and proper, direct the receiver to surrender possession of the undertaking to the municipality, the same right of the holders of the bonds to secure the appointment of a receiver to exist upon any subsequent default as hereinabove provided.

(d) Such receiver shall in the performance of the powers hereinabove conferred upon him, act under the direction and supervision of the court making such appointment and shall at all times be subject to the orders and decrees of such court and may be removed thereby. Nothing herein contained shall limit or restrict the jurisdiction of such court to enter such other and further orders and decrees as such court may deem necessary or appropriate for the exercise by the receiver of any functions specifically set forth herein. (Ex. Sess. 1938, c. 2, s. 8.)

Cross Reference.—As to authority for municipality to avail itself of provisions of bankruptcy law, see § 23-38.

§ 160-421. Approval of State agencies and sale of bonds by Local Government Commission.—All revenue bonds issued pursuant to this article 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 article to the United States of America, or any agency thereof, at private sale and without advertisement. It shall not be necessary for any municipality proceeding under this article to obtain any other approval, consent, or authorization of any bureau, board, commission, or like instrumentality of the State for the construction of an undertaking; provided, however, that existing powers and duties of the State Board of Health shall continue in full force and effect; and provided, further, that no municipality shall construct any systems, plants, works, instrumentalities, 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 usage without having first obtained a certificate of convenience and necessity from the North Carolina Utilities Commission, except that this requirement for a certificate of convenience and necessity shall not apply to any such undertaking defined in this proviso which has been authorized or the bonds for which have been authorized by any general, special, or local law enacted prior to April 21, 1949. (Ex. Sess. 1938, c. 2, s. 9; 1949, c. 1081.)

Editor's Note. — The 1949 amendment rewrote this section.

Necessity of Certificate of Convenience. —It is necessary for a city to obtain a certificate of convenience from the Public Utilities Commissioner in order to construct a hydroelectric generating system under this section and the contention of defendant municipality that it came within the proviso of this section since its resolution for the issuance of bonds for this purpose was passed prior to this article under authorization of chapter 473, Public Laws of 1935, is untenable when it appears that the resolution was amended and supplemented by a resolution passed subsequent to this article which made substantial changes, and supplied essential requirements lacking in the original resolution. McGuinn v. High Point, 217 N. C. 449, 8 S. E. (2d) 462, 128 A. L. R. 608 (1940).

Defendant municipality, by resolution of its council, proposed to construct a hydroelectric plant and finance same by issuing bonds under the Revenue Bond Act of 1935 (ch. 473, Public Laws of 1935). Thereafter the council amended the prior resolution by resolution making substantial changes in the original plans so that the bonds contemplated would be issued under the Revenue Bond Act of 1938 (ch. 2, Public Laws, Extra Session of 1938). The General Assembly, by private act, then created a board of power commissioners for the city and gave said board all the powers and duties of the city with respect to the plant proposed by the original resolution of the council and the amendments thereto. It was held that the board of power commissioners was created and authorized to prosecute the project as then constituted, which contemplated the issuance of bonds under the Revenue Bond Act of 1938, and the board is without power to change the fundamental character of the project by resolution rescinding the amendatory resolution of the council and re-enacting the original resolution of the council, so as to bring the project within the purview of the Revenue Bond Act of 1935, and thus obviate the necessity of a certificate of convenience from the Utilities Commissioner. McGuinn v. High Point, 219 N. C. 56, 13 S. E. (2d) 48 (1941).

§ 160-422. Construction of article. — The powers conferred by this article shall be in addition and supplemental to, and not in substitution for; and the limitations imposed by this article shall not affect the powers conferred by any other general, special, or local law. Bonds or interim receipts may be issued under this article without regard to the provisions of any other general, special, or local law. The General Assembly hereby declares its intention that the limitations of the amount or percentage of, and the restrictions relating to indebtedness of a municipality and the incurring thereof contained in the Constitution of the State and in any general, special or local law shall not apply to bonds or

interim receipts and the issuance thereof under this article. (Ex. Sess. 1938, c. 2, s. 10.)

§ **160-423:** Struck out by Session Laws 1949, c. 1081.

§ **160-424. Article applicable to school dormitories and teacherages.** —All the terms, conditions and provisions of this article are hereby made applicable to the acquisition, construction, reconstruction, improvement, betterment, or extension of school dormitories and teacherages within this State. (Ex. Sess. 1938, c. 5.)

Article 34A.

Bonds to Finance Sewage Disposal System.

§ **160-424.1. Issuance of bonds by municipality.**—Subject to the provisions of the Municipal Finance Act, 1921, as amended, but notwithstanding any limitation on indebtedness contained therein or in any other law, any municipality may issue its negotiable bonds for the purpose of paying the cost of acquiring, constructing, extending, enlarging or improving a system for the collection, treatment and disposal of sewage (hereinafter sometimes called the "sewage disposal system"), either within or without or partly within and partly without the municipality, and may pledge to the payment of such bonds the revenues of the sewage disposal system as hereinafter provided. Notwithstanding the provisions of § 160-391, such bonds shall mature at such time or times, not exceeding 40 years from their respective dates, and may be subject to such terms of redemption with or without premium as the governing body may provide, with the approval of the Local Government Commission. (1949, c. 1213, s. 1; 1951, c. 941, s. 1.)

Editor's Note. — The 1951 amendment inserted the word "may" in lieu of the word "to" formerly appearing before the word "pledge" near the middle of the section, and added the last sentence.

§ **160-424.2. Additional powers of municipality.**—In addition to any powers which it may now have under the provisions of any law, a municipality shall have the following powers:

(a) To acquire, construct, extend, enlarge or improve and operate a sewage disposal system, either within or without or partly within and partly without a municipality;

(b) To fix and collect rates, fees and charges for the services and facilities furnished by a sewage disposal system and to fix and collect charges for making connections with the sewer system of such municipality;

(c) To acquire in the name of the municipality, either by purchase or the exercise of the right of eminent domain, such lands and rights and interests therein, including lands under water and riparian rights, and to acquire such personal property, as it may deem necessary in connection with the construction, extension, enlargement, improvement or operation of a sewage disposal system;

(d) To construct and operate trunk, intercepting or outlet sewers, sewer mains, laterals, conduits or pipe lines in, along or under any streets, alleys, highways or other public ways;

(e) To enter into contracts with the government of the United States or any agency or instrumentality thereof, or with any other municipality, sanitary district, private corporation, co-partnership, association or individual providing for or relating to the treatment or disposal of sewage;

(f) To accept from any federal agency loans or grants for the planning, acquisition, extension, enlargement, improvement or lease of a sewage disposal

system and to enter into agreements with such agency respecting such loans and grants. (1949, c. 1213, s. 2; 1951, c. 941, s. 2.)

Editor's Note. — The 1951 amendment inserted the words "sewage disposal system" in lieu of the words "sewer system" in clause (f), inserted clause (a) and changed former clauses (a), (b), (c), (d) and (e) to (b), (c), (d), (e) and (f).

§ 160-424.3. Fixing or revising schedule of rates, etc., for services and facilities.—Before any municipality may issue bonds under the authority of this article, it shall fix the initial schedule of rates, fees and charges for the use of and for the services and facilities furnished or to be furnished by the sewage disposal system, to be paid by the owner, tenant or occupant of each lot or parcel of land which may be connected with or use the sewer system of such municipality, and revise such schedule of rates, fees and charges from time to time, so that such rates, fees and charges, with other funds available, shall be at least sufficient at all times to pay all expenses of operating, managing and repairing the sewage disposal system and to pay the principal of and the interest on the bonds issued under the provisions of this article as the same shall become due and to provide reserves therefor. (1949, c. 1213, s. 3; 1951, c. 941, s. 3.)

Editor's Note. — The 1951 amendment inserted the words "with other funds available, shall be at least sufficient at all times to pay all expenses of operating, managing and repairing the sewage disposal system".

§ 160-424.4. Authority to charge and collect rates, fees, etc.; basis of computation; additional charge for cause.—The municipality shall charge and collect the rates, fees and charges fixed or revised pursuant to the authority of this article, and such rates, fees and charges shall not be subject to supervision or regulation by any other commission, board, bureau or agency of the municipality or of the State or of any sanitary district or other political subdivision of the State.

Such rates, fees and charges shall be just and equitable, and may be based or computed either upon the quantity of water used or upon the number and size of sewer connections or upon the number and kind of plumbing fixtures in use in the premises connected with the sewer system or upon the number or average number of persons residing or working in or otherwise connected with such premises or upon the type or character of such premises or upon any other factor affecting the use of the facilities furnished or upon any combination of the foregoing factors.

Charges for services to premises, including services to manufacturing and industrial plants, obtaining all or a part of their water supply from sources other than the municipality's water system may be determined by gauging or metering or in any other manner approved by the municipality.

In cases where the character of the sewage from any manufacturing or industrial plant, building or premises is such that it imposes an unreasonable burden upon any sewer system, an additional charge may be made therefor, or the municipality may, if it deems it advisable, compel such manufacturing or industrial plant, building or premises to treat such sewage in such manner as shall be specified by the municipality before discharging such sewage into any sewer lines owned or maintained by the municipality. (1949, c. 1213, s. 4.)

§ 160-424.5. Inclusion of charges as part of water bill; water disconnected upon failure to pay charges.—The municipality may provide in the ordinance or resolution authorizing the issuance of bonds under the provisions of this article, that the charges for the services and facilities furnished by any sewage disposal system constructed by the municipality under the provisions of this article shall be included in bills rendered for water consumed on the premises (but such charges shall be stated separately from the water charges) and that if the amount of such charges so included shall not be paid within thirty days

from the rendition of any such bills, the municipality may discontinue furnishing water to such premises and may disconnect the same from the waterworks system of the municipality. (1949, c. 1213, s. 5; 1951, c. 941, s. 4.)

Editor's Note. — The 1951 amendment inserted the words "sewage disposal system" in lieu of the words "sewer system or sewer improvements".

§ **160-424.6. Revenues may be pledged to bond retirement.**—Any revenues derived from a sewage disposal system for which bonds shall be issued under the provisions of this article may be pledged to the payment of the principal of and the interest on such bonds and to provide reserves therefor. (1949, c. 1213, s. 6; 1951, c. 941, s. 5.)

Editor's Note. — The 1951 amendment rewrote this section. Prior to the amendment the section was mandatory in requiring that revenue be pledged to bond retirement.

§ **160-424.7. Powers herein granted are 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. (1949, c. 1213, s. 7.)

§ **160-424.8. Refunding bonds; approval and sale of bonds issued under article.**—Any municipality may issue its negotiable bonds for the purpose of refunding any bonds then outstanding and issued under the provisions of this article, or for the combined purposes of (a) paying the cost of any extension, enlargement or improvement of a sewage disposal system and (b) refunding bonds of the municipality which shall theretofore have been issued under the provisions of this article and shall then be outstanding and which shall then have matured or be subject to redemption or can be acquired for retirement, and may pledge to the payment of such bonds revenues of the sewage disposal system as above provided. The issuance of such bonds shall be governed by The Municipal Finance Act, 1921, as amended, and the foregoing provisions of this article, in so far as the same may be applicable, and shall not be subject to any limitation on indebtedness contained in The Municipal Finance Act, 1921, as amended, or in any other law. All bonds issued pursuant to this article shall be subject to approval and sale by the Local Government Commission and to delivery by the State Treasurer as provided in the Local Government Act. (1951, c. 941, s. 6.)

Cross Reference.—As to municipal parking authorities, see §§ 160-475 through 160-496.

SUBCHAPTER V. CAPITAL RESERVE FUNDS.

Article 35.

Capital Reserve Funds.

§ **160-425. Short title.** — This article may be cited as "The Municipal Capital Reserve Act of one thousand nine hundred and forty-three." (1943, c. 467, s. 1.)

Editor's Note.—For comment on this enactment, see 21 N. C. Law Rev. 357.

§ **160-426. Meaning of terms.** — The terms "municipality," "governing body," "clerk," "financial officer," "publication," "special assessments" and "necessary expenses" as used in this article shall have the same meaning as expressed in § 160-368, the same being a part of the Municipal Finance Act, 1921. The terms "debt service," "fiscal year," "surplus revenues," "unencumbered balance" and "fund" as used in this article shall have the same meaning as ex-

pressed in § 153-114 the same being a part of the County Fiscal Control Act. (1943, c. 467, s. 2.)

§ 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. (1943, c. 467, s. 3.)

§ 160-428. Sources of capital reserve fund.—The capital reserve fund may consist of moneys derived from any one or more of the following sources:

(1) Unappropriated surplus revenues and unencumbered balances itemized as to:

(a) Collections of ad valorem taxes levied for the current operating expense fund of the municipality which are not pledged or otherwise applicable by law to the payment of existing debt;

(b) Proceeds from the sale of municipal property;

(c) Proceeds from insurance collected by reason of loss of municipal property;

(d) Receipts from revenues derived from sources other than ad valorem taxes, including revenues derived from operation of a revenue producing enterprise owned by the municipality, which are not pledged or otherwise applicable by law to the payment of existing debt;

(e) Collections of special assessments not pledged or otherwise applicable by law to the payment of existing debt;

(f) Collections of ad valorem taxes levied for debt service;

(2) Appropriation included in the annual appropriation ordinance of the current operating expense fund: Provided, however, the sources of revenues from which such appropriation shall be payable shall be itemized in said appropriation ordinance as to amount and class of sources stated in subclauses (b), (c), (d), and (e) of clause (1) of this section;

(3) Proceeds from the sale of municipal property not included in the estimated revenues appropriated for the current fiscal year;

(4) Proceeds from insurance collected by reason of loss of municipal property: Provided, such proceeds are not included in the estimated revenues appropriated for the current fiscal year;

(5) Collections of special assessments not included in the estimated revenues appropriated for the current fiscal year and which are not pledged or otherwise applicable by law to the payment of existing debt;

(6) Moneys accruing to the municipality from the sale of alcoholic beverages which are not included in the estimated revenues appropriated for the current fiscal year. (1943, c. 467, s. 4; 1945, c. 464, s. 1.)

Editor's Note.—The 1945 amendment struck out the words "except that no money shall be deposited in such capital reserve fund after July tenth, one thousand nine hundred and forty-five," formerly appearing after the word "sources" in the introductory paragraph.

§ 160-429. How the capital reserve fund may be established; revenues derived from public utilities.—When a municipality elects under this article to establish a capital reserve fund the governing body shall pass an ordinance authorizing and declaring that the same shall be established. Said ordinance shall state such itemized sources provided in § 160-428 from which moneys are available for deposit in the capital reserve fund at the time of passage. In said ordinance the governing body shall designate some bank or trust company as depository in which moneys shall be deposited for the capital reserve fund. Said ordinance shall further contain a request to the Local Government Commission that the provisions thereof be approved by said Commission. Upon passage of said ordinance the same shall be spread upon the minutes of the governing body and the clerk shall transmit a certified copy thereof to the Local Government Commission.

If revenues derived from a utility or utilities (water system, water and sewer system, electric system, gas system) owned by the municipality are included in said ordinance, or an amendment thereto, as a source or sources, said ordinance or amendment may stipulate that the moneys of such source or sources shall not be withdrawn and expended for any purpose other than repairing, enlarging, extending or reconstructing such utility or utilities. (1943, c. 467, s. 5; 1945, c. 464, s. 1.)

Editor's Note. — The 1945 amendment added the second paragraph.

§ 160-430. When the capital reserve fund shall be deemed established.—The capital reserve fund shall be deemed established when the ordinance passed under the provisions of § 160-429 is approved by the Local Government Commission. After action is taken upon the provisions of said ordinance by the Local Government Commission the secretary of said Commission shall notify the clerk in writing of the approval by said Commission or disapproval, if the Commission declines to approve the ordinance, and the reasons therefor. Upon receipt of the notice of approval the clerk shall thereupon notify the financial officer of the municipality who shall immediately deposit in the designated depository the moneys stated as available in said ordinance for the capital reserve fund and simultaneously report such deposit to the Local Government Commission. (1943, c. 467, s. 6; 1945, c. 464, s. 1.)

Editor's Note.—The 1945 amendment deleted the former second paragraph relating to deposits and report thereof to the Local Government Commission.

§ 160-430.1. Increases to capital reserve fund. — No increase to a capital reserve fund shall be made except by resolution adopted by the governing body and the provisions thereof approved by the Local Government Commission which resolution shall state the source or sources of moneys from which such increase is intended to be made and the amount of the money from each source, but each increase shall be from moneys derived from the identical source or sources as those stated in the ordinance establishing the capital reserve fund or in an amendment thereto. The clerk shall transmit a certified copy of such resolution to the Local Government Commission. After action is taken upon the provisions of said resolution by the Local Government Commission the secretary of said Commission shall notify the clerk in writing of the approval by said Commission or disapproval, if the Commission declines to approve the resolution, and the reasons therefor. Upon receipt of the notice of approval the clerk shall thereupon notify the financial officer of the municipality who shall immediately deposit in the duly designated depository the moneys stated in said resolution and simultaneously report such deposit to the Local Government Commission. Deposits required in § 160-441 shall not be construed as increases of a capital reserve fund within the meaning of this section. (1945, c. 464, s. 1.)

§ 160-431. Amendments to ordinance authorizing the capital reserve fund.—At any time or from time to time after the capital reserve fund is established, the governing body may amend the ordinance authorizing the establishment of such fund for the purpose of including additional sources provided in § 160-428 or for the purpose of changing the designated depository. Each such amendment shall contain a request to the Local Government Commission that the provisions thereof be approved by said Commission. Each such amendment shall be spread upon the minutes of the governing body and the clerk shall transmit a certified copy thereof to the Local Government Commission. No such amendment shall be effective until the provisions thereof have been approved by said Commission. (1943, c. 467, s. 7.)

§ 160-432. Security for protection of deposits.—Any bank or trust company designated as depository of the capital reserve fund shall furnish such

security for deposits made in said fund as is required by law for other funds of the municipality. (1943, c. 467, s. 8.)

§ 160-433. Purposes for which capital reserve fund may be used. —The 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:

(a) Any one or more of the improvements or properties enumerated in § 160-382, subsection four, the same being a part of the Municipal Finance Act, 1921, or to supplement the proceeds from the sale of bonds or bond anticipation notes issued for any one or more of such improvements or properties, or to supplement federal or State grants for any one or more of such improvements or properties;

(b) Temporary borrowing for meeting appropriations made for the current fiscal year in anticipation of the collection 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 are made and no 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: Provided, further, each such withdrawal shall be repaid not later than thirty days after the close of the fiscal year in which made;

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

(d) 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 municipality;

(e) Payment of maturing serial bonds and interest on bonds of the municipality in accordance with a determined plan of amortization.

No part of the capital reserve fund consisting of moneys derived from the collections of taxes levied for debt service may be used for any purpose other than those specified in clauses (b), (c), (d), and (e), of this section. (1943, c. 467, s. 9; 1945, c. 464, s. 1.)

Editor's Note. — The 1945 amendment rewrote subsection (d).

§ 160-434. Authorization for withdrawals from the capital reserve fund.—A withdrawal for any one of the purposes contained in clauses (b), (c), (d) and (e) of § 160-433 shall be authorized by resolution duly adopted by the governing body. Each such resolution shall specify the purpose of the withdrawal, the amount of such withdrawal, the sources of moneys in the capital reserve fund for such withdrawal and the amount to be withdrawn from each source. Each such resolution shall contain a request to the Local Government Commission for its approval of the provisions thereof, shall be spread upon the minutes of the governing body and the clerk shall transmit a certified copy of such resolution to the Local Government Commission. A resolution authorizing a withdrawal for the purpose stated in clause (b) of § 160-433 shall further specify the total appropriations contained in the annual appropriation ordinance of the fiscal year in which such withdrawal is authorized and shall state the total amount of such previous withdrawals made in such fiscal year and the date upon which the withdrawal shall be repayable to the capital reserve fund. In any case where all or any part of a capital reserve fund has been withdrawn and invested in bonds, notes or certificates of indebtedness of the United States of America which are about to mature and it is desired to continue investment of like kind, such continuance may be effected by exchange of said maturing bonds, notes or certificates of indebtedness through the treasury of the United States, or an authorized agent thereof, for bonds, notes or certificates of indebtedness of the United States of America of like principal amount and of later maturity or maturities; Provided, however,

each such continuance and exchange shall first be authorized by resolution adopted by the governing body and the provisions thereof approved by the Local Government Commission.

A withdrawal for any one of the improvements or properties contained in clause (a) of § 160-433 shall be authorized by ordinance duly passed by the governing body which ordinance shall state:

(a) In brief and general terms the purpose for which the withdrawal is to be made;

(b) The amount of the withdrawal;

(c) The sources of moneys in the capital reserve fund for such withdrawal and the amount to be withdrawn from each such source;

(d) One of the following provisions:

(1) If the purpose of such withdrawal is for necessary expenses and the source of the moneys available therefor is in whole or in part ad valorem taxes, or, if such withdrawal is for either necessary expenses or other than necessary expenses and the source of all the moneys available therefor is from other than ad valorem taxes, 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 article, and that in such event it shall take effect when approved by the voters of the municipality at an election as provided in this article.

(2) If the purpose of such withdrawal is for other than the payment of necessary expenses and the source of moneys available therefor is in whole or in part ad valorem taxes, or, if the governing body, although not required to obtain the assent of the voters to such withdrawal, deems it advisable to obtain such assent, that the ordinance shall take effect when approved by the voters of the municipality at an election as provided in this article.

Each ordinance authorizing a withdrawal from the capital reserve fund shall be spread upon the minutes of the governing body and the clerk shall transmit a certified copy thereof to the Local Government Commission. (1943, c. 467, s. 10; 1945, c. 464, s. 1.)

Editor's Note. — The 1945 amendment added the last sentence to the first paragraph.

§ **160-435. Approval of ordinance or resolution for withdrawal by the Local Government Commission.**—No ordinance passed by the governing body authorizing a withdrawal from the capital reserve fund shall be published as provided in this article nor shall the question of approval of the provisions thereof be submitted to the voters until said provisions have first been approved by the Local Government Commission. A certified copy of such ordinance filed by the clerk with the Commission shall be deemed a request to the Commission for its approval of the provisions thereof. The Commission shall pass upon the provisions of such ordinance in the same manner as it passes upon an application for approval of the issuance of bonds or notes under the Local Government Act, and may require such information and evidence pertaining to the necessity and expediency and the adequacy of amount of the proposed withdrawal as it deems necessary before acting upon said ordinance.

No resolution adopted by the governing body authorizing a withdrawal shall become effective until the provisions thereof have been approved by the Local Government Commission. (1943, c. 467, s. 11.)

§ **160-436. Publication of ordinance for withdrawal.**—Upon approval by the Local Government Commission of an ordinance authorizing a withdrawal from the capital reserve fund, the clerk shall cause said ordinance to be published once in each of two consecutive weeks over the following appendage (the blanks being first properly filled in):

The foregoing ordinance was passed on the ..... day of ....., 19...., and was first published (or posted), on the ..... day of ....., 19....

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

.....
Clerk

(1943, c. 467, s. 12.)

§ 160-437. Limitation of action setting aside a withdrawal ordinance.—Any action or proceeding in any court to set aside an ordinance authorizing a withdrawal from the capital reserve fund, or to obtain any other relief upon the grounds that such ordinance is invalid, must be commenced within thirty days after the first publication made under § 160-436. After the expiration of such period of limitation, no right of action or defense founded upon the invalidity of the ordinance shall be asserted, nor shall the validity of the ordinance be open to question in any court upon any grounds whatever, except in an action or proceeding commenced within such period. (1943, c. 467, s. 13.)

§ 160-438. Elections on ordinance authorizing withdrawal. — The provisions of §§ 160-386 and 160-387, the same being a part of the Municipal Finance Act, 1921, relating to popular vote and an election on a bond ordinance, shall apply to an ordinance authorizing a withdrawal from the capital reserve fund: Provided, however, the majority of the qualified voters of the municipality, as required by the Constitution of North Carolina, shall be necessary only if the purpose stated in the ordinance authorizing such withdrawal is for other than a necessary expense and the source of moneys in the capital reserve fund for such withdrawal is in whole or in part ad valorem taxes. In all other cases where the provisions of such ordinance may be required to be approved by the voters, the affirmative vote of the majority of voters voting on such ordinance shall be sufficient to make it operative and in effect: Provided, further, a notice of election required by this article to be published shall state the amount of the proposed withdrawal and the purpose thereof, as well as the date of the election, and: Provided, further, the ballots to be furnished each qualified voter may contain the words, "For the ordinance authorizing $..... withdrawal from the capital reserve fund of the ..... of ..... (briefly stating the purpose)" and "Against the ordinance authorizing $..... withdrawal from the capital reserve fund of the ..... of ..... (briefly stating the purpose)." (1943, c. 467, s. 14.)

§ 160-439. How a withdrawal may be made. — No withdrawal from the capital reserve fund shall be made except pursuant to authority of the governing body by resolution or ordinance which has taken effect. Each withdrawal shall be for the full amount authorized, except a withdrawal for the purpose stated in clause (c) of § 160-433 which may be made for all or a part thereof from time to time according to the plan of amortization, and shall be by check drawn on the depository by the financial officer of the municipality and payable to said financial officer, except that a check evidencing withdrawal for the purpose of investment may be made payable to the obligor or to the vendor of such bonds, notes or certificates of indebtedness in which investment has been duly authorized. Each such check shall bear a certificate on the face or reverse thereof signed by the secretary of the Local Government Commission or by his duly designated assistant that the withdrawal evidenced thereby has been approved under the provisions of the Municipal Capital Reserve Act of one thousand nine hundred and forty-three, and such certificate shall be conclusive evidence that such withdrawal has been approved by the Local Government Commission: Provided, however, the State of North Carolina shall not be liable for misapplication of any moneys withdrawn from the capital reserve fund by reason of such certificate. (1943, c. 467, s. 15; 1945, c. 464, s. 1.)

Editor's Note. — The 1945 amendment added the exception clause to the second sentence.

§ **160-440. Accounting for the capital reserve fund.**—It is the intention of this article that the deposits in and withdrawals from the capital reserve fund shall be as one account with the depository but it shall be the duty of the financial officer to maintain accounts of each source, entering the credits thereto and withdrawals therefrom, and of the purpose for which each authorized withdrawal is made. (1943, c. 467, s. 16.)

§ **160-441. Certain deposits mandatory.** — Each withdrawal shall be used only for the purpose specified in the resolution or ordinance authorizing the same and shall constitute an appropriation duly made for said purpose: Provided, however, that if for any reason any part of such withdrawal is not applied to or is not necessary for such purpose, such unexpended or unused part thereof shall be promptly deposited in the capital reserve fund and credits of such deposit shall be entered to the various sources prorated on the basis upon which the withdrawal was made.

All receipts of earnings from and realizations of investments shall be promptly deposited in the capital reserve fund and credits of such deposits shall be entered to the various sources in said fund prorated on the basis of all withdrawals made for investment.

Receipts for repayment of moneys withdrawn for the purpose of meeting appropriations shall be promptly deposited in the capital reserve fund and credits of such deposits shall be entered to the various sources in said fund prorated on the basis of all such withdrawals made.

All deposits required in this section shall be made in the duly designated depository of the capital reserve fund and it shall be the duty of the financial officer to simultaneously report each such deposit to the Local Government Commission. (1943, c. 467, s. 17; 1945, c. 464, s. 1.)

Editor's Note. — The 1945 amendment added the fourth paragraph.

§ **160-442. Action of Local Government Commission.**—Any action required by this article to be taken by the Local Government Commission may be taken by the executive committee of said Commission, and such action taken by said executive committee shall be subject to review by the Commission in the same manner as action taken under the Local Government Act upon the issuance of bonds. (1943, c. 467, s. 18.)

§ **160-443. Provision for sinking funds.**—Before allocating all or any part of unappropriated surplus revenues and unencumbered balances to a capital reserve fund a municipality may make allocation thereof to a sinking fund for the retirement of term bonds, but such allocation or allocations, together with all other assets of the sinking fund, shall not exceed the amount of the term bonds outstanding and unpaid. (1943, c. 467, s. 19.)

§ **160-444. Termination of power to establish and increase capital reserve fund.**—No ordinance establishing a capital reserve fund, or amendment thereto for including additional sources, shall be passed nor shall a resolution providing for increase of a capital reserve fund be adopted after July tenth, one thousand nine hundred forty-seven. (1945, c. 464, s. 1.)

Validation of Former Increase. — Session Laws 1945, c. 464, s. 3, provides: "Any increase heretofore made to a capital reserve fund with money from the same source or sources stated in the ordinance or order establishing said fund in accordance with the provisions of either the Municipal Capital Reserve Act of one thousand nine hundred forty-three or the County Capital Reserve Act of one thousand nine hundred forty-three, or stated in an amendment to said ordinance or order, is hereby validated."

SUBCHAPTER VI. EXTENSION OF CORPORATE LIMITS.

Article 36.

Extension of Corporate Limits.

§ 160-445. Procedure for adoption of ordinance extending limits; effect of adoption when no election required.—After public notice has been given by publication once a week for four successive weeks in a newspaper in the county with a general circulation in the municipality, or if there be no such paper, by posting notice in five or more public places within the municipality, describing by metes and bounds the territory to be annexed, thus notifying the owner or owners of the property located in such territory, that a session of the municipal legislative body will meet for the purpose of considering the annexation of such territory to the municipality, the governing body of any municipality is authorized and empowered to adopt an ordinance extending its corporate limits by annexing thereto any contiguous tract or tracts of land not embraced within the corporate limits of some other municipality. Then from and after the date of the adoption of such ordinance, unless an election is required as herein provided, the territory and its citizens and property shall be subject to all debts, laws, ordinances and regulations in force in said city or town and shall be entitled to the same privileges and benefits as other parts of said city or town. The newly annexed territory shall be subject to municipal taxes levied for the fiscal year following the date of annexation. (1947, c. 725, s. 1.)

Editor's Note.—For comment on this article, see 25 N. C. Law Rev. 453.

§ 160-446. Referendum on question of extension.—If, at the meeting held for such purpose, a petition is filed and signed by at least fifteen per cent (15%) of the qualified voters resident in the area proposed to be annexed requesting a referendum on the question, the governing body shall, before passing said ordinance, annexing the territory, submit the question as to whether said territory shall be annexed to a vote of the qualified voters of the area proposed to be annexed, and the governing body may or may not cause the question to be submitted to the residents of the municipality voting separately. The governing body may, without receipt of a petition, call for a referendum on the question: Provided, however, the governing body of the municipality shall be required to call for a referendum within the municipality if a petition is filed and signed by at least fifteen per cent (15%) of the qualified voters residing in the municipality, who actively participated in the last gubernatorial election. (1947, c. 725, s. 2.)

§ 160-447. Extent of participation in referendum; call of election.—Upon receipt of a sufficient petition, or if the board, on its own motion, determines that a referendum shall be held, the local governing body shall determine whether or not the election will be conducted solely in the area to be annexed or simultaneously with the qualified voters of the municipality, and shall order the board of elections of the county in which the municipality is located to call an election to determine whether or not the proposed territory shall be annexed to the city or town. Within sixty (60) days after receiving such order from the governing body, the county board of elections shall proceed to hold an election on the question. (1947, c. 725, s. 3.)

§ 160-448. Action required by county board of elections; publication of resolution as to election; costs of election.—Such election shall be called by a resolution or resolutions of said county board of elections which shall:

(a) Describe the territory proposed to be annexed to the said city or town as set out in the order of the said local governing body;

(b) Provide that the matter of annexation of such territory shall be submitted to the vote of the qualified voters of the territory proposed to be annexed, and if

ordered by the local governing body, the qualified voters of said city or town voting separately;

(c) Provide for a special registration of voters in the territory proposed to be annexed for said election;

(d) Designate the precincts and voting places for such election;

(e) Name the registrars and judges of such election;

(f) And make all other necessary provisions for the holding and conducting of such election, the canvassing of the returns and the declaration of the results of such election. Said resolution shall be published in one or more newspapers of the said county once a week for thirty (30) days prior to the opening of the registration books. All cost of holding such election shall be paid by the city or town. Except as herein provided, said election shall be held under the same statutes, rules, and regulations as are applicable to elections in the municipality whose corporate limits are being enlarged. (1947, c. 725, s. 4.)

§ **160-449. Ballots; effect of majority vote for extension.**—At such election those qualified voters who present themselves to the election officials at the respective voting places shall be furnished with ballots upon which shall be written or printed the words "For Extension" and "Against Extension." If at such election a majority of the votes cast from the area proposed for annexation shall be "For Extension," and, in the event an election is held in the municipality, the majority of the votes cast in the municipality shall also be "For Extension," then from and after the date of the declaration of the result of such election the territory and its citizens and property shall be subject to all the debts, laws, ordinances, and regulations in force in said city or town and shall be entitled to the same privileges and benefits as other parts of said city or town. The newly elected territory shall be subject to city taxes levied for the fiscal year following the date of annexation. (1947, c. 725, s. 5.)

§ **160-450. Map of annexed area, copy of ordinance and election results recorded in the office of register of deeds.**—Whenever the limits of any municipal corporation are enlarged, in accordance with the provisions of this article, it shall be the duty of the mayor of the city or town to cause an accurate map of such annexed territory, together with a copy of the ordinance duly certified, and the official results of the election, if conducted, 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. (1947, c. 725, s. 6.)

§ **160-451. Surveys of proposed new areas.**—The governing bodies of the cities and towns are hereby authorized to make the surveys required to properly describe the territory proposed to be annexed. (1947, c. 725, s. 7.)

§ **160-452. Areas having less than twenty-five eligible voter-residents.**—No city or town shall, by virtue of the authority granted in this article, annex any territory in which there are less than twenty-five legal residents eligible to register and vote unless the owners of all the property proposed to be annexed sign a petition requesting the governing body to annex the territory. (1947, c. 725, s. 8.)

§ **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 New Hanover County or Dare County. (1947, c. 725, s. 9; 1951, c. 824.)

Editor's Note. — The 1951 amendment rewrote the first sentence.

SUBCHAPTER VII. URBAN REDEVELOPMENT.

Article 37.

Urban Redevelopment Law.

§ **160-454. Short title.**—This article shall be known and may be cited as the "Urban Redevelopment Law." (1951, c. 1095, s. 1.)

§ **160-455. Findings and declaration of policy.** — It is hereby determined and declared as a matter of legislative finding:

(a) That there exist in urban communities in this State blighted areas as defined herein.

(b) That such areas are economic or social liabilities, inimical and injurious to the public health, safety, morals and welfare of the residents of the State, harmful to the social and economic well-being of the entire communities in which they exist, depreciating values therein, reducing tax revenues, and thereby depreciating further the general community-wide values.

(c) That the existence of such areas contributes substantially and increasingly to the spread of disease and crime, necessitating excessive and disproportionate expenditures of public funds for the preservation of the public health and safety, for crime prevention, correction, prosecution, punishment and the treatment of juvenile delinquency and for the maintenance of adequate police, fire and accident protection and other public services and facilities, constitutes an economic and social liability, substantially impairs or arrests the sound growth of communities.

(d) That the foregoing conditions are beyond remedy or control entirely by regulatory processes in the exercise of the police power and cannot be effectively dealt with by private enterprise under existing law without the additional aids herein granted.

(e) That the acquisition, preparation, sale, sound replanning, and redevelopment of such areas in accordance with sound and approved plans for their redevelopment will promote the public health, safety, convenience and welfare.

Therefore, it is hereby declared to be the policy of the State of North Carolina to promote the health, safety, and welfare of the inhabitants thereof by the creation of bodies corporate and politic to be known as redevelopment commissions, which shall exist and operate for the public purposes of acquiring and replanning such areas and of holding or disposing of them in such manner that they shall become available for economically and socially sound redevelopment. Such purposes are hereby declared to be public uses for which public money may be spent, and private property may be acquired by the exercise of the power of eminent domain. (1951, c. 1095, s. 2.)

§ **160-456. Definitions.**—The following terms where used in this article, shall have the following meanings, except where the context clearly indicates a different meaning:

(a) "Commission" or "redevelopment commission"—A public body and a body corporate and politic created and organized in accordance with the provisions of this article.

(b) "Bonds"—Any bonds, interim certificates, notes, debentures or other obligations of a commission issued pursuant to this article.

(c) "City"—Any city or town. "The city" shall mean the particular city for which a particular commission is created.

(d) "Field of operation"—The area within the territorial boundaries of the city for which a particular commission is created.

(e) "Governing body"—In the case of a city or town, the city council or other legislative body.

(f) "Government"—Includes the State and federal governments or any subdivision, agency or instrumentality corporate or otherwise of either of them.

(g) "Municipality"—Any incorporated city or town with a population of 25,000 or more according to the last decennial census.

(h) "Obligee of the commission" or "obligee"—Any bondholder, trustee or trustees for any bondholders, any lessor demising property to a commission used in connection with a redevelopment project, or any assignees of such lessor's interest, or any part thereof, and the federal government, when it is a party to any contract with a commission.

(i) "Planning commission"—Any planning commission established by ordinance for a municipality of this State. "The planning commission" shall mean the particular planning commission of the city or town in which a particular commission operates.

(j) "Real property"—Lands, lands under water, structures and any and all easements, franchises and incorporeal hereditaments and every estate and right therein, legal and equitable, including terms for years and liens by way of judgment, mortgage or otherwise.

(k) "Redeveloper"—Any individual, partnership or public or private corporation that shall enter or propose to enter into a contract with a commission for the redevelopment of an area under the provisions of this article.

(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.

(m) "Redevelopment area"—Any area, which a planning commission may find to be blighted because of the existence of the conditions enumerated in subsection (q) of this section so as to require redevelopment under the provisions of this article.

(n) "Redevelopment area plan"—A plan for the redevelopment of a redevelopment area made by a "commission" in accordance with the provisions of this article.

(o) "Redevelopment contract"—A contract between a commission and a redeveloper for the redevelopment of an area under the provisions of this article.

(p) "Redevelopment proposal"—A proposal, including supporting data and the form of a redevelopment contract submitted for approval to the governing body by a commission, 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 individual tract, building or improvement shall be considered a part of any blighted area nor subject to the power of eminent domain herein granted unless it is of the character herein described and substantially contributes to the conditions rendering such area blighted.

(r) "Redevelopment project" shall mean any work or undertaking:

1. To acquire blighted areas or portions thereof, including lands, structures, or improvements the acquisition of which is necessary or incidental to the proper clearance, development or redevelopment of such blighted 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.

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.)

§ 160-457. Formation of commissions.—(a) Each municipality, as defined herein, is hereby authorized to create separate and distinct bodies corporate and politic to be known as the redevelopment commission of the municipality by the passage by the governing body of such municipality of an ordinance or resolution creating a commission to function within the territorial limits of said municipality. Notice of the intent to consider the passage of such a resolution or ordinance shall be published at least ten days prior to the meeting.

(b) The governing body of a municipality shall not adopt a resolution pursuant to subsection (a) above unless it finds:

(1) That blighted areas (as herein defined) exist in such municipality, and

(2) That the redevelopment of such areas is necessary in the interest of the public health, safety, morals or welfare of the residents of such municipality.

(c) The governing body shall cause a certified copy of such ordinance or resolution to be filed in the office of the Secretary of State; upon receipt of the said certificate the Secretary of State shall issue a certificate of incorporation.

(d) In any suit, action or proceeding involving or relating to the validity or enforcement of any contract or act of a commission, a copy of the certificate of incorporation duly certified by the Secretary of State shall be admissible in evidence and shall be conclusive proof of the legal establishment of the commission. (1951, c. 1095, s. 4.)

§ 160-458. Appointment and qualifications of members of commission.—Upon certification of a resolution declaring the need for a commission to operate in a city or town, the mayor and governing board thereof, respectively, shall appoint, as members of the commission, five citizens who shall be residents of the city or town in which the commission is to operate. (1951, c. 1095, s. 5.)

§ 160-459. Tenure and compensation of members of commission.—The members who are first appointed shall serve for terms of one, two, three, four and five years, respectively, from the date of their appointment as shall be specified at the time of their appointment. Thereafter, the term of office shall be five years. A member shall hold office until his successor has been appointed and qualified. Vacancies for the unexpired terms shall be promptly filled by the mayor and governing body. A member shall receive no compensation for this service, but shall be entitled within the budget appropriation to the necessary expenses, including traveling expenses, incurred in the discharge of his duties. (1951, c. 1095, s. 6.)

§ 160-460. Organization of commission.—The members of a commission shall select from among themselves a chairman, a vice-chairman, and such other officers as the commission may determine. A commission may employ a secretary, its own counsel, and such technical experts, and such other agents and employees, permanent or temporary, as it may require, and may determine the qualifications and fix the compensation of such persons. Three members shall constitute a quorum for its meeting. Members shall not be liable personally on the bonds or other obligations of the commission, and the rights of creditors shall be solely against such commission. A commission may delegate to one or more of its members, agents or employees such of its powers as it shall deem necessary to carry out the purposes of this article, subject always to the supervision and control of the commission. For inefficiency or neglect of duty or misconduct in office, a commissioner of a commission may be removed by the governing body, but a com-

missioner shall be removed only after a hearing and after he shall have been given a copy of the charges at least 10 days prior to such hearing and have had an opportunity to be heard in person or by counsel. (1951, c. 1095, s. 7.)

§ **160-461. Interest of members or employees.**—No member or employee of a commission shall acquire any interest, direct or indirect, in any redevelopment project or in any property included or planned to be included in any redevelopment area, or in any area which he may have reason to believe may be certified to be a redevelopment area, nor shall he have any interest, direct or indirect, in any contract or proposed contract for materials or services to be furnished or used by a commission, or in any contract with a redeveloper or prospective redeveloper relating, directly or indirectly, to any redevelopment project. The acquisition of any such interest in a redevelopment project or in any such property or contract shall constitute misconduct in office. If any member or employee of a commission shall have already owned or controlled within the preceding two years any interest, direct or indirect, in any property later included or planned to be included in any redevelopment project, under the jurisdiction of the commission, or has any such interest in any contract for material or services to be furnished or used in connection with any redevelopment project, he shall disclose the same in writing to the commission and to the local governing body, and such disclosure shall be entered in writing upon the minute books of the commission. Failure to make such disclosure shall constitute misconduct in office. (1951, c. 1095, s. 8.)

§ **160-462. Powers of commission.** — A commission shall constitute a public body, corporate and politic, exercising public and essential governmental powers, which powers shall include all powers necessary or appropriate to carry out and effectuate the purposes and provisions of this article, including the following powers in addition to those herein otherwise granted:

(a) To procure from the planning commission the designation of areas in need of redevelopment and its recommendations for such redevelopment;

(b) To co-operate with any government or municipality as herein defined;

(c) To act as agent of the State or federal government or any of its instrumentalities or agencies for the public purposes set out in this article;

(d) To prepare or cause to be prepared and recommend redevelopment plans to the governing body of the municipality and to undertake and carry out "redevelopment projects" within its area of operation;

(e) Subject to the provisions of § 160-464 (b) to arrange or contract for the furnishing or repair, by any person or agency, public or private, of services, privileges, works, streets, roads, public utilities or other facilities for or in connection with a redevelopment project; and (notwithstanding anything to the contrary contained in this article or any other provision of law), to agree to any conditions that it may deem reasonable and appropriate attached to federal financial assistance and imposed pursuant to federal law relating to the determination of prevailing salaries or wages or compliance with labor standards, in the undertaking or carrying out of a redevelopment project, and to include in any contract let in connection with such a project, provisions to fulfill such of said conditions as it may deem reasonable and appropriate;

(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 proposal 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;

(g) To invest any funds held in reserves or sinking funds or any funds not required for immediate disbursement, in such investments as may be lawful for guardians, executors, administrators or other fiduciaries under the laws of this State; to redeem its bonds at the redemption price established therein or to purchase its bonds at less than redemption price, all bonds so redeemed or purchased to be cancelled;

(h) To borrow money and to apply for and accept advances, loans evidenced by bonds, grants, contributions and any other form of financial assistance from the federal government, the State, county, municipality or other public body or from any sources, public or private for the purposes of this article, to give such security as may be required and to enter into and carry out contracts in connection therewith; and, notwithstanding the provisions of any other law, may include in any contract for financial assistance with the federal government for a redevelopment project such conditions imposed pursuant to federal law as the commission may deem reasonable and appropriate and which are not inconsistent with the purposes of this article;

(i) Acting through one or more commissioners or other persons designated by the commission, to conduct examinations and investigations and to hear testimony and take proof under oath at public or private hearings on any matter material for its information; to administer oaths, issue subpoenas requiring the attendance of witnesses or the production of books and papers;

(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.

(k) To make such expenditures as may be necessary to carry out the purposes of this article; and to make expenditures from funds obtained from the federal government;

(l) To sue and be sued;

(m) To adopt a seal;

(n) To have perpetual succession;

(o) To make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the commission; and any contract or instrument when signed by the chairman or vice-chairman and secretary or assistant secretary, or, treasurer or assistant treasurer of the commission shall be held to have been properly executed for and on its behalf;

(p) To make and from time to time amend and repeal bylaws, rules, regulations and resolutions;

(q) To make available to the government or municipality or any appropriate agency, board or commission, the recommendations of the commission affecting any area in its field of operation or property therein, which it may deem likely to promote the public health, morals, safety or welfare. (1951, c. 1095, s. 9.)

§ 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 area 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) In conformity with such redevelopment area plan, the commission may prepare a proposal for the redevelopment of all or part of such area, including the proposed redevelopment contract, with the redeveloper selected. The commission shall, after giving ten days' public notice thereof, hold public hearings prior to its final determination of the redevelopment proposal.

(f) The commission shall submit the redevelopment proposal to the planning commission for review. The planning commission, shall, within forty-five days, certify to the redevelopment commission its recommendation on the redevelopment proposal, 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 com-

mission, the commission shall submit to the governing body the redevelopment proposal 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 of blight.

(h) The governing body upon receipt of the redevelopment proposal and the recommendation, if any, of the planning commission shall hold a public hearing upon said proposal. Notice of the time, place and purpose of such hearing shall be published at least once a week for three consecutive weeks in a newspaper of general circulation, the time of the hearing to be at least ten days from the last publication of notice. The notice shall describe the redevelopment area by boundaries and by city block, street and house number. The redevelopment proposal with such maps, plans, contracts, or other documents as form part of said proposal, together with the recommendation, if any, of the planning commission, and supporting data shall be available for public inspection 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 proposal.

(i) The governing body shall approve, amend or reject the redevelopment proposal and the redevelopment contracts as submitted.

(j) Upon approval by the governing body of the redevelopment proposal and redevelopment contracts, the commission is authorized to execute the redevelopment contract after advertisement and award as hereinafter specified and to take such action as may be necessary to carry it out.

(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.)

§ 160-464. Provisions of the redevelopment contract; powers of the commission; procedure on sale or contract.—(a) A commission may sell, exchange or otherwise transfer real property or any interest therein in a redevelopment project area to any redeveloper for residential, recreational, commercial, industrial or other uses or for public use in accordance with the redevelopment plan, subject to such covenants, conditions and restrictions as may be deemed to be in the public interest or to carry out the purposes of this article; provided, that such sale, exchange or other transfer, and any agreement relating thereto, may be made only after, or subject to, the approval of the redevelopment

plan by the governing body of the municipality and after public notice and award as hereinafter specified in subsection (b).

(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 four 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 of such property as is specified in subsection (c) (1), (2) and (3) of this section with or without consideration as shall be determined by the commission; 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 awards of contracts and all sales shall be subject to the approval of the governing body of the municipality. After 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.

(d) The commission may temporarily 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.

(e) Any deed to a redeveloper in furtherance of a redevelopment contract shall

be executed in the name of the commission, by its proper officers, and shall contain in addition to all other provisions, such conditions, restrictions and provisions as the commission may deem desirable to run with the land in order to effectuate the purposes of this article. (1951, c. 1095, s. 11.)

§ **160-465. Eminent domain.**—Title to any property acquired by a commission through eminent domain shall be an absolute or fee simple title, unless a lesser title shall be designated in the eminent domain proceedings. The commission may exercise the right of eminent domain in the manner provided by law for the exercise of such right by municipalities, except that § 40-10 of the General Statutes shall not apply to such commission. If any of the real property in the redevelopment area which is to be acquired has, prior to such acquisition, been devoted to another public use, it may, nevertheless, be acquired by condemnation; provided, that no real property belonging to any municipality or county or to the State may be acquired without its consent. (1951, c. 1095, s. 12.)

§ **160-466. Issuance of bonds.**—(a) The commission shall have power to issue bonds from time to time for any of its corporate purposes including the payment of principal and interest upon any advances for surveys and plans for redevelopment projects. The commission shall also have power to issue refunding bonds for the purpose of paying or retiring or in exchange for bonds previously issued by it. The commission may issue such types of bonds as it may determine, including (without limiting the generality of the foregoing) bonds on which the principal and interest are payable:

(1) Exclusively from the income, proceeds, and revenues of the redevelopment project financed with the proceeds of such bonds; or

(2) Exclusively from the income, proceeds, and revenues of any of its redevelopment projects whether or not they are financed in whole or in part with the proceeds of such bonds; provided, that any such bonds may be additionally secured by a pledge of any loan, grant or contributions, or parts thereof, from the federal government or other source, or a mortgage of any redevelopment project or projects of the commission.

(b) Neither the commissioners of a commission nor any person executing the bonds shall be liable personally on the bonds by reason of the issuance thereof. The bonds and other obligations of the commission (and such bonds and obligations shall so state on their face) shall not be a debt of the municipality, the county, or the State and neither the municipality, the county, nor the State shall be liable thereon, nor in any event shall such bonds or obligations be payable out of any funds or properties other than those of said commission acquired for the purpose of this article. The bonds shall not constitute an indebtedness of the municipality within the meaning of any constitutional or statutory debt limitation or restriction. Bonds of a commission are declared to be issued for an essential public and governmental purpose and to be public instrumentalities and, together with interest thereon and income therefrom, shall be exempt from all taxes. Bonds may be issued by a commission under this article notwithstanding any debt or other limitation prescribed in any statute. This article without reference to other statutes of the State shall constitute full and complete authority for the authorization and issuance of bonds by the commission hereunder and such authorizations and issuance shall not be subject to any conditions, restrictions or limitations imposed by any other statute whether general, special or local, except as provided in subsection (d) of this section.

(c) Bonds of the commission shall be authorized by its resolution and may be issued in one or more series and shall bear such date or dates, be payable upon demand or mature at such time or times, bear interest at such rate or rates, not exceeding six per centum (6%) per annum, be in such denomination or denominations, be in such form either coupon or registered, carry such conversion or registration privileges, have such rank or priority, be executed in such manner,

be payable in such medium of payment, at such place or places, and be subject to such terms of redemption (with or without premium) as such resolution, its trust indenture or mortgage may provide.

(d) The bonds shall be approved and sold by the Local Government Commission in the same manner as bonds of municipalities are approved and sold by said Local Government Commission under the provisions of the Local Government Act; provided, however, said Local Government Commission may sell all or any part of an issue of bonds authorized pursuant to this article to the federal government at private sale and without advertisement and, in the event less than all of such bonds are sold to the federal government at private sale, may sell the balance of such bonds at private sale and without advertisement to any party or parties other than the federal government at an interest cost which shall not exceed the interest cost of that portion of such bonds sold to the federal government, such cost to be determined in the same manner as interest cost is determined in the sale of bonds of municipalities. No bonds issued pursuant to this article shall be sold at less than par and accrued interest. Such bonds shall be delivered in the same manner as bonds of municipalities are delivered under the provisions of § 159-21 of the General Statutes (in applying the provisions of said § 159-21 to bonds authorized pursuant to this article the words "bonds," "notes" and "indebtedness" as they appear in the context thereof shall mean "bonds" as defined in this article and the word "unit" shall mean "commission" as defined in this article).

(e) In case any of the commissioners or officers of the commission whose signatures appear on any bonds or coupons shall cease to be such commissioners or officers before the delivery of such bonds, such signatures shall, nevertheless, be valid and sufficient for all purposes, the same as if such commissioners or officers had remained in office until such delivery. Any provisions of any law to the contrary notwithstanding, any bonds issued pursuant to this article shall be fully negotiable.

(f) In any suit, action or proceedings involving the validity or enforceability of any bond of the commission or the security therefor, any such bond reciting in substance that it has been issued by the commission to aid in financing a redevelopment project, as herein defined, shall be conclusively deemed to have been issued for such purpose and such project shall be conclusively deemed to have been planned, located and carried out in accordance with the purposes and provisions of this article. (1951, c. 1095, s. 13.)

§ 160-467. Powers in connection with issuance of bonds.—(a) In connection with the issuance of bonds or the incurring of obligations and in order to secure the payment of such bonds or obligations, the commission, in addition to its other powers, shall have power:

(1) To pledge all or any part of its gross or net rents, fees or revenues to which its right then exists or may thereafter come into existence;

(2) To mortgage all or any part of its real or personal property, then owned or thereafter acquired;

(3) To covenant against pledging all or any part of its rents, fees and revenues, or against mortgaging all or any part of its real or personal property, to which its right or title then exists or may thereafter come into existence or against permitting of suffering any lien on such revenues or property; to covenant with respect to limitations on its right to sell, lease or otherwise dispose of any redevelopment project or any part thereof; and to covenant as to what other, or additional debts or obligations may be incurred by it;

(4) To covenant as to the bonds to be issued and as to the issuance of such bonds in escrow or otherwise, and as to the use and disposition of the proceeds thereof; to provide for the replacement of lost, destroyed or mutilated bonds, to covenant against extending the time for the payment of its bonds or interest thereon; and to covenant for the redemption of the bonds and to provide the terms and conditions thereof;

(5) To covenant (subject to the limitations contained in this article) as to the amount of revenues to be raised each year or other period of time by rents, fees and other revenues, and as to the use and disposition to be made thereof; to create or to authorize the creation of special funds for moneys held for operating costs, debt service, reserves, or other purposes, and to covenant as to the use and disposition of the moneys held in such funds;

(6) To prescribe the procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds the holders of which must consent thereto and the manner in which such consent may be given;

(7) To covenant as to the use, maintenance and replacement of any of or all of its real or personal property, the insurance to be carried thereon and the use and disposition of insurance moneys, and to warrant its title to such property;

(8) To covenant as to the rights, liabilities, powers and duties arising upon the breach by it of any covenants, conditions or obligations; and to covenant and prescribe as to events of default and terms and conditions upon which any or all of its bonds or obligations shall become or may be declared due before maturity and as to the terms and conditions upon which such declaration and its consequences may be waived;

(9) To vest in any obligees of the commissions the right to enforce the payment of the bonds or any covenants securing or relating to the bonds; to vest in any obligee or obligees holding a specified amount in bonds the right, in the event of a default to take possession of and use, operate and manage any redevelopment project or any part thereof, title to which is in the commission, or any funds connected therewith, and to collect the rents and revenues arising therefrom and to dispose of such moneys in accordance with the agreement with such obligees; to provide for the powers and duties of such obligees and to limit the liabilities thereof, and to provide the terms and conditions upon which such obligees may enforce any covenant or rights securing or relating to the bonds; and

(10) To exercise all or any part or combination of the powers herein granted; to make such covenants (other than and in addition to the covenants herein expressly authorized) and to do any and all such acts and things as may be necessary or convenient or desirable in order to secure its bonds, or, in the absolute discretion of said commission, as will tend to make the bonds more marketable notwithstanding that such covenants, acts or things may not be enumerated herein.

(b) The commission shall have power by its resolution, trust indenture, mortgage lease or other contract to confer upon any obligee holding or representing a specified amount in bonds, the right (in addition to all rights that may otherwise be conferred), upon the happening of an event of default as defined in such resolution or instrument, by suit, action or proceeding in any court of competent jurisdiction:

(1) To cause possession of any redevelopment project or any part thereof title to which is in the commission, to be surrendered to any such obligee;

(2) To obtain the appointment of a receiver of any redevelopment project of said commission or any part thereof, title to which is in the commission and of the rents and profits therefrom. If such receiver be appointed, he may enter and take possession of, carry out, operate and maintain such project or any part therefrom and collect and receive all fees, rents, revenues, or other charges thereafter arising therefrom, and shall keep such moneys in a separate account or accounts and apply the same in accordance with the obligations of said commission as the court shall direct; and

(3) To require said commission and the commissioners, officers, agents and employees thereof to account as if it and they were the trustees of an express trust. (1951, c. 1095, s. 14.)

§ 160-468. Right of obligee.—An obligee of the commission shall have the right in addition to all other rights which may be conferred on such obligee, subject only to any contractual restrictions binding upon such obligee:

(a) By mandamus, suit, action or proceeding at law or in equity to compel said commission and the commissioners, officers, agents or employees thereof to perform each and every term, provision and covenant contained in any contract of said commission with or for the benefit of such obligee, and to require the carrying out of any or all such covenants and agreements of said commission and the fulfillment of all duties imposed upon said commission by this article; and

(b) By suit, action or proceeding in equity, to enjoin any acts or things which may be unlawful, or the violation of any of the rights of such obligee of said commission. (1951, c. 1095, s. 15.)

§ **160-469. Co-operation by public bodies.** — (a) For the purpose of aiding and co-operating in the planning, undertaking or carrying out of a redevelopment project located within the area in which it is authorized to act, any public body may, upon such terms, with or without consideration, as it may determine:

(1) Dedicate, sell, convey or lease any of its interest in any property, or grant easements, licenses or any other rights or privileges therein to a commission;

(2) Cause parks, playgrounds, recreational, community, educational, water, sewer or drainage facilities, or any other works which it is otherwise empowered to undertake, to be furnished in connection with a redevelopment project;

(3) Furnish, dedicate, close, vacate, pave, install, grade, regrade, plan or replan streets, roads, sidewalks, ways or other places, which it is otherwise empowered to undertake;

(4) Plan or replan, zone or rezone any part of the redevelopment;

(5) Cause administrative and other services to be furnished to the commission of the character which the public body is otherwise empowered to undertake or furnish for the same or other purposes;

(6) Incur the entire expense of any public improvements made by such public body in exercising the powers granted in this section;

(7) Do any and all things necessary or convenient to aid and co-operate in the planning or carrying out of a redevelopment plan;

(b) Any sale, conveyance, or agreement provided for in this section may be made by a public body without public notice, advertisement or public bidding. (1951, c. 1095, s. 16.)

§ **160-470. Grant of funds by community.** — Any municipality located within the area of operation of a commission may appropriate funds to a commission for the purpose of aiding such commission in carrying out any of its powers and functions under this article. To obtain funds for this purpose, the municipality may levy taxes and may in the manner prescribed by law issue and sell its bonds. (1951, c. 1095, s. 17.)

§ **160-471. Records and reports.**—(a) The books and records of a commission shall at all times be open and subject to inspection by the public.

(b) A copy of all bylaws and rules and regulations and amendments thereto adopted by it, from time to time, shall be filed with the city clerk and shall be open for public inspection.

(c) At least once each year a report of its activities for the preceding year and such other reports as may be required shall be made. Copies of such reports shall be filed with the mayor and governing body of the municipality. (1951, c. 1095, s. 18.)

§ **160-472. Title of purchaser.**—Any instrument executed by a commission and purporting to convey any right, title or interest in any property under this article shall be conclusive evidence of compliance with the provisions of this article insofar as title or other interest of any bona fide purchasers, lessees or transferees of such property is concerned. (1951, c. 1095, s. 19.)

§ **160-473. Preparation of general plan by local governing body.**—The governing body of any municipality or county, which is not otherwise authorized to create a planning commission with power to prepare a general plan for the development of the community, is hereby authorized and empowered to prepare such a general plan prior to the initiation and carrying out of a redevelopment project under this article. (1951, c. 1095, s. 20.)

§ **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.)

SUBCHAPTER VIII. PARKING AUTHORITIES AND FACILITIES.

Article 38.

Parking Authorities.

§ **160-475. Short title.**—This article may be cited as the "Parking Authority Law." (1951, c. 779, s. 1.)

§ **160-476. Definitions.**—As used or referred to in this article, unless a different meaning clearly appears from the context:

1. The term "authority" shall mean a public body and a body corporate and politic organized in accordance with this article for the purposes, with the powers and subject to the restrictions hereinafter set forth;
2. The term "city" shall mean the city that is, or is about to be, included in the territorial boundaries of an authority when created hereunder;
3. The term "city council" shall mean the legislative body, council, board of commissioners, or other body charged with governing the city;
4. The term "city clerk" shall mean the clerk of the city or the officer thereof charged with the duties customarily imposed on the clerk;
5. The term "commissioner" shall mean one of the members of an authority, appointed in accordance with the provisions of this article;
6. The term "bonds" shall mean bonds authorized by this article;
7. The term "real property" shall mean lands, structures, franchises, and interest in lands, and any and all things usually included within the said term, and includes not only fees simple absolute but also any and all lesser interests, such as easements, rights of way, uses, leases, licenses, and all other incorporeal hereditaments and every estate, interest or right, legal or equitable, including terms of years, and liens thereon by way of judgments, mortgages or otherwise, and also claims for damage to real estate;
8. The term "parking project" shall mean any area or place operated or to be operated by the authority for the parking or storing of motor and other vehicles and shall without limiting the foregoing, include all real and personal property, driveways, roads, approaches, structures, garages, meters, mechanical equipment, and all appurtenances and facilities either on, above or under the ground which are used or usable in connection with such parking or storing of such vehicles. (1951, c. 779, s. 2.)

§ **160-477. Creation of authority.**—The city council of any city may, upon its own initiative, and shall, upon petition of 25 or more residents of the city, hold a public hearing on the question whether or not it is necessary for the city to organize an authority under the provisions of this article. Notice of the time, place and purpose of such hearing shall be given by publication in a newspaper of general circulation in the city, at least once, at least 10 days before such hearing. At such hearing, an opportunity to be heard shall be granted to all residents and taxpayers of the city and all other interested persons. If, after such hearing, the city council shall by resolution determine that it is necessary for

the city to organize an authority under the provisions of this article, the city council shall 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 or cause to be presented to the Secretary of State of North Carolina a written application signed by them, which shall set forth (1) a statement that the city council has, pursuant to this article, and after a public hearing held as herein required, determined that it is necessary for the city to organize an authority under the provisions of this article, and has appointed the signers of such application as commissioners of such an authority; (2) a statement that the commissioners desire the authority to become a public body and a body corporate and politic under this article; (3) the name, address and term of office of each of the commissioners; (4) the name which is proposed for the corporation; and (5) the location and the principal office of the proposed corporation. The application shall be accompanied by a copy, certified by the city clerk, of the resolution or resolutions of the city council making such determination and appointments. The application shall be subscribed and sworn to by each of said commissioners before an officer authorized by law to take and certify oaths, who shall certify upon the application that he personally knows said commissioners and knows them to be the persons appointed as stated 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 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 body corporate and politic under the name proposed in the application; and the Secretary of State shall make and issue a certificate of incorporation pursuant to this article, under the seal of the State, and shall record the same with the application.

The boundaries of such authority shall be coterminous with those of such city.

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. (1951, c. 779, s. 3.)

§ 160-478. Appointment, removal, etc., of commissioners; quorum; chairman; vice-chairman, agents and employees; duration of authority. —An authority shall consist of five commissioners appointed by the city council, and the city council shall designate the first chairman. No commissioner shall be a city official.

The commissioners who are first appointed shall be designated by the city council to serve for terms of one, two, three, four and five years respectively from the date of their appointment. Thereafter, the term of office shall be five years. A commissioner shall hold office until his successor has been appointed by the city council and has qualified. Vacancies shall be filled by the city council for the unexpired term. Three commissioners shall constitute a quorum. A commissioner shall receive no compensation for his services, but he shall be entitled to reimbursement for his actual and necessary expenses incurred in the performance of his official duties.

When the office of the first chairman of the authority becomes vacant, the authority shall select a chairman from among its members. An authority shall

select from among its members a vice-chairman, and it may employ a secretary (who shall be executive director), technical experts and such other officers, agents and employees, permanent or temporary, as it may require, and shall determine their qualifications, duties and compensation. An authority may, with the consent of the city council call upon the city attorney or chief law officer of the city for such legal services as it may require, or it may employ its own counsel and legal staff. An authority may delegate to one or more of its agents or employees such powers or duties as it may deem proper. The city council may remove any member of the authority for inefficiency, neglect of duty or misconduct in office, giving him a copy of the charges against him and an opportunity of being heard in person, or by counsel, in his defense upon not less than 10 days' notice.

Such authority and its corporate existence shall continue only for a period of five years and thereafter until all its liabilities have been met and its bonds have been paid in full or such liabilities or bonds have otherwise been discharged. Upon its ceasing to exist, all its rights and properties shall pass to the city. (1951, c. 779, s. 4.)

§ **160-479. Duty of authority and commissioners.**—The authority and its commissioners shall be under a statutory duty to comply or cause compliance strictly with all provisions of this article and, in addition thereto, with each and every term, provision and covenant in any contract of the authority on its part to be kept or performed. (1951, c. 779, s. 5.)

§ **160-480. Interested commissioners or employees.** — No commissioner or employee of an authority shall acquire any interest direct or indirect in any parking project or in any property included or planned to be included in any parking project, nor shall he have any interest direct or indirect in any contract or proposed contract for materials or services to be furnished or used in connection with any parking project. If any commissioner or employee of an authority owns or controls an interest direct or indirect in any property included or planned to be included in any parking project, he shall immediately disclose the same in writing to the authority and such disclosure shall be entered upon the minutes of the authority. Failure to so disclose such interest shall constitute misconduct in office. (1951, c. 779, s. 6.)

§ **160-481. Purpose and powers of the authority.**—An authority incorporated under this article shall constitute a public body and a body corporate and politic, exercising public powers as an agency or instrumentality of the city with which it is coterminous. The purpose of the authority shall be to relieve traffic congestion of the streets and public places in the city by means of off-street parking facilities, and to that end to acquire, construct, improve, operate and maintain one or more parking projects in the city. To carry out said purpose, the authority shall have power:

1. To sue and be sued;
2. To have a seal and alter the same at pleasure;
3. To acquire, hold and dispose of personal property for its corporate purposes, including the power to purchase prospective or tentative awards in connection with the condemnation of real property;
4. To acquire by purchase or condemnation, and use real property necessary or convenient. All real property acquired by the authority by condemnation shall be acquired in the manner provided by law for the condemnation of land by the city;
5. To make bylaws for the management and regulation of its affairs, and, subject to agreements with bondholders, for the regulation of parking projects;
6. To make contracts and leases, and to execute all instruments necessary or convenient;
7. To construct such buildings, structures and facilities as may be necessary or convenient;

8. To construct, reconstruct, improve, maintain and operate parking projects;

9. To accept grants, loans or contributions from the United States, the State of North Carolina, or any agency or instrumentality of either of them, or the city, and to expend the proceeds for any purposes of the authority;

10. To fix and collect rentals, fees and other charges for the use of parking projects or any of them subject to and in accordance with such agreements with bondholders as may be made as hereinafter provided;

11. To do all things necessary or convenient to carry out the purpose of the authority and the powers expressly given to it by this article. (1951, c. 779, s. 7.)

§ 160-482. Conveyance of property by the city to the authority; acquisition of property by the city or by the authority.—1. The city may convey, with or without consideration, to the authority real and personal property owned by the city for use by the authority as a parking project or projects or a part thereof. In case of real property so conveyed, the instrument of conveyance shall contain a provision for reversion of the property to the city upon the termination of the corporate existence of the authority or upon the termination of the use of the property for the corporate purpose of the authority. Such conveyance of property by the city to the authority may be made without regard to the provisions of other laws regulating sales of property by the city or requiring previous advertisement of sales of property by the city.

2. The city may acquire by purchase or condemnation real property in the name of the city for the authority or for the widening of existing roads, streets, parkways, avenues or highways or for new roads, streets, parkways, avenues or highways to any of the parking projects, or partly for such purposes and partly for other city purposes, by purchase or condemnation in the manner provided by law for the acquisition of real property by the city. The city may close such streets, roads, parkways, avenues, or highways as may be necessary or convenient.

3. Contracts may be entered into between the city and the authority providing for the property to be conveyed by the city to the authority, the additional property to be acquired by the city and so conveyed, the streets, roads, parkways, avenues and highways to be closed by the city, and the amounts, terms and conditions of payment to be made by the authority. Such contracts may contain covenants by the city as to the road, streets, parkway, avenue and highway improvements to be made by the city, including provisions for the installation of parking meters in designated streets of the city and for the removal of such parking meters in the event that such parking meters are not found to be necessary or convenient. Any such contract may pledge all or any part of the revenues of such parking meters to the authority for a period of not to exceed the period during which bonds of the authority shall be outstanding; provided, that the total amount of such revenues which may be paid pursuant to such a pledge shall not exceed the total of the principal of and interest on such bonds which become due and payable during such period. Such contracts may also contain provisions limiting or prohibiting the construction and operation by the city or any agency thereof in designated areas of public parking facilities and parking meters whether or not a fee or charge is made therefor. Any such contracts between the city and the authority may be pledged by the authority to secure its bonds and may not be modified thereafter except as provided by the terms of the contracts or by the terms of the pledge. The city council may authorize such contracts on behalf of the city and no other authorization on the part of the city for such contracts shall be necessary.

4. The authority may itself acquire real property for a parking project at the cost and expense of the authority by purchase or condemnation pursuant to the laws relating to the condemnation of land by the city.

5. In case the authority shall acquire any real property which it shall determine is no longer required for a parking project, then, if such real property was acquired at the cost and expense of the city, the authority shall have power to con-

vey it without consideration to the city, or, if such real property was acquired at the cost and expense of the authority, then the authority shall have power to sell, lease or otherwise dispose of said real property and shall retain and have the power to use the proceeds of sale, rentals or other moneys derived from the disposition thereof for its purposes. (1951, c. 779, s. 8.)

§ **160-483. Contracts.** — The authority shall let contracts in the manner provided by law for contracts of the city. (1951, c. 779, s. 9.)

§ **160-484. Moneys of the authority.**—All moneys of the authority shall be paid to the treasurer of the city as agent of the authority, who shall designate depositories and who shall not commingle such moneys with any other moneys. Such moneys shall be deposited in a separate bank account or accounts. The moneys in such accounts shall be paid out on checks of the treasurer on written requisition of the chairman of the authority or of such other person or persons as the authority may authorize to make such requisitions. All deposits of such moneys shall be secured in the manner provided by law for securing deposits of moneys of the city. The city accountant of the city and his legally authorized representatives are authorized and empowered from time to time to examine the accounts and books of the authority, including its receipts, disbursements, contracts, leases, sinking funds, investments and any other records and papers relating to its financial standing. The authority shall cause an annual audit of its accounts to be made by a certified public accountant or firm of certified public accountants, and shall cause a copy of the report of each such audit to be filed with the city clerk, who shall present the same to the city council. The authority shall have power, notwithstanding the provisions of this section to contract with the holders of any of its bonds as to the custody, collection, securing, investment and payment of any moneys of the authority or any moneys held in trust or otherwise for the payment of bonds or in any way to secure bonds, and to carry out any such contract notwithstanding that such contract may be inconsistent with the previous provisions of this section. Moneys held in trust or otherwise for the payment of bonds or in any way to secure bonds and deposits of such moneys may be secured in the same manner as moneys of the authority, and all banks and trust companies are authorized to give such security for such deposits. (1951, c. 779, s. 10.)

§ **160-485. Bonds of the authority.**—1. The authority shall have the power and is hereby authorized from time to time to issue its negotiable bonds for any purpose mentioned in § 160-481, including the acquisition, construction, reconstruction and repair of personal and real property of all kinds deemed by the authority to be necessary or desirable to carry out such purpose, as well as to pay such expenses as may be deemed by the authority necessary or desirable to the financing thereof and placing the project or projects in operation, in the aggregate principal amount of not exceeding three million dollars ($3,000,000.00). The authority shall have power from time to time and whenever it deems refunding expedient, to refund any bonds by the issuance of new bonds, whether the bonds to be refunded have or have not matured, and may issue bonds partly to refund bonds then outstanding and partly for any other purpose hereinabove described. In computing the total amount of bonds of the authority which may at any time be outstanding the amount of the outstanding bonds to be refunded from the proceeds of the sale of new bonds or by exchanging for new bonds shall be excluded. Except as may otherwise be expressly provided by the authority, the bonds of every issue shall be general obligations of the authority payable out of any moneys or revenues of the authority, subject only to any agreements with the holders of particular bonds pledging any particular moneys or revenues. Whether or not the bonds are of such form and character as to be negotiable instruments under the terms of the negotiable

instruments law (constituting chapter 25 of the General Statutes) the bonds shall be and are hereby made negotiable instruments within the meaning of and for all the purposes of the negotiable instruments law, subject only to the provisions of the bonds for registration.

2. The bonds shall be authorized by resolution of the board and shall bear such date or dates, mature at such time or times, not exceeding 30 years from their respective dates, bear interest at such rate or rates, not exceeding six per centum (6%) per annum payable annually or semiannually, be in such denominations, be in such form, either coupon or registered, carry such registration privileges, be executed in such manner, be payable in lawful money of the United States of America at such place or places, and be subject to such terms of redemption prior to maturity, at par value, as such resolution or resolutions may provide.

3. Any resolution or resolutions authorizing any bonds or any issue of bonds may contain provisions, which shall be a part of the contract with the holders of the bonds thereby authorized as to:

(a) Pledging all or any part of the revenues of a parking project or projects to secure the payment of the bonds, subject to such agreements with bondholders as may then exist;

(b) The rentals, fees, and other charges to be charged, and the amounts to be raised in each year thereby, and the use and disposition of the revenues;

(c) The setting aside of reserves or sinking funds, and the regulation and disposition thereof;

(d) Limitations on the right of the authority to restrict and regulate the use of a project;

(e) Limitations on the purpose to which the proceeds of sale of any issue of bonds then or thereafter to be issued may be applied and pledging such proceeds to secure the payment of the bonds or of any issue of the bonds;

(f) Limitations on the issuance of additional bonds; the terms upon which additional bonds may be issued and secured; the refunding of outstanding or other bonds;

(g) The procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds the holders of which must consent thereto; and the manner in which such consent may be given;

(h) Limitations on the amount of moneys derived from a parking project to be expended for operating, administrative or other expenses of the authority;

(i) Vesting in a trustee or trustees such property, rights, powers and duties in trust as the authority may determine, which may include any or all of the rights, powers and duties of the trustee appointed by the bondholders pursuant to § 160-493, and limiting or abrogating the right of the bondholders to appoint a trustee under said section or limiting the rights, duties and powers of such trustee;

(j) Any other matters, of like or different character, which in any way affect the security or protection of the bonds.

4. It is the intention hereof that any pledge of revenues or other moneys made by the authority shall be valid and binding from the time when the pledge is made; that the revenues or other moneys so pledged and thereafter received by the authority shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act; and that the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the authority irrespective of whether such parties have notice thereof. Statutory provisions relating to the recording or registering of instruments creating liens shall not apply to the lien of any such pledge.

5. Neither the members of the authority nor any person executing the bonds shall be liable personally on the bonds or be subject to any personal liability or accountability by reason of the issuance thereof.

6. The authority shall have power out of any funds available therefor to purchase bonds. The authority shall cancel such bonds.

7. In the discretion of the authority, the bonds may be secured by a trust indenture by and between the authority and a corporate trustee, which may be any trust company or bank having the powers of a trust company in the State of North Carolina. Such trust indenture 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 construction, maintenance, operation, repair and insurance of the parking project or projects, and the custody, safeguarding and application of all moneys, and may provide that the parking project or projects shall be constructed and paid for under the supervision and approval of consulting engineers. Notwithstanding the provisions of § 160-484, the authority may provide by such trust indenture for the payment of the proceeds of the bonds and the revenues of the project or projects to the trustee under such indenture or other depository and for the method of disbursement thereof, with such safeguards and restrictions as it may determine. All expenses incurred in carrying out such trust indenture may be treated as a part of the cost of maintenance, operation, and repairs of the parking project or projects. If the bonds shall be secured by a trust indenture, the bondholders shall have no authority to appoint a separate trustee to represent them, and the trustee under such trust indenture shall have and possess all of the powers which are conferred by § 160-493 upon a trustee appointed by bondholders. (1951, c. 779, s. 11.)

§ 160-486. Notes of the authority. — The authority shall have power from time to time to issue notes and from time to time to issue renewal notes (herein referred to as notes) maturing not later than five years from their respective original dates in an amount not exceeding at any time fifty thousand dollars ($50,000.00), over and above the amount of bonds authorized by subdivision 1 of § 160-485, whenever the authority shall determine that payment thereof can be made in full from any moneys or revenues which the authority expects to receive from any source. Such notes may, among other things, be issued to provide funds to pay preliminary costs of surveys, plans or other matters relating to any proposed project. The authority may pledge such moneys or revenues (subject to any other pledge thereof) for the payment of the notes and may in addition secure the notes in the same manner and with the same effect as herein provided for bonds. Interest on the notes shall not exceed the rate of six per centum (6%) per annum. The authority shall have power to make contracts for the future sale from time to time of the notes, by which the purchasers shall be committed to purchase the notes from time to time on terms and conditions stated in such contracts, and the authority shall have power to pay such consideration as it shall deem proper for such commitments. In case of default on its notes, or violation of any of the obligations of the authority to the noteholders, the noteholders shall have all the remedies provided herein for bondholders. (1951, c. 779, s. 12.)

§ 160-487. Approval of Local Government Commission; application of Local Government Act.—The issuance of all bonds and notes authorized pursuant to this article shall be subject to approval by the Local Government Commission and such bonds and notes shall be sold by said Commission in the same manner as bonds and notes of municipalities are approved and sold under the provisions of the Local Government Act. Such bonds and notes shall be delivered in the same manner as bonds and notes of municipalities are delivered under the provisions of the Local Government Act. (1951, c. 779, s. 12½.)

§ 160-488. Agreements of the State. — The State of North Carolina

does pledge to and agree with the holders of the bonds that the State will not limit or impair the rights hereby vested in the authority to acquire, construct, maintain, reconstruct and operate the project or projects, to establish and collect rentals, fees and other charges and to fulfill the terms of any agreements made with the holders of the bonds, or in any way impair the rights and remedies of the bondholders, until the bonds, together with interest thereon, with interest on any unpaid installments of interest and all costs and expenses in connection with any action or proceeding by or on behalf of the bondholders, are fully met and discharged. (1951, c. 779, s. 13.)

§ **160-489. State and city not liable on bonds.**—The bonds and other obligations of the authority shall not be a debt of the State of North Carolina or of the city, and neither the State nor the city shall be liable thereon, nor shall they be payable out of any funds other than those of the authority. (1951, c. 779, s. 14.)

§ **160-490. Bonds legal investments for public officers and fiduciaries.**—The bonds are hereby made securities in which all public officers and bodies of this State and all municipalities and municipal subdivisions, all insurance companies and associations and other persons carrying on an insurance business, all banks, bankers, trust companies, savings banks and savings associations, including savings and loan associations, investment companies and other persons carrying on a banking business and all other persons whatsoever, except as hereinafter provided, who are now or may hereafter be authorized to invest in bonds or other obligations of the State, may properly and legally invest funds including capital in their control or belonging to them; provided that, notwithstanding the provisions of any other general or special law to the contrary, such bonds shall not be eligible for the investment of funds, including capital, trusts, estates or guardianships under the control of individual administrators, guardians, executors, trustees and other individual fiduciaries. The bonds are also hereby made securities which may be deposited with and may be received by all public officers and bodies of this State and all municipalities and municipal subdivisions for any purpose for which the deposit of bonds or other obligations of this State is now or may hereafter be authorized. (1951, c. 779, s. 15.)

§ **160-491. Exemptions from taxation.**—It is hereby found, determined and declared that the creation of the authority and the carrying out of its corporate purposes is in all respects for the benefit of the people of the State of North Carolina, for the improvement of their health, welfare and prosperity, and for the promotion of their traffic, and is a public purpose, and that the authority will be performing an essential governmental function in the exercise of the powers conferred upon it by this article, and the State of North Carolina covenants with the holders of the bonds that the authority shall be required to pay no taxes or assessments upon any of the property acquired by it or under its jurisdiction, control, possession or supervision or upon its activities in the operation and maintenance of the project or any tolls, revenues or other income received by the authority and that the bonds of the authority and the income therefrom shall at all times be exempt from taxation, except for transfer and estate taxes. (1951, c. 779, s. 16.)

§ **160-492. Tax contract by the State.**—The State of North Carolina covenants with the purchasers and with all subsequent holders and transferees of bonds issued by the authority pursuant to this article, in consideration of the acceptance of and payment for the bonds, that the bonds of the authority issued pursuant to this article and the income therefrom, and all moneys, funds and revenues pledged to pay or secure the payment of such bonds, shall at all times be free from taxation except for transfer and estate taxes. (1951, c. 779, s. 17.)

§ **160-493. Remedies of bondholders.**—1. In the event that the author-

ity shall default in the payment of principal of or interest on any issue of the bonds after the same shall become due, whether at maturity or upon call for redemption, and such default shall continue for a period of 30 days, or in the event that the authority shall fail or refuse to comply with the provisions of this article, or shall default in any agreement made with the holders of any issue of the bonds, the holders of twenty-five per centum (25%) in aggregate principal amount of the bonds of such issue then outstanding, by instrument or instruments filed in the office of the register of deeds of the county in which the authority is located, and proved or acknowledged in the same manner as a deed to be recorded, may appoint a trustee to represent the holders of such bonds for the purposes herein provided.

2. Such trustee may, and upon written request of the holders of twenty-five per centum (25%) in principal amount of such bonds then outstanding shall, in his or its own name:

(a) By mandamus or other suit, action or proceeding at law or in equity enforce all rights of the bondholders, including the right to require the authority to collect revenues adequate to carry out any agreement as to, or pledge of, such revenues, and to require the authority to carry out any other agreements with the holders of such bonds and to perform its duties under this article;

(b) Bring suit upon such bonds;

(c) By action or suit in equity, require the authority to account as if it were the trustee of an express trust for the holders of such bonds;

(d) By action or suit in equity, enjoin any acts or things which may be unlawful or in violation of the rights of the holders of such bonds;

(e) Declare all such bonds due and payable, and if all defaults shall be made good then with the consent of the holders of twenty-five per centum (25%) of the principal amount of such bonds then outstanding, to annul such declaration and its consequences.

3. The superior court of the county in which the authority is situated shall have jurisdiction of any suit, action or proceeding by the trustee on behalf of bondholders.

4. Before declaring the principal of all such bonds due and payable, the trustee shall first give 30 days' notice in writing to the authority.

5. Any such trustee, whether or not the issue of bonds represented by such trustee has been declared due and payable, shall be entitled as of right to the appointment of a receiver of any part or parts of the project the revenues of which are pledged for the security of the bonds of such issue, and such receiver may enter and take possession of such part or parts of the project and, subject to any pledge or agreement with bondholders, shall take possession of all moneys and other property derived from or applicable to the construction, operation, maintenance and reconstruction of such part or parts of the project and proceed with any construction thereon which the authority is under obligation to do and to operate, maintain and reconstruct such part or parts of the project and collect and receive all revenues thereafter arising therefrom subject to any pledge thereof or agreement with bondholders relating thereto and perform the public duties and carry out the agreements and obligations of the authority under the direction of the court. In any suit, action or proceeding by the trustee, the fees, counsel fees and expenses of the trustee and of the receiver, if any, shall constitute taxable disbursements, and all costs and disbursements allowed by the court shall be a first charge on any revenues derived from such project.

6. Such trustee shall, in addition to the foregoing, have and possess all of the powers necessary or appropriate for the exercise of any functions specifically set forth herein or incident to the general representation of bondholders in the enforcement and protection of their rights. (1951, c. 779, s. 18.)

§ **160-494. Actions against the authority.**—In every action against the

authority for damages, for injuries to real or personal property, or for the destruction thereof, or for personal injuries or death, the complaint shall contain an allegation that at least 30 days have elapsed since the demand, claim or claims upon which such action is founded were presented to a member of the authority, or to its secretary, or to its chief executive officer and that the authority has neglected or refused to make an adjustment or payment thereof for 30 days after such presentment. (1951, c. 779, s. 19.)

§ **160-495. Termination of authority.**—Whenever all of the bonds issued by the authority shall have been redeemed or canceled, the authority shall cease to exist and all rights, titles and interests and all obligations and liabilities thereof vested in or possessed by the authority shall thereupon vest in and be possessed by the city. (1951, c. 779, s. 20.)

§ **160-496. Inconsistent provisions in other acts superseded.**—Insofar as the provisions of this article are inconsistent with the provisions of any other act, general or special, the provisions of this article shall be controlling. This article shall not repeal or modify any other act providing a different method of financing parking projects in cities, the powers conferred hereby being intended to be in addition to and not in substitution for the powers conferred by other acts. (1951, c. 779, s. 22.)

Article 39.

Financing Parking Facilities.

§ **160-497. Declaration of public necessity.**—It is hereby determined and declared that the free circulation of traffic of all kinds through the streets of the municipalities in the State is necessary to the health, safety and general welfare of the public, whether residing in such municipalities or traveling to, through or from such municipalities in the course of lawful pursuits; that in recent years the greatly increased use by the public of motor vehicles of all kinds has caused serious traffic congestion in the streets of such municipalities; that the parking of motor vehicles in the streets has contributed to this congestion to such an extent as to constitute at the present time a public nuisance; that such parking prevents the free circulation of traffic in, through and from such municipalities, impedes the rapid and effective fighting of fires and disposition of police forces, threatens irreparable loss in values of urban property which can no longer be readily reached by vehicular traffic, and endangers the health, safety and welfare of the general public; that the regulation of traffic on the streets by the installation of parking meters and the imposition of charges in connection with such on-street parking facilities has not relieved this congestion except to a limited extent; that this traffic congestion is not capable of being adequately abated except by provisions for sufficient off-street parking facilities; that adequate off-street parking facilities have not been provided and parking spaces now existing must be forthwith supplemented by off-street parking facilities provided by public undertaking; and that the enactment of the provisions of this article is hereby declared to be a public necessity. (1951, c. 704, s. 1.)

§ **160-498. Definitions.**—As used in this article, the following words and terms shall have the following meanings, unless the context shall indicate another or different meaning or intent:

(a) The word "municipality" shall mean any city or town in the State, whether incorporated by special act of the General Assembly or under the general laws of the State, which may desire to finance parking facilities under the provisions of this article.

(b) The term "governing body" shall mean the board or body in which the general legislative powers of a municipality are vested.

(c) The words "parking facilities" shall mean and shall include lots, garages, parking terminals or other structures (either single or multi-level and either at, above or below the surface) to be used solely for the off-street parking of motor vehicles, open to public use for a fee, and all property, rights, easements and interests relating thereto which are deemed necessary for the construction or the operation thereof.

(d) The word "cost" as applied to parking facilities or to extensions or additions thereto shall include the cost of acquisition, construction or reconstruction, the cost of all labor, materials, machinery and equipment, the cost of all lands, property, rights, easements and interests acquired by the municipality for such parking facilities or the operation thereof, the cost of demolishing or removing any buildings or structures on lands so acquired, including the cost of acquiring any lands to which such buildings or structures may be moved, financing charges, interest prior to and during construction and, if deemed advisable by the governing body, for one year after completion of construction, cost of engineering and legal services, plans, specifications, surveys and estimates of cost and of revenues, administrative expense, and such other expense as may be necessary or incident to such acquisition, construction or reconstruction, the financing thereof and the placing of the parking facilities in operation.

(e) The word "revenues" when applied to revenues of the parking facilities shall mean the net revenues derived in any fiscal year from the operation of the parking facilities after paying all expenses of operating, managing and repairing such parking facilities. (1951, c. 704, s. 2.)

§ 160-499. General grant of powers.—The governing body of any municipality in the State is hereby authorized and empowered:

(a) To acquire, construct, reconstruct, equip, improve, extend, enlarge, maintain, repair and operate parking facilities within the corporate limits of such municipality;

(b) To issue bonds of the municipality as hereinafter provided to pay the cost of such acquisition, construction, reconstruction, equipment, improvement, extension or enlargement;

(c) To establish and revise from time to time and to collect (such collection to be made by the use of parking meters, if deemed desirable by the governing body) rates, rentals, fees and other charges for the services and facilities furnished by such parking facilities, and to establish and revise from time to time regulations in respect of the use, operation and occupancy of such parking facilities or part thereof;

(d) To accept from any authorized agency of the federal government loans or grants for the planning, construction or acquisition of any parking facilities and to enter into agreements with such agency respecting any such loans or grants, and to receive and accept aid and 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 or contributions may be made;

(e) Subject to any provisions or restrictions which may be set forth in the ordinance authorizing bonds, to acquire in the name of the municipality, either by purchase or the exercise of the right of eminent domain, such lands and rights and interests therein, and to acquire such personal property, as it may deem necessary in connection with the construction, reconstruction, improvement, extension, enlargement or operation of any parking facilities;

(f) To lease all or any part of such parking facilities upon such terms and conditions and for such term of years as it may deem advisable to carry out the provisions of this article;

(g) 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, and to employ such engineers, attorneys, accountants, construction and

financial experts, superintendents, managers and other employees and agents as it may deem necessary, and to fix their compensation; and

(h) To do all acts and things necessary or convenient to carry out the powers expressly granted in this article. (1951, c. 704, s. 3.)

§ **160-500. Issuance of bonds.**—Subject to the provisions of The Municipal Finance Act of 1921, as amended, subchapter III, chapter 160 of the General Statutes, but notwithstanding any limitation or indebtedness contained therein or in any other law, any municipality may issue its negotiable bonds for the purpose of paying the cost of parking facilities, for the payment of which bonds, there shall be pledged, in addition to the full faith, credit and taxing power of the municipality, (a) the revenues of such parking facilities, (b) all the revenues of on-street parking meters collected in each fiscal year following the issuance of all or any part of such bonds (after paying any operating deficit of such parking facilities therewith) until a reserve has been established and is maintained at the close of each fiscal year which shall equal in amount at least ten per centum (10%) of the principal amount of such bonds then outstanding or at least the total amount of principal of and interest on such bonds falling due in the next ensuing fiscal year, whichever is greater, and (c) the proceeds of special assessments levied as hereinafter provided upon benefited property, except that all or any part of such proceeds may be applied to the payment of notes issued in anticipation of receipt of the proceeds of sale of such bonds, but the amount of such bonds authorized shall be reduced by the amount of such payments.

Such bonds shall mature at such time or times, not exceeding 40 years from their respective dates, and may be subject to such terms of redemption with or without premium, as the governing body may provide, with the approval of the Local Government Commission. The governing body may authorize the purchase and retirement of any of such bonds with funds pledged to their payment at market prices not in excess of the redemption value of the bonds so purchased.

Money may be borrowed in anticipation of the receipt of the proceeds of sale of such bonds under the provisions of § 160-375, and notes may be issued therefor as provided in § 160-376.

Bonds and notes issued under the provisions of this article shall be subject to the provisions of the Local Government Act. (1951, c. 704, s. 4.)

Editor's Note.—The word "or" in the phrase "limitation or indebtedness" near the beginning of the section was probably intended to be "of", although "or" is the language of the enactment.

§ **160-501. Parking meters.**—The governing body of any municipality in the State is hereby authorized to install parking meters, or cause the same to be installed, at or near the curbs of the streets within the municipality and to adopt such regulations and impose such charges in connection with any parking meters heretofore or hereafter installed as it may deem advisable. The governing body is further authorized to combine into a single project for financing purposes and for the more adequate regulation of traffic and relief of congestion such parking meters or any portion thereof with any parking facilities financed by bonds issued under the provisions of this article and to pledge to the payment of such bonds, as provided in § 160-500, the revenues derived from such parking meters. (1951, c. 704, s. 5.)

§ **160-502. Pledge of revenues.**—The revenues derived from any parking facilities for which bonds shall be issued under the provisions of this article shall be pledged to the payment of the principal of and the interest on such bonds. Subject to the provisions of § 160-500, the governing body shall also pledge to the payment of such principal and interest the revenues derived from on-street parking meters, and all or any part of the special assessments levied as hereinafter provided upon benefited property. (1951, c. 704, s. 6.)

§ **160-503. Authorizing ordinance.** — Any ordinance authorizing the issuance of bonds under the provisions of this article shall contain the following matters, in addition to all other matters required to be stated therein by The Municipal Finance Act:

(1) A statement that the revenues of on-street parking meters shall be pledged to the payment of such bonds as provided in this article; and

(2) A statement that special assessments shall be levied on benefited property, giving a description of the property which is to be specially benefited and is to be assessed, the basis of assessment, the proportion of the cost to be specially assessed, and the number of equal annual installments in which assessments may be paid. Such installments shall be not less than five nor more than twenty. (1951, c. 704, s. 7.)

§ **160-504. Special assessments.**—Any municipality in the State shall have power, through its governing body, upon petition made as herein provided, to provide for the levy of special assessments on benefited property.

A. The Petition.—A petition shall be submitted to the governing body of any municipality in the State requesting such governing body to issue bonds for the purpose of paying the cost of parking facilities. Such petition shall (a) designate by a brief description the parking facilities proposed; (b) request that the same be provided as authorized by this article; (c) set forth a description of the property which is to be specially benefited and is to be assessed; (d) request that such proportion of the cost of such parking facilities as may be specified in the petition be specially assessed against the property in the benefited area; (e) set forth the basis on which such assessments shall be assessed, whether by lineal feet of frontage on streets in the benefited area, by square feet of floor space on property fronting on streets in the benefited area, or by some other fair basis as determined upon by the petitioners. The petition shall be signed by at least a majority in number of the owners of property in the benefited area, who must represent at least a majority of the lineal feet of frontage, square feet of floor space, or other basis on which the assessments shall be assessed. For the purpose of the petition, all the owners of undivided interests in any land shall be deemed and treated as one person and such land shall be sufficiently signed for when the petition is signed by the owner or owners of a majority in amount of such undivided interests: Provided, that for the purpose of this section the word "owners" shall be considered to mean the owners of any life estate, of an estate by entirety, or of the estate of inheritance, and shall not include mortgagees, trustees of a naked trust, trustees under deeds of trust to secure the payment of money, lien holders, or persons having inchoate rights of curtesy or dower. Upon the filing of such petition with the municipality, the clerk, or other person designated by the governing body thereof, shall investigate the sufficiency of the petition, and if it is found to be sufficient, he shall certify the same to the governing body.

B. The Preliminary Resolution.—Upon the finding by the governing body that the petition provided for in the preceding subsection is sufficient, the governing body shall adopt a resolution which shall contain substantially the following:

(1) That a sufficient petition has been filed requesting the issuance of bonds for the purpose of paying the cost of parking facilities;

(2) A brief description of the proposed parking facilities;

(3) A description of the property to be specially benefited and assessed, the proportion of the cost of the parking facilities to be specially assessed, the basis of assessment, and the number of equal annual installments in which the assessments may be paid;

(4) A notice of the time and place, when and where a public hearing will be held to hear the objections of all interested persons to (i) the proposed parking facilities, (ii) the property which is to be specially benefited and assessed, (iii) the proportion of the cost of the parking facilities to be specially assessed, (iv) the basis of assessment, and (v) the number of equal annual installments in which

the assessments may be paid, which notice shall state that a petition has been filed requesting the issuance of bonds for the purpose of paying the cost of the parking facilities, shall contain a brief description of the proposed parking facilities and a description of the property to be specially benefited and assessed, shall show the proportion of the cost of the parking facilities to be specially assessed, the basis of assessment, and the number of equal annual installments in which the assessments may be paid, and such notice shall also state that all objections shall be made in writing, signed in person or by attorney, and filed with the clerk of the municipality at or before the time of such hearing, and that any such objections not so made will be waived.

Said notice shall be published one time in a newspaper published in the municipality, or if there be no such newspaper, such notice shall be posted in three public places in the municipality for at least five days, the date of publication or posting of the notice to be not less than ten days prior to the date fixed for the hearing.

C. Public Hearing on Preliminary Resolution.—At the time for the public hearing, or at some subsequent time to which such hearing shall be adjourned, the governing body shall consider such objections as have been made in compliance with subsection B (4) above. Any objection not made in writing, signed in person or by attorney, and filed with the clerk of the municipality at or before the time or adjourned time of such hearing shall be considered as waived; and if any such objection shall be made and shall not be sustained by the governing body, the adoption of the ordinance as provided in the next following subsection, shall be the final adjudication of the issues presented, unless an action or proceeding is commenced to set aside the ordinance or to obtain other relief upon the ground that the ordinance is invalid as provided by § 160-385.

D. Authorizing Ordinance.—The governing body shall thereafter determine in its discretion whether or not to proceed with the acquisition or construction of such parking facilities, and if it decides to proceed, it shall then adopt a bond ordinance in accordance with the provisions of § 160-503.

E. Amount of Assessment Ascertained.—Upon the completion of the proposed parking facilities the governing body shall compute and ascertain the total cost thereof. The governing body must thereupon make an assessment in accordance with the terms of the bond ordinance, and for that purpose must make out an assessment roll in which must be entered the names of the persons assessed as far as they can ascertain the same, and the amount assessed against them, respectively, with a brief description of the lots or parcels of land assessed.

F. Filing of Assessment Roll; Publication of Notice of Hearing Thereon.—After such assessment roll has been completed, the governing body of the municipality shall cause it to be filed in the office of the clerk of the municipality for inspection by parties interested, and shall cause to be published one time, in some newspaper published in the municipality, or if there be no such newspaper the governing body shall cause to be posted in three public places in the municipality, a notice of the completion of the assessment roll, setting forth a description in general terms of the parking facilities, and stating the time fixed for the meeting of the governing body for the hearing of objections to the special assessments, such meeting to be not earlier than 10 days after the first publication or from the date of posting of said notice. The governing body shall publish in said notice the amount of each assessment.

G. Hearing, Revision; Confirmation; Lien.—At the time appointed for that purpose or at some other time to which it may adjourn, the governing body of the municipality shall hear the objections to the assessment roll of all persons interested, who may appear and offer proof in relation thereto. Then or thereafter, the governing body shall either annul or sustain or modify in whole or in part the prima facie assessment as indicated on said roll, either by confirming the prima facie assessment against any or all lots or parcels described therein, or by cancelling, increasing or reducing the same, according to the special benefits which said gov-

erning body decides each of said lots or parcels has received or will receive on account of such parking facilities. If any property which may be chargeable under this article shall have been omitted from said roll or if the prima facie assessment has not been made against it, the governing body may place on said roll an apportionment to said property. The governing body may thereupon confirm said roll, but shall not confirm any assessment in excess of the special benefits to the property assessed and the assessments so confirmed shall be in proportion to the special benefits. Whenever the governing body shall confirm an assessment for parking facilities, the clerk of the municipality shall enter on the minutes of the governing body and on the assessment roll, the date, hour, and minute of such confirmation, and from the time of such confirmation the assessments embraced in the assessment roll shall be a lien on the property against which the same are assessed of the same nature and to the same extent as county and city or town taxes and superior to all other liens and encumbrances. After the assessment roll is confirmed a copy of the same shall be delivered to the tax collector of the municipality.

H. 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 such assessment he may, within 10 days after the confirmation of the assessment roll, give written notice to the mayor or clerk of the municipality that he takes an appeal to the superior court of the county wherein such municipality is situated, in which case he shall within 20 days after the confirmation of the assessment roll serve on said mayor or clerk a statement of facts upon which he bases his appeal. The appeal shall be tried as other actions at law. The remedy herein provided for any person dissatisfied with the amount of the assessment against any property of which he is the owner or in which he is interested shall be exclusive.

I. Power to Adjust Assessments.—The governing body may correct, cancel or remit any assessment for parking facilities, and may remit, cancel or adjust the interest or penalties on any such assessment. The governing body has 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 the local assessment made by it, and thereupon to make a reassessment. The proceeding shall be in all respects as in the case of original assessment, and the reassessment shall have the same force as if it had originally been properly made.

J. Payment of Assessment in Cash or by Installments.—The property owner against whom an assessment is made shall have the option and privilege of paying the assessment in cash, or if he should so elect and give notice of the fact in writing to the municipality within 30 days after the confirmation of the assessment roll, he shall have the option and privilege of paying the assessments in installments as may have been determined by the governing body in the bond ordinance. Such installments shall bear interest at the rate of six per cent (6%) per annum from the date of the confirmation of the assessment roll, and in case of the failure or neglect of any property owner to pay any installment when the same shall become due and payable, then and in that event all of the installments remaining unpaid shall at once become due and payable and such property shall be sold by the municipality under the same rules, regulations, rights of redemption and savings as are now prescribed by law for the sale of land for unpaid taxes. The whole assessment may be paid at the time of paying any installment by payment of the principal and all interest accrued to that date.

K. Payment of Assessment Enforced.—After the expiration of 20 days from the confirmation of an assessment roll the tax collector or such other officer of the municipality as the governing body may direct so to do shall cause to be published in a newspaper published in the municipality, or if there be no such newspaper, shall cause to be posted in at least three public places therein, a notice that any assessment contained in the assessment roll, naming and describing it, may be paid to him at any time before the expiration of 30 days from the first publication

of the notice without any addition. In the event the assessment is not paid within such time, it shall bear interest at the rate of six per cent (6%) per annum from the date of confirmation of the assessment roll. The assessment shall be due and payable on the date on which taxes are payable; provided, that where an assessment is divided into installments one installment shall become due and payable each year on the date on which taxes are due and payable. After default in the payment of any installment, the governing body may, on the payment of all installments in arrears, together with interest due thereon and on reimbursement of any expenses 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.

L. Sale or Foreclosure for Unpaid Assessments Barred in 10 Years; No Penalties.—No statute of limitation, whether fixed by law especially referred to in this article or otherwise, shall bar the right of the municipality to enforce any remedy provided by law for the collection of unpaid assessments, save from and after 10 years from default in the payment thereof, or if payable in installments, 10 years from the default in the payment of any installment. No penalties prescribed for failure to pay taxes shall apply to special assessments, but they shall bear interest at the rate of six per cent (6%) per annum only. In any action to foreclose a special assessment the costs shall be taxed as in any other civil action, and shall include an allowance for the commissioner appointed to make the sale, which shall not be more than five per cent (5%) of the amount for which the land is sold, and one reasonable attorney's fee for the plaintiff.

M. Assessments in Case of Tenant for Life or Years.—Whenever any real estate or portion thereof is in the possession or enjoyment of a tenant for life, or a tenant for a term of years, and an assessment is laid or levied on said property, the amount so assessed for such purposes, or a portion of the amount so assessed in case only a portion of the real estate is so possessed, shall be paid by the tenant for life or for years, and the remaindermen after the life estate, or the owner in fee after the expiration of tenancy for a term of years, pro rata their respective interests in said real estate.

The respective interests of a tenant for life and the remainderman in fee shall be calculated as provided in § 37-13 of the General Statutes.

If the assessment, after same shall be laid or levied, shall all be paid by either the tenant for life or the tenant for a term of years, or by the remainderman, or the owner in fee, the party paying more than his pro rata share of the same shall have the right to maintain an action in the nature of a suit for contribution against the delinquent party to recover from him his pro rata share of such assessment, with interest thereon from the date of such payment, and be subrogated to the right of the municipality to a lien on such property for the same.

Any one of several tenants in common, or joint tenants, or copartners, shall have the right to pay the whole or any part of the special assessments assessed or due upon the real estate held jointly or in common, and all sums by him so paid in excess of his share of such special assessments, interest, costs and amounts required for redemption, shall constitute a lien upon the shares of his cotenant or associates, payment whereof, with interest and costs, he may enforce in proceedings for partition, actual or by sale, or in any other appropriate judicial proceeding: Provided, the lien provided for in this paragraph shall not be effective against an innocent purchaser for value unless and until notice thereof is filed in the office of the clerk of the superior court in the county in which the land lies and indexed and docketed in the same manner as other liens required by law to be filed in such clerk's office.

N. Apportionment of Assessments.—When any special assessment has been made against any property as authorized by this article, and it is desirable that said assessment be apportioned among subdivisions of said property, the governing

body of the municipality shall have authority, upon petition of the owner of said property, to apportion said assessment fairly among said subdivisions. Thereafter, each of said subdivisions shall be relieved of any part of such original assessment except the part thereof apportioned to said subdivision; and the part of said original assessment apportioned to any such subdivision shall be of the same force and effect as the original assessment.

O. No Change of Ownership Affects Proceedings.—No change of ownership of any property or interest therein after the passage of the bond ordinance authorized by this article shall in any manner affect subsequent proceedings, and the parking facilities may be completed and assessments made therefor as if there had been no change in such ownership.

P. Lands Subject to Assessment.—No lands in the municipality shall be exempt from special assessment as provided in this article except lands belonging to the United States and except as provided in § 160-505; and the governing bodies of municipalities and the officers, trustees or boards of all incorporated or unincorporated bodies in whom is vested the right to hold and dispose of real property shall have the right by authority duly given to sign the petition for any parking facilities authorized by this article.

Q. Proceedings in Rem.—All proceedings for special assessment under the provisions of this article shall be regarded as proceedings in rem, and no mistake or omission as to the name of any owner or person interested in any lot or parcel of land affected thereby shall be regarded a substantial mistake or omission. (1951, c. 704, s. 8.)

§ 160-505. Exemption of property from taxation.—As adequate off-street parking facilities are essential to the health, safety and general welfare of the public, and as the exercise of the powers conferred by this article to effect such purposes constitute the performance of essential municipal functions, and as parking facilities constructed under the provisions of this article constitute public property and are used for municipal purposes, no municipality shall be required to pay any taxes or assessments upon any such parking facilities or any part thereof, or upon the income therefrom, and any bonds issued under the provision of this article, their transfer and the income therefrom (including any profit made on the sale thereof) shall at all times be free from taxation within the State. (1951, c. 704, s. 9.)

§ 160-506. Alternative method.—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. (1951, c. 704, s. 10.)

§ 160-507. Liberal construction.—The provisions of this article, being necessary for the welfare of the municipalities and their inhabitants, shall be liberally construed to effect the purposes thereof. (1951, c. 704, s. 11.)

Chapter 161.

Register of Deeds.

Article 1.

The Office.

Article 2.

The Duties.

ARTICLE 1.

The Office.

§ 161-1. Election and term of office.—In each county there shall be elected biennially by the qualified voters thereof, as provided for the election of members of the General Assembly, a register of deeds. (Const., art. 7, s. 1; Rev., s. 2650; C. S., s. 3543.)

Cross Reference.—As to time of election, see § 163-4.

Legislature May Change Duties and Emolument. — The office of register of deeds is constitutional, but the duties are statutory, and the legislature may, within reasonable limits, change the duties and diminish the emoluments of the office, if the public welfare requires it to be done. Fortune v. Commissioners, 140 N. C. 322, 52 S. E. 950 (1905).

§ 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, Avery, 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.)

Editor's Note. — The 1937 amendment struck out Stanly from the list of excepted counties; the 1939 amendments struck out Alleghany and Washington; the 1941 amendment struck out Transylvania; and the 1949 amendments struck out Bladen and Harnett.

§ 161-3. Oath of office.—The register of deeds shall take the oath of office on the first Monday of December next after his election, before the board of county commissioners. (1868, c. 35, s. 2; 1876-7, c. 276, s. 5; Code, s. 3647; Rev., s. 2652; C. S., s. 3544.)

Cross Reference.—As to form of oath, see § 11-11.

§ 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, and shall renew his bond annually on the first Monday in December. (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.)

Local Modification.—Dare: 1907, c. 75.

Cross References.—As to induction into office and necessity of approval of bond by county commissioners, see § 153-9, subsection 11. As to power of county commissioners to fill vacancy, see § 153-9, subsection 12. As to action on official bonds, see § 109-34 et seq. As to penalty for issuing marriage license unlawfully, see § 51-17.

Office Vacated unless Bond Given.—The board of commissioners may declare the office vacant for failure of the register to give a sufficient bond. State v. Patterson, 97 N. C. 360, 2 S. E. 262 (1887).

All Official Acts Included in Duties of Office. — The words "and faithfully discharge the duties of his office," in the bond of a register of deeds, do not refer alone to the safekeeping of the "records and books," but to all other official acts, the nonperformance of which results in injury. State v. Young, 106 N. C. 567, 10 S. E. 1019 (1890).

Breach of Bond.—As to failure to register instrument as breach of bond, see § 161-14. As to failure to index and cross-index, see § 161-22.

§ 161-5. Vacancy in office.—When a vacancy occurs from any cause in the office of register of deeds, the board of county commissioners shall fill such vacancy by the appointment of a successor for the unexpired term, who shall qualify and give bond as required by law. (1868, c. 35, s. 4; Code, s. 3649; Rev., s. 2651; C. S., s. 3546.)

Cross Reference. — As to authority of county commissioners to fill vacancy, see § 153-9, subsection 12.

Office Declared Vacated. — The county commissioners may appoint a successor to the office of register of deeds where they have declared the office vacant by reason of the incumbent's failure to give a sufficient bond. State v. Patterson, 97 N. C. 360, 2 S. E. 262 (1887).

§ 161-6. Deputies may be appointed; assistant registers of deeds.—The registers of deeds of the several counties in this State are hereby authorized and empowered to appoint deputies, whose acts as such shall be valid and for which the registers of deeds shall officially be responsible. They shall file the certificate of the appointment of the deputy in the office of the clerk of the superior court, who shall record the same.

Each register of deeds is authorized and empowered, in his discretion, to designate an assistant register of deeds, who, in addition to his other powers and duties, shall be authorized to register and sign instruments and documents in the name and under the title of the register of deeds, by himself as assistant. Such signing shall be substantially as follows:

John Doe—Register of Deeds
By Richard Roe—Assistant

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 such instrument or document had been registered and signed by the register of deeds personally. The register of deeds shall file with the clerk of the superior court of the

county a certificate of the appointment of the assistant so designated and authorized to act in the name of the register of deeds, and the clerk of the superior court shall record such certificate. (1909, c. 628, s. 1; C. S., s. 3547; 1949, c. 261.)

Local Modification.—Dare: 1907, c. 393; Durham: 1909, c. 91; Person: 1909, c. 546.

Editor's Note. — The 1949 amendment added the second and third paragraphs. For brief comment on amendment, see 27 N. C. Law Rev. 476.

§ **161-7. Office at courthouse.**—The register shall keep his office at the courthouse unless the board of county commissioners shall deem it impracticable. (1868, c. 35, s. 5; Code, s. 3650; Rev., s. 2653; C. S., s. 3548.)

§ **161-8. Attendance at office.**—The board of county commissioners may fix by order, to be entered on their records, what days of each week, and at what hours of each day, the register of deeds shall attend at his office in person or by deputy, and he shall give his attendance accordingly. (1868, c. 35, s. 6; Code, s. 3651; Rev., s. 2654; C. S., s. 3549.)

Free Abstracts Not Required.—While it is the duty of the register of deeds to permit all persons to inspect the records committed to his custody, he will not be required, without the payment of his proper fees, to allow anyone to make copies or abstracts therefrom. Newton v. Fisher, 98 N. C. 20, 3 S. E. 822 (1887).

§ **161-9. Official seal.** — The office of register of deeds for every county in the State shall have and use an official seal, which seal shall be provided by the county commissioners of the several counties, and shall be of the same size and design as the seals now used by the clerk of the superior court, with the words "Office of Register of Deeds," the name of the county and the letters "North Carolina" surrounding the figures. (1893, c. 119, s. 1; Rev., s. 2649; C. S., s. 3550.)

§ **161-10. Fees of register of deeds.**—The register of deeds shall be allowed, while and when acting as clerk to the board of commissioners, such per diem as such board may respectively allow, not exceeding two dollars; and shall be allowed the following fees for his services as register of deeds:

For registering any deed or other writing authorized to be registered by them, with certificate of probate or acknowledgment and private examination of a married woman, containing not more than three copy-sheets, eighty cents; and for every additional copy-sheet, ten cents.

Registering chattel mortgage, statutory form, twenty cents.

For comparing and certifying a copy of any instrument filed for registration, when the copy is furnished by the party filing the instrument for registration and at the time of filing, one dollar.

For a copy of any record or any paper in their offices, like fees as for registering the same.

For issuing each notice required by the county commissioners, including subpoenas for witnesses, fifteen cents. This shall not include county orders on the treasury.

Recording and issuing each order of commissioners, ten cents. Where a standing order is made for the payment of money, monthly or otherwise, there shall be charged but one fee therefor.

Making out original tax list, two cents for each name thereon; for each name on each copy required to be made, two cents.

Issuing marriage license, one dollar.

For transcript and certificate of limited partnership, fifty cents.

For recording the election returns from the various voting precincts, ten cents per copy-sheet, to be paid by the county.

For attaching and indexing subdivisions or plats now allowed by law to be registered, fifty cents; for transcribing and indexing subdivisions and plats, seventy-five cents. If such subdivision or plat contains more than three lots or tracts of land, the register of deeds shall be entitled to charge twenty-five cents for transcribing each and every lot or tract of land in excess of three that is contained in

such plat or subdivision, but in no case shall the fees exceed five dollars for transcribing and indexing such plat or subdivision. (Code, ss. 710, 3109, 3751; 1887, c. 283; 1891, c. 324; 1897, cc. 27, 68; 1899, c. 17, s. 2; 1899, c. 247, s. 3; 1899, cc. 261, 302, 578, 723; 1901, c. 294; 1903, c. 792; 1905, cc. 226, 292, 319; Rev., s. 2776; 1911, c. 55, s. 3; C. S., s. 3906.)

Local Modification. — Beaufort: 1949, c. 368, s. 3; Cabarrus: 1945, c. 880, s. 3; Chowan: 1947, c. 490; Gaston: 1951, c. 868; Guilford: 1949, c. 602; Pender: 1945, c. 430; Perquimans: 1949, c. 664; Richmond: 1951, c. 529.

Cross Reference.—As to fees for allowing others to make copies or abstracts, see note to § 161-8.

§ **161-10.1. Local variations as to fees of registers of deeds.**—The register of deeds shall receive for registering short form of lien bond, or lien bond and chattel mortgage combined, fifty cents in the counties of Davidson, Halifax, Northampton, Union, Vance, Warren and Wayne; thirty cents in the counties of Alamance, Alleghany, Anson, Ashe, Beaufort, Bladen, Brunswick, Buncombe, Burke, Carteret, Caswell, Catawba, Chowan, Cumberland, Davie, Duplin, Durham, Edgecombe, Forsyth, Gaston, Gates, Granville, Harnett, Hertford, Jones, Lenoir, Lincoln, Martin, McDowell, Moore, New Hanover, Onslow, Pamlico, Pender, Perquimans, Person, Pitt, Polk, Robeson, Rockingham, Rowan, Rutherford, Sampson, Scotland, Washington, Watauga and Wilson; twenty cents in the counties of Chatham, Columbus, Cleveland, Iredell, Johnston and Mecklenburg. (Rev., s. 2776; 1907, cc. 421, 636, 717; 1909, cc. 23, 532; P. L. 1913, c. 49; P. L. 1917, c. 182; C. S., s. 3907; 1933, c. 48.)

In Alexander County the Board of county commissioners are authorized and empowered to pay the register of deeds the sum of one cent each per name for indexing births and deaths in said county. Likewise in Cleveland County. (P. L. 1915, c. 513; P. L. 1917, c. 423; C. S., s. 3907.)

In Carteret County the register of deeds shall receive in addition to all other fees now allowed by law for recording instruments authorized to be registered, the sum of ten cents (.10) per name for each name in excess of five, for cross-indexing such names which appear on all instruments presented at his office and recorded therein. (1943, c. 289.)

In Catawba County the register of deeds shall be allowed as a fee for his services for registering any deed of trust, in which real property is conveyed to a trustee to secure a loan from a building and loan association, the sum of eighty cents. (1909, c. 43; C. S., s. 3907.)

In Forsyth County the register shall receive for registering any deed or other writing authorized to be registered, with certificate of probate or acknowledgment and private examination of a married woman, containing not more than three copy-sheets, sixty-five cents; and for every additional copy-sheet, ten cents: Provided, that the registration of any deed of trust shall not cost more than one dollar and ten cents, where the same does not contain more than four copy-sheets, and for every additional copy-sheet, ten cents each. (Rev., s. 2776; P. L. 1913, c. 626; P. L. Ex. Sess. 1913, c. 177; C. S., s. 3907.)

In Gates County the register of deeds shall receive for canceling of a mortgage or deed of trust, ten cents. (P. L. 1919, c. 4; C. S., s. 3907.)

In Jackson County the register shall, for his service in acting as clerk of the board of commissioners, for recording minutes, and doing other clerical work for or under the direction of the board of commissioners, receive three dollars per day, to be paid by the county. (P. L. 1913, c. 182; C. S., s. 3907.)

In Pamlico County the register of deeds shall receive the following fees: For recording chattel mortgage, statutory form, forty cents (40c); for recording each warranty deed, mortgage deed, deed of trust, contract or other instrument relating to real estate, the sum of one dollar ($1.00) for the first 300 words thereof, and fifteen cents (15c) for each 100 additional words or fraction thereof. (1951, c. 40, s. 3.)

In Pender County the register of deeds shall be allowed the sum of fifty cents (50c) for his services in registering any crop lien. (1945, c. 432.)

In Randolph County the register of deeds shall be allowed the sum of eighty cents (80c) for registering chattel mortgages, statutory form. (1951, c. 133, s. 5.)

In Richmond County the register of deeds shall receive for registering short form of lien bond, or lien bond and chattel mortgage combined, seventy-five cents (75c). (1951, c. 529.)

In Tyrrell County the register shall receive for canceling mortgages, deeds of trust or instruments intended to secure the payment of money, fifteen cents. (1909, c. 780; C. S., s. 3907.)

In Union County the county commissioners may revise the fees and commissions which may be charged by the register of deeds, and may fix all such fees and commissions at such amounts and rates as in their judgment will give the register of deeds and his deputies and assistants reasonable compensation. The fees and commissions so fixed shall be the legal fees chargeable by and payable to the register of deeds. (P. L. 1917, c. 366; C. S., s. 3907.)

In Wake County the register of deeds shall charge and receive the following fees for registration of the papers herein mentioned, to wit: For registering lien bond, fifty cents; for registering short form of chattel mortgage provided for securing a sum not exceeding three hundred dollars, thirty cents; for registering short form of agricultural lien and chattel mortgage for advances, thirty cents; for registering short form of crop lien to secure advances and chattel mortgage to secure pre-existing debt, and to give additional security to the lien, thirty cents; for registering short-form notes given for the purchase price of personal property or combining also a conveyance of the property or other additional property as security, and retaining title to the property sold, twenty cents. (P. L. 1915, c. 138; C. S., s. 3907.)

In Yadkin County the fees for recording chattel mortgages, crop liens, conditional sales, etc., shall be twenty cents for the first two copy-sheets or fraction thereof and ten cents for each additional copy-sheet or fraction thereof. (P. L. 1911, c. 414; C. S., s. 3907.)

In Yancey County the register of deeds shall receive the following fees: For recording each warranty deed, mortgage deed, deed of trust, lease or contract, the sum of one dollar ($1.00) for the first three hundred words, and the sum of twenty cents (20c) for each one hundred additional words or fraction thereof; ten cents (10c) per name for indexing and cross-indexing each warranty deed, mortgage deed, deed of trust, lease or contract; the sum of fifty cents (50c) for recording, indexing and cross-indexing each chattel mortgage; the sum of ten cents (10c) for recording and indexing each certificate of birth, marriage or death. (1945, c. 544.)

Local Modification. — Alamance: Pub. Loc. 1921, c. 234, s. 2; Alleghany: Pub. Loc. 1927, c. 175, s. 3½; Ashe: Pub. Loc. 1927, c. 372, s. 2; Avery: Pub. Loc. 1927, c. 612; Beaufort: Pub. Loc. 1921, c. 229, s. 3; Brunswick: Pub. Loc. 1921, c. 436, s. 3; Burke: Pub. Loc. 1937, c. 564; Catawba: Pub. Loc. 1921, c. 47, s. 2; 1939, c. 33; Cherokee: Pub. Loc. 1921, c. 523, s. 3; Chowan: Pub. Loc. Ex. Sess. 1920, c. 63; Cleveland: Pub. Loc. 1921, c. 75; Columbus: Pub. Loc. 1921, c. 77, s. 6; c. 350, s. 6; Craven: Pub. Loc. 1921, c. 461, s. 3; 1941, c. 68; Cumberland: Pub. Loc. 1927, c. 172, s. 1; Pub. Loc. 1931, c. 523; Davidson: Pub. Loc. 1921, c. 421, s. 2; Davie: Pub. Loc. 1921, c. 84, s. 9; Durham: Pub. Loc. 1921, c. 46, s. 4; Forsyth: Pub. Loc. 1921, c. 69, s. 1; Franklin: Pub. Loc. 1921, c. 45; Gaston: 1951, c. 868; Gates: Pub. Loc. 1927, c. 177; Pub. Loc. 1933, c. 237, s. 3; Graham: Pub. Loc. 1921, c. 453; Pub. Loc. 1927, c. 475; Pub. Loc. 1931, c. 28, s. 3; Halifax: Pub. Loc. 1921, c. 519, s. 1; Henderson: Pub. Loc. 1921, c. 189, s. 1; Pub. Loc. 1927, c. 528; Lee: Pub. Loc. Ex. Sess. 1920, c. 164; Lincoln: Pub. Loc. 1921, c. 122, s. 1; Macon: Pub. Loc. 1921, c. 145; Madison: Pub. Loc. 1921, c. 151, s. 2; Martin: Pub. Loc. Ex. Sess. 1921, c. 250; Pub. Loc. 1927, c. 415; Mitchell: Pub. Loc. 1927, c. 516; Pub. Loc. 1935, c. 93; 1943, c. 364; Montgomery: 1937, c. 137; New Hanover: Pub. Loc. 1921, cc. 95, 442; Pub. Loc. 1927, c. 390; Northampton: 1931, c. 11, s. 2; Pasquotank: Pub. Loc. 1921, c. 320, s. 2; Pub.

Loc. 1927, c. 518; Perquimans: Pub. Loc. 1921, c. 152; 1949, c. 664; Person: Pub. Loc. 1921, c. 577; Pitt: Pub. Loc. 1927, c. 255; c. 597, s. 2; Polk: 1925, c. 44; Robeson: Pub. Loc. 1921, c. 37; Rockingham: Pub. Loc. Ex. Sess. 1921, c. 108; Rutherford: Pub. Loc. 1921, c. 443, s. 4; Stokes: Pub. Loc. 1921, c. 285, s. 7; Pub. Loc. 1927, c. 569, s. 2; Swain: Pub. Loc. 1921, c. 422; 1943, c. 456; Transylvania: Pub. Loc. 1933, c. 386, s. 10; Union: Pub. Loc. 1921, c. 75; Wake: Pub. Loc. 1921, c. 190; Warren: Pub. Loc. 1921, c. 294, s. 2; Wayne: Pub. Loc. 1939, c. 118; Wilkes: Pub. Loc. 1927, cc. 406, 547.

Editor's Note. — The 1943 amendment added the paragraph relating to Richmond County. By virtue of the amendment Richmond has been stricken from the second list of counties appearing in the first paragraph.

§ 161-11. Fees for issuing certificates of encumbrances. — The fee charged by the register of deeds for preparing and issuing a certificate of encumbrance as required for federal chattel mortgages and/or crop liens shall be limited to fifty (50c) cents for each such certificate. (1933, c. 437.)

Article 2.

The Duties.

§ 161-12. Apply to clerk for instruments for registration.—The register of deeds shall at least once a week apply to the clerk of the superior court of his county for all instruments of writing admitted to probate, and then remaining in the office of such clerk for registration, and also for all fees for registration due thereon; which fees the clerk of the superior court shall receive for the register. (1868, c. 35, s. 7; Code, s. 3652; Rev., s. 2655; C. S., s. 3551.)

§ 161-13. Failure of clerk to deliver papers.—In case the clerk fails to deliver such instruments of writing, and pay over such fees as are prescribed in § 161-12, on application of the register, the clerk shall forfeit and pay to the register one hundred dollars for every such failure; for which sum judgment may be entered at any time by the judge of the superior court, on motion in behalf of the register, on a notice of ten days thereof to the clerk. (1868, c. 35, s. 8; Code, s. 3653; Rev., s. 2656; C. S., s. 3552.)

§ 161-14. Registration of instruments.—The register of deeds shall register all instruments in writing delivered to him for registration forthwith. He shall indorse on each instrument in writing the day and hour on which it is presented to him for registration, and such indorsement shall be entered on his books and form a part of the registration, and he shall, immediately upon making the indorsement herein required upon each instrument in writing, index and cross-index the same in the order of time in which such instruments are presented to him: Provided, that the register of deeds may, if in his opinion it is proper to do so, prepare and use in lieu of his permanent index a temporary index until the instrument is actually recorded, upon which all instruments shall be indexed immediately upon receipt of same into his office, and until said instruments shall have been recorded the temporary index shall operate in all respects as the permanent index. In the event the register of deeds shall use a temporary index, however, all instruments shall be recorded and cross-indexed on the permanent index within thirty (30) days from date of receipt of same. (R. C., c. 37, s. 23; 1868, c. 35, s. 9; Code, s. 3654; Rev., s. 2658; C. S., s. 3553; 1921, c. 114.)

Cross References.—As to requisites and formalities of the registration of deeds and mortgages, generally, see § 47-17 et seq. As to indexing of instruments, see also §§ 161-21, 161-22.

Editor's Note.—Prior to the 1921 amendment twenty days were allowed for the registration of all instruments except mortgages and deeds of trust, it was not required that the hour of filing be endorsed on the instrument, and there was no provision for a temporary index.

Session Laws 1945, c. 649, requires register of deeds of Pamlico County to show fees collected on recorded papers and to keep record of same.

Section Means Complete Registration.— This section means a registration complete and perfect, so that it may serve all the purposes of the law in protecting the rights of parties directly interested, and give notice truly to the public. State v. Young, 106 N. C. 567, 10 S. E. 1019 (1890).

Indexing and Cross-Indexing Essential to Proper Registration. — See note to § 161-22.

Failure to Register Breach of Bond. — Failure of the register of deeds to register written instruments properly presented is a breach of the bond required by § 161-4. Bank of Spruce Pine v. McKinney, 209 N. C. 668, 184 S. E. 506 (1936).

Filing Has Effect of Registration.—The filing for registration is in law registration, and all rights and liabilities accrue from the date of filing and do not depend upon the greater or lesser diligence of the register in performing his duty. Glanton v. Jacobs, 117 N. C. 427, 23 S. E. 335 (1895).

Delivery to Proper Officer Necessary to Filing.—Where the filing of a paper in the office of the register of deeds is necessary to the title to lands, the time thereof will be considered as that at which the paper was delivered to and received by the proper officer; and while the file mark of the officer is evidence as to the time, it is not essential under our statutes. Carolina-Tennessee Power Co. v. Hiawassee River Power Co., 175 N. C. 668, 96 S. E. 99 (1918).

Same—Delivery at Office.—It is required for a valid filing of a mortgage that it be delivered at the register of deeds' official office, and where a paper was delivered to the register outside of his office it is ineffectual until he returns and makes the proper entry. McHan v. Dorsey, 173 N. C. 694, 92 S. E. 598 (1917).

Sufficiency of Acknowledgment.—A certificate by the clerk of the superior court that the officers of the corporation who signed the deed "acknowledged the due execution of the annexed instrument for the purpose therein set forth," was sufficient to warrant the registration of the deed. Heath, etc., Co. v. Cotton Mills, 115 N. C. 202, 20 S. E. 369 (1894).

Registry Dated When Fees Paid. — A deed was handed to the register for registration, but he refused to register it because his fees were not paid, and the deed was left in his office for several months, when, the fees being paid, he made an endorsement that it was filed on the day first presented, followed by an explanatory endorsement reciting the facts. It was held that the register was not compelled to register before his fees were paid, and the facts did not constitute a filing for registration on the day when the deed was first presented to the register. Cunninggim v. Peterson, 109 N. C. 33, 13 S. E. 714 (1891).

Endorsement Unnecessary. — The endorsement required to be made by register of deeds on mortgages and deeds in trust on the day on which such deeds are presented to him for registration, is not essential to registration; and when made is not conclusive evidence, but only prima facie evidence, of the facts therein recited. Cunninggim v. Peterson, 109 N. C. 33, 13 S. E. 714 (1891).

Clerical Mistake.—A registry of a mortgage is not void because of a clerical mistake made by the register in transcribing, which does not affect the sense and provision as to the amount secured, description of property, etc., or obscure the meaning of the instrument. Royster v. Lane, 118 N. C. 156, 24 S. E. 796 (1896).

Omission of Signatures.—The registration of a deed showing the probate, including the separate examination of the wife, and the order of registration, and the names of the grantors, but omitting a copy of their signature at the end of the instrument is sufficient notice under this section. Smith v. Ayden Lumber Co., 144 N. C. 47, 56 S. E. 555 (1907).

Omission of Corporate Seal.—The failure of the register of deeds to copy the seal of the corporation on his books, or make an imitation copy thereon, does not render the conveyance of the lands invalid where the recitals in the deed signify that the seal was in fact attached, it appears upon the original, and the books show the name of the corporation appearing in brackets therein at its proper location. Heath, etc., Co. v. Cotton Mills, 115 N. C. 202, 20 S. E. 369 (1894); Lockville Power Corporation v. Carolina Power & Light Co., 168 N. C. 219, 84 S. E. 398 (1915).

Omission of Great Seal of State. — The fact that it does not appear of record that a scroll or imitation of the great seal of the State was copied thereon, does not invalidate the registry of the grant. The recital in the body of the grant, as recorded, of the affixing of the seal is sufficient evidence of its regularity. Broadwell v. Morgan, 142 N. C. 475, 55 S. E. 340 (1906).

Correction of Omission or Error. — Where the register has committed an error or omission in the recordation of an instrument he has the power to correct such error. Brown v. Hutchinson, 155 N. C. 205, 71 S. E. 302 (1911).

Certificates of Registration Prima Facie Evidence. — The certificates of registration made by registers of deeds are prima

facie evidence of the facts therein recited. Sellers v. Sellers, 98 N. C. 13, 3 S. E. 917 (1887).

Cited in Moore v. Ragland, 74 N. C. 343 (1876); Fleming v. Graham, 110 N. C. 374, 14 S. E. 922 (1892).

§ **161-15. Certify and register copies.**—When a deed, mortgage, or other conveyance conveying real estate situate in two or more counties is presented for registration duly probated and a copy thereof is presented with the same, the register shall compare the copy with the original, and if it be a true copy thereof he shall certify the same, and thereupon the register shall indorse the original deed or conveyance as duly registered in his county, designating the book in which the same is registered, and deliver the original deed to the party entitled thereto and register the same from the certified copy thereof to be retained by him for that purpose. (1899, c. 302; Rev., s. 2657; C. S., s. 3554.)

§ **161-16. Liability for failure to register.**—In case of his failure to register any deed or other instrument within the time and in the manner required by § 161-15, the register shall be liable, in an action on his official bond, to the party injured by such delay. (1868, c. 35, s. 10; Code, s. 3660; Rev., s. 2659; C. S., s. 3555.)

Failure to Register or Properly Index and Cross-Index Is a Breach of Bond. — The failure of the register of deeds to register instruments properly presented or his failure to properly index and cross-index them is a breach of his statutory bond, § 161-4, for which he and the surety on his bond are liable to the person injured by such breach under this section. Bank of Spruce Pine v. McKinney, 209 N. C. 668, 184 S. E. 506 (1936).

A register is liable for wrongly recording the amount of a mortgage, to a person injured thereby. State v. Young, 106 N. C. 567, 10 S. E. 1019 (1890).

Abatement of Action by Death. — See Wallace v. McPherson, 139 N. C. 297, 51 S. E. 897 (1905).

§ **161-17. Papers filed alphabetically.**—The register shall keep in files alphabetically labeled all original instruments delivered to him for registration, and on application for such originals by any person entitled to their custody, he shall deliver the same. (1868, c. 35, s. 11; Code, s. 3661; Rev., s. 2660; C. S., s. 3556.)

§ **161-18. Transcribe and index books.**—The board of county commissioners, when they deem it necessary, may direct the register of deeds to transcribe and index such of the books in the register's office as from decay or other cause may require to be transcribed and indexed. They may allow him such compensation at the expense of the county for this work as they think just. The books when so transcribed and approved by the board shall be public records as the original books, and copies therefrom may be certified accordingly. (1868, c. 35, s. 12; Code, s. 3662; Rev., s. 2661; C. S., s. 3557.)

§ **161-19. Number of survey in grants registered.** — The register of deeds in each county in this State, when grants have been registered without the number of tract or survey, shall place in the registration of the grants the number of the tract or survey, when the same shall be furnished him by the grantee or other person; and in registering any grant he shall register the number of the tract or survey. (1889, c. 522, s. 2; Rev., s. 2662; C. S., s. 3558.)

§ **161-20. Certificate of survey registered.**—It shall be the duty of the register of deeds in each county, when any grant is presented for registration with a certificate of survey attached, to register such certificate of survey, together with all indorsements thereon, together with said grant, and a record of any certificate of survey so made shall be read in evidence in any action or proceeding: Provided, the failure to register such certificate of survey shall not invalidate the registration of the grant. (1905, c. 243; Rev., s. 2663; C. S., s. 3559.)

§ **161-21. General index kept.**—The board of county commissioners, at the expense of the county, shall cause to be made and consolidated into one book

a general index of all the deeds and other documents in the register's office, and the register shall afterwards keep up such index without any additional compensation. The board of county commissioners shall also have the authority to install the modern "Family" index system and wherever the "Family" index system is in use, no instruments shall be lawfully recorded until indexed and cross-indexed under the appropriate family name and the appropriate alphabetical subdivision of said family name, according to the particular system in use. (1868, c. 35, s. 13; Code, s. 3663; Rev., s. 2664; C. S., s. 3560; 1929, c. 327, s. 1.)

Cross Reference.—See note to § 161-22.

Editor's Note. — The 1929 amendment added the provision relating to the "Family" index system.

Cited in Woodley v. Gregory, 205 N. C. 280, 171 S. E. 65 (1933); Dorman v. Goodman, 213 N. C. 406, 196 S. E. 352 (1938); Tocci v. Nowfall, 220 N. C. 550, 18 S. E. (2d) 225 (1942).

§ 161-22. Index and cross index of registered instruments.—The register of deeds shall provide and keep in his office full and complete alphabetical indexes of the names of the parties to all liens, grants, deeds, mortgages, bonds and other instruments of writing required or authorized to be registered; such indexes to be kept in well bound books, and shall state in full the names of all parties, whether grantors, grantees, vendors, vendees, obligors or obligees, and shall be indexed and cross-indexed, within twenty-four hours after registering any instrument, so as to show the name of each party under the appropriate letter of the alphabet; and wherever the "Family" index system shall be in use, to also show the name of each party under the appropriate family name and the initials of said party under the appropriate alphabetical arrangement of said index; and all instruments shall be indexed according to the particular system in use in the respective office in which the instrument is filed for record. Reference shall be made, opposite each name to the page, title or number of the book in which is registered any instrument: Provided, that where the "Family" system hereinbefore referred to has not been installed, but there has been installed an indexing system having subdivisions of the several letters of the alphabet, a registered instrument shall be deemed to be properly indexed only when the same shall have been indexed under the correct subdivision of the appropriate letter of the alphabet: Provided, further, that no instrument shall be deemed to be properly registered until the same has been properly indexed as herein provided: Provided, further, that in all counties where a separate index system is kept for chattel mortgages or other instruments concerning personal property, no instrument affecting the title to real estate shall be deemed to be properly registered until the same has been properly registered and indexed in the books and index system kept for real estate conveyances; Provided, further, that it shall be the duty of the register of deeds of each county, in which there is a separate index for conveyances of personal property and for those of real estate, to double index every such conveyance, provided that such conveyance shall contain both species of property. A violation of this section shall constitute a misdemeanor. (1876-7, c. 93, s. 1; Code, s. 3664; 1899, c. 501; Rev., ss. 2665, 3600; C. S., s. 3561; 1929, c. 327, s. 2.)

Editor's Note. — The 1929 amendment rewrote this section.

Section Mandatory. — The provisions of this section are mandatory. Woodley v. Gregory, 205 N. C. 280, 171 S. E. 65 (1933).

Indexing and Cross-Indexing Is Essential to Proper Registration.—The indexing and cross-indexing of deeds or other instruments in writing filed with a register of deeds for registration, as required by § 161-14, is essential to their proper registration. Bank of Spruce Pine v. McKinney, 209 N. C. 668, 184 S. E. 506 (1936).

The indexing of the deeds in the office of the register thereof is an essential part of the registration; and where the grantor's name has been omitted from the book, a subsequent grantee of the same lands from the same grantor acquires the title from him. Fowle & Son v. Ham, 176 N. C. 12, 96 S. E. 639 (1918). See Dorman v. Goodman, 213 N. C. 406, 196 S. E. 352 (1938) and comment thereon in 19 N. C. Law Rev. 77.

Chattel Mortgages. — An indexing of chattel mortgages is an essential part of

their registration. Whitehurst v. Garrett, 206 N. C. 234, 144 S. E. 585 (1928).

Where the court's docket index of chattel mortgages has been kept in the books wherein the instruments were registered, it is a substantial compliance with this section [§ 161-22], it appearing that the record of the instrument could have been found with an ordinary search such as a man of ordinary prudence would have made. Whitehurst v. Garrett, 196 N. C. 234, 144 S. E. 585 (1928).

Real Estate Mortgages.—The power to indexing of a mortgage upon lands is an essential part of its registration, and where the husband and wife make a mortgage on her lands which is only entered by the register of deeds in the name of the husband, it is not good as against a subsequent purchaser for value by deed from the husband and wife who had even actually entered and registered. Hanks v. Hanks, 196 N. C. 474, 146 S. E. 146 (1929).

Indexing and cross-indexing deed of trust given by tenant and remainderman in name of the tenant only followed by the words "et als." is not a sufficient compliance with the statute, and where another deed of trust is subsequently executed on the same lands which is registered, indexed and cross-indexed in compliance with the statute, the purchaser under foreclosure of the second deed of trust acquires title free from the lien of the improperly indexed prior deed in trust. Woodley v. Gregory, 204 N. C. 698, 171 S. E. 83 (1933), distinguishing Prudential Ins. Co. v. Forbes, 203 N. C. 202, 165 S. E. 699 (1932), in which the lien was indexed under "S. T. et ux."

Index of Mortgage on Land Held by Entireties under "J. H. and Wife." — Where the husband and wife mortgage their lands held by the entireties and the mortgage is indexed and cross-indexed under "J. H. and wife," the name of the wife not appearing on the index although it appeared on the mortgage deed, the index is sufficient to put a reasonable man upon inquiry which would have disclosed the facts, and upon the husband's death and the wife's remarriage, a mortgage given by the wife and her second husband is subject to the first mortgage, and the subsequent mortgagee is charged with notice thereof, and by law may not compel the first mortgagee from foreclosing his mortgage on the ground of insufficient indexing, although the name of the wife should have appeared on the index. Wiley v. Barham, 198 N. C. 403, 151 S. E. 887 (1930).

Capacity in Which Grantor Acted. — There is no law requiring that the cross index shall show the capacity in which the grantor acted in the making or execution of a deed. Tocci v. Nowfall, 220 N. C. 550, 18 S. E. (2d) 225 (1942).

Filing at Same Instant of Time.—Where the record discloses that a purchase-money mortgage and another mortgage given to secure cash payment for land were filed for registration at the same instant of time, neither mortgage has priority over the other, but both constitute a first lien on the land, and the fact that one necessarily appeared before the other on the index of the day's transactions does not alter this result, since the record fails to show that the mortgages were not indexed at the same time. Hood v. Landreth, 207 N. C. 691, 178 S. E. 222 (1935).

Priority of Second Mortgage to One Not Indexed.—A mortgage duly filed for registration and spread upon the registry, but not indexed or cross-indexed as required by this section, is not superior to the lien of a duly registered "second mortgage" on the same property. Story v. Slade, 200 N. C. 396, 157 S. E. 356 (1930).

Under this and the previous section a duly recorded chattel mortgage which is indexed and cross-indexed in the general chattel mortgage index has priority over a mortgage covering the same personal property and also certain real estate which is previously executed and recorded and indexed in the general real estate mortgage index but subsequently indexed and cross-indexed in the general chattel mortgage index. Pruitt v. Parker, 201 N. C. 696, 161 S. E. 212 (1931).

Liability for Failure to Index—Breach of Bond.—The failure of a register of deeds to properly index the registry of a mortgage renders him liable on his official bond to one injured by such neglect. State v. Grimard, 117 N. C. 105, 23 S. E. 93 (1895). See Watkins v. Simonds, 202 N. C. 746, 164 S. E. 363 (1932).

Failure of the register of deeds to properly index and cross-index registered instruments is a breach of the bond required by § 161-4. Bank of Spruce Pine v. McKinney, 209 N. C. 668, 184 S. E. 506 (1936).

Same — Failure to Index Must Cause Damage.—While the register of deeds and the surety on his official bond are liable for his failure to index and cross-index instruments such liability does not arise to the individuals claiming damages thereby unless the default of the register is the proximate cause which has been the proximate cause of injury to the claimant, and liability will not be imposed on the register of deeds when the negligence of the claimant or his agent has caused or concurred in causing the injury. State v. Hester, 177 N. C. 600, 98 S.

E. 721 (1919), overruling Davis v. Whitaker, 114 N. C. 279, 19 S. E. 699 (1894). See also Ely v. Norman, 175 N. C. 294, 95 S. E. 543 (1918); Fowle & Son v. Ham, 176 N. C. 12, 96 S. E. 639 (1918).

§ 161-22.1. Index and cross index of immediate prior owners of land. — Whenever any deed or other instrument conveying real property by a trustee, mortgagee, commissioner, or other officer appointed by the court, or by the sheriff under execution, is filed with the register of deeds for the purpose of being recorded, it shall be the duty of the register of deeds to index and cross-index as grantors the names of all persons recited in said instrument to be the persons whose interest in such real estate is being conveyed or from whom the title of such real estate was acquired by the grantor in such instrument.

For indexing and cross-indexing as grantors the names of persons described in this section, the register of deeds shall be allowed a fee of ten cents (10c). The provisions of this section shall not be construed to repeal any local act fixing a different fee for such indexing or cross-indexing. (1947, c. 211, ss. 1, 2.)

§ 161-23. Clerk to board of commissioners. — The register of deeds is ex officio clerk of the board of county commissioners, and as such shall perform the duties imposed by law or by order of the said board. (Const., art. 7, s. 2; 1868, c. 35, s. 15; Code, s. 3656; Rev., s. 2666; C. S., s. 3562.)

Cross Reference.—See § 153-40.

Same Office.—The register of deeds is ex officio clerk to the board of county commissioners, and the two positions are not separate offices. State v. Gouge, 157 N. C. 602, 72 S. E. 994 (1911).

§ 161-24. Notices to certain officers served by mail.—The register of deeds shall serve by mail all notices issued by the board of county commissioners to justices of the peace and school committeemen, in lieu of the service by the sheriff, and shall receive as his compensation his actual expenses for mailing, and nothing more. (1879, c. 328, ss. 1, 3; Code, s. 3657; Rev., s. 2667; C. S., s. 3563.)

§ 161-25. Keep list of statutes authorizing special tax.—The register of deeds in each county, or the auditor in those counties having county auditors, must keep on file and subject to inspection by the public a list of the statutes authorizing a special tax levy in their respective counties, showing the year in which such special tax levy was authorized by the General Assembly of North Carolina and the chapter of the public laws containing the authority for such special levy. Upon payment of a fee of one dollar the register of deeds or county auditor shall furnish to anyone making application therefor a certified copy of said list of statutes. (1917, c. 182; C. S., s. 3565.)

§ 161-26. Duties unperformed at expiration of term.—Whenever, upon the termination for any cause of the term of office of the register of deeds, it appears that he has failed to perform any of the duties of his office, the board of commissioners shall cause the same to be performed by another person or the successor of any such defaulting register. Such person or successor shall receive for his compensation the fees allowed for such services, and if any portion of the compensation has been paid to such defaulting register, the same may be recovered by the board of county commissioners, by suit on his official bond, for the benefit of the county or person injured thereby. (1868, c. 35, s. 14; Code, s. 3655; Rev., s. 2669; C. S., s. 3566.)

§ 161-27. Register of deeds failing to discharge duties; penalty.—If any register of deeds fails to perform any of the duties imposed or authorized by law, he shall be guilty of a misdemeanor, and besides other punishments at the discretion of the court, he shall be removed from office. (1868, c. 35, s. 18; Code, s. 3659; Rev., s. 3599; C. S., s. 3567.)

Cross References.—As to duty of register to issue marriage license, see § 51-8. As to penalty for issuing license unlawfully, see § 51-17. As to misconduct in pub-

lic office and penalty therefor, see § 14-228 et seq. As to duty of register in regard to clerk's bond, see § 109-28; in regard to strays, see § 79-1; in regard to vacancy in office of entrytaker, see § 146-22.

Issuing Marriage License Not Included. — A register of deeds is not liable under this section for issuing a license for the marriage of an infant female under eighteen years of age, without the written consent of her parent or guardian. State v. Snuggs, 85 N. C. 542 (1881).

Chapter 162.

Sheriff.

Article 1.

The Office.

§ 162-1. Election and term of office.—In each county a sheriff shall be elected by the qualified voters thereof, as is prescribed for members of the General Assembly, and shall hold his office for four years. (Const., art. 4, s. 24; Rev., s. 2808; C. S., s. 3925.)

Cross References.—As to form of oath required of sheriff before taking office, see § 11-11; as to other oaths required of public officers, see §§ 11-6, 11-7; Const. Art. VI, § 7; as to penalty for failure to take oath, see § 128-5.

Editor's Note.—It was held in Hoke v. Henderson, 15 N. C. 1 (1833), that a public office is to be classed as private property based on a contract between the State and the officer. In cases following Hoke v. Henderson, supra, it was held that there is a contract between the sheriff and the State that he will discharge the duties of the office, and it cannot be abrogated, or impaired except by the consent of both parties. King v. Hunter, 65 N. C. 603 (1871). However, Hoke v. Henderson, supra, and all cases following it in holding a public office to be private property, were overruled by Mial v. Ellington, 134 N. C. 131, 46 S. E. 961 (1903). Therefore, a sheriff is no longer considered to have a vested right in his office, nor is his tenure considered to be based upon a contract with the State.

Effect of Constitutional Amendment on Term of Office.—The term of office of sheriffs-elect begins on the first Monday in December next ensuing their election, and the constitutional amendment changing the term of office of sheriffs from two to four years, approved by the voters in the election of 1938, being in effect on the first Monday in December, the date of the beginning of the term of the sheriffs elected in that election, their term of office is four years in accordance with the amendment then in effect. Freeman v. Cook, 217 N. C. 63, 6 S. E. (2d) 894 (1940).

§ 162-2. Disqualifications for the office.—No person shall be eligible to the office of sheriff who is not of the age of twenty-one years, and has not resided in the county in which he is chosen for one year immediately preceding his election, or who is a member of the General Assembly, or practicing attorney, or who theretofore has been sheriff of such county and has failed to settle with and fully pay up to every officer the taxes which were due from him. (1777, c. 118, ss. 2, 4, P. R.; 1806, c. 699, s. 2, P. R.; 1829, c. 5, s. 6; 1830, c. 25, ss. 2, 3; R. C., c. 105, ss. 5, 6, 7; Code, ss. 2067, 2068, 2069; Rev., s. 2809; C. S., s. 3926.)

Full Settlement of Public Funds by Incumbent.—A person, although elected by the qualified voters of a county to the office of sheriff, was not eligible for said office, if he, having been theretofore sheriff of said county, had failed to settle with, and fully pay up to, every officer the taxes which were due from him. Lenoir County v. Taylor, 190 N. C. 336, 130 S. E. 25 (1925).

A former sheriff must exhibit to the board of commissioners the receipts in full of the proper officers, for all public funds which he received, or ought to have received during his preceding official term, before he will be permitted to re-enter upon a new term. Colvard v. Board, 95 N. C. 515 (1886); Lenoir County v. Taylor, 190 N. C. 336, 130 S. E. 25 (1925).

Same—Produce Receipts.—The fact that he was able, ready and willing at the time of tendering his bond, to make settlement and payment of any liability on account of funds so received, does not dispense with the requirement that he shall produce receipts in full. Colvard v. Board, 95 N. C. 515 (1886).

Same—Requirement Constitutional.—The requirement that a sheriff-elect who has theretofore been sheriff, produce his tax receipts is not unconstitutional. State v. Dunn, 73 N. C. 595 (1875).

Cited in Pender County v. King, 197 N. C. 50, 147 S. E. 695 (1929).

§ 162-3. Sheriff may resign.—Every sheriff may vacate his office by resigning the same to the board of county commissioners of his county; and thereupon the board may proceed to elect another sheriff. (1777, c. 118, s. 1, P. R.; 1808, c. 752, P. R.; R. C., c. 105, s. 15; Code, s. 2077; Rev., s. 2810; C. S., s. 3927.)

§ 162-4. Removal for misdemeanor in office. — If any sheriff shall be convicted of a misdemeanor in office, the court may at its discretion, as a part of his punishment, remove him from office. (1829, c. 5, s. 8; R. S., c. 109, s. 11; R. C., c. 105, s. 11; Code, s. 2071; Rev., s. 2811; C. S., s. 3928.)

Cross Reference.—As to removal of unfit officers generally, see §§ 128-16 through 128-20.

Proceedings in Nature of Quo Warranto.—An action by the Attorney General in the name of the people of the State, and of the person who claims the office of sheriff, is the proper mode of proceeding against the person who is alleged to be usurping it, to try the question as to which of the parties is entitled to the office. Loftin v. Sowers, 65 N. C. 251 (1871).

§ 162-5. Vacancy filled; duties performed by coroner.—If any vacancy occurs in the office of sheriff, the coroner of the county shall execute all process directed to the sheriff until the first meeting of the county commissioners next succeeding such vacancy, when the board shall elect a sheriff to supply the vacancy for the residue of the term, who shall possess the same qualifications, enter into the same bonds, and be subject to removal, as the sheriff regularly elected. If the board should fail to fill such vacancy, the coroner shall continue to discharge the duties of sheriff until it shall be filled. (1829, c. 5, s. 8; R. S., c. 109, s. 11; R. C., c. 105, s. 11; Code, s. 2071; Rev., s. 2811; C. S., s. 3929.)

Cross References. — As to liability of commissioners for failure to declare vacancy and fill same, see § 153-15 and notes thereto. As to filling vacancy, see § 153-9, subsec. 12 and notes thereto; see also § 162-10.

Commissioners Appoint for Unexpired Term Only.—In case of a vacancy in the sheriff's office, it is within the power of the board of county commissioners to appoint for the unexpired term only. Worley v. Smith, 81 N. C. 304 (1879).

Commissioners Appoint When Sheriff-Elect Fails to Qualify.—Where a sheriff-

elect failed to qualify as sheriff for the term to which he had been elected, it became the duty of the board of commissioners forthwith to elect some suitable person in the county as sheriff for the unexpired term. Lenoir County v. Taylor, 190 N. C. 336, 130 S. E. 25 (1925).

It is the duty of the county commissioners to declare the sheriff's office vacant, and appoint someone for the unexpired term, whenever the incumbent thereof is found to be, on re-election, in arrears in his settlement of the public taxes. People v. Green, 75 N. C. 329 (1876).

S was appointed sheriff in 1875, to fill a vacancy, and held the office until May, 1877; in the meantime—November, 1876—an election was held, and upon the result of certain legal proceedings in May, 1877, M was declared to be elected sheriff, who failed to give bond, and the county commissioners declared a vacancy and appointed B to fill the same. It was held, that S had no right to hold over until the next popular election, but that B was entitled to the office, being elected by the commissioners. State v. Bullock, 80 N. C. 132 (1879).

When Sheriff Becomes Insane.— Upon the prima facie ascertainment of the insanity of the sheriff, or by inquisition of lunacy, the commissioners may declare the office vacant, under this section, but their failure to do so merely authorizes the coroner to perform the duties of sheriff proper, till such declaration (Greer v. Asheville, 114 N. C. 678, 19 S. E. 635 (1894)), and does not cast upon him the right to collect the taxes, which goes to the sheriff's bondsmen for the current list, and after that the duty devolves upon a tax collector chosen by the county commissioners. Somers v. Board, 123 N. C. 582, 31 S. E. 873 (1898).

Upon the insanity of the sheriff, his right to exercise the office ceases and the agency of his deputies is terminated, and his committal to a hospital for the insane and the appointment of a guardian for him are certainly at least prima facie evidence of such insanity. Somers v. Board, 123 N. C. 582, 31 S. E. 873 (1898).

Same—Collection of Taxes.—Upon the declaration of insanity, the sureties of the sheriff had no more rights than would have gone to them upon his death, i. e., to collect the tax list then in his hands. Public Laws 1897, ch. 169, § 117; Perry v. Campbell, 63 N. C. 257 (1869); McNeill v. Somers, 96 N. C. 467, 2 S. E. 161 (1887). And the commissioners are vested with the power of electing a tax collector for the ensuing year, unless and until the sheriff should be restored to reason. Somers v. Board, 123 N. C. 582, 31 S. E. 873 (1898).

§ **162-6. Fees of sheriff.**—Sheriffs shall be allowed the following fees and expenses, and no others, namely:

Executing summons or any other writ or notice, sixty cents; but the board of county commissioners may fix a less sum than sixty cents, but not less than thirty cents, for the service of each road order.

Arrest of a defendant in a civil action and taking bail, including attendance to justify, and all services connected therewith, one dollar.

Arrest of a person indicted, including all services connected with the taking and justification of bail, two dollars.

Imprisonment of any person in a civil or criminal action, thirty cents; and release from prison, thirty cents.

Executing subpoena on a witness, thirty cents.

Conveying a prisoner to jail to another county, five cents per mile.

For prisoner's guard, if any necessary, and approved by the county commissioners, going and returning, per mile for each, five cents.

Expense of guard and all other expenses of conveying prisoner to jail, or from one jail to another for any purpose, or to any place of punishment, or to appear before a court or justice of the peace in another county, or in going to another county for a prisoner, to be taxed in the bill of costs and allowed by the board of commissioners of the county in which the criminal proceedings were instituted.

For allotment of widow's year's allowance, one dollar.

In claim and delivery for serving the original papers in each case, sixty cents, and for taking the property claimed, one dollar, with the actual cost of keeping the same until discharged by law, to be paid on the affidavit of the returning officer.

For conveying prisoners to the penitentiary, two dollars per day and actual necessary expenses; also one dollar a day and actual necessary expenses for each

guard, not to exceed one guard for every three prisoners, as the sheriff upon affidavit before the clerk of the superior court of his county shall swear to be necessary for the safe conveyance of the convicts, to be paid by the board of commissioners of the county in which the criminal proceedings were instituted.

Providing prisoners in county jail with suitable beds, bed-clothing, other clothing and fuel, and keeping the prison and grounds cleanly, whatever sum shall be allowed by the commissioners of the county.

Collecting fine and costs from convict, two and a half per cent on the amount collected.

Collecting executions for money in civil actions, two and a half per cent on the amount collected; and the like commissions for all moneys which may be paid to the plaintiff by the defendant while the execution is in the hands of the sheriff.

Advertising a sale of property under execution at each public place required, fifteen cents.

Seizing specific property under order of a court, or executing any other order of a court or judge, not specially provided for, to be allowed by the judge or court.

Taking any bond or undertaking, including furnishing the blanks, fifty cents.

The actual expense of keeping all property seized under process or order of court, to be allowed by the court on the affidavit of the officer in charge.

Summoning a grand or petit jury, for each man summoned, thirty cents, and ten cents for each person summoned on the special venire.

For serving any writ or other process, with the aid of the county, the usual fee of one dollar, and the expense necessarily incurred thereby, to be adjudged by the county commissioners, and taxed as other costs.

All just fees paid to any printer for any advertisement required by law to be printed.

Bringing up a prisoner upon habeas corpus, to testify or answer to any court or before any judge, one dollar, and all actual and necessary expenses for such services, and five cents per mile by the route most usually traveled, and all expenses for any guard actually employed and necessary.

For summoning and qualifying appraisers, and for performing all duties in laying off homesteads and personal property exemptions, or either, two dollars, to be included in the bill of costs.

For levying an attachment, one dollar.

For attendance to qualify jurors to lay off dower, or commissioners to lay off year's allowance, one dollar; and for attendance, to qualify commissioners for any other purpose, seventy-five cents.

Executing a deed for land or any interest in land sold under execution, one dollar, to be paid by the purchaser.

Service of writ of ejectment, one dollar.

For every execution, either in civil or criminal cases, fifty cents.

Whenever any precept or process shall be directed to the sheriff of any adjoining county, to be served out of his county, such sheriff shall have for such service not only the fees allowed by law, but a further compensation of five cents for every mile of travel going to and returning from service of such precept or process: Provided, that whenever any execution of five hundred dollars or upwards shall be directed to the sheriff of an adjoining county, under this chapter, such sheriff shall not be allowed mileage, but only the commissions to which he shall be entitled. Provided, that when the summons in a civil action or special proceedings shall be from any court of any county other than his own county, the sheriff's fees for serving the same shall be one dollar ($1) for each defendant named therein; and such service shall include the delivery of copy of said summons and complaint or petition attached to the original summons; and that for subpoenas served from other than the county of said sheriff he shall receive a fee of fifty cents (50c.) for each witness named therein. The proviso immediately preceding shall not affect fees provided in § 162-7 for service upon the waters of the counties of Carteret, Dare, Hyde, and Pamlico.

For the service of summons together with a copy of the complaint, petition or other pleading, the sheriff shall have the fees now prescribed by law in the respective counties for the service of summons only, and shall not be entitled to an additional fee for serving the copy of the pleading unless it is necessary that it be served separately. (1822, c. 1132, P. R.; R. C., c. 31, s. 56; R. C., c. 102, s. 21; Code, ss. 931, 2089, 2090, 2135, 3752; 1885, c. 262; 1891, cc. 112, 143; 1901, c. 64; 1903, c. 541; Rev., s. 2777; C. S., s. 3908; 1924, c. 101; 1925, c. 275, s. 6; 1929, c. 227; 1933, c. 132; 1939, c. 138, s. 2.)

Local Modification.—Forsyth: 1951, c. 449; Nash: 1949, c. 1046; Onslow: 1951, c. 517; Pender: 1945, c. 431; Richmond: 1947, c. 235, s. 4.

Cross References.—As to costs of laying off homesteads and personal property exemptions, see § 6-28. As to costs in reassessment of homestead, see § 6-29 and notes thereto. As to payment of certain sheriff's fees by county, see § 6-36. As to statute of limitation against fees due sheriff, see § 1-52.

Editor's Note. — The 1924 amendment added the final proviso to the section which fixes the sheriff's fees for summons and subpoenas from outside the county.

The 1925 amendment rewrote the last part of the ninth paragraph removing the cost from the State and placing it upon the county of the proceedings.

The 1929 amendment added the last paragraph.

The 1933 amendment reduced the mileage fee for bringing up a prisoner upon habeas corpus from ten cents per mile to five cents per mile.

The 1939 amendment substituted "two dollars" for "one dollar" in the fourth paragraph.

Construed with § 6-36. — The true construction of this section regulating the fees of sheriffs is had by reading as a proviso at the end thereof § 6-36. Coward v. Commissioners, 137 N. C. 299, 49 S. E. 207 (1904).

Legislative Control of Sheriffs' Salaries and Fees.—One who accepts a public office does so, with well defined exceptions as to certain constitutional offices, under the authority of the legislature to change the emoluments he is to receive for the performance of his duties, at any time, and, while the office of sheriff is a constitutional one, the regulation of his fees is within the control of the legislature, and the same may be reduced during the term of the incumbent, or he may therein be compensated by a salary instead of on a fee basis. Commissioners v. Stedman, 141 N. C. 448, 54 S. E. 269 (1906); Mills v. Deaton, 170 N. C. 386, 87 S. E. 123 (1915); State v. Gentry, 183 N. C. 825, 112 S. E. 427 (1922).

Commissions When Debtor Pays after Levy. — At common law a sheriff could not demand commissions, although the debtor paid the creditor the amount of the judgment after he had received the execution and made his levy. He was allowed to do so at first under the act of 1784. Pass v. Brooks, 118 N. C. 397, 24 S. E. 736 (1896).

In Dawson v. Grafflin, 84 N. C. 100 (1881), when property was levied on and advertised for sale under execution, but payment was made before sale, the sheriff was allowed no commission on the sale. The rule in that case is now changed by this section. Cannon v. McCape, 114 N. C. 580, 19 S. E. 703, 20 S. E. 276 (1894).

Whenever a sheriff into whose hands an execution is placed levies the same and advertises a sale, he becomes entitled to his commissions. And if the plaintiff in the execution receives the amount from the debtor, he orders the same to be returned unexecuted, he makes himself liable for the sheriff's fees. Willard v. Satchwell, 70 N. C. 268 (1874), which is in conformity with the section, which changes the ruling in Dawson v. Grafflin, 84 N. C. 100 (1881).

Collecting Executions for Money. — It was said by Manly, J., in Dibble v. Aycock, 58 N. C. 399 (1860): "The law upon the subject of sheriff's fees, Revised Code, chap. 102, § 21, (now this section) gives 2½ per cent commission to that officer upon all moneys collected by him by virtue of any levy, and the like commissions for all moneys that may be paid to the sheriff by the defendant while such precept is in the hands of the sheriff, and after levy. The sum upon which commission is asked, (in the instant case) was paid into the office of the court, for plaintiff, while the precept was in the sheriff's hands, and after a levy. The case is strictly, therefore, within the provisions of the law. That the payment was made under a condition for an injunction does not affect the question at all."

A sheriff is entitled to commissions only on moneys actually collected by himself under execution, and not where the same is paid the plaintiff by defendant after

levy. Dawson v. Grafflin, 84 N. C. 100 (1881).

When Sheriff Has Lien.—A lien exists in favor of the sheriff when he does not require the plaintiff, as he has a right to do, to pay his fees in advance. In such instances he has the right of retainer to the extent of the costs out of the amount collected, and cannot be compelled to look exclusively to the plaintiff's prosecution bond, nor prevented from exhausting his remedy against the debtor, by reason of any receipt or compromise between the judgment creditor and debtor. Long v. Walker, 105 N. C. 90, 10 S. E. 858 (1890).

When Process Returned "Fees Not Paid."—Where the return of the sheriff was as follows, to-wit: "Defendant does not petition for homestead, and the plaintiffs refuse to pay homestead fees. No action; the necessary fees not paid." The court held that an officer cannot be required to execute process unless his fees be paid or tendered by the person in whose interest the service is to be rendered. Lute v. Reilly, 65 N. C. 20 (1871); Taylor v. Rhyne, 65 N. C. 530 (1871).

A sheriff is not required to sell the excess of realty beyond the homestead, until the plaintiff has paid, or offered to pay, his fees for so doing. Taylor v. Rhyne, 65 N. C. 530 (1871).

Writ of Ejectment.—A sheriff is not entitled to any extra compensation for executing a "writ of ejectment," or a "writ of possession." Allen v. Spoon, 72 N. C. 369 (1875).

Summons of Tales Jurors.—There is no provision giving sheriffs compensation for the service of summoning tales jurors. This is one of the many gratuitous services expected to be performed by sheriffs. The legislature, no doubt, deemed such service too trivial to be the subject of compensation, for all a sheriff has to do in a performance of the duty is to stand at his desk in the courthouse and, when a deficiency of jurors occurs, order A, B and C to take seats in the jury box. Bryan v. Commissioners, 84 N. C. 105 (1881).

Power of Judge to Order Commissioners to Pay.—The judge of the superior court has no power to order the commissioners of one of the counties in his district to pay the sheriff any sum for his services in attending the court. Brandon v. Commissioners, 71 N. C. 62 (1874), cited and approved; Griffith v. Commissioners, 71 N. C. 340 (1874).

New Trial Awarded Where Number of Prisoners Conveyed Is Not Shown.—Where, in an action by a sheriff to recover compensation for transportation of prisoners under this section, it does not appear from the facts agreed how many prisoners were conveyed to jails in other counties by the sheriff or how many miles such prisoners were conveyed, a new trial will be awarded in order that the facts necessary to a determination of the question may be found and a proper adjudication made thereon. Patterson v. Swain County, 208 N. C. 453, 181 S. E. 329 (1935).

§ 162-7. Local modifications as to fees of sheriffs.—Bertie.—The sheriff of Bertie County shall collect for the use of Bertie County 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.

Serving subpoena, fifty cents (50c) for each person. (1947, c. 755.)

Carteret, Dare and Hyde.—The sheriff of Hyde County shall be allowed the sum of two dollars for serving all warrants or capiases or other criminal processes on the waters of Pamlico Sound or on the waters of any bay in Hyde County. Whenever such sheriff is compelled to go by boat or vessel a distance of more than two miles from any shore or landing in Hyde and of Dare County to serve any civil process upon the waters of Pamlico Sound and waters of Dare County or any bay in Hyde County, such sheriff, in addition to the fee prescribed by law for serving such process, may add the expense of hiring such boat or vessel, which cost or expense shall be taxed by the clerk of the superior court of the county from which such process issued in the bill of costs in the action in which such process issued. Sheriffs and constables of Hyde and Carteret Counties shall receive three dollars for every process executed on board of any boat or vessel lying in the waters between Ocracoke Island, Hyde County, and Portsmouth in Carteret County. (Rev., s. 2777; 1907, c. 206; C. S., s. 3909.)

The sheriff of Dare County shall be allowed his actual traveling expenses incurred by him in serving warrants, capiases or other criminal process on the wa-

ters of Dare County or at any point in Dare County across the water. (1909, c. 527; C. S., s. 3909.)

Greene.—The sheriff of Greene County shall be allowed the following fees:

Arrest of a defendant in a civil action and taking bail including attendance to justify, and all services connected therewith, two dollars ($2).

Arrest of any person indicted including all services connected with taking of bail, two dollars ($2).

Taking any bond or undertaking, including furnishing the blanks, seventy-five cents (75c).

Executing a subpoena on a witness, fifty cents, when not traveling less than one mile to do so.

Levying an attachment, two dollars ($2).

Service of writ ejectment, two dollars ($2).

Serving claim, and delivery process, two dollars ($2).

Advertising sale of property under execution at each place required thirty-three and one-third cents (33 1/3c). (P. L., 1919, c. 313; C. S., s. 3909.)

Harnett.—The sheriff of Harnett County shall be allowed the following fees:

For an arrest, one dollar and fifty cents ($1.50), with fifty cents (50c) additional for taking bond.

For the service of summons, with or without complaint attached, or for the service of notices, execution, or other court orders, a fee of one dollar each for the first five persons upon whom the process is served; and fifty cents for each additional person.

For the service of claim and delivery process, two dollars for the first defendant, and one dollar each for additional defendant; also actual expenses of caring for property seized.

For the collection of judgments, five per cent on the first five hundred dollars, and two and one-half per cent upon all amounts in excess of five hundred dollars.

In allotting homesteads, a fee of fifty cents for each appraiser and one dollar to the sheriff for his return, and an additional allowance of one dollar each for the use and benefit of each appraiser.

Guardhouse fees shall be sixty cents.

There shall be taxed in each bill of costs for the use and benefit of the sheriff of Harnett County in all cases wherein defendants have been convicted or pleaded guilty to the charge of manufacturing whiskey or possession of any whiskey still, the sum of $10.00 for each still captured by the sheriff or his deputies and for which such defendant or defendants may have been found guilty or pleaded guilty of possessing.

The sheriff of Harnett County shall receive for his services all such fees as are now allowed by law and not herein specifically enumerated. (1933, c. 75, s. 1; 1943, c. 422.)

Haywood, Lincoln, Madison, Pitt and Transylvania.—For every illicit distillery seized as required by law the sheriffs of Haywood, Lincoln, Pitt and Transylvania Counties shall receive the sum of twenty dollars, and in Madison County thirty dollars, which shall be allowed by the commissioners of the county in which the seizure was made. (Ex. Sess. 1908, c. 97; P. L. 1919, c. 30; C. S., s. 3909.)

Mitchell.—The board of county commissioners of Mitchell County shall make provision in the county budget for the fiscal year beginning July first, one thousand nine hundred thirty-two, for the payment of the salary of the sheriff, which is hereby fixed at the rate of three thousand ($3,000) dollars per annum payable in equal monthly installments and shall also make provision in said budget for the payment to the sheriff at the same rate per annum for such time as he has served as sheriff since the first Monday of December, one thousand nine hundred thirty. In addition to the salary, as hereinabove provided, the sheriff of Mitchell County shall be entitled to all fees and emoluments accruing to him, by virtue of his office, including such fees as are provided in chapter fifty-six, Public Laws of one thousand nine hundred twenty-nine. (1931, c. 53, ss. 6, 8.)

Northampton.—The sheriff of Northampton County shall collect for the use of Northampton County the following fees:

Serving civil summons, one dollar for each defendant;

Subpoena, for each person, thirty cents;

For each arrest, two dollars. (1931, c. 11, s. 4.)

Richmond.—The sheriff of Richmond County shall receive for the imprisonment of any person in a civil or criminal action, fifty cents (50c), and for release from prison, fifty cents (50c). The sheriff of Richmond County, shall receive for feeding each prisoner in jail the sum of one dollar and fifty cents ($1.50) per day to be paid by the board of commissioners of Richmond County. Each person imprisoned in the jail of Richmond County shall be charged one dollar and fifty cents ($1.50) per day for board and lodging which shall be taxed in the bill of cost and paid to Richmond County. (1951, c. 106.)

Robeson.—For each person summoned on a special venire the sheriff of Robeson County shall receive thirty cents; but not for a special venire ordered to be summoned from the bystanders, in which case he shall receive ten cents for each person so summoned. (1909, c. 317; C. S., s. 3909.)

Wayne.—The sheriff of Wayne County shall receive the following fees, in addition to other fees allowed by law, for services of the following processes:

For arrest fee for State warrant	$2.00
For arrest fees for capias	2.00
Fees for claim and delivery	3.00
Fees for ejectment proceedings	2.00
Fees for service of executions on civil judgments	2.00

(1937, c. 254.)

Editor's Note.—The 1943 amendment increased the fee for arrest by the sheriff of Harnett County from one dollar to one dollar and fifty cents. The 1947 amendment added the provisions relating to Bertie County, and the 1951 amendment added the provisions relating to Richmond County.

Illicit Distilleries.—The fees or emoluments incident to a sheriff's office as allowance for the seizure and destruction of illicit distilleries, are excluded by a public-local law applicable to a certain county, subsequently enacted, but prior to the commencement of the term of the incumbent, wherein it is provided that the sheriff shall turn over to the county treasurer all moneys collected from fees, and receive a specified sum as a salary in lieu of his fees, with exception only of certain fees allowed to his township deputy in certain instances, the duty to seize the illicit distilleries being the same as any other required of him as sheriff of the county. Thompson v. Board, 181 N. C. 265, 107 S. E. 1 (1921).

Article 2.

Sheriff's Bonds.

§ 162-8. Sheriff to execute two bonds. — The sheriff shall execute two several bonds, payable to the State of North Carolina, as follows:

One conditioned for the collection and settlement of county and other local taxes according to law, a sum not exceeding the amount of such county and other local taxes for the previous year.

The second bond, for the due execution and return of process, payment of fees and moneys collected, and the faithful execution of his office as sheriff, shall be not more than five thousand dollars, in the discretion of the board of county commissioners, and shall be conditioned as follows:

The condition of the above obligation is such that, whereas the above bounden ..... is elected and appointed sheriff of ..... County; if, therefore, he shall well and truly execute and due return make of all process and precepts to him directed, and pay and satisfy all fees and sums of money by him received or levied by virtue of any process into the proper office into which the same, by the tenor thereof, ought to be paid, or to the person to whom the same shall be due,

his executors, administrators, attorneys, or agents; and in all other things well and truly and faithfully execute the said office of sheriff during his continuance therein, then the above obligation to be void; otherwise to remain in full force and effect. (1777, c. 118, s. 1, P. R.; 1823, c. 1223, P. R.; R. C., c. 105, s. 13; 1879, c. 109; Code, s. 2073; 1895, c. 270, ss. 1, 2; 1899, c. 54, s. 52; 1899, c. 207, s. 2; 1903, c. 12; Rev., s. 298; C. S., s. 3930; 1943, c. 543.)

Cross References.

As to official bonds generally, see §§ 109-1 et seq. As to duty of county commissioners to bring suit on sheriff's bond, in case of default, see § 155-18 and note. See also, §§ 162-9 and 162-10. As to right of action on official bond, see § 109-34 and note. As to statute of limitation on official bond, see § 1-50. As to liability of sheriff's bond when he acts as treasurer, see § 155-6.

I. GENERAL INCIDENTS OF BOND.

Editor's Note. — Prior to the 1943 amendment the sheriff was required to execute three bonds.

When Sheriff Fails to Comply.—Where the sheriff had not complied with the requirements of this section, it was held that he was not entitled to have the county commissioners induct him into office. Colvard v. Board, 95 N. C. 515 (1886).

And this is true notwithstanding the fact that at the beginning of his term there is a tax collector in that county. Colvard v. Board, 95 N. C. 515 (1886).

When Section Complied with.—When a sheriff-elect has fulfilled all the statutory requirements as to the execution of bonds, it is not competent for the county commissioners to refuse the said bonds and deprive the rightful holder of his office. Sikes v. Commissioners, 72 N. C. 34 (1875).

Ceremony.—The ceremony of acknowledgment in open court, and registration, are not essential to the validity of a sheriff's bond. State v. Buchanan, 53 N. C. 444 (1862).

Sufficiency of Form.—A sheriff's bond to "his Excellency M. S. Captain General and Commander in Chief, in and over the State of North Carolina in the sum of $10,000, to be paid to his Excellency, the Governor, his successor and assigns:" is a bond payable to the Governor in his official capacity, and is an official bond within the act of 1823, which was in force when it was taken. Governor v. Montford, 23 N. C. 155 (1840).

School Fund Included in County Bond.—It is immaterial whether the school fund is, strictly speaking, State taxes or county taxes, or partly both. They are included in the "county" bond and the sheriff must account for them in settling his liability on that bond. Tillery v. Candler, 118 N. C. 888, 24 S. E. 709 (1896); State v. Sutton, 120 N. C. 298, 26 S. E. 920 (1897).

Process Bond Not Liable for County Taxes.—The county tax cannot be recovered of the sheriff upon the official bond required by the act of 1777, which is the process bond required by this section. Governor v. Barr, 12 N. C. 65 (1826).

The case of Governor v. Crumpler, 12 N. C. 63 (1826), holds that the sureties on the "process" bond are not liable for default as to county taxes, which is true now, as it was then. State v. Sutton, 120 N. C. 298, 26 S. E. 920 (1897).

II. LIABILITY ON OFFICIAL BONDS.

Editor's Note.—See 12 N. C. Law Rev. 394, for note "Extent of Liability on Sheriff's Official Bond."

A. Liability Limited to Terms of Bond.

Rule of Construction.—In a bond given for a specific object, general words shall be construed with reference only to that object. Therefore, when a bond is given with a condition that A. M. shall "collect the county contingent tax, and in all things perform his duty as sheriff" the public taxes cannot be recovered on it. Crumpler v. Governor, 12 N. C. 52 (1826).

Duties Specifically Described.—A sheriff and his sureties are liable on his official bond only for a breach of some duty specifically described therein. Eaton v. Kelly, 72 N. C. 110 (1875).

The general provisions of the bond as to the sheriff's performance of the duties of his office relate to the specific obligations therein set out as to process, and neither the sheriff nor the sureties on his bond are liable in a civil action for damages for injury inflicted by the sheriff while acting in his official capacity. State v. Leonard, 68 F. (2d) 228 (1934).

Not Extended as to Years.—Where an action was brought on the bonds of a sheriff, given in 1872 and 1873 and conditioned only for those years, they could not

be enlarged to embrace a default occurring in the year 1874 on the ground that the law required a bond for the principal's whole term of office. State v. McNeill, 77 N. C. 398 (1877).

Where Separate Bond Including All Official Duties Omitted.—Where the condition of a sheriff's bond is made in clear and unambiguous terms to secure the performance of a certain class of duties imposed on him by statute, the superaddition of general terms thereto, though large enough to include all of his official duties, for which by law a separate bond is directed, but omitted to be given, will not extend the liability of sureties to such other duties. Governor v. Matlock, 12 N. C. 214 (1827).

Same—Examples. — In Crumpler v. Governor, 12 N. C. 52 (1826), the sheriff had given four bonds, but the condition of no one of them provided for the payment of the State taxes, the nonpayment of which was the breach alleged. All of them contained general words, "faithfully execute the office," etc. It was held that these words did not extend beyond the duties specially described and provided for in the preceding clause. Mr. Justice Henderson dissented from the conclusion of the court, but he concurred in this rule of construction, and states it with great clearness and force.

State v. Long, 30 N. C. 415 (1848), was an action on a bond with a condition containing general words. In that case it was held that these words did not impose on the sureties an obligation that the sheriff should commit no wrong by color of his office, nor do anything not authorized by law. See also, Jones v. Montford, 20 N. C. 69 (1838); State v. Brown, 33 N. C. 141 (1850); Commissioners v. Sutton, 120 N. C. 298, 26 S. E. 920 (1897).

State v. Bradshaw, 32 N. C. 229 (1849), is not in conflict with the cases generally on this subject. That case simply decides that a bond to serve process, collect and pay out moneys, etc., is broad enough to cover money collected for a town which it was the sheriff's duty to collect. See State v. McNeill, 77 N. C. 398 (1877).

Trespass under Color of Office. — The sureties in the official bond of a sheriff are not liable for damages for a trespass committed by the sheriff under color of his office. State v. Brown, 33 N. C. 141 (1850). See also, State v. Long, 30 N. C. 415 (1848).

When New Duty Attached.—Where a statute requires a bond from an officer for the faithful discharge of his duty, and a new duty is attached to the office by statute, such bond, given subsequently to the latter statute, embraces a new duty, and is a security for its performance, unless where, when the new duty is attached, a bond is required to be given specifically for its performance. State v. Bradshaw, 32 N. C. 229 (1849).

Liability for Injury Caused by Prisoner While Unlawfully at Large as Trusty.—The statutory bonds required to be given by a sheriff under this section may be put in evidence as though they had been written as prescribed by § 109-1, and where suit is brought on one of the bonds which provides for liability if the sheriff fail to properly execute and return all process, or properly pay all moneys received by him by virtue of any process, "and in all things well and truly and faithfully execute the said office of sheriff," the general provisions of the bond as to the sheriff's faithful performance of the duties of the office relate to the specific obligations therein set out as to service and return of process, and neither the sheriff nor the sureties on his bond is liable thereon in a civil action for damages for a negligent injury inflicted by a prisoner lawfully intrusted to the custody of the sheriff while such prisoner was unlawfully permitted by the sheriff to be at large as a trusty. Sutton v. Williams, 199 N. C. 546, 155 S. E. 160 (1930).

Liability for Deputy's Negligent Injury of Prisoner in Jail.—The liability of the surety on the bond of a public officer is limited by the terms of the bond, and the condition of the bond of a sheriff for the "faithful execution of his office" refers to the specific condition for the "due execution and return of process" and the terms of the statutory bond do not impose liability on the surety for the negligent act of a deputy unconnected with the execution and return of process, and the surety's motion to nonsuit is properly granted in a prisoner's action to recover for negligent injury inflicted by a deputy while he was in jail. Davis v. Moore, 215 N. C. 449, 2 S. E. (2d) 366 (1939).

Liability for Use of Excessive Force in Making Arrest.—Where the complaint in an action against a sheriff in his official capacity and against his surety alleged that plaintiff was permanently injured by the sheriff's use of excessive force in arresting him, and that the arrest was wrongful and unlawful, defendants' demurrer to the complaint should have been overruled, since, even if the terms of the bond "and in all other things well and truly and faithfully execute the said office of sheriff," refer solely to the specific du-

ties enumerated and do not impose liability for the wrong alleged, the provision of § 109-34 extends the liability on the sheriff's general official bond and imposes liability for the wrong alleged committed under color of his office. Price v. Honeycutt, 216 N. C. 270, 4 S. E. (2d) 611 (1939).

Change of Amount of Salary or to Fee Basis.—The liability of a surety on a sheriff's bond, given under this section is not affected by the fact that the sheriff, pending the life of the bond, has been put upon a salary instead of a fee basis, or the amount of his salary has been changed under the authority of a statute. Pender County v. King, 197 N. C. 50, 147 S. E. 695 (1929).

B. Successive Terms and Successive Bonds.

The various bonds separately required to be given by the sheriff under this section imposes a distinct liability on the sureties on each bond separately for the terms of office for which given, and where one is given by the same surety for the same sheriff for more than one successive term, the giving of the bond for the succeeding term does not discharge the bond previously given nor release the surety from liability thereon, and a separate cause of action lies against the surety on the bond for each term. Pender County v. King, 197 N. C. 50, 147 S. E. 695 (1929).

Appointment of Sheriff Removed for Failure to Give Bond.—Where under § 162-10, the board of county commissioners has declared the office of sheriff of that county vacant for his failure to give the bond required by this section, and has appointed another who likewise failed to give the bonds, and has again appointed the former sheriff, who gives the necessary bonds and then qualifies, his term is by virtue of his appointment by the board of county commissioners, and the liability of the sureties on his official bonds commences from the time of his appointment. Pender County v. King, 197 N. C. 50, 147 N. E. 695 (1929).

Failure to Renew Bond.—The sureties on the bond of a sheriff are liable for all official delinquents of which the principal may be guilty during the continuance of his term of office. Where a sheriff, elected in 1872, continued to exercise the duties of the office after his failure to renew his bond and produce his receipts, and was re-elected in 1874, and failed to collect and pay over the taxes for that year, it was held that he was liable on his bond of 1872. State v. Pipkin, 77 N. C. 408 (1877). See also, State v. McIntosh, 31 N. C. 307 (1848); State v. Clarke, 73 N. C. 255 (1875); State v. McNeill, 74 N. C. 535 (1876).

Effect of Termination of Incumbency.—When the deputy of a sheriff received the note of a married woman for collection within a magistrate's jurisdiction, and failed to collect the same during the sheriff's official term, but afterwards, when acting as the deputy of his successor, collected it and failed to pay over the money, it was held that there was no breach of the former sheriff's official bond. State v. Buchanan, 60 N. C. 93 (1863).

Taxes for Preceding Year.—A sheriff's sureties for one year are not liable for any taxes received by him under the lists furnished in the preceding year; but the sureties of that year are liable. Fitts v. Hawkins, 9 N. C. 394 (1823).

C. Irregularities or Informalities in Bond.

When Valid as Voluntary Bond.—When a bond made payable to the State is given by a sheriff for the discharge of public duties, though not taken in the manner or by the persons designated by law to take it, will be good as a voluntary bond. Being for the benefit of the State, the State will be presumed to have accepted it when it was delivered to a third person for its benefit. State v. McAlpin, 26 N. C. 140 (1843).

Excessive Bond.—If a sheriff voluntarily give bond, with sureties, in an amount larger than is prescribed by law, they will be liable for a breach thereof. State Bank v. Twitty, 9 N. C. 5 (1822); Governor v. Matlock, 9 N. C. 366 (1823).

III. ACTIONS ON BONDS.

Demand Unnecessary.—A demand is not necessary before suit by the county treasurer on a sheriff's bond, as the sheriff is required by law to settle on or before a day certain. McGuire v. Williams, 123 N. C. 349, 31 S. E. 627 (1898).

Proper Relator for Settlement of School Taxes.—The Code of 1883, § 2563, made the county commissioners the proper relators in an action on the sheriff's bond to compel a settlement of the school taxes. The Acts of 1889, ch. 199, substituted the county board of education as relators (Board v. Wall, 117 N. C. 382, 23 S. E. 358 (1895)), but Acts of 1895, ch. 439, abolished the county board of education and again made the county commissioners the proper relators. Tillery v. Candler, 118 N. C. 888, 24 S. E. 709 (1896); State v. Sutton, 120 N. C. 298, 26 S. E. 920 (1897).

Certified Copy as Evidence.—The office

of the clerk of the superior court of the county for which one is sheriff is the proper place of deposit for the bond of such sheriff. Therefore, a copy of such bond, certified by such clerk, is competent evidence of its contents. Such a copy is competent (at least under the maxim, omnia presumuntur, etc.) even although the certificate does not state that it has been recorded. State v. Lawrence, 64 N. C. 483 (1870).

Previous Settlements Prima Facie Correct.—Previous settlements with the sheriff, when approved by the board of commissioners, are prima facie correct, and the burden of proving to the contrary rests upon them. Commissioners v. White, 123 N. C. 534, 31 S. E. 670 (1898).

Settlement of One Tax Fund at Expense of Another.—Where a sheriff's settlement of one tax fund is made partially by an amount deducted from another tax fund, the settlement exonerates him and his surety from liability on the bond for the taxes settled; he and his sureties are liable in an action on the bond for the taxes misappropriated for such defalcation. McGuire v. Williams, 123 N. C. 349, 31 S. E. 627 (1898).

Plea in Bar.—The general rule is that where there is a plea in bar it must be disposed of before a reference for an account can be made. Commissioners v. White, 123 N. C. 534, 31 S. E. 670 (1898).

Summary Judgment Set Aside.—Where judgment is entered up summarily against the sureties of a sheriff, upon a proper case, it will be set aside. Crumpler v. Governor, 12 N. C. 52 (1826).

When Sum Differs from That Required.—A sheriff's bond payable to the Governor and his successors in a sum different from that directed by law, cannot be sued in the name of the successor. Governor v. Twitty, 12 N. C. 153 (1827).

Failure to Take Bail in Civil Cases.—In Governor v. Jones, 9 N. C. 359 (1823), it was held that the sheriff was not liable in debt upon his official bond for omitting to take bail when he executed a capias in civil cases; but must be proceeded against as bail by sci. fa.

Return Conclusive.—The return of a sheriff that a fi. fa. is satisfied is conclusive upon his sureties in an action on his official bond. Governor v. Twitty, 12 N. C. 153 (1827).

Failure to Have Insolvent's Allowance Made.—Where a sheriff failed to settle for taxes within the time appointed by law and not having had allowance made him by the commissioners for insolvents at the time and in the manner prescribed by law, he cannot have such allowances made by the court in an action brought against him on his official bond for the balance due by him on the tax list. Board v. Wall, 117 N. C. 377, 23 S. E. 358 (1895).

Misjoinder.—Where a sheriff has been elected for successive terms of office, and appointed for a third term by the county commissioners after the office for his third term had been declared vacant, an action against him and the sureties on his bonds given under the provisions of this section, for defalcation during the successive terms is a misjoinder of parties and causes of action, and a demurrer thereto is good. Pender County v. King, 197 N. C. 50, 147 S. E. 695 (1929).

§ 162-9. County commissioners to take and approve bonds.—The board of county commissioners in every county shall take and approve the official bonds of the sheriffs, which they shall cause to be registered and the originals deposited with the clerk of the superior court for safekeeping. The bonds shall be taken on the first Monday of December next after the election of sheriffs, but no board shall permit any former sheriff to give bonds for, or reenter upon the duties of the office, until he has produced before the board the receipt in full of every such officer for taxes which he has or should have collected. (1806, c. 699, s. 2, P. R.; 1830, c. 5, s. 5; R. C., c. 105, s. 6; 1868, c. 20, s. 32; 1876-7, c. 276, s. 5; Code, ss. 2066, 2068; Rev., s. 2812; C. S., s. 3931.)

Cross References.—See § 153-9, subsecs. 11, 12. As to disqualification for office, see § 162-2.

Purpose.—The evident purpose of the section is only to protect and safeguard the public revenue and to insure its honest collection and application. Hudson v. McArthur, 152 N. C. 445, 67 S. E. 995 (1910).

Execution and Approval of Bonds.—To entitle a sheriff to be inducted into office, it is essentially necessary that the bonds must be executed by him and approved by the county commissioners. Dixon v. Commissioners, 80 N. C. 118 (1879).

Not Liable to Sureties for Failure to Demand Receipt.—The county commissioners are not liable to the sureties on the bond of a defaulting sheriff and tax collector whose defalcations they were required to pay, for a failure to demand of the sheriff his receipts in full, for the

taxes collected the previous year before permitting him to receive the tax duplicate for the current year. Hudson v. McArthur, 152 N. C. 445, 67 S. E. 995 (1910).

Cited in Pender County v. King, 197 N. C. 50, 147 S. E. 695 (1929).

§ **162-10. Duty of commissioners when bonds insufficient.**—It shall be the duty of the board of county commissioners whenever they shall be of opinion that the bonds of the sheriff of their county are insufficient, to notify the sheriff in writing to appear within ten days and give other and better sureties, or justify the sureties on his bonds; and in case such sheriff shall fail to appear on notice, or fail to give sufficient bonds, or to justify his bonds, it shall be the duty of the board to elect forthwith some suitable person in the county as sheriff for the unexpired term, who shall give proper and lawful bonds and be subject to like obligations and penalties. (1879, c. 109, s. 2; Code, s. 2074; Rev., s. 2813; C. S., s. 3932.)

Cross References.—As to bonds required of sheriff, see § 162-8; see also, §§ 153-9, subsecs. 11, 12, and 162-5. As to liability of commissioners for failure to declare vacancy and fill same, see § 153-15.

Right to Examine Sheriff and Vacate Office.—Under article seven, section 2 of the Constitution (1868 as revised) the county commissioners have the right to summons the sheriff to justify or renew his official bond, whenever in fact, or in their opinion the sureties have become, or are liable to become insolvent. And it is not only the right, but the duty of the commissioners, to declare the office of sheriff vacant, and appoint one for the unexpired term, whenever the incumbent thereof takes no notice of a summons by the commissioners to appear before them and justify or renew his bond. People v. Green, 75 N. C. 329 (1876).

Power to Fill Vacancy.—Upon the failure of a sheriff-elect to give bonds required by law, the board has power to elect some suitable person in the county as sheriff for the unexpired term. Lenoir County v. Taylor, 190 N. C. 336, 130 S. E. 25 (1925).

Cited in Pender County v. King, 197 N. C. 50, 147 S. E. 695 (1929).

§ **162-11. Liability of commissioners.** — If any board of county commissioners shall fail to comply in good faith with the provisions of this article, they shall be liable for all loss sustained in the collection of taxes, on motion to be made by the solicitor of the district. (1868-9, c. 245, s. 3; Code, s. 2075; Rev., s. 2814; C. S., s. 3933.)

Court Cannot Compel Approval.—The boards of county commissioners are liable in damages if they knowingly accept insufficient bonds, and approval or disapproval of such bonds is within their discretion, and the courts cannot compel them to approve and receive bonds which they find to be insolvent or insufficient. State v. King, 117 N. C. 117, 23 S. E. 92 (1895).

Liable for All Loss.—If any board of commissioners shall fail to comply with the provisions of the statute, they shall be liable for all loss sustained in the collection of taxes, on motion to be made by the solicitor of the district. Lenoir County v. Taylor, 190 N. C. 336, 130 S. E. 25 (1925).

When Liable for One Penalty Only.—The statutes requiring the sheriff to renew annually his official bonds, and, in addition, produce receipts for the public moneys collected by him, and in default thereof it shall be the duty of the board of county commissioners to declare the office vacant, are intended to effectuate the same purpose, and therefore a member of the board of county commissioners is liable for only one penalty for failure to perform his duty in that connection. Bray v. Barnard, 109 N. C. 44, 13 S. E. 729 (1891).

§ **162-12. Liability of sureties.**—The sureties to a sheriff's bond shall be liable for all fines and amercements imposed on him, in the same manner as they are liable for other defaults in his official duty. (1829, c. 33; R. C., c. 105, s. 14; Code, s. 2076; Rev., s. 2815; C. S., s. 3934.)

Cross Reference.—See § 162-8 and notes thereto.

Liable for Amercements.—The sureties to a sheriff's bond, with a condition in the ordinary form, are liable for an amercement of the sheriff for a default committed during his official year, though the final judgment for the amercement may

not have been rendered until after the expiration of the year. Governor v. Montford, 23 N. C. 155 (1840).

Same—Records of Proceedings as Evidence.—The records of the proceedings against a sheriff for an amercement imposed upon him, are not evidence against his sureties to prove his default; but they are admissible against them to prove the fact of the existence of the amercement itself. Governor v. Montford, 23 N. C. 155 (1840).

Return Conclusive.—A sheriff cannot be heard to deny or contradict his return; as to him it is conclusive, and he and the sureties upon his bond are liable to the plaintiff in the execution for the sums so indorsed. Walters v. Moore, 90 N. C. 41 (1884).

Judgment or Amercement Not Conclusive.—A judgment of an amercement against a sheriff is not conclusive against the sureties on his bond. They may show that the judgment was either fraudulently or improperly obtained against their principal. State v. Woodside, 29 N. C. 296 (1847).

ARTICLE 3.

Duties of Sheriff.

§ 162-13. To receipt for process.—Every sheriff, coroner or constable shall, when requested, give his receipt for all original and mesne process placed in his hands for execution, to the party suing out the same, his agent or attorney; and such receipt shall be admissible as evidence of the facts therein stated, against such officer and his sureties, in any suit between the party taking the receipt and such officer and his sureties. (1848, c. 97; R. C., c. 105, s. 18; Code, s. 2081; Rev., s. 2816; C. S., s. 3935.)

Cross References.—As to collection of inheritance taxes by sheriff and commission therefor, see § 105-17. As to attendance upon county court, see § 7-337. As to duty to adjourn court in absence of judge, see § 7-76. As to duty to summon and swear appraisers in homestead proceedings, see § 1-371. As to duty when warrant of attachment directed to sheriff, see § 1-447. As to duties and liabilities in claim and delivery, see §§ 1-476, 1-477. As to attachment for failure to obey writ of habeas corpus, see § 17-16. As to attachment against sheriff to be directed to coroner, see § 17-18. As to official deed, when sheriff selling or empowered to sell is out of office, see § 39-5. As to sheriff as tax collector, see §§ 105-401, 153-56.

This section obviously has no reference to final process. Wyche v. Newsom, 87 N. C. 144 (1882).

§ 162-14. Execute process; penalty for false return.—Every sheriff, by himself or his lawful deputies, shall execute and make due return of all writs and others process to him legally issued and directed, within his county or upon any river, bay or creek adjoining thereto, or in any other place where he may lawfully execute the same. He shall be subject to the penalty of forfeiting one hundred dollars for each neglect, where such process shall be delivered to him twenty days before the sitting of the court to which the same is returnable, to be paid to the party aggrieved by order of court, upon motion and proof of such delivery, unless the sheriff can show sufficient cause to the court at the next succeeding term after the order.

For every false return, the sheriff shall forfeit and pay five hundred dollars, one moiety thereof to the party aggrieved and the other to him that will sue for the same, and moreover be further liable to the action of the party aggrieved, for damages.

Every sheriff and his deputies, and every constable, shall execute all writs and other process to him legally issued and directed from a justice's court and make due return thereof, under penalty of forfeiting one hundred dollars for each neglect or refusal, where such process shall be delivered to him ten days before the return day thereof, to be paid to the party aggrieved by order of such court, upon motion and proof of such delivery, unless the sheriff or constable can show sufficient cause to the court at a day within three months from the date of the entry of the judgment nisi, of which the officer shall be duly notified. (1777, c. 218,

s. 5, P. R.; 1821, c. 1110, P. R.; R. C., c. 105, s. 17; 1874, c. 33; Code, s. 2079; 1899, c. 25; Rev., s. 2817; C. S., s. 3936.)

Cross References.

See §§ 14-242, 162-17. As to duty to note date of receipt and date of execution on process, see § 2-41. As to penalty for false return to writ of habeas corpus, see § 17-27.

I. GENERAL CONSIDERATIONS.

Summary of Section.—The section authorizes the following penalties and remedies: 1. An amercement nisi for $100, on "motion and proof" by the party aggrieved, for failure to "execute and make due return." 2. A qui tam action for penalty of $500 for a "false return," one moiety to the party aggrieved, and the other to anyone who will sue for the same. 3. An action for damages by the party aggrieved. 4. An amercement nisi for $100 in justices' courts, on "motion and proof" by the party aggrieved, for "neglect or refusal" to execute process of such court. Piedmont Mfg. Co. v. Buxton, 105 N. C. 74, 11 S. E. 264 (1890).

Who May Issue Process.—Process can be issued by the mayor of a town or city to any lawful officer such as a sheriff, whose duty it then becomes to execute and make due return. State v. Cainan, 94 N. C. 880 (1886); Paul v. Washington, 134 N. C. 363, 47 S. E. 793 (1904).

"Return" Defined.—The term "return" means that the process must be brought back and produced in the court whence it issued with such indorsement as the law requires. Watson v. Mitchell, 108 N. C. 364, 12 S. E. 836 (1891).

Making Due Return Is an Affirmative Requirement.—The requirements that an officer having process in hand for service must note on the process the date received by him under § 1-94 and make due return thereof under § 162-14 are affirmative requirements of these sections. State v. Moore, 230 N. C. 648, 55 S. E. (2d) 177 (1949).

What Constitutes Due Return. — In Waugh v. Brittain, 49 N. C. 470 (1857), it was said by Battle, J.: "We concur with his Honor in the opinion, due return of process, means a proper return, made in proper time; and such, we believe, has always been the construction put upon those words, as used in the Act of 1777, Rev. Code, ch. 105, § 17 [now this section.]"

A return of a sheriff to a fi. fa. that "he had made a levy on personal property and taken a forthcoming bond, but had not sold it, that the obligors did not deliver the property on the day, and that, after the day, it was too late to make a sale," is not such a "due return" of the process as will exempt the sheriff from amercement. Frost v. Rowland, 27 N. C. 385 (1845).

Where a sheriff indorsed upon an execution the words "debt and interest due to sheriff, costs paid into office"; and upon another, the word "satisfied," without stating what disposition he had made of the fund the returns were held to be sufficient in law to relieve the sheriff from amercement for not making "due return." Person v. Newsom, 87 N. C. 142 (1882).

Nor is he required to note thereon the date of its delivery to him. (The act of Assembly has no reference to final process.) Person v. Newsom, 87 N. C. 142 (1882).

Same—Mixed Question of Law and Fact.—Whether, in any particular case, a due return has been made, may involve questions, both of law and fact. Whether the return is a proper one in form and substance is a question of law, to be decided by the court, but whether it was made in proper time, is a question of fact, to be decided by the jury. Waugh v. Brittain, 49 N. C. 470 (1857).

Manner of Making Return—By Mail.—If, then, the mail can be used as a medium by which process can be transmitted to a sheriff, so as to charge him with its reception, it would seem that he ought to be allowed to adopt the same means for making his return, at least so far as the due time of the return is involved. In Waugh v. Brittain, 49 N. C. 470 (1857), it was intimated that he might do so, and that he would be excused if the letter, indorsing the process, with his return upon it, was properly mailed in due time. Cockerham v. Baker, 52 N. C. 288 (1859), affirmed in Yeargin v. Wood, 84 N. C. 326 (1881).

Fees in Advance.—Until his fees are

paid or tendered, a sheriff is not bound to execute process. Johnson v. Kenneday, 70 N. C. 435 (1874).

II. NEGLECT OR FAILURE TO MAKE DUE RETURN.

A. In General.

An amercement is a penalty, and is for a fixed sum without regard to the amount of the plaintiff's damage. Thompson v. Berry, 65 N. C. 484 (1871).

Subsequent Term.—A sheriff may be amerced for a nonreturn of process at a term subsequent to that at which the process was returnable. Hyatte v. Allison, 48 N. C. 533 (1856).

A sheriff, failing to execute and return process, shall be subject to a penalty to be paid to the party aggrieved, by order of the court, on motion, and proof that process was delivered to him before the sitting of the court to which it was returnable, unless the sheriff shows sufficient cause to the court for his failure "at the court next succeeding such order." And there is nothing in the statute to prevent a sheriff not returning process from being amerced at a subsequent term to that to which the return should have been made. Halcombe v. Rowland, 30 N. C. 240 (1848).

Expiration of Term.—A sheriff, who goes out of office before the return day of the writ delivered to him, is not subject to amercement for failure to return it. McLin v. Hardie, 25 N. C. 407 (1843); State v. Woodside, 29 N. C. 296 (1847).

Process Must Be Delivered Twenty Days before Term.—To bring a delinquent officer within the provisions of the statute and subject him to its pains, the process must have been delivered to him twenty days before it is to be returned, and there must be "proof of such delivery." Yeargin v. Wood, 84 N. C. 326 (1881).

When Returnable.—Executions shall be returnable to the term of the court next after that from which they bear teste. The sheriff is allowed all the days of the term to return an execution, unless he be ruled, upon motion and cause shown, to return it on some intermediate day. Person v. Newsom, 87 N. C. 142 (1882); Turner v. Page, 111 N. C. 291, 16 S. E. 174 (1892).

A sheriff who fails to make return of process before the adjournment of the court to which it is returnable, is subject to the penalty prescribed by statute. Boyd v. Teague, 111 N. C. 246, 16 S. E. 338 (1892); Turner v. Page, 111 N. C. 291, 16 S. E. 174 (1892).

Not Applicable to Federal Marshal.—In Lowry v. Story, 31 F. 769 (1887), it was said: "The motion before us is founded upon this law of the State imposing a penalty upon sheriffs who fail or neglect to execute process duly issued to and received by them. The motion cannot be allowed, as this court has no power to enforce against the marshal a penalty imposed by the law of this State upon a sheriff for neglect of duty."

B. What Constitutes Failure and Defenses.

1. The Essential Elements of Failure.

In General.—The delivery of the process to the officer and his failure to execute its commands and make due return are essential ingredients in the criminal dereliction of duty followed by the penal consequences thus summarily enforced. Yeargin v. Wood, 84 N. C. 326 (1881).

Insufficient Return.—Under the Act of 1777 (Rev. St. c. 109, § 18), imposing a fine on a sheriff for not making due return of process placed in his hands, a return by the sheriff on a fi. fa. that he has levied on goods subject to older executions, without stating whether he had sold property seized or still held it, is not a due return, and subjects him to amercement. Buckley v. Hampton, 23 N. C. 322 (1840).

Failure to Sell Property and Make Return.—A sheriff who had not sold property under execution nor made return on writs of venditioni exponas should be amerced. Anonymous, 2 N. C. 415 (1796).

Agreement of Parties.—Where a scire facias was issued on a judgment, the sheriff was liable to amercement for failure to return the process, though the parties agreed, while it was in the sheriff's hands, that the collection of the money should be suspended, so as to enable them to make a full settlement. Morrow v. Allison, 33 N. C. 217 (1850).

Refusal of Clerk to Receive Return.—It is not a sufficient excuse to an officer for neglecting to return a process to the proper term of the court that he had tendered it to the clerk, who had refused to receive it, nor that the clerk had died during the term. Hamlin v. March, 31 N. C. 35 (1848).

False Impression as to When Summons Returnable No Defense.—A summons issued June 27, 1901, returnable at the July, 1901, term of the court, which recited that it was returnable on the fifth Monday before the first Monday in September, 1901, and was not returned until August 6, 1901, it was held not to constitute a de-

fense to an action to recover the penalty prescribed by the section for the sheriff's failure to return the same within the time required, that he had the erroneous impression that the summons was returnable at a later date, and that his failure was occasioned by endeavoring to obtain service. Bell v. Wycoff, 131 N. C. 245, 42 S. E. 608 (1902).

Failure to Pay or Tender Fees.—Though a sheriff is not required to execute process until his fees are paid or tendered by the person at whose expense the service is to be rendered, he is not excused thereby for a failure to make a return of process; for, if he has any excuse for not executing the writ, he must state it in his return. Jones v. Gupon, 65 N. C. 48 (1871).

Belief That Lien Divested by Subsequent Legislation.—A sheriff is liable to be amerced for a return on a vend. exp. of "no goods," etc., after levy, although made in the belief that the lien has been divested by subsequent legislation. McKeithan v. Terry, 64 N. C. 25 (1870).

Order Restraining Further Prosecution of Action in Which Execution Issued.—Execution of a judgment against defendant in summary ejectment to remove her from the land was issued and delivered to the sheriff. The sheriff failed to serve the execution because of an intervening order restraining the plaintiff from further prosecuting the summary ejectment, issued in a prior pending action to try title. It was held that motion to amerce the sheriff for failure to serve the execution was properly denied, since the sheriff had shown sufficient cause for failing to serve the execution. Massengill v. Lee, 228 N. C. 35, 44 S. E. (2d) 356 (1947).

2. When Return Is Sufficient.

In General.—Where a sheriff indorsed on an execution the words, "Debt and interest due to sheriff; costs paid into office," it was held that the return was sufficient in law to relieve the sheriff from amercement for not making "due return." Person v. Newsom, 87 N. C. 142 (1882).

Return within Time Prescribed by Law.—A sheriff can not be amerced if he return an execution within the time prescribed by law, though he fail to return the money levied thereon into court, or pay it to the party or his attorney. Davis v. Lancaster, 5 N. C. 255 (1809); Cockerham v. Baker, 52 N. C. 288 (1859).

Indorsing Process "Served."—While it is a better practice for officers to make their returns of process show with particularity upon whom and in what manner the process was served, their indorsement "served" implies service as the law requires and such return signed by the officer in his official capacity is sufficient to show prima facie service at least, and error in the date of service is immaterial. State v. Moore, 230 N. C. 648, 55 S. E. (2d) 177 (1949).

Indorsing Execution "Satisfied."—Where a sheriff indorsed upon an execution merely the word "satisfied" without stating what disposition he had made of the fund, the return was sufficient in law to relieve him from an amercement for not making due return. Wyche v. Newsom, 87 N. C. 144 (1882).

Same—Return Marked "Satisfied" without Satisfaction.—In Cockerham v. Baker, 52 N. C. 288 (1859), it was said by Mr. Justice Battle that "the counsel for the plaintiff contended that there was not a due return of the process as required by § 17, ch. 105, Rev. Code, (now this section), because, though returned 'satisfied', the money was not sent with it, nor paid into the clerk's office, nor to the plaintiff or his attorney. If this question were before the court for the first time, we should be strongly inclined to hold this objection to be fatal to the return. The writ, in its terms, demands that the sheriff shall have the money levied before the court, and it would seem a return of 'satisfied', without the 'satisfaction,' is but a mockery. But, at a very early period, a different construction was put upon the Act of 1777 (ch. 118, § 6, Rev. Code of 1820), and as that act has been twice re-enacted in the same terms, we must consider that construction as settled; see Davis v. Lancaster, 5 N. C. 255 (1809); and see also, 1 Rev. Stat., ch. 109, § 18, and the Rev. Code, ch. 105, § 17, (now this section) in both of which there is a marginal reference to that case, and according to it a sheriff cannot be fined if he return the execution within the time prescribed by law, though he fail to return the money levied thereon into court, or pay it to the party or his attorney."

Where Debtor Had No Property in Excess of His Exemptions.—A sheriff is not liable to amercement for failure to have in court the amount of an execution issued on a judgment for a debt contracted prior to 1868, when the judgment debtor had no property in excess of his exemptions, as the exemption laws (Const. Art. 10, and the statutes pursuant thereto) so modify Battle's Revisal, c. 106, § 15, as not to authorize the infliction of a penalty therein imposed for disobedience

to the exemption laws. Richardson v. Wicker, 80 N. C. 172 (1879).

C. Actions Concerning Amercements.

Jurisdiction of Superior Court.—Where the sheriff has laid himself liable to the penalty for failure to make due return of process, the superior court has jurisdiction to give the judgment nisi on motion. Thompson v. Berry, 64 N. C. 79 (1870).

Time of Trial.—See Hogg v. Bloodworth, 1 N. C. 593 (1804).

Necessity of Trying Issues of Torts on Affidavits.—On a scire facias against a sheriff to amerce him for not returning an execution into the Supreme Court, whence it issued, issues of fact must be tried on affidavits, as the court has no power to call a jury. Kea v. Melvin, 48 N. C. 243 (1855).

Remedy by Rule.—When a prima facie case is made against a sheriff, either upon affidavit or other sufficient proof, a rule nisi is granted as of course, and surplusage in the affidavit will not impair its effect. Ex parte Schenck, 63 N. C. 601 (1869).

Process Mailed Sufficient for Amercement Nisi.—The proof is sufficient for an amercement nisi under former rulings, where it is shown that the process in an envelope properly directed and with postage prepaid has been deposited in the post office in time to enable it to reach its destination in the due course of the mail twenty days before the session of the court to which it is returnable. State v. Latham, 51 N. C. 233 (1858); Yeargin v. Wood, 84 N. C. 326 (1881).

Where in such case the summons sent by mail did not reach such officer until six days before the sitting of the court to which it was returnable, and he served it in two days thereafter he is not liable to amercement. Yeargin v. Wood, 84 N. C. 326 (1881).

Same—To Sheriff in Another County.—It has frequently been decided by the Supreme Court, after argument and full consideration, that if it be made to appear that a clerk has sent a writ to the sheriff of another county, enclosed in a stamped envelope, in due time to reach him in the regular course of the mails, twenty days before the sitting of the court to which it is returnable, it is sufficient to authorize a judgment nisi for an amercement for the nonreturn of the process. State v. Latham, 51 N. C. 233 (1858); Cockerham v. Baker, 52 N. C. 288 (1859).

Presumption Subject to Rebuttal.—And the officer is allowed to rebut the presumption of its having been received and to discharge himself, as upon a motion for a rule against him, by making an affidavit that the writ did not come to his hands. Yeargin v. Wood, 84 N. C. 326 (1881).

Judgment Nisi Made Absolute.—Where judgment nisi for $100 is rendered against a sheriff for failure to make due return of process, and no sufficient reason is shown for the failure, the judgment should be made absolute. Graham & Co. v. Sturgill, 123 N. C. 384, 31 S. E. 705 (1898).

Judgment Absolute Set Aside.—In a proceeding to enforce the statutory penalty against a sheriff for failure to make due return of process, it is not error to set aside a judgment absolute where it appeared that he had no notice of the rule upon him to show cause. Yeargin v. Wood, 84 N. C. 326 (1881).

Method of Recovering Penalty Exclusive.—The method by which a sheriff may be amerced for unlawfully failing to execute a warrant it was his duty to serve, as prescribed by this section, is alone to be followed in an action for penalty brought thereunder. Walker v. Odom, 185 N. C. 557, 118 S. E. 2 (1923). And a civil action cannot be resorted to. Piedmont Mfg. Co. v. Buxton, 105 N. C. 74, 11 S. E. 264 (1890).

Same—Nature and Form.—The statute provides only for an amercement, on motion, for the failure of a sheriff to make "due and proper" return of process. Piedmont Mfg. Co. v. Buxton, 105 N. C. 74, 11 S. E. 264 (1890). See also, Harrell v. Warren, 100 N. C. 259, 6 S. E. 777 (1888).

Penalty Gives Way to Exemption Laws.—The provisions of the exemption laws (Constitution, Art. X, and the statutes passed in pursuance thereof) so modify ch. 106, § 15 Bat. Rev., now this section, as not to authorize the infliction of the penalty therein imposed for obedience to said exemption laws. Richardson v. Wicker, 80 N. C. 172 (1879).

Courts Cannot Relieve.—The courts have no dispensing power to relieve from the penalty prescribed by law. Swain v. Phelps, 125 N. C. 43, 34 S. E. 110 (1899).

III. FALSE RETURN.

Penalty Enforced in Civil Action.—The action for $500 penalty for "false return," is properly sought to be maintained by civil action. Piedmont Mfg. Co. v. Buxton, 105 N. C. 74, 11 S. E. 264 (1890).

Power of Court to Allow Return to Be Amended.—In an action against a sheriff, for the penalty of $500 for a false return, as provided in this section, after the action was begun, the defendant, on affidavits, moved the court to be allowed to amend

his return so as to speak the truth. The motion was allowed, and upon appeal the Supreme Court held that the power of the superior court judge to allow amendments in process, etc., is broad, both by statute and the inherent power of the court, and the ruling of the lower court was affirmed. Swain v. Burden, 124 N. C. 16, 32 S. E. 319 (1899).

Where a sheriff to whom a summons issued, returned it "served," and was sued for the $500 penalty for false return provided for by this section, the court permitted him, for proper reasons set out in his affidavit, to amend this return and the power of the court below to allow the amendment was sustained on appeal. Swain v. Burden, 124 N. C. 16, 32 S. E. 319 (1899); Swain v. Phelps, 125 N. C. 43, 34 S. E. 110 (1899).

When, in an action against a sheriff for a false return, the court permits such return to be amended, the plaintiff should note his exception, and, unless the amended return is admitted to be true, proceed to try the issue. An appeal before final judgment on such admission, or a verdict, is premature and will be dismissed. Piedmont Mfg. Co. v. Buxton, 105 N. C. 74, 11 S. E. 264 (1890).

Plaintiff Need Not Name Other Party.—Any person may sue for the penalty imposed upon sheriffs by the section for a false return, and he need not mention in his complaint the other party, to whom the statute gives one half of the recovery. Harrell v. Warren, 100 N. C. 259, 6 S. E. 777 (1888). See also, Martin v. Martin, 50 N. C. 346 (1858); Peebles v. Newsom, 74 N. C. 473 (1876).

Restricted to Civil Process.—The penalty of $500 imposed for a false return by the section is restricted to sheriffs, and false returns by them made to civil process. Harrell v. Warren, 100 N. C. 259, 6 S. E. 777 (1888). See also, Martin v. Martin, 50 N. C. 346 (1858).

Element Essential to Liability.—In order to render a sheriff liable for a false return, under the section, falsehood must be found in the statement of facts in the return. Harrell v. Warren, 100 N. C. 259, 6 S. E. 777 (1888).

Mistake.—A return made by a sheriff, that is false in fact, although the officer was mistaken in the matter as to which he made his return will, nevertheless, subject him to the penalty for a false return. Albright v. Tapscott, 53 N. C. 473 (1862).

If a return be false in fact, inadvertence or mistake is no excuse or protection to the officer, although no intentional deceit was practiced. Harrell v. Warren, 100 N. C. 259, 6 S. E. 777 (1888).

Illustrations.—In an action for the penalty imposed for a false return the complaint stated, in substance, that an execution was placed in the sheriff's hands and by him levied on the goods of the defendant therein named, which goods the sheriff kept locked up for several days; that defendant in the execution, at the time of the levy, demanded that his exemptions be allotted to him; that defendant paid the sheriff $2.50 in part of the execution, while his goods were held under the levy; that after keeping said goods several days, and receiving the said $2.50, the sheriff returned said execution, "Levy made; fees demanded for laying off exemptions and not paid; no further action taken;" that said return was false in that it did not state that he had collected said $2.50 on the execution. Upon such a state of facts the failure to mention the payment of $2.50 in his return made the return defective, but such an omission does not render the sheriff liable to the penalty imposed for a false return. Harrell v. Warren, 100 N. C. 259, 6 S. E. 777 (1888).

Where a sheriff returns upon a fi. fa., two credits for money received, thereon at different times, and, suppressing a third credit, returns not satisfied, it was held that such return was false, and subjected him to the penalty of $500, under Rev. Code, ch. 105, § 17, now this section. Martin v. Martin, 50 N. C. 346 (1858).

Same — Return "Too Late to Hand." — Where a sheriff indorsed truly the day on which he received a declaration in ejectment, returnable to a county court, and returned on the same "too late to hand," although five days intervened between the day indorsed, and the return day, it was held that he was not liable under 17th section, 105th chapter, of Rev. Code, now this section, to the penalty for making a false return. Hassel v. Latham, 52 N. C. 465 (1860).

Same — Return "Not Found." — The return of "Not to be found" on a capias is not true, because of the defendant's being out of the State at the time the return is made, if the officer had an opportunity of making the arrest previously, while the process was in his hands. Martin v. Martin, 50 N. C. 349 (1858). See also, Tomlinson v. Long, 53 N. C. 469 (1862); Harrell v. Warren, 100 N. C. 259, 6 S. E. 777 (1888).

A deputy sheriff having an order of arrest to be executed, went to the house of the person named therein, and, after reading to him the summons in the action,

told him that he had an order of arrest for him. After some talk, the deputy left the bond with him, on his promise to call next day and fix the matter up. It was held that as the deputy did not have, or attempt to have within his control in any way the party named in the order, there was no arrest, and a return of the order "Not served" did not render the officer liable for a false return. State v. Buxton, 102 N. C. 129, 8 S. E. 774 (1889).

Same—Arrest.—Where a sheriff, having in hand an order of arrest against B., told B. that he "had better come and go with him to Jackson, and fix the matter there;" B. refused to go with him, and the sheriff left, without taking any further action, it was held that what passed did not constitute an arrest of B., and the sheriff was not liable for a false return, in that he returned on the order of arrest, "not served." State v. Buxton, 102 N. C. 129, 8 S. E. 774 (1889).

Statute of Limitations.—When an amercement was imposed upon a sheriff for a false return made more than six years previous, an action upon his official bond to recover the penalty was barred by the statute of limitations. State v. Barefoot, 104 N. C. 224, 10 S. E. 170 (1889).

IV. WRITS FROM JUSTICE'S COURT.

No Power to Amerce Sheriff of Another County.—Under the Act of 1874-'75, ch. 33, now this section, a justice of the peace has no power to amerce the sheriff of a county other than that in which he holds his court, for failure to make due return to process issued by such justice. He can only amerce the sheriff of his county when he fails to perform the duties imposed by that act. Boggs v. Davis, 82 N. C. 27 (1880).

Action for Failure of Sheriff to Serve Warrant. — The court may not regard an independent action as a motion in the original cause when the latter is not before it; and where the sheriff is liable for the penalty prescribed by this section, for failure to serve a warrant in an action before a justice of the peace, and the plaintiff brings an independent action for the recovery of the penalty before another justice, from whose judgment the defendant has appealed, and a trial de novo had in the superior court, it is error for the trial judge to regard the summons and complaint in the independent action as a motion in the cause under this section and proceed with the trial accordingly. Walker v. Odom, 185 N. C. 557, 118 S. E. 2 (1923).

When Constable Not Liable for Refusal to Serve. — A constable does not subject himself to the penalty of $100 by declining to receive process which, at the time it was tendered, he could not have executed ex. gr. process against a person then attending under subpoena before a commissioner. Fentress v. Brown, 61 N. C. 373 (1867).

Where Sheriff a Party. — An execution directed to a sheriff, who is a party, is null and void, and the sheriff cannot be amerced for neglecting or refusing to make a return thereon. Bowen v. Jones, 35 N. C. 25 (1851).

Where Sheriff's Motion for Nonsuit Properly Granted.—Plaintiffs instituted action against the sheriff and bondsman for damages caused by alleged false return of summons. The sheriff's return was regular upon its face, but each plaintiff testified that service was not made on him, but did not testify as to whether service was made on the other plaintiff, and there was no evidence corroborating plaintiffs' testimony. It was held that defendants' motion for judgment as of nonsuit was properly granted. Penley v. Rader, 208 N. C. 702, 182 S. E. 337 (1935).

§ 162-15. Sufficient notice in case of amercement.—In all cases where any sheriff or other officer shall be amerced for failure to make due return of any execution or other process placed in his hands, or for any default whatsoever in office, and judgment nisi or otherwise for the penalty or forfeiture in such case made and provided shall be entered, it shall be sufficient to give such sheriff notice, according to law, under the hand of the clerk and seal of the court where such judgment may be entered, of a motion for a judgment absolute, or for execution, as the case may be; and no other notice, summons or suit shall be necessary to enforce the same; and such proceedings shall be deemed and held in aid of a suit or other proceedings already instituted in court. (1871-2, c. 74, s. 4; Code, s. 446; Rev., s. 2818; C. S., s. 3937.)

Amercement, and not a civil action, is the remedy given against a sheriff for not making "due and proper" return of process. Piedmont Mfg. Co. v. Buxton, 105 N. C. 74, 11 S. E. 264 (1890).

When Rule Nisi Granted. — Where a prima facie case is made, either upon affidavit or other sufficient proof a rule nisi

is granted as of course. Ex parte Schenck, 63 N. C. 601 (1869).

Immaterial Evidence. — On the trial of an action for the penalty, when the defendant sheriff offered to introduce in evidence the true returns of the proceeds of sale indorsed upon certain other executions, the evidence was immaterial and properly excluded. Finley v. Hayes, 81 N. C. 368 (1879).

Jurisdiction in Court to Which Process Returnable.—An action against a sheriff of a county other than that from which the process issued, for making a false return, is properly brought in the courts of the county to which that process was returnable. Watson v. Mitchell, 108 N. C. 364, 12 S. E. 836 (1891).

Amerced at Subsequent Term.—A sheriff may be amerced at a subsequent term to that at which the process was returnable, for not having made his return at a previous term. Hyatte v. Allison, 48 N. C. 533 (1856).

Return Prima Facie Correct. — The return or certificate of a ministerial officer, as to what he has done out of court, is only to be taken as prima facie true, and is not conclusive; it may be contradicted by any evidence and shown to be false, antedated, etc. Smith v. Low, 27 N. C. 197 (1844).

Nonpayment of Fees Does Not Excuse Return.—A sheriff is not required to execute process until his fees are paid or tendered by the person at whose instance the service is to be rendered; but this does not excuse him for a failure to make a return of the process. Jones v. Gupton, 65 N. C. 48 (1871).

Section 1-220.—On motion to set aside a judgment against defendant sheriff for an alleged failure to make due return of process, the facts of the instant case entitled him to relief under § 1-220. Francks v. Sutton, 86 N. C. 78 (1882).

Duties under C. C. P. and Old System. —The duties and liabilities of a sheriff in relation to the execution of process are nearly the same under the C. C. P. as under the old system but the mode of procedure for enforcing a judgment nisi against him is changed from a scire facias to a civil action, and the summons must be in the same court as the judgment, and must be returned to the regular term thereof. Jones v. Gupton, 65 N. C. 48 (1871).

§ **162-16. Execute summons, order or judgment.**—Whenever the sheriff may be required to serve or execute any summons, order or judgment, or to do any other act, he shall be bound to do so in like manner as upon process issued to him, and shall be equally liable in all respects for neglect of duty; and if the sheriff be a party, the coroner shall be bound to perform the service, as he is now bound to execute process where the sheriff is a party; and this chapter relating to sheriffs shall apply to coroners when the sheriff is a party. Sheriffs and coroners may return process by mail. Their liabilities in respect to the execution of process shall be as prescribed by law. (C. C. P., s. 354; Code, s. 598; Rev., s. 2819; C. S., s. 3938.)

Execution from Justice's Court.—Execution from a justice's court must be directed to "any constable or other lawful officer of the county," and if it comes into the hands of the sheriff, he must obey it. McGloughan v. Mitchell, 126 N. C. 681, 36 S. E. 164 (1900).

When Addressed to Constable.—A constable cannot serve process addressed to the sheriff, nor can a sheriff serve process addressed to a constable. McGloughan v. Mitchell, 126 N. C. 681, 36 S. E. 164 (1900).

When Want of Jurisdiction Not Apparent.—It is well settled, that if a court issuing process has general jurisdiction to issue such process, and the want of jurisdiction does not appear upon the face of the paper, a sheriff and his assistants may justify under it. State v. Ferguson, 67 N. C. 219 (1872).

When Coroner Acts. — In an action wherein the sheriff is a party defendant it is proper that a summons issued against a codefendant should be addressed to and served by the coroner. Battle v. Baird, 118 N. C. 854, 24 S. E. 668 (1896).

The county commissioners may declare the office vacant, upon the insanity of the sheriff, but their failure to do so merely authorizes the coroner to perform the duties of sheriff proper, but does not cast upon him the right to collect taxes. Somers v. Board, 123 N. C. 583, 31 S. E. 873 (1898).

§ **162-17. Liability of outgoing sheriff for unexecuted process.**—Any sheriff who shall have received a precept, and shall go out of office before the re-

turn day thereof, without having executed the same, shall forfeit and pay to the party at whose instance it was issued the sum of one hundred dollars, if such precept shall have remained in his hands for such length of time wherein it might have been well executed by him; unless the same shall have been thereafter executed by the successor of such sheriff and returned at the day and place commanded therein; or unless it shall have been delivered over to the succeeding sheriff time enough to have allowed of its being executed by him; and the penalty aforesaid shall be recoverable by notice against such outgoing sheriff and his sureties. (R. C., c. 105, s. 25; Code, s. 2088; Rev., s. 2820; C. S., s. 3939.)

Cross Reference. — See § 162-14 and notes thereto.

When Not to Make Return.—A sheriff, to whom a writ has been delivered, but who goes out of office before the return day of the writ, has no power to make the return on it, and therefore is not liable to amercement for not doing so. State v. Woodside, 29 N. C. 296 (1847).

Delivery to Successor.—It is the duty of the sheriff, going out of office, to deliver all the processes remaining in his hands to his successors. State v. Woodside, 29 N. C. 296 (1847).

§ **162-18. Payment of money collected on execution.**—In all cases where a sheriff has collected money upon an execution placed in his hands, if there be no bona fide contest over the application thereof, he shall immediately pay the same to the plaintiff, or into the office of the clerk of the court from which the execution issued, and upon his failure to make such payment upon demand, he shall be liable to a penalty of one hundred dollars, to be collected as other penalties. (Code, s. 2080; Rev., s. 2821; C. S., s. 3940.)

The auditing of account of sheriff by county commissioners is prima facie evidence of its correctness, and it is impeachable only for fraud or special error. Williamson v. Jones, 127 N. C. 178, 37 S. E. 202 (1900); Commissioners v. Kenan, 127 N. C. 181, 37 S. E. 997 (1900).

§ **162-19. Deposit county tax money with treasurer.** — Every sheriff shall deposit the county and other local taxes, by him collected, with the county treasurer, if there be a county treasurer, as often as he shall collect or have in his possession at any one time of such county or local taxes a sum equal to five hundred dollars. (Code, s. 2073; Rev., s. 298; C. S., s. 3941.)

§ **162-20. Publish list of delinquent taxpayers.**—Whenever any sheriff or tax collector shall be credited on settlement with any tax or taxes by him returned as insolvent, dead or removed, he shall forthwith make publication at the courthouse door, and at least one public place in each and every township in his county, of a complete list of the names of such insolvent, dead or removed delinquents, with the amount of the tax due from each, and the sum total so credited. Such list, by order of the board of commissioners, may also be published in any newspaper printed in the county; in which case, the expense of the advertisement, for such time as may be directed, shall be paid by the county. Any sheriff or tax collector failing to comply with the provisions of this section shall be guilty of a misdemanor, and upon conviction shall be fined not less than ten nor more than one hundred dollars. (1876-7, c. 78, ss. 1, 2, 3; Code, s. 2092; Rev., ss. 2826, 3587; C. S., s. 3942.)

§ **162-21. Liability for escape under civil process.**—When any sheriff shall take or receive and have in keeping the body of any debtor in execution, or upon attachment, for not performing a judgment for the payment of any sum of money, and shall willfully or negligently suffer such debtor to escape, the person suing out such execution or attachment, his executors or administrators, shall have and maintain an action for the debt against such sheriff and the sureties on his official bond, and in case of his death, against his executors or administrators, for the recovery of all such sums of money as are mentioned in the execution or attach-

ment, and damages for detaining the same. (13 Edw. I, c. 11; 1777, c. 118, ss. 10, 11, P. R.; R. C., c. 105, s. 20; Code, s. 2083; Rev., s. 2823; C. S., s. 3943.)

I. General Considerations.
II. Liability of Sheriff.
III. Actions.

I. GENERAL CONSIDERATIONS.

Escape Defined.—An escape is defined to be when one who is arrested gains his liberty before he is delivered in due course of law. State v. Ritchie, 107 N. C. 857, 12 S. E. 251 (1890).

An escape has been effected, in the criminal sense of the law, in the language of an eminent author in a work on criminal law, "when one who is arrested, gains his liberty before he is delivered in due course of law." 1 Russell on Crimes, 467. It is defined in brief words by another writer as "the departure of a prisoner from custody." 2 Whar. Cr. Law, § 2606; State v. Johnson, 94 N. C. 924 (1886).

It is not an escape in a sheriff to permit a debtor committed under a ca. sa. to remain in prison with the door of the prison open, unless such debtor passes out of the prison. Currie v. Worthy, 47 N. C. 104 (1854).

Release before Commitment.—If the sheriff arrests a person on mesne process and, before commitment to prison, allows him to go at large, this is not an escape, but the sheriff is liable as special bail. State v. Falls, 63 N. C. 188 (1869).

Two Kinds of Escape.—There are only two kinds of escape known to our law, of a prisoner confined for debt: one voluntary and the other negligent, except where the prisoner has escaped by the act of God or of the enemies of our country. Adams v. Turrentine, 30 N. C. 147 (1847).

Same — Difference in Liability. — The only difference as to the liability of the officer between the two kinds of escape is that in the case of voluntary escape he is liable absolutely; in the case of negligent escape he has a right to retake the prisoner, and, if he does retake him upon fresh pursuit, he is not liable to an action of debt brought after such recapture, and when he has the prisoner in custody. Adams v. Turrentine, 30 N. C. 147 (1847).

Negligent Escape. — The meaning of the term "negligent escape" in our statute is the same that was given to that term at the common law. Adams v. Turrentine, 30 N. C. 147 (1847).

At Common Law and under Statutes.—At common law a sheriff who had a person in actual custody under legal authority and suffered him to go at large was guilty of an escape; and in civil cases the only remedy for the injured was an action on the case. Various statutes have increased the remedies of the party injured, and changed in some respects the liability of the sheriff. State v. Falls, 63 N. C. 188 (1869).

Not Dependent upon § 162-14. — It would seem that this section is in nowise dependent upon § 162-14. In the case of Richardson v. Wicker, 80 N. C. 172 (1879), the court says: "The imposition of a penalty for a want of official diligence is a matter of State regulation, and it would be no impairment of the plaintiff's right to collect his debt if the legislature should repeal the amercement law altogether." Washington Toll Bridge Co. v. Commissioners, 81 N. C. 491 (1879).

Recapture as Defense.—Where a prisoner confined for debt escapes, the officer, in an action against him for the escape, can only excuse himself by showing that he has not only made fresh pursuit, but also that he has actually recaptured the prisoner before suit brought. Without this, fresh pursuit will not excuse the officer, even though the prisoner die before the officer has it in his power, by due diligence, to recapture him. Whicker v. Roberts, 32 N. C. 485 (1849).

Same—Made on General Issue.—In this State the defense of fresh pursuit and recapture need not be by plea, but may be made on the general issue. Whicker v. Roberts, 32 N. C. 485 (1849).

II. LIABILITY OF SHERIFF.

General Rule as to Liability.—In all cases of escape after a debtor is committed to jail, the sheriff is liable, however innocent he may be, unless the escape has been occasioned by the act of God or the public enemies. Rainey v. Dunning, 6 N. C. 386 (1818).

Escape of Insolvent Surrendered in Open Court.—To render a sheriff liable for the escape of an insolvent, surrendered in open court, it is necessary to show that such insolvent was committed to the sheriff's custody by an order of the court. A mere prayer to that effect will not be sufficient. State v. McKee, 47 N. C. 379 (1855).

Release on Bond to Appear and Take Insolvent's Oath.—Where a defendant has been arrested upon mesne process and gives bail, and, after judgment, the bail surrenders him to the sheriff, out of term-time, no execution having been issued on the judgment nor any committitur

prayed by the plaintiff, if the sheriff releases him upon a bond to appear at court and take the benefit of the insolvent law, the sheriff is liable for an escape. State v. Ellison, 31 N. C. 261 (1848).

When Directed Not to Serve Ca. Sa. on One of Two Defendants.—When a judgment is obtained against two or more, and no bail bond has been taken from either of the defendants in the suit, and the sheriff, who has thus become bail for all, after the rendition of the judgment and the issuing of the ca. sa., is directed by the plaintiff not to serve the ca. sa. on one of the defendants, he is still liable, as bail, for not surrendering the other defendant. Jackson v. Hampton, 32 N. C. 579 (1849).

When Prisoner Committed on Mesne Process.—A sheriff is not liable as special bail, after he has committed a defendant on mesne process, though such defendant be permitted by him to go at large. Buffalow v. Hussey, 44 N. C. 237 (1852).

A sheriff having permitted one arrested by him upon mesne process in a civil action, to go into an adjoining room, from which he escaped, was guilty of an escape. Winborne & Bro. v. Mitchell, 111 N. C. 13, 15 S. E. 882 (1892).

Prisoner Discharged as Insolvent. — Where a scire facias was issued against a sheriff to charge him as special bail for a person sued at the instance of the plaintiff, and who had been, for want of bail, committed to jail in the sheriff's county, and afterwards discharged as an insolvent by two magistrates, it was held that the sheriff was not liable as special bail. Buffalow v. Hussey, 44 N. C. 237 (1853).

Return Sufficient to Charge Sheriff.— The words "executed P. R. T., D. Sheriff," indorsed on a capias, which, duly issued, and came to the hands of the sheriff, are so much a due and legal return, as to make the sheriff liable as special bail, on the failure of him or his deputy, to take a bail bond. Washington v. Vinson, 49 N. C. 380 (1857).

When Sheriff Fails to Take Bail.—The sheriff is said to fail to take bail when the paper returned by him as a bail bond is so defective and imperfect as to be adjudged not to be such. Adams v. Jones, 60 N. C. 198 (1864).

Same—Exceptions and Notice.—If the sheriff fails to take bail, the plaintiff need not file exceptions nor give notice to fix him as bail. Adams v. Jones, 60 N. C. 198 (1864).

Failure to Handcuff as Negligence Per Se.—A sheriff's liability for permitting an escape depends on the circumstances of the particular case, and failure to handcuff does not constitute negligence per se. State v. Hunter, 94 N. C. 829 (1886).

May Become Special Bail.—If the person, after arrest, get at large by the negligence of the sheriff and against his will, he may by his return elect to become special bail. State v. Falls, 63 N. C. 188 (1869).

III. ACTIONS.

Negligent Escape When No Actual Negligence.—An action of debt will lie against a sheriff under our statute for a negligent escape of a prisoner confined for debt, even though there was no actual negligence. Adams v. Turrentine, 30 N. C. 147 (1847).

Damages Really Sustained.—In an action of debt on a sheriff's bond for the escape of a debtor imprisoned under a ca. sa., the jury are not bound to give the whole sum due from such debtor, but should give the damages really sustained by the escape. State v. Eure, 53 N. C. 320 (1861), in which the case of Governor v. Matlock, 8 N. C. 425 (1821), is cited and approved.

Objection as to County by Plea in Abatement.—In an action for an escape, if the defendant wishes to except, upon the ground of its being a penal action, that it is brought in the wrong county, he must make the objection by plea in abatement. Whicker v. Roberts, 32 N. C. 485 (1849).

When Creditor Will Not Charge Party in Execution.—After surrender, if the creditor, upon reasonable notice, will not charge the party in execution, either a habeas corpus or a supersedeas would be issued by the court. State v. Ellison, 31 N. C. 261 (1848).

§ 162-22. Custody of jail.—The sheriff shall have the care and custody of the jail in his county; and shall be, or appoint, the keeper thereof. (R. C., c. 105, s. 22; Code, s. 2085; Rev., s. 2824; C. S., s. 3944.)

Duties of Jailer.—The duties of a jailer are those prescribed by statute and those recognized at common law. Gowens v. Alamance County, 216 N. C. 107, 3 S. E. (2d) 339 (1939).

Jailer Bound Only to Sheriff.—Where a sheriff arrested a man on a ca. sa. and committed him to jail, in custody of the jailer, and the prisoner escaped, it was held that without a bond of indemnity, the jailer was only bound to the sheriff for want of fidelity or due care in the dis-

charge of his duty. Turrentine v. Faucett, 33 N. C. 652 (1850).

Sheriff May Take Jailer's Bond. — A sheriff has a right to take a bond from the jailer to indemnify him for all losses to which he may be subjected by the escape of a prisoner while in custody of the jailer. Turrentine v. Faucett, 33 N. C. 652 (1850).

Negligence of Deputy in Charge of Jail. —Where the evidence is sufficient to be submitted to the jury as to the negligence of a deputy in charge of a jail in causing injury to a prisoner in closing the cell door on the prisoner's thumb, it is sufficient to be submitted to the jury as to the liability of the sheriff, since the act of the deputy is within the scope of his authority and in the line of his duty, and the liability of the sheriff for acts of his deputy is governed by the law applicable to the law of principal and agent. Davis v. Moore, 215 N. C. 449, 2 S. E. (2d) 366 (1939).

Cited in Sutton v. Williams, 199 N. C. 546, 155 S. E. 160 (1930).

§ **162-23. Prevent entering jail for lynching; county liable.**—When the sheriff of any county has good reason to believe that the jail of his county is in danger of being broken or entered for the purpose of killing or injuring a prisoner placed by the law in his custody, it shall be his duty at once to call on the commissioners of the county, or some one of them, for a sufficient guard for the jail, and in such case, if the commissioner or commissioners fail to authorize the employment of necessary guards to protect the jail, and by reason of such failure the jail is entered and a prisoner killed, the county in whose jail the prisoner is confined shall be responsible in damages, to be recovered by the personal representatives of the prisoner thus killed, by action begun and prosecuted before the superior court of any county in this State. (1893, c. 461, s. 7; Rev., s. 2825; C. S., s. 3945.)

§ **162-24. Not to farm office.**—No sheriff shall let to farm in any manner, his county, or any part of it, under pain of forfeiting five hundred dollars, one-half to the use of the county and the other half to the person suing for the same. (23 Hen. VI, c. 10; R. C., c. 105, s. 21; Code, s. 2084; Rev., s. 2828; C. S., s. 3946.)

A sheriff may employ a deputy to assist him, but he cannot delegate his authority to another. Cansler v. Penland, 125 N. C. 578, 34 S. E. 683 (1899).

Letting to Farm.—The section prohibits a sheriff from letting to farm, in any manner, his county, or any part of it. Cansler v. Penland, 125 N. C. 578, 34 S. E. 683 (1899).

Cannot Be Subject of Bargain and Sale. —The public has an interest in the proper performance of their duties by public officers, and would be prejudiced by agreements tending to impair an officer's efficiency or in any way interfere with or disturb the due execution of the duties of the office. The office of sheriff and tax collector is one of public confidence and fidelity to a public trust, and cannot be a matter of bargain and sale. It requires good faith and duty. Cansler v. Penland, 125 N. C. 578, 34 S. E. 683 (1899).

Traffic in public offices is against good morals and contrary to public policy. Basket v. Moss, 115 N. C. 448, 20 S. E. 733 (1894).

To Secure Appointment, or Expenses for Attempting.—Not only an agreement by A to pay to B, a public officer, an amount equal to the emoluments of the unexpired term of his office in consideration of his resignation and his influence to secure the appointment of A to the office is void, but likewise an agreement to compensate anyone for or to pay the expenses of anyone in attempting to secure the appointment. Basket v. Moss, 115 N. C. 448, 20 S. E. 733 (1894).

§ **162-25. Obligations taken by sheriff payable to himself.**—The sheriff or his deputy shall take no obligation of or from any person in his custody for or concerning any matter or thing relating to his office otherwise payable than to himself as sheriff and dischargeable upon the prisoner's appearance and rendering himself at the day and place required in the writ (whereupon he was or shall be taken or arrested), and his sureties discharging themselves therefrom as special bail of such prisoner or such person keeping within the limits and rules of any prison; and every other obligation taken by any sheriff in any other manner or form, by color of his office, shall be void, except in any special case and other

obligation shall be, by law, particularly and expressly directed; and no sheriff shall demand, exact, take or receive any greater fee or reward whatsoever, nor shall have any allowance, reward or satisfaction from the public, for any service by him done, other than such sum as the court shall allow for ex officio services and the allowance given and provided by law. (1777, c. 118, s. 8, P. R.; R. C., c. 105, s. 19; Code, s. 2082; Rev., s. 2829; C. S., s. 3947.)

Division XVIII. Elections and Election Laws.

Chapter 163.

Elections and Election Laws.

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SUBCHAPTER I. GENERAL ELECTIONS.

Article 1.

Political Parties.

§ 163-1. Political party defined; creation of new party.—A political party within the meaning of the election laws of this State shall be:

(1) Any group of voters which, at the last preceding general State election, polled for its candidate for Governor, or for presidential electors, in the State at least ten per cent of the entire vote cast therein for Governor, or for presidential electors; or

(2) Any group of voters which shall have filed with the State Board of Elections by twelve o'clock noon, on or before the first day of July preceding the day on which a general State election is held petitions signed by ten thousand persons who are at that time registered and qualified voters in this State, declaring their intention to organize a new State political party, the name of which party shall be stated on the petitions together with the name and address of the State chairman thereof, and also there shall be set forth on the petitions a declaration of their intention of participating in the next succeeding election and affiliating with said new State political party by voting for the nominees thereof. The signatures of the persons signing such petitions shall be proven before some officer authorized to take acknowledgments of deeds and other instruments which may be recorded and such acknowledgments certified by such officer, or the genuineness of such signatures shall be proven by the oath and examination before such officer by a person in whose presence the petitions were signed and such proof certified by such officer. Such petitions must be accompanied by certificates signed by the chairman of the county boards of elections in the several counties in which signatures to the petitions are obtained, certifying that the signatures on the petitions have been checked against the registration books and showing the number and indicating by check marks on the petitions the names of the petitioners who are duly qualified and registered voters in such county. The group of petitioners shall pay to the chairman of the county boards of elections who check the signatures on the petitions a fee of five cents for each name checked on the petitions.

No such group of petitioners shall assume a name or designation which shall be so similar, in the opinion of the State Board of Elections, to that of an existing political party as to confuse or mislead the voters at an election, and which name or designation shall not contain the same word that appears in the name or designation of any existing State political party. When any new political party has qualified for participation in an election as herein required, and has furnished to the State Board of Elections by the first day of August prior to the election the names of such of its nominees named in a convention of such party, for State, congressional and national offices as is desired to be printed on the official ballots, it shall be the duty of the State Board of Elections to cause to be printed on the official ballots furnished by it to the counties the names of such nominees. No names of any candidates of any new party shall be printed on the county ballots in any county for the first election held after the filing of such petitions. When any political party fails to cast ten per cent of the total vote cast at any election for Governor or for presidential electors, it shall cease to be a political party within the meaning of this chapter: Provided, that notwithstanding any other provision of this section, any group of voters which at the 1948 general election polled for its candidates for presidential electors in the State at least three per cent of the total vote cast therein for presidential electors shall be deemed to be a political party within the meaning of the election and primary laws of this State

until the regular general election of 1952 is held. (1901, c. 89, s. 85; Rev., s. 4292; C. S., s. 5913; 1933, c. 165, s. 1; 1949, c. 671, s. 1.)

Cross Reference.—As to definition of political party for primary elections, see § 163-144.

Editor's Note.—The 1949 amendment rewrote this section. Among other changes, the 1949 amendment to this section wrote into it a number of administrative regulations adopted by the State Board of Elections in 1948, some of which were found in States' Rights Democratic Party v. State Board of Elections, 229 N. C. 179, 49 S. E. (2d) 379 (1948), to be repugnant to the intention of the law as then written. 27 N. C. Law Rev. 455.

See 11 N. C. Law Rev. 226, for review and comment on this section. For note on definition of political parties, see 11 N. C. Law Rev. 148 et seq.

This chapter repeals prior laws on the same subject. Window v. Morton, 118 N. C. 486, 24 S. E. 417 (1896).

Applicable to Municipal Elections. — The machinery provided by this chapter for ascertaining and declaring the successful candidate in an election applies to all municipal elections. State v. Proctor, 221 N. C. 161, 19 S. E. (2d) 234 (1942).

This section confers upon any qualified voter the legal right to sign a petition for the creation of a new political party irrespective of whether such voter has participated in the primary election of an existing political party during the year in which the petition is signed, and regulations of the State Board of Elections are invalid if they undertake to establish and enforce the rule that a qualified voter is ineligible to join in a petition for the creation of a new political party during a year in which he has voted in the primary election of an existing political party. States' Rights Democratic Party v. State Board of Elections, 229 N. C. 179, 49 S. E. (2d) 379 (1948).

The primary laws have no application to new political parties created by petition under this section. By express legislative declaration, such laws apply only to existing political parties "which, at the last preceding general election, polled at least three (now ten) per cent of the total vote cast therein for" Governor, or for presidential electors. The law permits a new political party created by statutory petition to select its candidates in its own way. States' Rights Democratic Party v. State Board of Elections, 229 N. C. 179, 49 S. E. (2d) 379 (1948).

Duty of State Board of Elections. — Upon the filing of a petition under this section for the creation of a new political party, it is the duty of the State Board of Elections, in the first instance, to determine whether the petition is in accordance with the statutory requirements. States' Rights Democratic Party v. State Board of Elections, 229 N. C. 179, 49 S. E. (2d) 379 (1948). Note effect of 1949 amendment.

As § 163-151 specifies that ballots for use in general elections shall be printed and delivered to the county boards of elections "at least thirty days previous to the date of elections," the indisputable purpose of the provision of this section as it stood prior to the 1949 amendment concerning the time for filing a petition for the creation of a new political party was to afford the State Board of Elections approximately sixty days as the time in which to determine the sufficiency of the petition and to print ballots for use in the general election bearing the names of the nominees of the new political party in the event the petition for its creation was found to conform to the statute. States' Rights Democratic Party v. State Board of Elections, 229 N. C. 179, 49 S. E. (2d) 379 (1948).

Notice and Hearing Required before Rejection of Petition. — Manifestly the statutes creating the State Board of Elections and defining its duties contemplate that the Board shall give petitioners for the creation of a new political party under this section notice and an opportunity to be heard in support of their petition before rejecting it or adjudging it insufficient. Indeed, notice and hearing in such case are necessary to meet the constitutional requirement of due process of law. States' Rights Democratic Party v. State Board of Elections, 229 N. C. 179, 49 S. E. (2d) 379 (1948).

Article 2.

Time of Elections.

§ **163-2. For State officers.**—On Tuesday next after the first Monday in

November, in the year of our Lord one thousand nine hundred and four, and every four years thereafter, an election shall be held in the several election precincts in each county for the following officers: Governor, Lieutenant-Governor, Secretary of State, Auditor, Treasurer, Superintendent of Public Instruction, Attorney General, and other State officers whose terms last for four years, and at said time and every two years thereafter, elections shall be held in the several election precincts in each county for other State officers whose election is not otherwise provided for by law. (1901, c. 89, s. 3; Rev., s. 4293; C. S., s. 5914.)

Cross Reference.—See § 147-4.

§ 163-3. For presidential electors.—On the Tuesday next after the first Monday in the month of November, in the year of our Lord one thousand nine hundred and eight, and every four years thereafter, or on such days as the Congress of the United States shall have directed, a poll shall be opened in each of the precincts of the State for the election of electors of President and Vice-President of the United States, the number of whom is to be equal to the number of Senators and Representatives in Congress to which this State may be entitled, and the persons shall be electors for the State as aforesaid, and the voting place in each ward or precinct shall be the same as in elections for members of the General Assembly, unless changed by the county board of elections. (1901, c. 89, s. 77; Rev., s. 4294; C. S., s. 5915.)

§ 163-4. For congressmen, legislators, county officers, and solicitors.—On the Tuesday next after the first Monday in November, in the year of our Lord one thousand nine hundred six, and every two years thereafter, an election shall be held in the several election precincts in each county for members of the House of Representatives of the Congress of the United States in the several districts, and members of the General Assembly for their respective counties and districts. At the same time and in the same manner as members of the General Assembly are elected, subject to whether the term is for two years or four as by law provided, an election shall be held in each county for a clerk of the superior court, register of deeds, sheriff, coroner, county surveyor, county commissioners, where the county commissioners are elected by the people, and in such counties as have one, a county treasurer, and other officers; and at such times an election shall be held in the several solicitorial districts for the office of solicitor. (Const., art. 4, s. 24; 1901, c. 89, s. 1; Rev., s. 4296; C. S., s. 5917; 1935, c. 362; 1943, c. 134, s. 4.)

Editor's Note. — The 1943 amendment substituted "solicitorial districts" for "judicial districts" near the end of the section.

§ 163-5. For township offices.—On the first Tuesday after the first Monday in November, in the year of our Lord one thousand nine hundred and six, and every two years thereafter, an election shall be held in each township for the office of constable, and also for justices of the peace in such counties as elect them by a vote of the people, and all other officers elected by a vote of the township. (1901, c. 89, s. 2; Rev., s. 4297; C. S., s. 5918.)

Cross Reference.—As to municipal elections, see § 160-29.

Creation of New Township—Election upon Reasonable Notice.—Where the legislature has created a new township and the time for election has passed, as the public good requires the offices to be immediately filled, the commissioners may order an election upon reasonable notice. Grady v. County Comm., 74 N. C. 101 (1876).

§ 163-6. Special election for members of General Assembly.—When a vacancy occurs in the General Assembly by death, resignation, or otherwise, it shall be the duty of the chairman of the county board of elections, or of the sheriff of the county in which the late member resided, provided the General Assembly shall not be in session, to notify the Governor of such vacancy, and in case the

General Assembly shall be in session when such vacancy occurs, it shall be the duty of the presiding officer in the house in which the vacancy occurs to notify the Governor of the same, who shall thereupon issue a writ of election to the chairman or chairmen of the district or county represented by the late member, said election to be held at such time as the Governor may designate, and in such manner as may be prescribed by law.

Nominations of candidates for a special election to fill a vacancy in the State House of Representatives may be made by the several political party executive committees for each party respectively in the county in which such vacancy occurs. Nominations of candidates for a special election to fill a vacancy in the State Senate in a senatorial district composed of only one county may be made by the several political party executive committees for each party respectively of such county in which said vacancy occurs. Nominations of candidates for a special election for the State Senate in a senatorial district composed of more than one county where there is no party agreement for rotation of counties in the district in furnishing the candidate or candidates, may be made by the senatorial party executive committees for each party respectively of the district. Nominations of candidates for a special election for the State Senate in a senatorial district composed of more than one county operating under a party rotation agreement under which one or more counties are permitted to nominate the candidate or candidates for the State Senate in such district, may be made by the county political party executive committee or committees for the county or counties which, under the party rotation agreement, are entitled to select the candidates. It shall be the duty of the chairman and secretary of the political party executive committees making such a nomination for State Senator in a special election to certify the name and party affiliation of the nominee to the chairman of each county board of elections in said district in which the special election is to be held before the special election ballots are printed. (1901, c. 89, s. 74; Rev., s. 4298; C. S., s. 5919; 1947, c. 505, s. 1.)

Editor's Note.—The 1947 amendment added the second paragraph.

§ 163-7. For vacancies in State offices.—Whenever any vacancies shall exist by reason of death, resignation, or otherwise, in any of the following offices, to wit, Secretary of State, Auditor, Treasurer, Superintendent of Public Instruction, Attorney General, Solicitor, Justices of the Supreme Court, judges of the superior court, or any other State officer elected by the people, the same shall be filled by elections, to be held in the manner and places and under the same regulations and rules as prescribed for general elections, at the next regular election for members of the General Assembly which shall occur more than thirty days after such vacancy, except as otherwise provided for in the Constitution. (1901, c. 89, ss. 4, 73; Rev., s. 4299; C. S., s. 5920.)

Article 3.

State Board of Elections.

§ 163-8. State Board of Elections; appointment; term of office.—There shall be a State Board of elections, consisting of five electors, whose terms of office shall begin on the first day of January, nineteen hundred and thirty-four, and 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.)

Editor's Note. — The 1933 amendment changed this section and those following by increasing the term of office from two to four years and consolidating a number of provisions of the old law and conveniently enumerating the duties and powers

of the State Board in a single section of fifteen clauses. Several of these are new in whole or in part. See 11 N. C. Law Rev. 227.

§ **163-9. Meetings of Board; vacancies; pay.**—The State Board of Elections shall meet in Raleigh whenever the chairman of said Board shall call such meetings as may be necessary to discharge the duties and functions imposed upon said Board by this chapter at such times and places as he may appoint. At the first meeting held after the appointment of members for a new term, the members shall take the oath of office and the Board shall then organize by electing one of its members chairman and another secretary of said board.

The chairman of the State Board of Elections shall call a meeting of the Board upon the application in writing of any two members thereof, or if there be no chairman, or if the chairman does not call such meeting, any three members of said Board shall have power to call a meeting of the Board and any duties imposed or power conferred by this chapter may be performed or exercised at such meeting, although the time for performing or exercising the same prescribed by this chapter may have expired; and if at any meeting any member of said Board shall fail to attend, and by reason thereof there is a failure of a quorum, the members attending shall adjourn from day to day, for not more than three days, at the end of which time, if there should be no quorum, the Governor may remove the members so failing to attend summarily and appoint their successors.

Any vacancy occurring in the said Board shall be filled by the Governor, and the person so appointed shall fill the unexpired term.

The members of the Board shall receive in full compensation for their services four dollars per day for the time they are actually engaged in the discharge of their duties, together with their actual traveling expenses, and such other expenses as are necessary and incidental to the discharge of the duties imposed by this chapter. (1901, c. 89, s. 7; Rev., ss. 2760, 4301; C. S., s. 5922; 1933, c. 165, s. 1.)

§ **163-10. Duties of the State Board of Elections.**—It shall be the duty of the State Board of Elections:

1. To appoint, in the manner provided by law, all members of the county boards of elections, and to advise such members of such boards as to the proper methods of conducting primaries and elections.

2. To prepare rules, regulations and instructions for the conduct of primaries and elections.

3. To publish and furnish to the county boards of elections and other election officials, from time to time, a sufficient number of indexed copies of all election laws then in force.

4. To publish, issue and distribute such explanatory pamphlets as in the opinion of the Board should be issued to the electorate.

5. To furnish to the county boards of elections such registration and poll books, cards, blanks, instructions and forms as may be necessary for the registration of voters and holding elections in the respective counties.

6. To determine, in the manner provided by law, the forms of ballots, the forms of all blanks, instructions, poll books, tally sheets, abstract and return forms, and certificates of elections to be used in primaries and elections.

7. To prepare, print and distribute to the county boards of elections all ballots for use in any primary or election held in the State which the law provides shall be printed and furnished by the State to the counties, and to instruct the county boards of elections as to the printing of their county and local ballots.

8. To certify to the several county boards of elections the names of such candidates for district offices who are required to file notice of candidacy with the State Board of Elections, but whose names are required to be printed on the county ballots.

9. To require such reports from the several county boards and election officers as are provided by law, or as may be deemed necessary.

10. To compel the observance, by election officers in the counties, of the requirements of the election laws, and the State Board of Elections shall have the right to hear and act on complaints arising by petition or otherwise, on the failure or neglect of a county board of elections to comply with any part of the election laws pertaining to their duties thereunder. And the State Board of Elections shall have power to remove any member of a county board of elections for neglect or failure in his duties and to appoint a successor.

11. To investigate when necessary or advisable, the administration of election laws, frauds and irregularities in elections in any county, and to report violations of the election laws to the Attorney General or solicitor of the district for further investigation and prosecution.

12. To tabulate the primary and election returns and to declare the results of same, and to prepare abstracts of the votes cast in each county in the State for such offices as is provided by law shall be tabulated by the State Board of Elections.

13. To keep a minute book showing a record of all proceedings and findings at each meeting of the State Board of Elections, which book shall be kept in the office of the State Board of Elections.

14. To make such recommendations to the Governor and legislature relative to the conduct and administration of the primaries and the elections in the State as it may deem advisable.

15. To have the general supervision over the primaries and elections in the State and it shall have the authority to make such reasonable rules and regulations with respect to the conduct of primaries and elections as it may deem advisable: Provided same shall not conflict with any provisions of the law.

16. The State Board of Elections may, under such rules and regulations as it may prescribe, when it deems it necessary and advisable, authorize the chairman of any county board of elections to delegate the authority to any other member of such county board of elections to receive applications for and to issue absentee ballots in any primary or general election; provided, the chairman of any county board of elections may in his discretion decline to delegate any other member of said board to receive applications for and to issue absentee ballots.

In the performance of these enumerated duties, the chairman of the State Board of Elections shall have the power to administer oaths, issue subpoenas, summon witnesses, compel the production of papers, books, records, and other evidence; and to fix the time and place for hearing any matter relating to the administration and the enforcement of the election laws: Provided, however, the place of hearing shall be had in the county where the irregularities are alleged to have been committed. (1901, c. 89, s. 7; Rev., s. 4302; C. S., s. 5923; 1933, c. 165, s. 1; 1945, c. 982.)

Editor's Note.—The 1945 amendment inserted subsection 16. The title of the amendatory act purports to amend this section but there is no reference to the section in the body of the act.

Supervisory and Other Powers. — The State Board of Elections has general supervision over the primaries and elections in the State, with authority to promulgate legally consistent rules and regulations for their conduct, and to compel the observance of the election laws by county boards of elections, and the duty of the State Board to canvass the returns and declare the count, does not affect its supervisory power, which perforce must be exercised prior to the final acceptance of the returns made by the county boards. Burgin v. North Carolina State Board, 214 N. C. 140, 198 S. E. 592 (1938).

Board May Make Rules and Regulations Not in Conflict with Law. — The General Assembly has conferred upon the State Board of Elections power to make reasonable rules and regulations for carrying into effect the law it was created to administer, but has annexed to the grant of this power the express limitation that such rules and regulations must not conflict with any provisions of such law. It seems clear that this specific restriction would have been inseparably wedded to the authority granted even if the statutes had been silent with respect to it. This is true because the Constitution forbids the legislature to delegate the power to make law to any other body. States' Rights Democratic Party v. State Board

of Elections, 229 N. C. 179, 49 S. E. (2d) 379 (1948).

Cited in Swaringen v. Poplin, 211 N. C. 700, 191 S. E. 746 (1937).

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 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.

No person shall serve as a member of the county board of elections who holds any elective public office or who is a candidate for any office in the primary or election.

No person, while acting as a member of a county board of elections, shall serve as a county campaign manager of any candidate in a primary or election. (1901, c. 89, s. 6; Rev., s. 4303; C. S., s. 5924; 1933, c. 165, s. 2; 1945, c. 758, s. 1; 1949, c. 672, s. 1.)

Editor's Note.—The 1933 amendment made ineligible as a member of the county board any office holder or candidate in a primary or general election. See 11 N. C. Law Rev. 228.

The 1945 amendment rewrote the proviso at the end of the first paragraph, and the 1949 amendment added the last paragraph.

§ 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 seventh 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.

Vacancies in the membership of the county boards of elections shall be filled by the State Board of Elections and the persons so appointed shall fill the unexpired term.

The members of the county board of elections shall receive in full compensation for their services five 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 seven dollars ($7.00) per day. (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.)

Local Modification.—Hyde, Iredell and Nash: 1941, c. 305, s. 2.

Editor's Note.—Prior to the 1923 amendment this section required that the board of elections should meet not later than the first Monday in September. The 1941 amendment added the proviso at the end of the section.

The 1945 amendment increased the compensation first mentioned in the last paragraph from three to five dollars per day, and increased the compensation of the chairman from five to seven dollars per day.

§ 163-13. Removal of member of county board of elections. — 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; a vacancy occurring in the county board of elections for any other cause than removal by the State Board of Elections may be filled by either the board or by the chairman of the State Board of Elections, but the person so appointed shall be of the same political party as his predecessor. (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.)

Editor's Note. — The 1933 amendment changed this section by adding fraud as a cause for removal of a member of the board. See 11 N. C. Law Rev. 228.

Cited in Hill v. Britt, 231 N. C. 713, 58 S. E. (2d) 727 (1950).

§ 163-14. Duties of county boards of elections.—The boards of elections within their respective jurisdictions by a majority vote shall exercise, in the manner herein provided, all powers granted to such boards in this chapter, and shall perform all the duties imposed by law which shall include the following:

1. To establish, define, provide, rearrange and combine election precincts.
2. To fix and provide the places for registration, when required, and for holding primaries and elections.
3. To provide for the purchase, preservation and maintenance of booths, ballot boxes, books, maps, flags, blanks, cards of instructions, and other forms, papers and equipment as may be used in registration, nominations and elections.
4. To appoint and remove its clerk, assistant clerks, and employees, and all registrars, judges, clerks and other officers of elections, and to fill vacancies, and to designate the ward or district and precinct in which each shall serve.
5. To make and issue such rules, regulations and instructions, not inconsistent with law, or the rules established by the State Board of Elections as they may deem necessary for the guidance of election officers and voters.
6. To advertise and contract for the printing of ballots, and other supplies used in registrations and elections.
7. To provide for the issuance of all notices, advertisements, and publications concerning elections required by law.
8. To provide for the delivery of ballots, pollbooks and other required papers and materials to the polling places.
9. To cause the polling places to be suitably provided with stalls and other supplies required by law.
10. To investigate irregularities, nonperformance of duties, or violations of laws by election officers and other persons; to administer oaths, issue subpoenas, summon witnesses, and compel the production of books, papers, records, and other evidence in connection with any such investigation; and to report the facts to the prosecuting attorney.
11. To review, examine and certify the sufficiency and validity of petitions and nomination papers.
12. To receive the returns of primaries and elections, canvass the returns, make abstracts thereof and transmit such abstracts to the proper authorities provided by law.
13. To issue certificates of election to county officers and members of the General Assembly, except State Senators in districts composed of more than one county.
14. To keep minute book of proceedings of board.
15. To prepare and submit to the proper appropriating officers a budget estimating the cost of elections for the ensuing fiscal year.
16. To perform such other duties as may be prescribed by law or the rules of

the State Board of Elections. (1901, c. 89, s. 11; Rev., s. 4306; C. S., s. 5927; 1921, c. 181, s. 2; 1927, c. 260, s. 1; 1933, c. 165, s. 2.)

Editor's Note. — The 1933 amendment changed this section so as to consolidate and enumerate the duties and powers of the board under sixteen clauses. Several of these were new or partly new with the amendment. See 11 N. C. Law Rev. 228.

Board Must Act as Body. — When the State Board of Elections instructs certain county boards of elections to amend their respective returns in accordance with the State Board's rulings on protests challenging the validity of certain ballots, it is necessary for the county boards to hear the challenges and make the amended returns, acting as a body in a duly assembled legal session, and action taken and amended returns made by two members of the county board of each county, respectively, without notice to the third member, are void as a matter of law. Burgin v. North Carolina State Board, 214 N. C. 140, 198 S. E. 592 (1938).

Cited in Swaringen v. Poplin, 211 N. C. 700, 191 S. E. 746 (1937).

Article 5.

Precinct Election Officers and Election Precincts.

§ 163-15. Appointment of registrars and judges of elections; qualifications.—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. 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. 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.

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.)

Local Modification.—Durham: 1937, c. 299.

Editor's Note.—The 1933 amendment rewrote this section. See 11 N. C. Law Rev. 228. And the 1947 amendment rewrote the next to last sentence of the first paragraph.

The following cases were decided under

§ 5969 of the Consolidated Statutes, repealed by Public Laws of 1933, ch. 165, s. 7. However, these cases seem applicable to the present law as the provisions of former § 5969 are substantially set forth in the instant section.

Party of Person Appointed by Board of Elections.—Upon failure of a chairman of the State executive committee of a political party to designate judges of election on behalf of such party, the persons appointed must belong to the political party for which they are appointed. Harkins v. Cathey, 119 N. C. 649, 26 S. E. 136 (1896).

The board of elections has no authority to appoint two registrars from the same party in the same voting precinct. Mullen v. Morrow, 123 N. C. 773, 31 S. E. 1003 (1898).

Mandamus to Compel Board to Appoint Proper Persons.—Where the chairman of the State executive committee of one political party fails to designate the judges of election for a particular county for and on behalf of such party, and the clerk of the superior court (now county board of elections) under the exercise of the power of appointment given in this section, appoints persons not having the requisite qualifications, the chairman of the executive committee of another political party in such county may bring mandamus to compel the appointment of proper persons. Harkins v. Cathey, 119 N. C. 649, 26 S. E. 136 (1896).

§ 163-16. Names of precinct officers published by board. — The county board of elections shall, immediately after the appointment of the registrars and judges of elections as herein provided, publish the names of the persons so appointed, at the courthouse door of said county, and shall notify each person appointed of his or her appointment, either by letter or by having a notice to be served upon said persons by the sheriff. (1901, c. 89, s. 16; Rev., s. 4308; C. S., s. 5929; 1923, c. 111, s. 2; 1933, c. 165, s. 3.)

§ 163-17. Vacancies in precinct offices; how filled.—If any registrar or judge of election shall fail to perform the duties of his office, and for that, or for any other cause be removed from office, or shall die or resign, or if there shall for any other cause be a vacancy in said office, the chairman of the county board of elections may appoint another in his place, of the same political party, and have such person or persons notified of the appointment. If any person appointed judge of election shall fail to attend at the polls at the hour of opening the same, the registrar of the township, ward or precinct shall appoint some suitable elector of the same political party as the judge failing to attend, if practicable, to act in his stead, who shall be by him sworn before acting. If the registrar shall fail to appear at the polls, then the judges of election may appoint another to act as registrar, who shall also be sworn before acting. (1901, c. 89, s. 9; Rev., s. 4309; C. S., s. 5930; 1933, c. 165, s. 3.)

§ 163-18. Removal of precinct officers; reasons for.—The county board of elections shall have power to remove any registrar or judge of elections appointed by it for incompetency, failure to discharge the duties of office, failure to qualify within the time prescribed by law, fraud or for any other satisfactory cause. (1901, c. 89, s. 10; Rev., s. 4310; C. S., s. 5931; 1933, c. 165, s. 3.)

§ 163-19. Compensation for certain duties relating to elections. — The registrar shall receive three cents for each name registered in the new registration when ordered, and thereafter in the revision of the registration book he shall receive one cent for each name copied from the original registration book: Provided, that in addition to the compensation hereinbefore allowed the registrar, it shall be lawful for the county commissioners to pay to the registrar such additional compensation as may be by them considered just and fair. The registrar or judge of election who shall act as returning officer shall be allowed three dollars, to be payable out of the county treasury.

Each sheriff shall receive thirty cents for each notice he is required to serve under the law provided for holding elections. The compensation allowed officers shall be paid by the county treasurer after being audited by the board of county commissioners.

Clerks and registers of deeds shall also be allowed the usual registration fees for recording the election returns, to be paid by the county. (1901, c. 89, ss. 11, 62; 1905, c. 434; Rev., ss. 2784, 4304; 1907, c. 760; 1919, c. 61; C. S., s. 3917.)

Editor's Note.—Session Laws 1947, c. 496 made the compensation provided by this section applicable in Ashe county.

§ **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 seven dollars. The registrar shall receive the sum of ten dollars per day for his services on the day of a primary or election, and shall also receive the sum of ten dollars 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 commissioners 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.)

Local Modification.—Beaufort, Chowan, Person: 1941, c. 304, s. 2; Bladen, Wake: 1935, c. 421; Hyde: 1935, c. 421; 1941, c. 304, s. 2; Mecklenburg: 1937, c. 382; Nash: 1951, c. 654; Watauga: 1939, c. 264.

Editor's Note.—The 1935, 1939, 1945 and 1951 amendments increased the compensation. The 1941 amendment added the second proviso, and the 1945 amendment added the last proviso.

The 1947 amendment struck out the words "and said registrar shall receive no other compensation whatsoever" formerly appearing at the end of the second sentence. It also struck out from the end of the last proviso the words "in precincts where the duties of those election officials require services for a substantial period of time after the closing of the polls."

§ **163-21. Duties of registrars and judges of election.**—The registrars and judges of election shall perform such duties as are provided by law, which duties shall consist of:

1. The fair and impartial conduct of the primaries and elections within their respective precincts on the day of election.

2. The enforcement of peace and good order in and about the place of registration and voting. They shall especially keep the place of access of the electors to the polling place open and unobstructed, prevent and stop improper practices or attempts to obstruct, intimidate or interfere with any elector in registering or voting. They shall protect challengers and witnesses against molestation and violence in the performance of their duties, and may eject from the polling place any such challenger or witness for violation of any provisions of the election laws. They shall prevent riots, violence, tumult or disorder. In the discharge of these duties they may call upon the sheriff, police, or other peace officers to aid them in enforcing the law. They may order the arrest of any person violating any provision of the election law, but such arrest shall not prevent such person from registering or voting if he is entitled so to do. The sheriff, all constables, police officers and other officers of the peace, shall immediately obey and aid in the enforcement of any lawful order made by the precinct election officials in the enforcement of the election laws. The registrar and judges of election of any precinct, or any two of such election officials, shall have the authority to deputize

any person or persons as police officers to aid in maintaining order at a voting precinct.

3. The registrar shall have in his charge the actual registration of voters within his precinct and shall attend the polling place on the days required for the registration of new voters and for hearing challenges, but in the performance of these duties the registrar shall be subject to the observance of such reasonable rules and regulations as the county board of elections may prescribe not inconsistent with the law.

4. The registrar shall have charge of the registration book on the day of election or primary for passing on the registration of voters who present themselves at the polls for the purpose of voting.

5. One of the judges of election shall keep a poll book in which shall be entered the name of every person who shall vote in the primary or election. The poll and registration books shall be signed by the registrar and judges of election at the close of any primary or election and filed with the chairman of the county board of elections.

6. The registrars and judges shall hear challenges on the right of electors to vote as provided by law.

7. The registrars and judges shall count the votes cast in their precinct and make such return of same as is provided by law.

8. The precinct officers shall make such an accounting to the chairman of the county board of elections for ballots and for election supplies as required by law. (1901, c. 89, s. 41; Rev., s. 4312; C. S., s. 5933; 1933, c. 165, s. 3; 1939, c. 263, s. 3½; 1947, c. 505, s. 3.)

Editor's Note. — The 1947 amendment added the last sentence of subsection 2.

Absence of Judges.—It was held under a former statute that in the absence of fraud it is not material to the validity of an election that the persons appointed judges to hold it electioneered, or were absent from their posts at different times during the day. Wilson v. Peterson, 69 N. C. 113 (1873).

Cited in Swaringen v. Poplin, 211 N. C. 700, 191 S. E. 746 (1937).

§ 163-22. Election precincts established or altered. — The county boards of elections may, in their respective counties, adopt the present election precincts, or they may establish new precincts, but the election precincts and polling places as now fixed in each county shall remain as they now are until altered. In the case of the alteration of the election precincts or polling places therein, they shall give twenty days' notice thereof, prior to the beginning of the registration period, in some public journal, or in lieu thereof, in three public places in such county, and at the courthouse door. And the county board of elections shall have power from time to time, after dividing their counties into election precincts, to establish, alter, discontinue, or create such new election precincts in their respective counties as they may deem expedient, giving twenty days' notice thereof, prior to the beginning of registration period, by advertising in some public journal, or in lieu thereof, in three public places in such county, and at the courthouse door. If any polling place is changed in any precinct, like advertisement of such change shall be given. And there shall be at least one polling place in every township, conveniently located for a majority of the voters. (Rev., s. 4313; 1913, c. 53; C. S., s. 5934; 1921, c. 180; 1933, c. 165, s. 3.)

§ 163-23. New registration of voters or revision of registration books; how made.—The county board of elections shall have power from time to time to order a revision of the registration book of any precinct in any township and to order a new registration for any precinct; and if and when a new registration is ordered, notice shall be given as hereinbefore provided for the alteration of an election precinct or polling place: Provided, however, when a new registration or revision is ordered as herein provided for, the names of all persons who have been registered under the absentee voters' law shall remain upon the registration books unless the said persons so registered have died or

otherwise become disqualified electors. The several county boards of elections shall have power to revise the registration books of any precinct and may require them to be purged of illegal or disqualified voters, after notice to such voters as herein directed. When an order for revision is made by said county board of elections, it shall be directed to the registrar and judges of election of the precinct to which it relates, directing said officials to meet at the polling place on the first Saturday for the registration of voters, before any primary or general election, and to prepare from the registration books a list of the names of registered voters, with their names and addresses as appearing on the registration books, who are, in the opinion of said precinct officials, dead or disqualified by removal from said precinct or county for the length of time prescribed by law to be disqualified to vote in that particular precinct. When such list is prepared it shall, within forty-eight hours, be delivered to the chairman of the county board of elections, who shall cause to be mailed to each of the names on said list, at his or her address as shown on said list, a notice requiring such person to appear at the polling place for the precinct in which they are registered, on the Saturday prescribed for hearing challenges, and show that they are legally entitled to vote in that particular precinct, or in lieu of a personal appearance at the precinct on the day named for hearing challenges, such person may furnish such satisfactory evidence by mail or otherwise, that he or she is qualified to vote in said precinct. Upon failure of such person to make such personal appearance on challenge day, or upon failure of such person to offer satisfactory evidence that he or she is qualified and entitled to vote in said precinct in the approaching primary or general election, their names shall be stricken off the registration book. After due investigation, such precinct officers shall strike from the registration book the names of all such persons found by them to be dead or disqualified to vote by removal from the precinct for such time as prescribed by law shall disqualify them from voting in such precinct.

However, in the event that any person, whose name has been removed from the registration book by said county board of elections as having been disqualified to vote in that precinct, should appear at the polling place on election day and give satisfactory evidence to the registrar and judges that he had never received any notice by mail or otherwise of his name being placed among the list of disqualified voters in that precinct, and can satisfy said officials that he is qualified to vote in that precinct, then such person's name shall be placed back on the registration book and he shall be allowed to vote in said precinct as before. (1905, c. 510; Rev., s. 4314; 1909, c. 894; C. S., s. 5935; 1921, c. 181, s. 3; 1933, c. 165, s. 3.)

Cross Reference.—As to new State-wide registration of voters, see § 163-43 et seq.

Editor's Note. — The provision for new registrations of voters and revisions of the registration books was rewritten by the 1933 amendment. See 11 N. C. Law Rev. 228.

Article 6.

Qualification of Voters.

§ 163-24. Persons excluded from electoral franchise.—The following classes of persons shall not be allowed to register or vote in this State, to wit: First, persons under twenty-one years of age; second, idiots and lunatics; third, persons who have been convicted or confessed their guilt in open court, upon indictment, of any crime the punishment of which is now or may hereafter be imprisonment in the State's prison, unless such person shall have been restored to citizenship in the manner prescribed by law. (1901, c. 89, s. 14; Rev., s. 4315; C. S., s. 5936.)

Cross Reference.—As to restoration of citizenship, see chapter 13.

§ 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, four months 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 the same county shall not operate to deprive any person of the right to vote in the precinct, ward or other election district from which he has removed until four months after such removal.

All registrars and judges of elections, in determining the residence of a person offering to register or vote, shall be governed by the following rules, so far as they may apply:

a. That place shall be considered the residence of a person in which his habitation is fixed, and to which, whenever he is absent, he has the intention of returning.

b. A person shall not be considered to have lost his residence who leaves his home and goes into another State or county of this State, for temporary purposes only, with the intention of returning.

c. A person shall not be considered to have gained a residence in any county of this State, into which he comes for temporary purposes only, without the intention of making such county his permanent place of abode.

d. The place where the family of a married man or woman resides shall be considered and held to be his or her place of residence; except that where the husband and wife have separated and live apart, the place where he or she resides the length of time required by the provisions of this article to entitle a person to vote, shall be considered and held to be his or her residence.

e. If a person remove to another State or county within this State, with the intention of making such State or county his permanent residence, he shall be considered to have lost his residence in the State or county from which he has removed.

f. If a person remove to another State or county within this State, with the intention of remaining there an indefinite time and making such State or county his place of residence, he shall be considered to have lost his place of residence in this State or county from which he has removed, notwithstanding, he may entertain an intention to return at some future time.

g. School teachers who remove to a county for the purpose only of teaching in the schools of that county temporarily and with the intention or expectation of returning to the county of their parents or other relatives during the vacation period to live, and who do not have the intention of becoming residents of the county in which they have moved to teach, shall be considered residents of that county of their parents or other relatives for the purpose of voting.

h. If a person remove to the District of Columbia, or other federal territory, to engage in the government service, he shall not be considered to have lost his residence in this State during the period of such service, and the place where such person resided at the time of his removal shall be considered and held to be his place of residence. This rule shall also apply to employees of the State government who remove from one county to another within the State, unless a contrary intention is shown by such employee.

i. If a person goes into another State or county, and while there exercises the right of a citizen by voting in an election, he shall be considered to have lost his residence in this State or county.

j. All questions of the right to vote shall, except as otherwise provided herein, be heard and determined by the registrar and judges of election in the precinct where the question arose. (19th amendt. U. S. Const.; amendt. State Const.,

1920; 1901, c. 89, s. 15; Rev., s. 4316; C. S., s. 5937; 1920, Ex. Sess., c. 18, s. 1; 1933, c. 165, s. 4; 1945, c. 758, s. 7.)

Editor's Note.—No changes were made in this section by the 1933 amendment as to the qualifications for suffrage, age, citizenship, literacy, and residence requirements, but ten rules are added to govern and aid registrars and judges of elections in determining the difficult problem of the voter's legal residence. See 11 N. C. Law Rev. 229.

The 1945 amendment inserted near the beginning of the first paragraph the words "every person born in the United States and."

Change of Voting Qualifications by General Assembly. — The General Assembly cannot in any way change the constitutional qualifications of voters in State, county, township, city or town elections. People v. Canaday, 73 N. C. 198 (1875).

Qualification for Municipal Suffrage. — Qualifications for voting in a municipal election are the same as in a general election. People v. Canaday, 73 N. C. 198, 21 Am. Rep. 465 (1875); State v. Viele, 164 N. C. 122, 80 S. E. 408 (1913); Gower v. Carter, 194 N. C. 293, 139 S. E. 604 (1927).

"Residence" Is Synonymous with Domicile. — Residence as a prerequisite to the right to vote in this State, within the purview of N. C. Constitution, Art. VI, § 2, is synonymous with domicile, which denotes a permanent dwelling place to which a person, when absent, intends to return. State v. Chaplin, 228 N. C. 705, 47 S. E. (2d) 12 (1948). See State v. Grizzard, 89 N. C. 115 (1883).

Meaning of "Residence" Is Judicial Question.—The meaning of the term "residence" for voting purposes, as used in Art. VI, § 2 of the Constitution of North Carolina, is a judicial question. It cannot be made a matter of legislative construction. This is true because the legislature cannot prescribe any qualifications for voters different from those found in the organic law. State v. Chaplin, 228 N. C. 705, 47 S. E. (2d) 12 (1948).

Length of Residence and Domicile—Evidence Thereof.—See People v. Teague, 106 N. C. 576, 11 S. E. 665 (1890).

Evidence Insufficient to Show Loss of Domicile. — Uncontroverted testimony which discloses that electors whose votes were challenged on the ground of nonresidence left their homes and moved to another state or to another county in this State for temporary purposes, but that at no time did they intend making the other state or the other county in this State a permanent home, is insufficient to support a finding that they had lost their domicile in the county for the purpose of voting. State v. Chaplin, 228 N. C. 705, 47 S. E. (2d) 12 (1948).

The indefiniteness of an elector's intention to return to the county of his domicile is insufficient to establish loss of voting residence—no other having been acquired or intended. State v. Chaplin, 229 N. C. 797, 48 S. E. (2d) 37 (1948).

The right of teachers in a locality to vote therein is made to depend upon whether they were residents therein only for the scholastic year. A question is incompetent that asks them of their intention to make the locality their legal residence, since the answer involves a question of law as to what constitutes a sufficient legal residence to qualify them to vote. State v. Carter, 195 N. C. 697, 143 S. E. 513 (1928).

Infants and Aliens. — X was under 21 years of age and Y was a citizen of Syria, not of North Carolina, at the time they voted. They were therefore disqualified to vote in an election for mayor. State v. Carter, 195 N. C. 697, 143 S. E. 513 (1928).

Three Months Residence Prior to Election.—H testified that he had lived in C only three months before the election and that the defendant registered his name. For this reason he was not a qualified elector to vote in an election for mayor. State v. Carter, 195 N. C. 697, 143 S. E. 513 (1928).

Conviction of Infamous Crime.—See In re Reid, 119 N. C. 641, 26 S. E. 337 (1896).

Person Imprisoned for Misdemeanor.—See People v. Teague, 106 N. C. 576, 11 S. E. 665 (1890).

§ 163-26. Residence of women.—For the purpose of the registration and voting of women, the residence of a married woman living with her husband shall be where her husband resides, and of a woman living separate and apart from her husband or where for any reason her husband has no legal residence in this State, then the residence of such woman shall be where she actually resides. (Ex. Sess. 1920, c. 18, s. 3; C. S., s. 5937(a).)

§ 163-27. Registration a prerequisite.—Only such persons as are reg-

istered shall be entitled to vote in any election held under this chapter. (1901, c. 89, s. 12; Rev., s. 4317; C. S., s. 5938.)

Registration Is Necessary and Evidence of Right to Vote.—When duly made registration is prima facie evidence of the right to vote. State v. Nicholson, 102 N. C. 465, 9 S. E. 545 (1889); State v. Waldrop, 104 N. C. 453, 10 S. E. 694 (1889). This section must be complied with in order to constitute one a qualified voter. Smith v. Wilmington, 98 N. C. 343, 4 S. E. 489 (1887); Pace v. Raleigh, 140 N. C. 65, 52 S. E. 277 (1905).

§ 163-28. Voter must be able to read and write; exceptions.—Every person presenting himself for registration shall be able to read and write any section of the Constitution in the English language, and shall show to the satisfaction of the registrar his ability to read and write any such section when he applies for registration, and before he is registered: Provided, however, that no male person who was, on January first, one thousand eight hundred and sixty-seven, or at any time prior thereto, entitled to vote under the laws of any state in the United States where he then resided, and no lineal descendant of such person, shall be denied the right to register and vote at any election in this State by reason of his failure to possess the educational qualification aforesaid: Provided, that said elector shall have registered prior to December 1st, 1908, in accordance with article six, section four, of the Constitution and the laws made in pursuance thereto. (1901, c. 89, s. 12; Rev., s. 4318; C. S., s. 5939; 1927, c. 260, s. 3.)

Editor's Note.—In lieu of the last proviso, this section prior to the 1927 amendment contained a proviso that the voter should show to the registrar that he or his ancestor was entitled to vote prior to January 1, 1867, in any state in the United States as provided by Art. 6, § 4 of the Constitution, and that if such voter was otherwise qualified he should be registered regardless of whether or not he could read or write.

The provisions of this section are valid, since such qualification is prescribed by the Constitution, Art. VI, § 4, and authority therein granted the legislature by Art. VI, § 3, to enact general legislation to carry out the provisions of the article. Allison v. Sharp, 209 N. C. 477, 184 S. E. 27 (1936).

And the provision placing the duty upon the registrar is logical and reasonable, and does not constitute class legislation, since its provisions apply to all classes, and there being an adequate remedy at law if a registrar, in bad faith or in abuse of power or discretion, should refuse to register a person duly qualified. Allison v. Sharp, 209 N. C. 477, 184 S. E. 27 (1936).

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 precinct, 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 four months; or that I was a resident of ..... township (ward or precinct) on the .... day of ..... (being four months 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. (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.)

Editor's Note.—This section was amended in 1933 so as to require an applicant for registration removing from one precinct to another to present a certificate from the registrar of his former precinct showing that his name has been removed from the registration books of the former precinct before he is entitled to have his name placed on the registration books of another precinct. See 11 N. C. Law Rev. 229.

The 1951 amendment rewrote the part of this section pertaining to transfers.

In General.—While the General Assembly cannot add to the qualifications prescribed by the Constitution for voters, it has the power, and it is its duty, to enact such registration laws as will protect the rights of duly qualified voters, and no person is entitled to vote until he has complied with the requirements of those laws. Harris v. Scarborough, 110 N. C. 232, 14 S. E. 737 (1892).

Requirements Mandatory.—The requirements of the registration act are mandatory. Harris v. Scarborough, 110 N. C. 232, 14 S. E. 737 (1892).

Effect of Irregularities.—Where the disregard of constitutional or statutory directions does not affect the result it does not warrant a rejection of the vote. If none are incompetent to vote, the registration must be accepted as the act of a public officer, and entitles the electors to vote, notwithstanding irregularities as to adminis-

tering the oath, the registrar's appointment, etc. State v. Nicholson, 102 N. C. 465, 9 S. E. 545 (1889).

Administration of Oath.—Article 6, § 2, of the State Constitution is satisfied by an oath to support the Constitution of the United States and that of the State. All valid laws, whether State or national, are included by implication. State v. Nicholson, 102 N. C. 465, 9 S. E. 545 (1889).

In the absence of direct evidence to the contrary it will be presumed that the oath was taken with uplifted hand. State v. Nicholson, 102 N. C. 465, 9 S. E. 545 (1889).

Failure to administer oath would not invalidate an election to determine whether a school tax should be levied in absence of fraud or improper motive. Gibson v. Board, 163 N. C. 510, 79 S. E. 976 (1913).

Registration by Other than Registrar. — The fact that a qualified voter was registered by a third person, with whom the registrar had left the books, does not disqualify him to vote, where such registration has been accepted as sufficient by the registrar. Quinn v. Lattimore, 120 N. C. 326, 26 S. E. 638 (1897).

Inquiry as to Qualifications of Voters.—Registrars of election may ask an elector if he had resided in the State twelve months next preceding the election, and four months in the district in which he offers to vote. They may ask an elector as to his age and residence, as well as the township and county from whence he removed, in the case of a removal since the last election, and as to the name by which he is commonly known.

If, in reply to such questions, the elector answers that he is twenty-one years old, and has resided in the State twelve months and in the county ninety days (now four months) preceding the election, it is the duty of the registrar, upon his taking the prescribed oath, to record his name as a voter; but bystanders may require him to be sworn as to his residence. In re Reid, 119 N. C. 641, 26 S. E. 337 (1896).

Sufficiency of Response.—In answer to the question of residence the designation of the county of residence is sufficient; but the designation of the state merely is insufficient. Harris v. Scarborough, 110 N. C. 232, 14 S. E. 737 (1892).

Denial of registration and voting to persons qualified to vote, even though by accident or mistake, vitiates the election particularly where it would affect the result. McDowell v. Massachusetts, etc., Constr. Co., 96 N. C. 514, 2 S. E. 351 (1887). See also, Perry v. Whitaker, 17 N. C. 475 (1833); People v. Canaday, 73 N. C. 198 (1875).

§ 163-30. When person can register on election day.—No registration shall be allowed on the day of election, but if any person shall give satisfactory evidence to the registrar and judges of election that he has become qualified to register and vote after the time for registration has expired, he shall be allowed to register on that date. (1901, c. 89, s. 21; Rev., s. 4322; C. S., s. 5946.)

Residence for One Year at Time of Election. — Where a person otherwise legally qualified, who had not been allowed to register because at that time he had not been a resident of the State for one year, but who became qualified in that respect on or before the day of election, asked to be allowed to register on election day and tendered his ballot, which was refused, it was held that such vote should have been received. State v. Lattimore, 120 N. C. 426, 26 S. E. 638 (1897).

§ 163-31. Time when registration books shall be open and closed; oath and duty of registrar; 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. 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.

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 permit 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.)

Editor's Note. — The 1923 amendment transposed the location of sentences and phrases of this section and introduced a few changes of phraseology, none of which changes affected the substance of the section.

The 1933 amendment changed the time for opening the registration books from the fifth Saturday to the fourth Saturday before each election. See 11 N. C. Law Rev. 229.

The 1947 amendment added the second paragraph.

Time for Books to Remain Open. — Where the charter of a city or town provides that for the issuance of bonds an election shall be held "under the rules and regulations presented by law for regular elections," it refers to this section, requiring that the books of registration shall be kept open for twenty days (now two weeks); and construing this section in connection with § 160-37, it is held, that the former is for the purpose of a new and original registration, and the latter, in providing for only seven days, is for the purpose of revising the registration books so that electors may be registered whose names are not on the former books. Hardee v. Henderson, 170 N. C. 572, 87 S. E. 498 (1916).

Substantial Compliance Is All That Is Necessary.—The statutory requirement that the registration be kept open and accessible for a specified time, is regarded as essential by the courts in passing upon the validity of bonds to be issued by a municipality; but where it appears that the books were afterwards opened for a time actually sufficient to afford all an opportunity to register, though short of the legal period, and it further appears that the election has been hotly contested by both sides, it shall be deemed sufficient. Hill v. Skinner, 169 N. C. 405, 86 S. E. 351 (1915).

Effect of Noncompliance on Bond Issue. —The failure to keep the registry, for the question of the issuance of bonds in a special school district, open for twenty days (now two weeks), etc., required by this section, does not of itself render invalid the issuance of the bonds accordingly approved when it appears that the matter was fully known and discussed, opportunity offered every voter to register, there was nothing to show that every elector desiring to vote had not done so, and there was no opposition to the measure manifested. Hammond v. McRae, 182 N. C. 747, 110 S. E. 102 (1921).

Presence of Registrar Every Moment of Time Not Necessary. — The requirements of this section do not require the registrar to be at his home or place of registration every moment of the twenty days (now two weeks) between the hours indicated, and a reasonable compliance is all that is necessary. Younts v. Commissioners, 151 N. C. 582, 66 S. E. 575 (1909).

Article 8.

Permanent Registration.

§ 163-32. Persons entitled to permanent registration.—Every person claiming the benefit of section four of article six of the Constitution of North Carolina, as ratified at the general election on the second day of August, one thousand nine hundred, and who shall be entitled to register upon the permanent record for registration provided for under said section four, shall, prior to December first, one thousand nine hundred and eight, apply for registration to the officer charged with the registration of voters as prescribed by law in each regular election to be held in the State for members of the General Assembly, and such person shall take and subscribe before such officer an oath in the following form, viz.:

I am a citizen of the United States and of the State of North Carolina; I am ..... years of age. I was, on the first day of January, A. D. one thousand eight hundred and sixty-seven, or prior to said date, entitled to vote under the constitution and laws of the state of ....., in which I then resided (or, I am a lineal descendant of ....., who was, on January one, one thousand eight hundred and sixty-seven, or prior to that date, entitled to vote under the constitution and laws of the state of ....., wherein he then resided). (1901, c. 550, s. 1; Rev., s. 4325; C. S., s. 5949.)

Registration on Permanent Roll Does Not Dispense with New Registration.—The fact that a voter is registered on the permanent roll does not dispense with the necessity of his registering anew in order to become a qualified voter, whenever required by the statutes regulating the registration of voters. Clark v. Statesville, 139 N. C. 490, 52 S. E. 52 (1905).

Object of Permanent Roll.—The making of a permanent roll or record was intended to be done for the sole purpose of furnishing convenient and easily available evidence of the fact that those whose names appear thereon are not required to have the educational qualification. Clark v. Statesville, 139 N. C. 490, 52 S. E. 52 (1905).

§ 163-33. Oaths administered; names recorded.—It shall be the duty of the officer charged with the registration of voters in all such elections held in this State until November first, one thousand nine hundred and eight, to administer such oaths and to record the name of such person on his roll of registered and qualified voters; and all registration under this article and under the said section of the Constitution shall be had and taken at the times and places provided by law for registration of voters for all such elections in this State until November first, one thousand nine hundred and eight. (1901, c. 550, s. 2; Rev., s. 4326; C. S., s. 5950.)

§ 163-34. Registrar to return list to clerk of court; record.—It shall be the duty of such registration officer, within five days after the close of the election, to return to the clerk of the superior court of the county in which he resides a list of the names of all the persons so registered by him, stating therein the name and age of such person, and the name of the person from whom descended, unless he himself was a voter on January first, one thousand eight hundred and sixty-seven, or prior thereto, and the state wherein he or his ancestor was a voter, and the date on which he applied for registration, and it shall be the duty of the clerk of the superior court, within ten days after receipt of said list, to make an alphabetical roll by townships of all persons taking such oath and registered by such registrar, and to record the same in a book to be provided for that purpose, which said book shall contain the name and age of such person, the name of the person from whom he was descended, unless he himself was a voter on January first, one thousand eight hundred and sixty-seven, or prior thereto, the state in which he was such voter and the date he applied for registration. And the said roll shall, during the office hours of said

clerk, be open to the inspection of the public. (1901, c. 550, s. 3; 1903, c. 557; Rev., s. 4327; C. S., s. 5951.)

§ **163-35. Clerks to certify list to Secretary of State.**—It shall be the duty of the several clerks of the superior courts of this State to certify to the Secretary of State, within thirty days after the close of each election, a copy of the said roll in his office, and it shall be the duty of the Secretary of State to record, in a book provided for that purpose, the facts set out in such certified copy, and keep the lists from each county separate. The clerk of the superior court shall keep the lists from each township in separate columns. The books kept by such clerks and the Secretary of State shall be plainly lettered "Permanent Roll of Registered Voters," and they shall prepare a complete alphabetical index to the same. And for recording and indexing such names the clerks of the superior courts shall receive as compensation ten cents for each copy-sheet, to be paid by the county commissioners. (1901, c. 550, s. 4; 1903, c. 557, s. 2; Rev., s. 4328; C. S., s. 5952.)

§ **163-36. How permanent roll prepared and certified; certified copies from roll.**—It shall be the duty of all officers charged with the registration of voters in any election held in the State to enter the name of such person on the registration book and voting lists of his township, ward, or precinct, and to give a certificate in the following form:

I, ..., registrar for ..... township (ward or precinct) of ..... county, do hereby certify that on this day ..... of ..... race, of ..... county, ... township, ... precinct (or ward), age ..... years, took and subscribed the oath required by law, and has this day been registered on the permanent roll as a voter in said township (ward or precinct), in accordance with section four, article six, of the Constitution of North Carolina.

This the ..... day of ....., 19...

.....
Registrar.

And it shall be the duty of the clerk of the superior court to certify, under his hand and seal, to the genuineness of such certificate as follows:

North Carolina, ... County.

I, ..., clerk of the superior court of the aforesaid county, do hereby certify that the foregoing certificate is in due form, and that the signature of said ....., registrar of said precinct (ward or township), is in his own proper handwriting.

Witness my hand and official seal, this the .... day of ....., 19...

.....,
Clerk of the Superior Court.

And for furnishing such certificates and administering such oaths neither the said registrar nor clerk shall be paid any compensation by the person so applying for registration. In the event of the loss of such certificate the person entitled to the same, upon the payment of twenty-five cents, may obtain from the clerk of the superior court, or from the Secretary of State, a certificate under his official seal to the effect that his name is on the permanent roll of registered voters from his county, in his office, and such certificate shall, in all respects, take the place of such original, and be used as such. (1901, c. 550, s. 5; Rev., s. 4329; C. S., s. 5953.)

§ **163-37. When copy of roll obtainable by clerk from Secretary of State.**—In the event of loss or destruction of such rolls in the clerk's office, it shall be his duty to obtain from the Secretary of State a certified copy of said roll for his county, and such certified copy shall be good and effectual for all purposes as the original would have been. (1901, c. 550, s. 6; Rev., s. 4330; C. S., s. 5954.)

§ 163-38. Copy of, or certificate from roll evidence of voter's rights.—In all suits involving the right to vote, or trying the title to office, or other action in which such rolls are produced in evidence, all of the facts and recitals therein shall be taken as prima facie evidence of such facts and recitals, and if the right of any voter upon such rolls to vote is challenged, either his certificate or a certified copy of such permanent roll shall be deemed prima facie evidence of his right to vote. (1901, c. 550, s. 7; Rev., s. 4331; C. S., s. 5955.)

§ 163-39. Registration of voters removing residence.—Whenever any voter so registered shall remove from one precinct to another in the same county, or from one county to another in the State, he shall make application for registration, and upon production of his certificate of his being on the permanent roll, as provided in this article, under the hand and seal of either the clerk of the superior court or of the Secretary of State, and proof of his identity, the proper officer charged with the registration of voters shall register his name and make record of the same as in cases of original registration under this chapter. (1901, c. 550, s. 8; Rev., s. 4332; C. S., s. 5956.)

§ 163-40. Educational qualification not applicable to permanent registrants.—Any person holding a certificate of registration, as herein provided, shall be entitled to register in any county in this State, notwithstanding his inability to read and write: Provided, that he shall be otherwise qualified as an elector. (1901, c. 550, s. 9; Rev., s. 4333; C. S., s. 5957.)

§ 163-41. State Board of Elections furnishes necessary blanks.—The State Board of Elections shall procure, provide, and furnish to the several officers named in this article and charged with duties under it, all such books, blanks, and other printed matter as may be necessary to carry into effect the provisions of this article. (1901, c. 550, s. 10; Rev., s. 4334; C. S., s. 5958; 1921, c. 181, s. 4.)

Editor's Note.—The duties now devolving upon the State Board of Elections, were, prior to the 1921 amendment, imposed upon the Secretary of State.

§ 163-42. Books constitute roll in Secretary of State's office.—The books containing the permanent roll of registered voters, sent to the office of the Secretary of State by clerks of the courts of the several counties, shall be and constitute the permanent roll of registered voters, required by this article to be kept in the office of the Secretary of State, and such books shall be deemed a full and complete compliance with the requirements of this article. It shall be the duty of the several clerks of the court, within thirty days after the close of each registration hereafter to be held, up to the first day of December, one thousand nine hundred and eight, to forward to the Secretary of State the names of all persons registering under article six, section four, of the Constitution of North Carolina, as required by this article, and it shall be the duty of the Secretary of State to record such names in the permanent roll of registered voters for the several counties. (1903, c. 178; Rev., s. 4335; C. S., s. 5959.)

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, the State Board of Elections may authorize any county board of elections, at the request of any county board and at such county's expense, to use a modern loose-leaf registration book system in the larger precincts instead of the new registration book to be furnished by the State. 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.)

Editor's Note. — The 1949 act repealed the former section and substituted therefor the present section. For comment on the former enactment, see 17 N. C. Law Rev. 356.

§ 163-44. State Board of Elections to distribute new registration books and instruct county election officials.—As soon as the new general registration books have been printed the State Board of Elections shall furnish to the chairman of each county board of elections in this State a sufficient number of the new registration books to supply one for each voting precinct in each county. These books shall be distributed to the county election chairman in time for the names from the old primary and general election registration books to be transcribed to the new book prior to the 1950 registration period. The State Board of Elections shall also furnish written instructions to each county election chairman and to the various registrars as to their duties with respect to the use of the new general registration book system. (1949, c. 916, s. 2.)

Editor's Note. — The 1949 act repealed the former section and substituted therefor the present section. The former section was codified from Public Laws 1939, c. 263, s. 2.

§ 163-45. County election board chairman to deliver new registration books to registrars and instruct them on their use.—After the receipt of the new registration books by a chairman of a county election board from the State Board of Elections, the chairman shall call a meeting of all of the registrars in his county for the purpose of delivering said new books to his registrars and instructing the registrars as to their duties relative thereto. Each registrar shall be entitled to be paid compensation and travel expense by the county for attending this meeting. (1949, c. 916, s. 3.)

Editor's Note. — The 1949 act repealed the former section and substituted therefor the present section. The former section as codified from Public Laws 1939, c. 263, s. 2½.

§ 163-46. How new general registration book is to be used by registrar. — It shall be the duty of each registrar, after receiving his new general registration book from the chairman, to transcribe to the new general registration book in alphabetical order the names of all persons who are registered in the present party primary and general election registration books and shall indicate opposite the name of each registrant, in the column showing party affiliation, the political party affiliation of each such registrant as shown on the present party primary registration book, in which such person is now registered. In

those cases where a person is now registered in the general election registration book and is not registered in a party primary registration book, no party affiliation will be placed opposite the name of such person when transcribed on the new book, but such person will not be permitted to vote in any party primary held thereafter unless or until such person declares his party affiliation to the registrar on the day of a party primary or registration period, and then only in the primary of such political party with which such person so declares his or her party affiliation and requests the registrar to record that party affiliation opposite his or her name on the new registration book.

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 opposite 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.

In transcribing the names of registrants from the old books to the new general registration book, the registrar shall not transcribe the names of any persons known to the registrar to be dead, or who have moved their permanent residence to another precinct, county or state; however, if any person whose name has been so removed from the books because of removal of residence should appear at the same polling place on election day and satisfy the registrar that he or she is entitled under the law to vote in that precinct, the registrar shall put such person's name back on the new book on election day and be permitted to vote there.

In lieu of a registrar transcribing the names of registrants from the old to the new general registration book, the county board of elections, in its discretion, may employ such clerks or assistants as it may desire to do the work.

Each registrar, or other persons, who transcribes the names of registrants from the old books to the new registration book shall be paid such compensation for same as the county board of commissioners may fix as proper. (1949, c. 916, s. 4.)

Editor's Note. — The 1949 act repealed the former section and substituted therefor the present section. The former section was codified from Public Laws 1939, c. 263, s. 3.

§ 163-47. New registration in discretion of county board of elections. —In lieu of the procedure prescribed in this article for the transcription of registrants from the present registration books to the new general registration book, any county board of elections may, in its discretion, order a new registration of the voters in any county or precincts, but in any new registration only the new general registration book shall be used in each precinct, and the party affiliation of the new registrants indicated thereon. (1939, c. 263, s. 2½; 1949, c. 916, s. 5.)

Editor's Note. — The 1949 act repealed the former section and substituted therefor the present section.

§ 163-48. Registration and poll books to be returned to chairman of county election board.—On the day of the county canvass of votes after a

primary or an election, each registrar shall return the registration book and the poll book for his precinct to the chairman of the county board of elections. The registrars shall be responsible for the safekeeping of the registration and poll books while in their custody. (1939, c. 263, s. 3½; 1949, c. 916, s. 6.)

Editor's Note. — The 1949 act repealed the former section and substituted therefor the present section.

§ 163-49. Chairman of county board of elections to keep registration books.—When not in use for a primary or an election, all of the registration books and poll books shall be in the custody and safekeeping of the chairman of the county board of elections. It shall be his duty to keep these books in a safe and secure place where they may not be tampered with, stolen or destroyed, and, if possible, they shall be kept in a fireproof vault. The chairman may, in his discretion, permit these books while in his custody to be inspected or copied, but only under his supervision. (1949, c. 916, s. 7.)

Editor's Note. — The 1949 act repealed the former section and substituted therefor the present section. The former section was codified from Public Laws 1939, c. 263, s. 5.

§ 163-50. Change of party affiliation. — No registered elector shall be permitted to change his party affiliation for a primary or second primary after the close of the registration period. Any elector who desires to change his party affiliation for a primary from the registration book on which registered to that of another party shall, during the registration period only, go to the registrar of his precinct and request that such change be made on the general registration books. Before being permitted to change his party affiliation, for the purpose of participating in a primary election, however, such elector shall be required by the registrar to take the oath of party loyalty to the party to which he wishes to now affiliate, and the registrar shall thereupon administer to the said elector the following oath:

I, ..., do solemnly swear (or affirm) that I desire in good faith to change my party affiliation from the ..... party to the ..... party, and that such change of affiliation be made on the party registration books, and I further solemnly swear (or affirm) that I will support the nominees of the party to which I am now changing my affiliation in the next election and the said party nominees thereafter until I shall, in good faith, change my party affiliation in the manner provided by law, so help me God.

If at any time the chairman of the board of elections or the registrar of any precinct shall be satisfied that an error has been made in designating the party affiliation of any voter on the general registration book then and in all such events the chairman of the county board of elections or the registrar, having the custody of the registration book may make the necessary correction upon the voter taking the oath of party loyalty in substance of the form set forth in this section. (1939, c. 263, s. 6; 1949, c. 916, s. 8.)

Editor's Note. — The 1949 amendment substituted the words "general registration books" for the words "party primary books" at the end of the second sentence. It also substituted "general registration book" for "primary registration books" in the last paragraph.

§ 163-51. Willful violations made misdemeanor.—Any chairman of a county board of elections or any registrar who willfully and knowingly refuses or fails to comply with the provisions of this article with respect to his duties as herein specified shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine, imprisonment, or both, in the discretion of the court. (1939, c. 263, s. 7; 1949, c. 916, s. 9.)

Editor's Note. — The 1949 amendment inserted the words "or any registrar" and struck out all of the former second paragraph relating to violations by registrars.

§ 163-52. Removal of chairman of county board for violations; appointment of successor.—The State Board of Elections shall have the authority to summarily remove any chairman of a county board of elections who fails or refuses to comply with any of the duties placed upon him by the provisions of this article, and shall thereupon request the chairman of the State Executive Committee to recommend a person to succeed the member removed from said county board of elections, which said person shall thereupon be appointed by the State Board of Elections as the chairman of such county board of elections. (1939, c. 263, s. 8.)

Article 10.

Absent Voters.

§ 163-53. Registration of voters expecting to be absent during registration period. — Any citizen of the State, not duly registered, who may be qualified to vote under the Constitution and laws of this State, and who expects to be absent from the county in which he lives during the usual period provided for registration of voters, may be registered as herein provided. The State Board of Elections shall furnish to the chairman of the county board of elections in each county a book for the registration of absent electors, which book shall contain separate columns for the name of elector, name of precinct in which elector resides, age, place of birth, race, and precinct in which elector last resided. It shall be the duty of the chairman of the board of elections in each county to register on said county registration book any qualified elector who presents himself for registration at any time other than the usual registration period, and who expects to be absent from the voting precinct in which he resides during the usual registration period, if found to be otherwise entitled to registration, in the same manner as now provided by law for the registration of voters before the precinct registrar in the usual registration period. The chairman of the county board of elections shall, immediately after the appointment of a registrar or registrars for any election to be held in his county, either legalized primary or general election, either for the county or for any political subdivision thereof, certify to the respective registrars in each of such precincts the names, age, and residence, place of birth, etc., of any electors registered on the said county registration book and thereby entitled to vote in such precinct; and it shall be the duty of the registrar in every such precinct to enter upon the regular registration book for such precinct the names of all such electors so certified to him by the chairman of the county board of elections, marking opposite the names of such electors the words "Registered before chairman county board of elections"; and electors so registered shall be entitled to vote in any election in such precinct in the same manner as if registered by the precinct registrar. (1917, c. 23, s. 2; C. S., s. 5961.)

§ 163-54. Absentee voting in general elections.—Any qualified voter of the State who finds that he will be absent from the county in which he is entitled to vote during the day of the holding of any general election, or who by reason of sickness or other physical disability will be unable to travel from his home, or place of confinement, to the voting place in his precinct, may vote in any such general election, in the manner as hereinafter provided. (1939, c. 159, s. 1.)

Local Modification. — Jackson: 1939, c. 309; Sampson: 1941, c. 167.

Editor's Note.—As to abuses under prior law and respects in which this enactment seeks to remedy those evils, see 17 N. C. Law Rev. 355.

Under Former Law.—For cases decided under the former law, see Jenkins v. State Board, 180 N. C. 169, 104 S. E. 346 (1920), holding law valid; Davis v. Board, 186 N. C. 227, 119 S. E. 372 (1923), holding provision requiring certificate or affidavit to be mandatory; State v. Jackson, 183 N. C. 695, 110 S. E. 593 (1922), holding that persons

within county were not entitled to vote as absentees; Bouldin v. Davis, 200 N. C. 24, 156 S. E. 103 (1930), holding that jurat was prima facie evidence only that ballots had been sworn to; Phillips v. Slaughter, 209 N. C. 543, 183 S. E. 897 (1936), holding law applicable to municipal elections.

The provision of the former law that election laws be construed in favor of the right to vote was held not to apply when the elector desires to avail himself of a special privilege and does not, of his own volition, comply with the conditions precedent prescribed by the statute, which gives him the right to do so. Davis v. County Board, 186 N. C. 227, 119 S. E. 372 (1923).

Effect of Mistake or Misconduct of Election Officials.—Persons in all respects qualified to cast absentee ballots will not be disfranchised for the mistake or even willful misconduct of election officials in performing their duties when the mistake or misconduct does not amount to coercion, fraud or imposition and it appears that the ballots expressed only the free choices of the electors themselves. State v. Chaplin, 228 N. C. 705, 47 S. E. (2d) 12 (1948).

§ **163-55. Written application for official ballot.**—Such voter, not more than thirty days, nor less than two days prior to the date of such general election shall make application, in person, by some member of his or her immediate family (husband and wife, brother and sister, parent and child only) or by mail, in writing, to the chairman of the county board of elections of his county, for an official ballot to be voted in such general election: Provided, that said two days minimum shall not apply to voters becoming unexpectedly physically disabled to attend the polls: Provided further, that the thirty days maximum specified in this section above shall not apply to a qualified registered voter who is in the military, naval or other armed forces of the United States, and an application for an absentee ballot from such member of the armed or naval forces shall not be required to be made on the form herein prescribed but may be informally made in writing, by card or letter, signed by the voter and mailed direct to the chairman of the county board of elections of the county in which voter resides: Provided further, that the provisions of this section shall be in addition to and not exclusive of the method of applying for ballots hereinbefore provided for.

Such application shall be made on a blank to be furnished by the chairman of the county board of elections and shall be substantially in the following form:

Application for Absentee Voter's Ballot

I, ..., do hereby certify that I am a duly qualified voter in ..... precinct, ... Township, in the County of ....., North Carolina, and that I am entitled to vote in the general election to be held therein on the ..... day of ..... 19..:

(a) That I will be absent from the county during the day of the election;

(b) That by reason of sickness, or other physical disability, I will be unable to travel from my home, or place of confinement, to the voting place in my precinct;

(Strike out whichever of (a) or (b) is inappropriate)

and I hereby make application for the official ballot, or ballots, to be voted by me in such general election, and that I will return said ballot, or ballots, to the official issuing the same, before the date of said general election.

Dated.....

P. O. Address.....

(Signed).....

Witness: .....

There shall be printed as part of the application a certificate to be executed by the chairman of the county board of elections as follows:

Certificate of Chairman of Election Board

I, ..., chairman of the county board of elections of ..... County, do hereby certify that the above application was received by me from ....., on the ..... day of ....., 19.., by personal de-

livery to me by the voter or by a member of his or her immediate family, or by mail addressed to me; that this application is number ....., and that I have delivered, or caused to be delivered at my direction and under my supervision, in person to ....., the said voter, or ....., a member of his or her immediate family, or have mailed to him, or her, at the designated post office address, the official ballot with the name of the applicant certified on said ballot or ballots, and that I delivered, or caused to be delivered at my direction and under my supervision, in person, or to said member of his or her immediate family, or mailed, to the voter a container envelope for said ballot, bearing the same number with the name of the voter and his voting precinct entered thereon; and that I also, at the same time, furnished a return envelope, bearing my name and address, in which the ballot could be returned to me.

I further certify that this application was registered by me, in a register furnished for that purpose by the State Board of Elections, on the day that it was received and the ballot issued, and that it bears the same number on the register as this application and the container envelope furnished.

Dated.....
(Signed).....
Chairman, ... County
Board of Elections.

On the back of said application there shall be printed §§ 163-65 and 163-66. (1939, c. 159, s. 2; 1943, c. 751, s. 1.)

Local Modification. — Sampson: 1941, c. 167.

Cross Reference. — See notes to §§ 163-54, 163-56, 163-58.

Editor's Note. — The 1943 amendment added the second and third provisos to the first paragraph.

Applied in State v. Chaplin, 238 N. C. 705, 47 S. E. (2d) 12 (1948).

§ 163-56. Issuance of official ballot.—Upon receipt of such application (provided it shall be received not more than thirty days, nor less than two days prior to such general election, except as hereinbefore provided), the chairman of the county board of elections, after entering on the register to be supplied to him for that purpose, by the State Board of Elections, the name of the voter, the number of the application, the precinct in which the applicant certified he is a qualified voter, the reason assigned as entitling the voter to the absentee ballot, the date of the receipt of the application, the date of the delivery of the ballot, and whether the ballot was delivered in person to the voter, to a member of his or her immediate family, or by mail, shall deliver in person, only, or to a member of his or her immediate family, or mail to the applicant at the designated post office address, an official ballot, with a container envelope, and a return envelope bearing the name, title, and address of the chairman issuing same.

It shall be the duty of the chairman of the county board of elections issuing such ballot, to place on the back thereof, by stamp, in writing, or otherwise, a certificate as follows:

I certify that this ballot was delivered in person to ..... the voter who applied for same or to a member of his immediate family for him, or mailed to his post office address and whose application is on file in my office. That the container envelope furnished with the ballot bears the same number as the application upon which this ballot was issued.

(Signed).....
Chairman, ... County
Board of Elections

(1939, c. 159, s. 3.)

Local Modification.—Sampson: 1941, c. 167.

Delivery of Ballot to Voter. — The fact that the chairman of the county board of elections, in company with candidates in the election, personally delivers absentee

ballots to absentee voters at their temporary residence in another state or county is insufficient, of itself, to vitiate their votes, there being no evidence remotely suggesting coercion, fraud or imposition. State v. Chaplin, 228 N. C. 705, 47 S. E. (2d) 12 (1948).

§ 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, or same was made for me by some member of my immediate family, 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.)

Local Modification. — Sampson: 1941, c. 167.

Cross Reference. — See notes to §§ 163-54, 163-56, 163-58.

Editor's Note. — The 1943 amendment rewrote this section.

Applied in State v. Chaplin, 228 N. C. 705, 47 S. E. (2d) 12 (1948).

§ 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 shall sign or cause to be signed on the back or margin of said ballot, or ballots, his or her name; 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, if the voter is absent from the county. If the voter is within the county at the time he signs the affidavit and marks the ballot, the container envelope, with the ballot enclosed, shall be placed in the return envelope and mailed or delivered by the voter or some member of his or her family in person to the chairman of the county board of elections issuing the ballot. Such envelope containing the ballot must be in the hands of the chairman of the county board of elections by three o'clock, P. M. on the day of the general election. No ballots received after that time shall be voted or counted: 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.)

Local Modification. — Sampson: 1941, c. 167.

Editor's Note. — The 1941 amendment added the proviso at the end of this section. The 1943 amendment rewrote the second sentence and inserted the third sentence, and the 1945 amendment rewrote the proviso.

Delivery of Ballots. — The fact that the chairman of a county board of elections delivers absentee ballots in person to the voters at their temporary residences outside the boundaries of the State, and that the voters deliver the votes in the sealed containers to him in person instead of mailing them, is not sufficient, standing alone, to vitiate the votes. State v. Chaplin, 228 N. C. 705, 47 S. E. (2d) 12 (1948).

Voters Must Be Sworn.—Where the evidence supports the findings that certain absentee voters were not sworn, the rejection of their ballots is proper. State v. Chaplin, 228 N. C. 705, 47 S. E. (2d) 12 (1948).

Oaths Need Not Be Taken upon the Bible.—The fact that the oaths of absentee voters were not taken by them upon the Bible, but were taken with uplifted hands, does not invalidate their votes. State v. Chaplin, 228 N. C. 705, 47 S. E. (2d) 12 (1948).

The interest of the clerk of the superior court in his own re-election, standing alone, does not disqualify him from administering oaths to absentee voters, administering the oaths being ministerial and not judicial. State v. Chaplin, 228 N. C. 705, 47 S. E. (2d) 12 (1948).

§ 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 personally, or a member of his, or her, immediate family, or 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.)

Local Modification. — Sampson: 1941, c. 167.

Editor's Note. — The 1943 amendment struck out the words "on blanks furnished by the State Board of Elections for that purpose" formerly appearing after the word "triplicate" near the beginning of this section.

Applied in State v. Chaplin, 228 N. C. 705, 47 S. E. (2d) 12 (1948).

§ 163-60. Delivery of absentee ballots and list thereof to registrars; list to be posted.—On the morning of the day of a general election, the chair-

man of the county board of elections shall deliver, or cause to be delivered, to each registrar in the county, a list of all 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 said list of absentee voters in a public place at the polls where it may be inspected by any voter, which list shall be posted by twelve o'clock noon on election day. (1939, c. 159, s. 7; 1943, c. 751, s. 4.)

Local Modification. — Sampson: 1941, c. 167.

Editor's Note. — The 1943 amendment rewrote this section.

Applied in State v. Chaplin, 228 N. C. 705, 47 S. E. (2d) 12 (1948).

§ 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 upon being opened and inspected it shall appear that the affidavit and jurat, or either, are not in due form, or that the name on the container envelope, the ballot and the chairman's certificate do not correspond. In either of which events, the ballot shall not be voted, nor counted. At any time during the day or, if more convenient, 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 shall be called by one of the judges of the elections. If it be found that he is a qualified voter of the precinct, and no challenge is offered to the vote, the name shall then be recorded on 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 be removed from the envelope without unfolding the same so as to disclose how the ballot is marked, and if the signature of the voter on the ballot or ballots corresponds with the name on the envelope and with the name set out in the chairman's certificate on the back of the ballot, 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 name on the envelope and the name on the ballot and in the chairman's certificate on the back of the ballot do not correspond, or if the affidavit and jurat are not in due form, 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 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 of the county board of elections for a period of six months, or longer if any contest shall then be pending concerning the validity of any of the absentee ballots so delivered to him. (1939, c. 159, s. 8.)

Local Modification. — Sampson: 1941, c. 167.

Applied in State v. Chaplin, 228 N. C. 705, 47 S. E. (2d) 12 (1948).

§ 163-62. Challenged voter granted right of hearing before county board.—The absent voter, whose ballot has been challenged, shall, upon notice, have the right to appear before the county board of electors on canvass day and be given the opportunity to sustain the validity, and if its validity is sustained, his ballot shall be counted and added to the returns from the proper precincts: Provided, that in case the voter is absent from the county or is physically un-

able to attend, such voter may act through any duly appointed representative. (1939, c. 159, s. 9; 1945, c. 758, s. 8.)

Local Modification. — Sampson: 1941, c. 167.

Editor's Note. — The 1945 amendment added the proviso.

§ **163-63. Register of applications declared a public record.** — The register of applications for absent voters ballots, required to be kept by the chairman of the county board of elections, shall constitute a public record and shall be opened to the inspection of any elector of the county, at any time within thirty days before and thirty days after any general election, or at any other time when good and sufficient reason may be assigned for such inspection. (1939, c. 159, s. 10.)

Local Modification. — Sampson: 1941, c. 167.

§ **163-64. Certification without administering oath made misdemeanor.**—Any person authorized to administer oaths, who willfully signs a certificate that any person has subscribed and sworn to an affidavit for use in obtaining an absent voters application, or absent voters affidavit, or any other purported affidavit referred to and required by this article, when, as a matter of fact, he has not administered the oath to such person, shall be guilty of a misdemeanor, and upon conviction, 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. 11.)

Local Modification. — Sampson: 1941, c. 167.

§ **163-65. False statements under oath made misdemeanor.**—If any person shall willfully and falsely make any affidavit or statement, under oath, which affidavit or statement, under oath, is required to be made by the provisions of this article, such person shall be guilty of a misdemeanor, and upon conviction, shall be punished by a fine of not less than one hundred dollars ($100.00), or imprisoned for not less than sixty days, or both, in the discretion of the court. (1939, c. 159, s. 12.)

Local Modification. — Sampson: 1941, c. 167.

§ **163-66. False statements not under oath made misdemeanor.**—If any person, for the purpose of obtaining or voting any official ballot hereunder, shall willfully sign any printed or written false statement which does not purport to be under oath, or which, if it purports to be under oath, was not duly sworn to, such person shall be guilty of a misdemeanor, and upon conviction, 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. 13.)

Local Modification. — Sampson: 1941, c. 167.

§ **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. 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.)

Local Modification. — Sampson: 1941, c. 167.

§ 163-68. Violations not otherwise provided for made misdemeanor. —If any person shall willfully violate any of the provisions of this article, or willfully fail to comply with any of the provisions thereof, for which no other punishment is herein provided, such person shall be guilty of a misdemeanor, and upon conviction, shall be fined not less than one hundred dollars ($100.00), or imprisoned not less than six months, or both, in the discretion of the court. (1939, c. 159, s. 15.)

Local Modification. — Sampson: 1941, c. 167.

§ 163-69. Reports of violations to Attorney General and solicitor.— It shall be the duty of the State Board of Elections to report to the Attorney General of North Carolina, and to the solicitor of the appropriate judicial district, any violation of this article, or the failure of any person charged with a duty hereunder to comply with and perform such duty, and it shall be the duty of the solicitor to cause such person to be prosecuted therefor. (1939, c. 159, s. 16.)

Local Modification. — Sampson: 1941, c. 167.

Article 11.

Absentee Voting in Primaries by Voters in Military and Naval Service.

§ 163-70. Voting by persons in armed forces. — Any qualified voter entitled to vote in the primary of any political party, who, on the date of such primary, is in the military, naval or other armed forces of the United States may vote in the primary of the party of his affiliation in the manner as hereinafter provided. (1941, c. 346, ss. 1, 1a; 1945, c. 758, s. 4.)

Editor's Note.—For comment on this enactment, see 19 N. C. Law Rev. 480.

The 1945 amendment struck out the former provision that the act shall be null and void on or after the repeal of the Selective Service Act.

§ 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 or signed in his name by a member of his immediate family (wife, brother, sister, parent or child) 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 or the immediate family of such 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 or signed in his name by a member of his immediate family as herein defined.

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.)

§ 163-72. Ballot mailed to applicant; form of certificate on ballot. —The chairman of the county board of elections after registering said application shall mail to the applicant the official primary ballot of the political party with

which the applicant is affiliated, certifying on said ballot that it was furnished to the voter, naming him, whose application for the ballot was made to the chairman of the county board signing the same.

On the back of the ballot a certificate shall be printed in the following words:

I, ..., a duly registered Democrat—Republican (Strike whichever is inappropriate) 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 am sending 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 my commanding officer this the ..... day of ....., 19.....

.....

Witnesses:

.....

Name of Officer.

.....

Title and Unit.

(1941, c. 346, ss. 4, 5.)

§ **163-73. Envelope for return of ballot.** — The chairman of the county board of elections shall send with the official ballot an envelope for the return of the ballot addressed to the chairman and having printed thereon the following form:

This envelope contains the ballot of ....., a member of the armed forces of the United States to be voted in ..... precinct, ... County, in the primary of the ..... Party to be held on the ..... day of ....., 19.....

.....

Signature of Voter.

(1941, c. 346, s. 6.)

§ **163-74. Voting of ballots; delivery to appropriate precincts, unchallenged ballots deposited and counted.**—The voter receiving said ballot may vote same by properly marking the ballot, completing the certificate on the back thereof and signing his name to said certificate in the presence of his commanding officer or a commissioned officer who shall sign his name thereto as witness to the signature of the voter.

The ballot shall then be placed in the envelope furnished, securely sealed, the voter completing and signing the certificate on the back of the envelope and mailing the same to the chairman of the county board of elections by United States mail.

The chairman of the county board of elections on the day of the primary shall deliver or cause to be delivered to the appropriate precinct all primary ballots received by him from members of the armed forces of the United States. Said ballots shall be delivered in the envelope in which received and without the seals being broken.

All ballots delivered to the precinct officials by the chairman of the county board of elections shall be deemed voted at three o'clock on the day of the primary except such as may have been successfully challenged. Such ballot shall not be voted, however, unless the voter is duly registered on the primary books of the political party in whose primary he offers to vote.

At any time after three o'clock or the close of the polls all unchallenged ballots shall be deposited in the appropriate ballot box and counted as and in the same manner as other ballots are counted. (1941, c. 346, ss. 7-10.)

§ **163-75. Preservation of envelopes in which ballots transmitted.**—The precinct officials with the returns of the primary shall deliver to the chairman of the county board of elections all envelopes from which absentee ballots have been voted and said envelopes with all applications received by the chairman of the county board of elections on which he has issued ballots shall be preserved for at least six months after the primary and longer if there should be reason or necessity therefor. (1941, c. 346, s. 11.)

§ **163-76. Register of ballots a public record; posting list.**—The register of the ballots issued by the chairman shall be a public record open to inspection by any voter of the county at any time.

A list of all ballots received at a precinct to be voted therein shall be posted at a conspicuous place about the polls as soon as practical after receipt of the ballots and before they are voted. (1941, c. 346, ss. 12, 13.)

§ **163-77. Unlawful voting made misdemeanor.**—Any person who shall vote or attempt to vote absentee ballot in any primary, not then being a member of the armed forces of the United States, shall be guilty of a misdemeanor and punished by fine of not more than two hundred dollars ($200.00) or imprisoned for not more than six months or both in the discretion of the court. (1941, c. 346, s. 14.)

Article 11A.

Absentee Registration and Voting in General Elections by Persons in Military or Naval Service.

§ **163-77.1. Persons in armed forces may register and vote by mail under article.**—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. (1943, c. 503, s. 1.)

§ **163-77.2. Application made to Secretary of State; transmitted to chairman of county election board.**—Such absent member of the United States armed forces, absent from his residence county, may make an application, in writing, at any time prior to an election on the form prescribed in Public Law seven hundred and twelve of the Seventy-seventh Congress, to the Secretary of State, for absentee ballots to be voted in the election, and the Secretary of State shall, after making a record of the name and residence of such applicant, transmit such application to the office of the State Board of Elections. The State Board of Elections shall, after the receipt of such application from the Secretary of State, transmit said application to the chairman of the county board of elections of the county in which applicant resides, with all necessary instructions to said county chairman as to his duties hereunder. (1943, c. 503, s. 2.)

§ **163-77.3. Duties of county chairman upon receipt of application; registration and issuance of absentee ballots.**—It shall be the duty of the chairman of the county board of elections upon receipt of said application from the State Board of Elections to:

(a) If the applicant is found by the chairman of the county board of elections to be registered in the registration book of the precinct in which applicant advises he is residing, the said chairman shall mail such applicant one official absentee ballot of each kind being used in the election, together with a container return envelope for the return of the ballot the same as required by § 163-57.

(b) If the applicant is found by the chairman not to be registered in the regis-

tration book of the voting precinct in which the applicant declares he is residing, upon the chairman determining the resident precinct of such applicant and that he is eligible under article six of the State Constitution and the statutory laws relating thereto to be registered, then the said chairman may register such applicant in the registration book furnished and kept by him under the provisions of § 163-56 according to precincts.

When the chairman of the county board of elections has registered said applicant in said registration book, he shall thereupon mail to the applicant one official absentee ballot of each kind being used in the election, including candidates for all federal, State, district, county and local offices and for Constitutional amendments, together with a container return envelope for the return of the ballots to the chairman the same as required by § 163-57. (1943, c. 503, s. 3.)

§ 163-77.4. Chairman to prepare list of persons registered; list to be posted at precinct.—The chairman of the county board of elections shall prepare in duplicate a list of the names of all persons who have applied for absentee ballots under the said federal act and whose names he has registered on said absentee registration book. One copy of this list shall be delivered by said chairman, together with a copy of the list of names of all other absentee ballots which he is required by § 163-60 to deliver, to the registrar of each precinct on the morning of the election, which shall be posted by the registrar in a public place at the voting precinct where it may be inspected by any voter. This list shall be entitled "List of applicants under the federal act for absentee ballots registered by chairman of the county board of elections." One copy shall be kept by such chairman. (1943, c. 503, s. 4.)

§ 163-77.5. List constitutes valid registration; names not to be placed on regular registration books.—The chairman of the county board of elections' list as delivered to the registrars of the various precincts shall constitute the only precinct registration of the members of the armed forces registering under the provisions of this article, and the posting of such list by the registrar at the precinct shall be sufficient to validate the ballots of such absentee voters when such ballots are in all other respects regular, and the registrars shall not register on the regular election registration books of the precincts the names of such voters registered under the provisions of this article. (1943, c. 503, s. 5.)

§ 163-77.6. Chairman may register qualified persons who apply by mail direct to him for an absentee ballot.—If an unregistered applicant for an absentee ballot in the said armed forces applies in writing direct to the chairman of the county board of elections instead of through the Secretary of State, the said chairman may likewise register said applicant in his registration book and mail him the absentee ballot if the chairman determines that said applicant is qualified to register under article six of the State Constitution and the statutory laws enacted relating thereto and shows that he or she is a member of the United States armed forces as above described in § 163-77.1. (1943, c. 503, s. 6.)

§ 163-77.7. Article 10 on absentee voting applicable except as otherwise provided herein.—Except as herein otherwise provided, the provisions of article 10 of this chapter, relating to absentee voting in general elections, shall apply as to the form of the absentee ballot, the certificates, envelopes, and manner of depositing and voting of such ballots, counting of ballots and certifying results, et cetera. (1943, c. 503, s. 7.)

§ 163-77.8. State Election Board to supervise administration of article; power to make regulations.—The State Board of Elections is hereby given full power and authority to supervise the administration of this article, and in case sufficient provisions may not appear to have been made herein, said

Board of Elections may make such reasonable rules and regulations as are necessary to carry out the true intent and purpose of this article, not in conflict with the provisions of the law relating thereto. (1943, c. 503, s. 8.)

§ **163-77.9. Provisions applicable to absentee registration and voting in primaries.**—The provisions of this article shall be applicable to registration and voting in primary elections, as well as in general elections. The State Board of Elections is hereby authorized and empowered to adopt and promulgate whatever rules and regulations it may deem necessary to conform the provisions hereof to the primary election law. (1943, c. 503, s. 9; 1945, c. 758, s. 6.)

Editor's Note. — The 1945 amendment rewrote this section.

§ **163-77.10. Printing and distribution of absentee ballots and supplies.**—In order to fully carry out the purposes and intentions of this article, the State Board of Elections and the various county boards of elections, as the case may be, are authorized, empowered and directed to have printed, and in the hands of the proper election officials, all necessary ballots, together with the container return envelope, not later than the first day of September immediately preceding the ensuing general election, and in the event this article is made applicable to primary elections, not later than ten days after the time has expired for the filing for candidacy by county officers. (1943, c. 503, s. 10; 1949, c. 672, s. 3.)

Editor's Note. — The 1949 amendment substituted "September" for "August."

§ **163-77.11. Expenses of administering article; how paid.**—The expenses of administering the provisions of this article by the State Board of Elections shall be paid for by allotment from the State contingency and emergency fund, unless or until the same is paid by the federal treasury under the provisions of the said federal act. (1943, c. 503, s. 11.)

§ **163-77.12. Article inapplicable to persons after discharge from service; re-registration required.**—Upon any member of the armed forces, as hereinbefore defined, being discharged therefrom, he or she shall no longer be entitled to the benefits of the provisions of this article, and if such person registered under the provisions of this article, he or she shall be required to re-register in person the same as any other person before being entitled to vote in any election. (1943, c. 503, s. 12.)

Article 12.

Challenges.

§ **163-78. Registrar to attend polling place for challenges.**—It shall be the duty of the registrar to attend the polling place of his township or precinct with the registration books on Saturday preceding the election, from the hour of nine o'clock a. m. till the hour of three o'clock p. m., when and where the said books shall be open for the inspection of the electors of the precinct or township, and any of said electors shall be allowed to object to the name of any person appearing on said books. In case of any such objection, the registrar shall enter upon his books, opposite the name of the person so objected to, the word "Challenged," and shall appoint a time and place, before the election day, when he, together with the judges of election, shall hear and decide said objection, giving personal notice of such challenge to the voter so objected to; and if for any cause personal notice cannot be given, then it shall be sufficient notice to leave a copy thereof at his residence: Provided, nothing in this section shall prohibit any elector from challenging or objecting to the name of any person registered or offering to register at any time other than that above specified. If any person so chal-

lenged or objected to shall be found not duly qualified, the registrar shall erase his name from the books. (1901, c. 89, s. 19; Rev., s. 4339; C. S., s. 5972.)

Absence of Officer in Charge for a Short Time.—That one of the officers appointed to conduct an election was absent a short time from the polls, during which time no vote was cast and the ballot boxes were not tampered with, nor was any opportunity afforded for tampering with them, does not vitiate the election. State v. Nicholson, 102 N. C. 465, 9 S. E. 545 (1889).

Remedy for Irregular Registration. — Where it is alleged that the registration of voters in a primary municipal election was irregular and fraudulent, and the plaintiffs seek mandamus to compel a proper registration, and the statute and the charter of the city under which the election is to be held provided for challenge to voters so registered, mandamus being a proceeding in equity will not be issued, there being an adequate remedy at law by way of challenge provided by statute. Glenn v. Culbreth, 197 N. C. 675, 152 S. E. 332 (1929).

§ **163-79. How challenges heard.**—When any person is challenged, the judges and registrar shall explain to him the qualifications of an elector, and shall examine him as to his qualifications; and if the person insists that he is qualified and shall prove his identity with the person in whose name he offers to vote, and his continued residence in the precinct since his name was placed upon the registration list, as the case may be, by the testimony, under oath, of at least one elector, one of the judges or the registrar shall tender to him the following oath or affirmation:

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 four months 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.

And if he refuses to take such oath, when tendered, his vote shall be rejected; if, however, he does take the oath when tendered, his vote shall be received: Provided, that after such oath or affirmation shall have been taken, the registrar and judges may, nevertheless, refuse to permit such person to vote, unless they be satisfied that he is a legal voter; and they are hereby authorized to administer the necessary oaths or affirmations to all witnesses brought before them to testify to the qualification of a person offering to vote. Whenever any person's vote shall be received, after having taken the oath or affirmation prescribed in this section, the registrar or one of the judges shall write on the poll books, at the end of such person's name, the word "Sworn." The same powers as to the administration of oaths and affirmations and the examination of witnesses, as in this section granted to registrars and judges of election, may be exercised by the registrars in all cases where the names of persons registered or offering to register are objected to. (1901, c. 89, s. 22; Rev., s. 4340; C. S., s. 5973.)

§ **163-80. Challenge as felon; answer not used on prosecution.**—If any person is challenged as being convicted of any crime which excludes him from the right of suffrage, he shall be required to answer any question in relation to such alleged conviction; but his answer to such questions shall not be used against him in any criminal prosecution. (1901, c. 89, s. 71; Rev., s. 3388; C. S., s. 5974.)

Article 13.

Conduct of Elections.

§ **163-81. Special elections.**—Every election held in pursuance of a writ from the Governor shall be conducted in like manner as the regular biennial elections, so far as the particular case can be governed by general rules, and shall, to all intents and purposes, be as legal and valid, and subject the officers holding

and the persons elected to the same penalties and liabilities as if the same had been held at the time and according to the rules and regulations prescribed for the regular biennial elections. (1901, c. 89, s. 75; Rev., s. 4341; C. S., s. 5975.)

§ 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. (1901, c. 89, s. 72; Rev., s. 4376; C. S., s. 5977.)

§ 163-83. Voter may deposit his own ballot. — The ballot may be deposited for the voter by the registrar, or one of the judges of election, or the voter may deposit it if he chooses. (1901, c. 89, s. 24; Rev., s. 4343; C. S., s. 5979.)

Choice as to Voting.—The provisions of our State Constitution, Art. VI, § 6, making the distinction that the elector shall vote by ballot, and an election by the General Assembly shall be viva voce, gives under our statute, the elector the choice to deposit his own ballot secretly, or to declare his choice openly when depositing it, or to have the registrar, or one of the judges of election, deposit it for him. Jenkins v. State Board, 180 N. C. 169, 104 S. E. 346 (1920).

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.—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. After the polls are closed the registrar shall then proceed to open one ballot box at a time for the purpose of counting the ballots in that box in the presence of all election officials, witnesses and watchers, if there are any present.

The counting of ballots shall be conducted as follows: One of the ballots shall be taken out of the ballot box by one of the judges and opened in full view of all the judges and witnesses. If the judges and registrar all agree as to how the ballot shall be counted, one of them shall place it where it can be seen by anyone present and shall read aloud distinctly the names of the candidates voted for and the vote on any issue submitted; and the tally-man shall tally the same directly on the tally sheets. In the event the registrar and judges cannot agree as to how the ballot shall be counted, such ballot shall not be counted, but shall be placed in an envelope and marked "disputed ballots" and returned to the county board of elections.

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. (1933, c. 165, s. 8.)

Editor's Note.—The following cases were decided under former § 5983 of the Consolidated Statutes, now repealed, which provided for the counting of ballots. These cases seem applicable to the present law as the provisions of former § 5983 are substantially set forth in the instant section.

Counting by Others than Officers of Election. — While it is irregular to permit other persons than the officers of election to count the ballots, yet, unless it appears affirmatively that the count was not correct, that fact will not be allowed to vitiate the election, especially when the judges accepted and certified the result thus ascertained as true. State v. Calvert, 98 N. C. 580, 4 S. E. 127 (1887).

Effect of Voting for Too Many Candidates. — The statute does not contemplate throwing out the whole ballot for voting one ticket for too many candidates, its language distinguishing between the ballot and the ticket, of several of which (each office voted for being a separate ticket on the same ballot) the ballot is made up. Hence a ballot for one claiming the office of register of deeds, thrown out because containing two unmarked names, instead of one, for the office of recorder of the county, was improperly rejected as a vote for register, the elector's choice for such office being properly indicated. Bray v. Baxter, 171 N. C. 6, 86 S. E. 163 (1915).

A ballot the only defect of which was that it contained unmarked names of four persons for the office of county commissioner, while only three commissioners were to be elected, was improperly rejected. Bray v. Baxter, 171 N. C. 6, 86 S. E. 163 (1915).

Two Candidates with Same Name—Evidence of Identification. — If there be two candidates for different offices having the same name, and a ticket be found in the ballot box having that name and no other on it, it may be proved by extrinsic evidence for which of the candidates it was given. Wilson v. Peterson, 69 N. C. 113 (1873).

§ 163-85. How precinct returns are to be made and canvassed. — When the results of the counting of the ballots have been ascertained, such results shall be embodied in a duplicate statement to be prepared by the registrar and judges on forms provided by the county board of elections and certified to by said officers. One of the statements of the voting in the precinct shall be placed in a sealed envelope and delivered to the registrar or judge selected by them for the purpose of delivery to the county board of elections, at its meeting to be held on the second day after the election or primary. The other duplicate statement shall be mailed by one of the other precinct election officers to the chairman of the county board of elections immediately.

The county board of elections shall meet on the second day next after every primary or election, at eleven o'clock A. M. of that day, at the courthouse of the county, for the purpose of canvassing the votes cast in the county and the preparation of the county abstracts. Any registrar or judge appointed to deliver the certified precinct returns who shall fail to deliver those returns at the meeting of the county board of elections by twelve o'clock A. M. on the day of such board meeting shall be guilty of a misdemeanor, unless for illness or good cause shown for such failure. In the event any precinct returns have not been received by the county board by twelve o'clock A. M. on the first day of its meeting, or if any returns are incomplete or defective, it shall have authority to dispatch an officer to the residence of such precinct officials for the purpose of securing the proper returns for such precinct. (1933, c. 165, s. 8.)

Editor's Note.—This section and § 163-86 were rewritten by the 1933 amendment by abolishing the county board of canvassers and assigning their duties to the county board of elections. See 11 N. C. Law Rev. 228.

§ 163-86. County board of elections to canvass returns and declare

results.—The county board of elections at their said meeting required to be held on the second day after every primary or election, in the presence of such electors as choose to attend, shall open the returns and canvass and judicially determine the results of the voting in the respective counties, stating the number of legal ballots cast in each precinct for each candidate, the name of each person voted for and the political party with which he affiliated, and the number of votes given to each person for each different office, and shall sign the same. The said county board of elections shall have the power and authority to judicially pass upon all facts relative to the election, and judicially determine and declare the result of the same. And they shall have power and authority to send for papers and persons and examine the same, and to pass upon the legality of any disputed ballots transmitted to them by any precinct officer. (1933, c. 165, s. 8.)

Editor's Note. — The cases below were decided before this section was rewritten in 1933 and the duties of the board of canvassers assigned to the board of elections. However, they seem applicable to the present law.

Judicial Powers of Board of Canvassers. —The county board of canvassers are vested with statutory authority to judicially pass upon all facts relative to the election and to judicially determine and declare the results, and with the exercise of this discretion the courts will not interfere, except in an action to try title to the office by quo warranto. However, since by the Federal Constitution, Art. I, § 5, power is given to both houses of Congress to pass upon the election of members, an action in the nature of quo warranto cannot be brought to determine which candidate was elected to Congress. Britt v. Board, 172 N. C. 797, 90 S. E. 1005 (1916).

The returns made by the precinct officials constitute but a preliminary step in ascertaining the results of an election, and such returns must be canvassed and declared by the board of canvassers as an essential part of the election machinery, which board, after judicially determining the results, must issue a certificate of election to the successful candidate upon which he may qualify and enter into the discharge of the duties of the office. State v. Proctor, 221 N. C. 161, 19 S. E. (2d) 234 (1942).

Returns Prima Facie Correct.—In proceedings in the nature of a quo warranto, to determine the respective rights of the parties contesting for an office, the result of the election, as declared by the county board of canvassers, must be taken as prima facie correct. State v. Jackson, 183 N. C. 695, 110 S. E. 593 (1922).

Same—Subject to Collateral Attack. — The decisions or judgments of the county board of canvassers are not of such conclusiveness or finality as to exclude collateral attack, and the use of the word "judicially" in this section does not affect the construction. State v. Midgett, 151 N. C. 1, 65 S. E. 441 (1909).

The correctness of the result of the election of a clerk of the superior court, determined and declared by the county board of canvassers, can be investigated, passed upon and determined in a civil action in the nature of a quo warranto, and such is the proper remedy. State v. Midgett, 151 N. C. 1, 65 S. E. 441 (1909).

Jurisdiction of Superior Court for Quo Warranto Not Ousted. — The act of the county canvassers in declaring the result of an election to public office, under this section, cannot have the effect of ousting the jurisdiction of the superior court in quo warranto or information in the nature thereof. Harkrader v. Lawrence, 190 N. C. 441, 130 S. E. 35 (1925).

Mandamus to Reconvene Board of Canvassers.—As to whether a board of canvassers can be compelled by mandamus to reconvene after its final adjournment, quaere; and semble, it can be done theretofore only for the purpose of requiring it to complete its labors, but not to reconsider its action. Britt v. Board, 172 N. C. 797, 90 S. E. 1005 (1916).

Supplementary Returns after Adjournments of Registrar and Poll Holders.—Additional or supplemental returns made up by the county board of canvassers after the registrar and poll holders had fully performed their duties and adjourned, and without calling them together for reconsideration as a body, should not be given effect by the courts. Britt v. Board, 172 N. C. 797, 90 S. E. 1005 (1916).

Cited in State v. Proctor, 221 N. C. 161, 19 S. E. (2d) 234 (1942).

§ **163-87. Grouping certain returns on same abstract.**—The abstract of votes for each of the following classes of officers shall be made on a different sheet:

1. President and Vice-President.

2. Governor and all State officers; justices of the Supreme Court; judges of the superior court; and United States Senator.
3. Representatives in Congress.
4. Solicitor.
5. Senators and Representatives of the General Assembly.
6. County officers.
7. Township officers.
(1933, c. 165, s. 8.)

§ 163-88. Preparation of original abstracts; where filed.—When the canvass has been completed, the county board of elections shall prepare on forms furnished by the State original statements of the results showing:

1. Upon a single sheet an abstract of votes for President and Vice-President of the United States, when a presidential election is held.
2. Upon another sheet an abstract of votes for Governor, and all State officers, judges of the Supreme Court, judges of the superior court and United States Senator.
3. Upon another sheet an abstract of votes for Representatives to Congress.
4. Upon another sheet an abstract of votes for solicitor.
5. Upon another sheet an abstract of votes for State Senators and Representatives in the General Assembly.
6. Upon another sheet an abstract of votes for county officers.
7. Upon another sheet an abstract of votes for township officers for each township in the county.
8. Upon another sheet an abstract of votes for all constitutional amendments and propositions submitted to the people. Each of these abstracts shall be so prepared as to show the total number of votes cast for each candidate of each political party for each office in each precinct in the county.

Each of these original abstracts shall be signed by the members of the county board of elections with their certificate as to their correctness, and each of the original abstracts together with the original precinct returns shall be filed with the clerk of the superior court to be recorded in the permanent file in his office. (1933, c. 165, s. 8.)

§ 163-89. Duplicate abstracts to be sent to State Board of Elections; penalty for failure to comply.—When the county boards of elections shall have completed the original abstracts, they shall also prepare separate duplicate abstracts for all offices for which the State Board of Elections is required to canvass the votes and declare the results, which shall include the following: For President and Vice-President; for State officers and United States Senator; for Representatives to Congress; for solicitors; and for State Senators in senatorial districts composed of more than one county; and for amendments and propositions submitted.

When said duplicate abstracts shall have been prepared, the county board of elections shall sign an affidavit on each abstract that they are true and correct; then the chairman of said board shall mail said duplicate abstracts, within five days after the primary or election is held, to the chairman of the State Board of Elections at Raleigh, so that said abstracts shall be received by the chairman of the State Board of Elections within one week after the primary or election.

The chairman of the county board of elections, failing or neglecting to transmit said abstracts to the chairman of the State Board of Elections within the time above prescribed shall be guilty of a misdemeanor and subject to a fine of one thousand dollars: Provided, that the penalty herein prescribed shall not apply where said aforesaid officer was prevented from performing the duties herein prescribed because of sickness or other unavoidable delay, but the burden of proof shall be on such officer to show that his failure to perform his said duties was due to sickness or unavoidable delay. (1933, c. 165, s. 8.)

§ 163-90. Clerk of superior court to send statement of votes to Secretary of State in general election.—In a general election, the clerk of the superior court shall, within two days after the original abstracts are filed in his office by the county board of elections, certify under his official seal to the Secretary of State, upon blanks furnished to him by the State for that purpose, a statement of the votes cast in his county for all national, State and district officers, and for and against constitutional amendments and propositions submitted to the people. The clerk of superior court shall at the same time also certify under his official seal to the Secretary of State a list of all the persons voted for as members of the State Senate and House of Representatives and all county officers, together with the votes cast for each and their postoffice address.

The clerk of the superior court, failing or neglecting to transmit these returns to the Secretary of State within the time herein provided, shall be subject to a fine of five hundred dollars and be guilty of a misdemeanor: Provided, that the penalty herein prescribed shall not apply where said aforesaid officer was prevented from performing the duties herein prescribed because of sickness or other unavoidable delay, but the burden of proof shall be on such officer to show that his failure to perform his said duties was due to sickness or unavoidable delay. (1933, c. 165, s. 8.)

§ 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.

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.)

Editor's Note.—The cases discussed below were decided prior to the 1933 amendment. The provisions of the former statute on this subject are now substantially set forth in the instant section.

Finding of Board Prima Facie Correct.—The finding by the board of canvassers as to the number of votes received by a contestant in an election is prima facie correct. State v. Flynt, 159 N. C. 87, 74 S. E. 817 (1912).

There is a final and conclusive presumption in favor of the correctness of the result of an election as declared by the proper officials, until the issues raised by the pleadings have been tried and disposed of before the jury. Wallace v. Salisbury, 147 N. C. 58, 60 S. E. 713 (1908).

Cited in State v. Proctor, 221 N. C. 161, 19 S. E. (2d) 234 (1942).

§ 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 December 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. (1933, c. 165, s. 8; 1947, c. 505, s. 4.)

Editor's Note. — The 1947 amendment added the last sentence.

Article 15.

Canvass of Returns for Higher Offices and Preparation of State Abstracts.

§ 163-93. State Board of Elections to canvass returns for higher offices.—The State Board of Elections shall constitute the legal canvassing

board for the State of all national, State and district offices, including the office of State Senator in those districts consisting of more than one county. No member of the State Board of Elections shall take part in canvassing the votes for any office for which he himself is a candidate. (1933, c. 165, s. 9.)

Supervisory Powers of Board. — The State Board of Elections has general supervision over the primaries and elections in the State, with authority to promulgate legally consistent rules and regulations for their conduct, and to compel the observance of the elections laws by county boards of elections, and the duty of the State Board to canvass the returns and declare the count, does not affect its supervisory power, which perforce must be exercised prior to the final acceptance of the returns made by the county boards. Burgin v. North Carolina State Board, 214 N. C. 140, 198 S. E. 592 (1938).

§ 163-94. Meeting of State Board of Elections to canvass returns of the election.—The State Board of Elections shall meet in the city of Raleigh on the Tuesday following the third Monday after each general election held in this State under the provisions of this chapter, in the hall of the House of Representatives, at eleven o'clock A. M. for the purpose of canvassing the votes cast in all the counties of the State for all national, State and district officers and to determine whom they ascertain and declare by the count to be elected to the respective offices, and shall prepare abstracts of same as hereinafter provided. At this meeting, the Board shall examine the county abstracts, if they shall have been received from all of the counties, and if all have not been they may adjourn, not exceeding ten days for the purpose of obtaining the abstracts and returns from the missing counties, and when they have all been received the Board shall proceed with the canvass, which shall be conducted publicly in the hall of the House of Representatives. In obtaining the abstracts from the counties whose abstracts have not been received by the date of this meeting, the Board is authorized to obtain from the clerk of the superior court or the county board of elections, at the expense of such counties, the original abstracts or returns, or if they have been forwarded, copies of them. The State Board of Elections shall be authorized to enforce the penalties provided by law for the failure of a clerk of a superior court or a chairman of the county board of elections to comply with the law in making their returns of an election. (1933, c. 165, s. 9.)

§ 163-95. Meeting of State Board of Elections to canvass returns of a special election for congressmen.—In all cases of special elections ordered by the Governor to fill vacancies in the representation of the State in Congress as provided for in § 163-105, the State Board of Elections may meet as soon as the chairman of said Board shall have received returns from all of the counties entitled to vote in said special elections for the purpose of canvassing the returns of said special election and for preparing an abstract of same. It shall be the duty of the chairman of the State Board of Elections to fix the day of meeting which shall not be later than ten days after such elections, and it shall be the duty of all returning officers to make their returns promptly so that the same may be received within the ten days. (1933, c. 165, s. 9.)

§ 163-96. Board to prepare abstracts and declare results of elections.—The State Board of Elections, at the conclusion of its canvass of the general election, shall cause to be prepared the following abstracts:

1. Upon a single sheet an abstract of votes for President and Vice-President of the United States when an election is held for same.
2. Upon another sheet an abstract of votes for governor and all State officers, justices of the Supreme Court, judges of the superior court, and United States Senators.
3. Upon another sheet an abstract of votes for Representatives to Congress for the several Congressional districts in the State.
4. Upon another sheet an abstract of votes for solicitor in the several judicial districts in the State.

5. Upon another sheet an abstract of votes for State Senators in the several senatorial districts in the State, where such districts are composed of more than one county.

6. Upon another sheet an abstract of votes for and against any constitutional amendments or propositions submitted to the people.

These abstracts so prepared by said Board shall state the number of legal ballots cast for each candidate, the names of all persons voted for, for what office they respectively receive the votes, the number of votes each receive, and whom said Board shall ascertain and judicially determine and declare by the count to be elected to the office. These abstracts shall be signed by the State Board of Elections in their official capacity and have the great seal of the State affixed thereto. (1933, c. 165, s. 9.)

§ **163-97. Results certified to the Secretary of State; certificate of election issued.**—After the State Board of Elections shall have ascertained the result of the election as hereinbefore provided, they shall cause the result to be certified to the Secretary of State, who shall prepare a certificate for each person elected, and shall sign the same, which certificate he shall deliver to the person elected, when he shall demand the same.

The State Board of Elections shall also file with the Secretary of State the original abstracts prepared by it, also the original county abstracts to be filed in his office. (1933, c. 165, s. 9.)

§ **163-98. Secretary of State to record abstracts.**—The Secretary of State shall record the abstracts filed with him by the State Board of Elections in a book to be kept by him for recording the results of elections and to be called the election book, and shall also file the county abstracts. (1933, c. 165, s. 9.)

Article 16.

State Officers, Senators and Congressmen.

§ **163-99. Contested elections; how tie broken.** — The person having the highest number of votes for each office, respectively, shall be declared duly elected thereto by the State Board of Elections, but if two or more be equal and highest in votes for the said office, then one of them shall be chosen by joint ballot of both houses of the General Assembly. In contested elections, the State Board of Elections shall certify to the Speaker of the House of Representatives a statement of such facts as the Board has relative thereto and such contests shall be determined by joint vote of both houses of the General Assembly in the same manner and under the same rules as described in cases of contested elections for members of the General Assembly. (1901, c. 89, s. 44; Rev., s. 4363; 1915, c. 121, s. 1; C. S., s. 5999; 1927, c. 260, s. 14; 1933, c. 165, s. 10.)

Editor's Note. — The 1927 amendment rewrote this section.

§ **163-100. Regular elections for Senators.**—United States Senators to fill vacancies caused by the expirations of regular terms shall be elected by the people at the last regular election before each vacancy shall occur as now provided for State officers, and the tickets shall be furnished, blanks sent out and returns made as for State officers, and the returns canvassed and results declared in the same way. (1913, c. 114, s. 3; C. S., s. 6001.)

Editor's Note. — This and the two following sections were enacted in 1913 in consequence of the 17th Amendment to the Constitution of the United States, ratified May 31, 1913, which provides that United States Senators shall be elected by the people of each state. Prior to the Amendment, United States Senators were chosen by the legislatures of the several states.

§ **163-101. Governor to fill vacancies until general election.**—Whenever there shall be a vacancy in the office of United States Senator from this State

caused by death, resignation, or otherwise than by expiration of a term, the Governor shall appoint to fill the vacancy till there shall be an election. (1913, c. 114, s. 1; C. S., s. 6003; 1929, c. 12, s. 2.)

Editor's Note. — The 1929 amendment provided that this section should be re-enacted.

§ **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, which shall take place at the same time and in the same way as the canvassing of the returns for State officers. (1913, c. 114, s. 2; C. S., s. 6002.)

§ **163-103. Congressional districts specified.**—For the purpose of selecting Representatives to the Congress of the United States, the State of North Carolina shall be divided into twelve (12) districts as follows:

First District: Beaufort, Camden, Chowan, Currituck, Dare, Gates, Hertford, Hyde, Martin, Pasquotank, Perquimans, Pitt, Tyrrell, and Washington counties.

Second District: Bertie, Edgecombe, Greene, Halifax, Lenoir, Northampton, Warren, and Wilson counties.

Third District: Carteret, Craven, Duplin, Jones, Onslow, Pamlico, Pender, Sampson, and Wayne counties.

Fourth District: Chatham, Franklin, Johnston, Nash, Randolph, Vance, and Wake counties.

Fifth District: Caswell, Forsyth, Granville, Person, Rockingham, Stokes, and Surry counties.

Sixth District: Alamance, Durham, Guilford, and Orange counties.

Seventh District: Bladen, Brunswick, Columbus, Cumberland, Harnett, New Hanover, and Robeson counties.

Eighth District: Anson, Davidson, Davie, Hoke, Lee, Montgomery, Moore, Richmond, Scotland, Union, Wilkes, and Yadkin counties.

Ninth District: Alexander, Alleghany, Ashe, Cabarrus, Caldwell, Iredell, Rowan, Stanly, and Watauga counties.

Tenth District: Avery, Burke, Catawba, Lincoln, Mecklenburg, and Mitchell counties.

Eleventh District: Cleveland, Gaston, McDowell, Madison, Polk, Rutherford, and Yancey counties.

Twelfth District: Buncombe, Cherokee, Clay, Graham, Haywood, Henderson, Jackson, Macon, Swain, and Transylvania counties. (Rev., s. 4366; 1911, c. 97; C. S., s. 6004; 1931, c. 216; 1941, c. 3.)

Editor's Note. — The 1931 amendment changed the number of congressional districts from ten to eleven, and the 1941 amendment increased the number to twelve.

§ **163-104. Election after reapportionment of congressmen.**—Whenever, by a new apportionment of Representatives among the several States, the number of Representatives in the Congress of the United States from North Carolina shall be either increased or decreased, and neither the Congress nor the General Assembly shall provide for the election of the same, then if the said Representatives shall be increased, the increased number shall be elected by the qualified voters of the whole State, and shall be voted for on one ballot, and the Representatives from the several Congressional districts shall be elected by the voters of said districts, respectively, and shall each be voted for on another ballot; but if the number of said Representatives shall be decreased as aforesaid, in that event all the Representatives in Congress shall be elected by the qualified voters of the whole State and shall be voted for on one ballot. (1901, c. 89, s. 58; Rev., s. 4368; C. S., s. 6006.)

§ **163-105. Special election for congressmen.**—If at any time after the expiration of any Congress and before another election, or if at any time after an election, there shall be a vacancy in the representation in Congress, the Governor shall issue a writ of election, and by proclamation shall require the voters to meet in the different townships in their respective counties at such times as may be appointed therein, and at the places established by law, then and there to vote for a Representative in Congress to fill the vacancy; and the election shall be conducted in like manner as regular elections.

In the event such vacancy occurs within eight months preceding the next succeeding general election, nominations of candidates in a special election for Representative in Congress to fill a vacancy may be made by the several political party congressional executive committees in the district in which such vacancy occurs, for each political party respectively. It shall be the duty of the chairman and secretary of each political party congressional executive committee making such a nomination of a candidate in a special election to immediately certify to the State Board of Elections the name and party affiliation of the nominee so selected prior to the printing of the special election ballots.

In the event such vacancy occurs more than eight months prior to the next succeeding general election, then a special primary election shall be called by the Governor. Such special primary election shall be conducted in accordance with the laws governing general primaries, except that the closing date for filing notices of authority with the State Board of Elections shall be fixed by the Governor in his call for the primary, and shall be for the purpose of nominating candidates, to be voted upon thereafter in a special election to be called by the Governor as hereinbefore provided in the first paragraph of this section. The candidate elected in this special election shall fill such vacancy in the representation in Congress. (1901, c. 89, s. 60; Rev., s. 4369; C. S., s. 6007; 1947, c. 505, s. 5.)

Editor's Note. — The 1947 amendment added the second and third paragraphs.

§ **163-106. Certificate of election for congressmen.**—Every person duly elected a Representative to Congress, upon obtaining a certificate of his election from the Secretary of State, shall procure from the Governor a commission, certifying his appointment as a Representative of the State, which the Governor shall issue on such certificate being produced. (1901, c. 89, s. 61; Rev., s. 4370; C. S., s. 6008.)

Article 17.

Election of Presidential Electors.

§ **163-107. Conduct of presidential election.** — The election of presidential electors shall be conducted and the returns made as nearly as may be directed in relation to the election of State officers, except as herein otherwise expressed. (1901, c. 89, s. 79; Rev., s. 4371; C. S., s. 6009; 1933, c. 165, s. 11.)

§ **163-108. Arrangement of names of presidential electors.**—The names of candidates for electors of President and Vice-President of any political party or group of petitioners, who have qualified under the provisions of § 163-1 of the General Statutes of North Carolina as a political party shall not be placed on the ballot, but shall after nomination be filed with the Secretary of State. In place of their names there shall be printed first on the ballot the names of the candidates for President and Vice-President, respectively, of each party or group of petitioners who have qualified under the provisions of § 163-1 of the General Statutes of North Carolina as a political party and they shall be arranged under the title of the office. A vote for such candidates shall be a vote for the electors of the party by which such candidates were named and whose names have been

filed with the Secretary of State. (1901, c. 89, s. 78; Rev., s. 4372; C. S., s. 6010; 1933, c. 165, s. 11; 1949, c. 672, s. 2.)

Editor's Note. — See 11 N. C. Law Rev. 229, for a discussion of changes made in this section by the 1933 amendment. The 1949 amendment inserted the clauses as to having qualified as a political party under § 163-1.

§ **163-109. How returns for President shall be made.** — The county board of elections shall meet at the courthouse on the second day next after every election for President and Vice-President, and shall ascertain and determine the number of legal votes cast for the electors for President and Vice-President and shall prepare abstracts and make their returns to the State Board of Elections in the same manner as hereinbefore provided for State officers. (1901, c. 89, s. 80; Rev., s. 4373; C. S., s. 6011; 1927, c. 260, s. 16; 1933, c. 165, s. 11.)

§ **163-110. Declaration and proclamation of results by State Board; casting of State's votes for President and Vice-President.**—The State Board of Elections shall canvass the returns for electors for President and Vice-President at the same time and place as hereinbefore required to be made for State officers, and an abstract for same shall be prepared and certified to the Secretary of State in the same manner.

The Secretary of State shall, under his hand and seal of his office, certify to the Governor the names of as many persons receiving the highest number of votes for electors of President and Vice-President of the United States as the State may be entitled to in the Electoral College. The Governor shall thereupon immediately issue his proclamation and cause the same to be published in such daily newspapers as may be published in the city of Raleigh, wherein he shall set forth the names of the persons duly elected as electors, and warn each of them to attend at the capitol in the city of Raleigh at noon on the first Monday after the second Wednesday in December next after his election, at which time the said electors shall meet, and then and there give their votes on behalf of the State of North Carolina for President and Vice-President of the United States. In case of the absence or ineligibility of any elector chosen, or if the proper number of electors shall for any cause be deficient, those present shall forthwith elect from the citizens of the State so many persons as will supply the deficiency, and the persons so chosen shall be electors to vote for the President and Vice-President of the United States. And the Governor shall, on or before the said first Monday after the second Wednesday in December, make out six lists of the names of the said persons so elected and appointed electors and cause the same to be delivered to them, as directed by the Act of Congress. (1901, c. 89, s. 81; Rev., s. 4374; 1917, c. 176, s. 2; C. S., ss. 5916, 6012; 1923, c. 111, s. 12; 1927, c. 260, s. 17; 1933, c. 165, s. 11; 1935, c. 143, s. 2.)

Editor's Note.—By the 1935 amendment the meetings were changed from the second Monday in January to the first Monday after the second Wednesday in December.

§ **163-111. Compensation of presidential electors.**—Presidential electors shall receive, for their attendance at the meeting of said electors in the city of Raleigh, the sum of $10.00 (ten dollars) per day and traveling expenses at the rate of 5c (five cents) per mile in going to and returning from said meeting. (1901, c. 89, s. 84; Rev., s. 2761; C. S., s. 3878; 1933, c. 5.)

Editor's Note.—Prior to the 1933 amendment, this section provided for traveling expenses and compensation the same as allowed members of the General Assembly.

§ **163-112. Penalty for presidential elector failing to attend and vote.**—Each elector, with his own consent previously signified, failing to attend and vote for a President and Vice-President of the United States, at the time and place herein directed (except in case of sickness or other unavoidable accident), shall forfeit and pay to the State five hundred dollars, to be recovered by

the Attorney General in the Superior Court of Wake County. (1901 c. 89, s. 83; Rev., s. 4375; C. S., s. 6013; 1933, c. 165, s. 11.)

Article 18.

Miscellaneous Provisions as to General Elections.

§ 163-113. Agreements for rotation of candidates in senatorial districts of more than one county.—When any senatorial district consists of two or more counties, in one or more of which the manner of nominating candidates for legislative offices is regulated by statute, and the privilege of selecting the candidate for Senator, or any one of the candidates for Senator, of any political party (as the words "political party" are defined in the first section of this subchapter) in the senatorial district, is, by agreement of the several executive committees representing that political party in the counties constituting the district, conceded to one county therein, such candidate may be selected in the same manner as the party's candidates for county officers in the county, whether in pursuance of statute or under the plan of organization of such party. All nominations of party candidates for the office of Senator, made as hereinbefore provided, shall be certified by the chairman of the county board of elections of the county in which the nomination is made, to each chairman of the county board of elections in all of the counties constituting the senatorial district, and it shall be the duty of each chairman of the other counties to which the nominations are certified to print the name or names of the nominee or nominees on the official county ballot for the general election. (1911, c. 192; C. S., s. 6014; 1947, c. 505, s. 6.)

Editor's Note. — The 1947 amendment rewrote the second sentence.

§ 163-114. Judges and solicitors; commission; when term begins.—Justices of the Supreme Court, judges of the superior court, and solicitors shall be commissioned by the Governor, and their terms of office shall begin on the first day of January next succeeding their election. An election for officers, whose terms shall be about to expire, shall always be held at the general election next preceding the expiration of their terms of office. (1901, c. 89, s. 69; Rev., s. 4377; C. S., s. 6015.)

§ 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 one cent 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.)

Editor's Note. — The 1931 amendment rewrote this section.

§ 163-116. Forms for returns sent to proper officers by State Board of Elections.—The State Board of Elections shall cause proper forms of returns to be prepared and printed, and send copies thereof, with plain directions as to the manner of endorsing, directing, and transmitting the same to the seat of government, to all of the returning officers of the State, at least thirty days be-

fore the time for holding any election. The said Board shall also furnish to the clerk of the superior court of each county all such printed blanks as may be necessary for making the county returns. (1901, c. 89, s. 43; Rev., s. 4383; C. S., s. 6017; 1921, c. 181, s. 5; 1927, c. 260, s. 18.)

Editor's Note.—Prior to the 1921 amendment the duties of the State Board of Elections under this section were required to be performed by the Secretary of State. Prior to the 1927 amendment, the printed blanks were furnished to the register of deeds instead of to the clerk of the superior court.

SUBCHAPTER II. PRIMARY ELECTIONS.

Article 19.

Primary Elections.

§ 163-117. Date for holding primaries.—On the last Saturday in May next preceding each general election to be held in November for State officers, Representatives in Congress, district officers in districts composed of more than one county, and members of the General Assembly of North Carolina, or any such officers, there shall be held in the several election precincts within the territory for which such officers are to be elected a primary election for the purpose of nominating candidates of each and every political party in the State of North Carolina for such offices as hereinafter provided; and at such primary election next preceding the time for the election of a Senator for this State in the Congress of the United States there shall likewise be nominated the candidate of each political party in this State for such office of United States Senator.

This subchapter shall not apply to the nomination of candidates for presidential electors. Presidential electors shall be nominated in a State convention of each political party as defined in § 163-1 unless otherwise provided by the plan of organization of such political party. One presidential elector shall be nominated from each congressional district and two from the State at large. (1915, c. 101, s. 1; 1917, c. 218; C. S., s. 6018; 1939, c. 196; 1951, c. 1009, s. 2.)

Local Modification.—Session Laws 1945, c. 894, repealed this article insofar as its provisions apply to the nomination of democratic candidates for the General Assembly and county offices in Mitchell County.

Editor's Note. — The 1939 amendment substituted, near the beginning of the section, the words "last Saturday in May" for the words "first Saturday in June." The 1951 amendment added the second paragraph.

Article Is Constitutional.—The primary law, as amended by the Australian Ballot Law (§ 163-148 et seq.), is reasonable and constitutional. McLean v. Durham County Board, 222 N. C. 6, 21 S. E. (2d) 842 (1942).

It must be construed in pari materia with article 20 of this chapter. Phillips v. Slaughter, 209 N. C. 543, 183 S. E. 897 (1936); McLean v. Durham County Board, 222 N. C. 6, 21 S. E. (2d) 842 (1942).

The manifest purposes of the primary system set up by our laws is to secure to the members of an existing political party freedom of choice of candidates, and to confine the right of qualified electors to vote in party primaries to the primary of the existing political party of which they are members at the time of the holding of such primary. States' Rights Democratic Party v. State Board of Elections, 229 N. C. 179, 49 S. E. (2d) 379 (1948).

The primary law provides an exclusive method for nomination of candidates for office, and a candidate who has not complied with its provisions is not the nominee of any political party within the law. McLean v. Durham County Board, 222 N. C. 6, 21 S. E. (2d) 842 (1942).

The primary laws have no application to new political parties created by petition under § 163-1. States' Rights Democratic Party v. State Board of Elections, 229 N. C. 179, 49 S. E. (2d) 379 (1948).

§ 163-118. Primaries governed by general election laws. — Unless otherwise provided in this article, such primary elections shall be conducted, as far as practicable, in all things and in all details in accordance with the general election laws of this State, and all the provisions of this chapter and of other laws

governing elections not inconsistent with this article shall apply as fully to such primary elections and the acts and things done thereunder as to general elections; and all acts made criminal if committed in connection with a general election shall likewise be criminal, with the same punishment, when committed in a primary election held hereunder. (1915, c. 101, s. 3; 1917, c. 218; C. S., s. 6020.)

Cited in State v. Abernethy, 220 N. C. 226, 17 S. E. (2d) 25 (1941).

§ **163-119. Notices and pledges of candidates; with whom filed.** — Every candidate for selection as the nominee of any political 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 12:00 o'clock noon on or before 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."

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 six o'clock p. m. on or before the sixth Saturday before such primary 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. (1915, c. 101, s. 6; 1917, c. 218; C. S., s. 6022; 1923, c. 111, s. 13; 1927, c. 260, s. 19; 1929, c. 26, s. 1; 1933, c. 165, s. 12; 1937, c. 364; 1947, c. 505, s. 7; 1949, c. 672, s. 4; 1951, c. 1009, s. 3.)

Editor's Note.—This section was amended in 1933 so as to change the time for filing the notice for candidacy from six weeks to the seventh Saturday before the primary date. See 11 N. C. Law Rev. 230. The 1937 amendment changed this to the tenth Saturday before the election, and substituted "sixth Saturday" for "fourth Saturday" formerly appearing in the second paragraph.

The 1947 amendment added the first two sentences of the last paragraph. The 1949 amendment substituted in the first paragraph "12:00 noon" for "6:00 P. M." The 1951 amendment added the last two sentences of the last paragraph.

Obligation Imposed upon Candidate. — This section attempts to place upon a candidate who seeks nomination to public office in the primary election of an existing political party an obligation to adhere to such existing political party for at least a

limited time in the future. States' Rights Democratic Party v. State Board of Elections, 229 N. C. 179, 49 S. E. (2d) 379 (1948).

§ 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 instead of a salary basis shall pay to the county board of elections a filing fee of five dollars, unless the holder of such office has in the year next preceding received in fees a sum in excess of five hundred dollars: In which event the filing fee shall be one per cent of such total amount received; the purpose of this amendment being to raise the filing fees of all county and legislative candidates to the same basis as that of all candidates for State offices; that is, one per cent of the annual salary of the office for the first year; and further to fix a filing fee for candidates for county and township offices operated on a fee basis instead of a salary basis at five dollars, unless the compensation for the office in the year next preceding was in excess of five hundred dollars. (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.)

Local Modification.—Mecklenburg: 1937, c. 382; Sampson: 1941, c. 111.

Editor's Note.—This section was amended in 1933 so as to change the basis of candidacy fees from a flat sum for each office to a percentage of the salary of the office. See 11 N. C. Law Rev. 230.

The 1939 amendment changed the filing fee in the second sentence from one-half of one per cent to one per cent. It also changed the proviso.

Filing Fee Is Not a Tax.—The filing fee required by this section is in no sense a tax within the meaning of Art. II, § 14, or a local law as condemned by Art. II, § 29, or the Constitution of North Carolina. McLean v. Durham County Board, 222 N. C. 6, 21 S. E. (2d) 842 (1942).

§ 163-121. Fees erroneously paid refunded.—Where a candidate erroneously files a notice of candidacy, accompanied by the proper sum of money, with the State Board of Elections, instead of with the local county board, and the money is paid into the State treasury; or where a candidate files a notice, accompanied by the sum fixed by law with the State Board, the money being paid into the State treasury, and afterwards, but before the time for filing such notices, as fixed by law, shall have expired, he wishes to withdraw his candidacy, then, in both these cases, the money may be refunded to the candidate, upon certificate from the chairman of the State Board of Elections that the facts exist which entitle him to such refunding. Upon such certificate, the Auditor shall give his warrant upon the Treasurer of the State, and the Treasurer shall pay the same. (1919, c. 50; C. S., s. 6024.)

§ 163-122. Payment of expense for primary elections.—The expense of printing and distributing the poll and registration books, blanks, ballots for those offices hereinafter provided to be furnished by the State, and the per diem and expenses of the State Board of Elections while engaged in the discharge of the duties herein imposed, shall be paid by the State; and the expenses of printing and distributing the ballots hereinafter provided to be furnished by the counties, and the per diem and expenses of the county board of elections, and the registrars and judges of election, while engaged in the discharge of the duties herein imposed, shall be paid by the counties, as is now provided by law to be paid for performing the duties imposed in connection with other elections. (1915, c. 101, s. 7; 1917, c. 218; C. S., s. 6026; 1927, c. 260, s. 21; 1933, c. 165, s. 14.)

§ 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. (1915, c. 101, s. 5; 1917, c. 218; C. S., s. 6027.)

Cross References.—As to new State-wide registration of voters, see § 163-43. As to effect of voting in primary on future conduct of voter, see notes to § 163-126.

§ 163-124. Notices filed by candidates to be certified; printing and distribution of ballots.—When the time for filing notices by candidates for nomination shall have expired, the chairman of the State Board of Elections shall within three days thereafter certify the facts as to such notices as have been filed with it to the Secretary of State; and in the senatorial districts composed of more than one county where there is no agreement as provided for in § 163-113, the chairman or secretary of the county board of elections of each county in such senatorial district shall, within three days after the time for filing such notice shall have expired, certify to every other chairman of the county board of elections in such senatorial district the names of all candidates who have filed notice of candidacy in their respective county for the office of the State Senator; and said chairman, acting under the direction of the State Board of Elections and under such rules and regulations as may be prescribed by it, shall, without delay, at the expense of the State, cause a sufficient number of official ballots to be printed for each political party having candidates to be voted for in the primary and distributed to the chairman of the county boards of elections in the several counties, upon which ballot shall appear the names of candidates who shall, under the provisions of this article, have filed notice of their candidacy and otherwise complied with the requirements of this article, except candidates for offices ballots for which are herein provided to be printed by the several county boards of elections, so that such ballots shall be received by the respective county boards of elections at least thirty days before the date of holding such primaries. The expense of printing and distributing such official ballots shall be paid by the State Treasurer out of funds appropriated to the State Board of Elections, in accordance with the Executive Budget Act. Said ballots so printed by the State Board of Elections shall be for each of the several political parties in the State, as hereinafter defined and described, and the names of the respective parties and the candidates shall be printed on the ballots prepared for the respective parties with which the candidates affiliate, and upon the ballots the office for which each aspirant is a candidate shall be indicated. Three days before the primary election the chairmen of the county boards of elections shall distribute the official ballots to the several registrars in their respective counties, and take a receipt therefor, and the registrars shall have them at the several polling places for the use of the electors at the time of holding the primary. Any election or other officer who shall accept appointment and who shall, without previously resigning, fail to perform in good faith the duties prescribed in this article, shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned, in the discretion of the court. (1915, c. 101, s. 8; 1917, c. 218; C. S., s. 6028; 1927, c. 260, s. 22.)

Editor's Note. — The 1927 amendment struck out a provision requiring the chairman of the State Board of Elections to certify to the appropriate county boards of elections as to the facts of notice filed by the candidates for nomination for the State Senate in districts composed of two or more counties, and inserted in lieu thereof the part of the section beginning with the phrase "and in the senatorial districts" and

ending with the words "office of the State Senator."

Possession of Ballots. — This section makes it the duty of the county board of elections to keep in its possession official ballots until delivery to the local officials. State v. Abernethy, 220 N. C. 226, 17 S. E. (2d) 25 (1941).

§ 163-125. Only official ballots to be voted; contents and printing of ballots.—There shall be voted in primary elections only the official ballots furnished to the chairmen of the county board of elections and by them to the registrars; and if other ballots be voted in a party primary, they shall not be counted. There shall be as many kinds of official ballots as there are political parties, members of which have filed notice of their candidacy for primary elections. (1915, c. 101, s. 9; 1917, c. 218, C. S., s. 6029.)

§ 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. Any person who has become of the age of twenty-one years between the time when the books closed for registration and the day of the primary election, and who is otherwise a qualified elector, and who desires to register and vote as a member of a political party, may do so in the manner herein provided.

At the time of voting, the name of the voter shall be entered on a primary polling book to be provided and kept for the purpose, under rules prescribed by the State Board of Elections, which said book shall be provided at the expense of the State for all State primaries and State elections, and upon said book shall be entered, opposite the name of such voter and in proper column provided for the purpose, the name of the political party whose ticket he shall have voted, and said books shall be filed for safekeeping, until the next election, in the clerk's office of the county in which the ballots are so cast.

It shall be the duty of the county board of elections and of the judges and registrar in each precinct to make all necessary arrangements by providing a proper number of places in each precinct whereby each voter shall have an opportunity, both at all primary and all general elections, to arrange his ballot in secret and without interference from any other person whatsoever; and it shall be the duty of the judges of election and registrars holding primary and general elections to give any voter any information he may desire in regard to the kind of ballot which he may be entitled to vote and the names of the candidates thereon, and in response to questions asked by him, they shall communicate to him any information which he may desire in regard to the kind of ballot which he

may be entitled to vote and the names of the candidates thereon, and, in response to questions asked by him, they shall communicate to him any information necessary to enable him to mark his ballot as he desires.

At the written request of the chairman of any political party of any county, the judges and registrar of any precinct shall designate the name of some elector in each precinct, if there be such elector who affiliates with such political party, who shall be furnished the opportunity to observe the method of holding such primary election; but such elector shall in no manner interfere with the method of holding such election or interfere or communicate with or observe any voter in casting his ballot, but shall make such observation and notes of the manner of holding such election and the counting of the ballots as he may desire: Provided, nothing herein contained shall be construed to prevent any elector from casting at the general election a free and untrammeled ballot for the candidate or candidates of his choice. (1915, c. 101, s. 11; 1917, c. 218; C. S., s. 6031; 1921, c. 181, s. 6; 1923, c. 111, s. 14.)

Cross Reference.—See § 163-180.

Editor's Note.—By the 1923 amendment the name of the third ballot box was changed from "Legislative Primary Box" to "Legislative and County Primary Box." Prior to the 1921 amendment the polling book provided for by the third paragraph of this section was to be furnished at the expense of the State for the first election held under this article, and subsequently at the expense of the several counties. The amendment requires that it be furnished at the expense of the State for all the State primaries and State elections.

This section secures to the member of an existing political party freedom of choice of candidates by providing that he may vote for candidates for all or any of the officers printed on the ballots of the political party with which he affiliates "as he shall elect and that he shall disclose the name of the political party printed thereon and no more." States' Rights Democratic Party v. State Board of Elections, 229 N. C. 179, 49 S. E. (2d) 379 (1948).

Voter Need Not Support Candidates of Party in Whose Primary He Voted.—This section and § 163-123 confine the right of a qualified elector to vote in party primaries to the primary of the existing political party with which he affiliates at the time of the holding of the primary. But they do not undertake to deprive the voter of complete liberty of conscience or conduct in the future in the event he rightly or wrongly comes to the conclusion subsequent to the primary that it is no longer desirable for him to support the candidates of the party in whose primary he has voted. States' Rights Democratic Party v. State Board of Elections, 229 N. C. 179, 49 S. E. (2d) 379 (1948). See § 163-126.

He May Sign Petition to Establish New Party under § 163-1.—Thus regulations of the State Board of Elections conflict with this and other pertinent sections of this subchapter if they attempt to set up and establish a rule that voting in the primary election of an existing political party disables qualified electors to sign a petition for the creation of a new political party under § 163-1 during the year in which such primary election is held. States' Rights Democratic Party v. State Board of Elections, 229 N. C. 179, 49 S. E. (2d) 379 (1948).

Cited in Burgin v. North Carolina State Board, 214 N. C. 140, 198 S. E. 592 (1938).

§ 163-127. Counting ballots and certifying results.—When the polls have been closed, the primary ballot boxes shall be opened in the presence of the registrars and both judges of election at the several precincts and such electors as may desire to be present: Provided, the registrars and judges may fix such space as they may consider reasonable and necessary to enable them to count the ballots. The ballots of each of the several parties in the boxes in each precinct shall be counted and bound in separate packages, and the result shall be certified to the proper county board of elections and by them to the State Board of Elections upon blanks to be provided by the State Board of Elections at the expense of the State within the time and, as near as may be, in the manner provided for the certification of the result of general elections. (1915, c. 101, s. 12; 1917, c. 218; C. S., s. 6032.)

When Ballot Found in Wrong Box.—In primary elections for county officers the registrar and judges of election are authorized not only to pass upon the qualifi-

cation of voters therein, but to determine whether a ballot found in the wrong box was placed there by mistake, and, if satisfied of the mistake, to count the ballots for the one for whom they had been cast, in making their returns to the county board. Bell v. County Board, 188 N. C. 311, 124 S. E. 311 (1924).

Distinguished from General Elections.—In primary elections the return for county officers must be certified as this section requires to the county board of elections, which shall publish the result, the distinction between elections of this character and general elections being that in the former there is no right to an election to public office which may be put in issue and determined by quo warranto, and no provision for a board of canvassers with power judicially to determine the precinct return. Bell v. County Board, 188 N. C. 311, 124 S. E 311 (1924).

§ **163-128. Names of candidates successful at primaries printed on official ballot; where only one candidate.**—Only those who have filed notice of their candidacy and who shall have complied with the requirements of law applicable to candidates before primaries with respect to such primary elections shall have their names printed on the official ballot of their respective political parties. In all cases where only one aspirant for nomination for a particular political office to be voted for by his political party on the State or district ballot or, for the State Senate in districts composed of two or more counties shall have filed such notice, the board of elections of the state shall, upon the expiration of the time for filing such notices, declare him the nominee of his party, and his name shall not therefore be placed on the primary ballot, but shall be placed on the ballot to be voted at the general election as his party's candidate for such office. (1915, c. 101, s. 13; 1917, c. 218; C. S., s. 6033.)

Cited in McLean v. Durham County Board, 222 N. C. 6, 21 S. E. (2d) 842 (1942); Ingle v. State Board of Elections, 226 N. C. 454, 38 S. E. (2d) 566 (1946).

§ **163-129. Primaries for county offices; candidates to comply with requirements.**—At the time of holding primary elections for State officers, as hereinbefore provided, there shall likewise be held primary elections for the nomination of the candidates of the several political parties in the State for county offices; and no one shall be voted for in such primary elections for the nomination of candidates for county offices unless he shall have filed a notice with the appropriate county board of elections and shall have taken the pledge required of candidates filing notice with the State Board of Elections, as hereinbefore provided, and shall have otherwise complied with the requirements applicable to such candidates for nomination for State offices, except in so far as such requirements are modified by the provisions of this article with reference to candidates for primary nominations for county offices. (1915, c. 101, s. 14; 1917, c. 218; C. S., s. 6034.)

Local Modification.—Avery: 1933, c. 327; 1935, c. 141; 1937, c. 263; Stanly: 1945, c. 958; Watauga: C. S. 6054; 1935, c. 391; 1937, c. 264.

Cited in McLean v. Durham County Board, 222 N. C. 6, 21 S. E. (2d) 842 (1942).

§ **163-130. Primaries for county offices; notices of candidacy and official ballots.**—The State Board of Elections, prior to the time fixed by law for the appointment of registrars and judges of primary elections, shall prescribe, print, and furnish to the several county boards of elections a sufficient number of notices to be filed by candidates desiring nomination for county offices, which said notices shall be substantially the same in form as those required to be filed by candidates for primary nomination for State offices as hereinbefore provided; and the several county boards of elections shall have printed and shall provide official ballots for county officers similar in form and otherwise to the ballots hereinbefore provided for State officers, and shall distribute the same to the several precincts in the manner and at the time hereinbefore prescribed in the case of State offices. (1915, c. 101, s. 15; 1917, c. 218; C. S., s. 6035.)

§ **163-131. Primaries for county offices; voting and returns.**—In

primary elections for the selection of candidates for county offices the voting shall be done in the manner hereinbefore prescribed for primary elections for State offices, and all of the provisions herein contained governing primary elections for State offices shall apply with equal force to primary elections for county offices when not inconsistent with other provisions herein with reference to such primary elections for county officers; and the returns in such primary elections for county officers shall be certified to the appropriate county board of elections, which shall declare and publish the results. (1915, c. 101, s. 16; 1917, c. 218; C. S., s. 6036.)

§ **163-132. Primary ballots; provisions as to names of candidates printed thereon.**—It shall be the duty of the State Board of Elections to print and furnish to the counties for primary elections a sufficient number of official ballots for each political party having candidates to be voted for in the primary within the time prescribed for in § 163-124, which official ballots shall have printed thereon the names of candidates for the United States Senate, for the national House of Representatives, and for Governor and for all other State offices, with the exception of the office of solicitor and judge of the superior court. All of these candidates, ballots for which are required to be furnished by the State, may be printed on one form of ballot or they may be printed on a number of forms of ballots as may be decided by the State Board of Elections.

It shall be the duty of the county board of elections to print and furnish to the voting precincts in the county for primary elections a sufficient number of official ballots for each political party having candidates to be voted for in the primary within the time prescribed in § 163-124, which official ballots shall have printed thereon the names of candidates for the following offices in the order in which they are named and shall be known as the "official primary ballot for judge superior court, solicitor, State Senator and county and township offices" when candidates for all of said offices are participating in the primary within the county. Whenever there is no contest for any of the aforesaid offices, then such names will not appear on the county ballot. The county board of elections may print the township ballot separate from the county ballot if it should so desire.

The ballots to be printed by the counties shall be of such width, color, form and printed in such type and on such paper as the State Board of Elections may direct.

It shall be the duty of the chairman of the State Board of Elections to certify to the chairman of the county board of elections in each county, by the fourth Saturday before each primary election, the names of such candidates for the nomination for judge of the superior court and solicitor as have filed the required notice and pledge and filing fee with the State Board of Elections and entitled to have their names placed on the official county ballot, and it shall be the duty of each county chairman to acknowledge receipt within two days after the receipt of the letter of certification to the chairman of the State Board of Elections so that the State chairman will know that each candidate's name has been properly certified and received. (1915, c. 101, s. 17; 1917, c. 218; C. S., s. 6037; 1933, c. 165, s. 16.)

Cited in State v. Abernethy, 220 N. C. 226, 17 S. E. (2d) 25 (1941).

§ **163-133. Boxes for county officers; how labeled.**—All ballots for nominations for county officers shall be deposited in the box labeled "Legislative Primary Box" hereinbefore provided for, which box, in addition to bearing the label "Legislative Primary Box," shall also immediately thereunder be labeled "County Primary Box." (1915, c. 101, s. 18; 1917, c. 218; C. S., s. 6038.)

§ **163-134. Sole candidate declared nominee.**—In all cases where only one aspirant for nomination by the party with which he affiliates for the State

Senate in districts composed of only one county or for the House of Representatives of the General Assembly or for a county office shall have filed the notice of candidacy in this article required, the county board of elections shall, upon the expiration of the time fixed for filing such notice, declare him the nominee of his party, and his name shall therefore not be placed on the primary ballot, but shall be placed upon the ballot to be voted at the general election as his party's candidate for such office. (1915, c. 101, s. 19; 1917, c. 218; C. S., s. 6039.)

§ 163-135. Primaries for township and precinct officers.—The several county boards of elections shall provide for holding in their respective counties primary elections for the choice of candidates for the nomination for township and precinct officers, which primary elections shall be held at the same time and places as the primaries for county officers: Provided, that in the counties exempt from the operation of the primary law for the nomination of county officers, township officers may also be nominated in the same manner as county officers within such counties. The expenses for holding primaries for township officers shall be paid for by the counties. (1915, c. 101, s. 20; 1917, c. 218; C. S., s. 6040; 1933, c. 165, s. 17.)

§ 163-136. Returns of precinct primaries; preservation of ballots.—The registrar and judges of election at each precinct in the State of North Carolina shall certify upon blanks prepared and printed by the State Board of Elections and distributed through the county board of elections to the election officers of each of the several precincts the result of the primary election of each precinct; and there shall be made by the judges of election and registrar at each precinct two copies of their returns, one copy of which shall be filed by them with the clerk of the court of their county for public inspection, and one shall be filed with the county board of elections to be kept on file by it; and it shall be the duty of the judges and registrars to preserve and keep for two months after each election the original ballots cast at such election, which ballots, after being counted, shall be placed in bundles, a separate and distinct bundle to be made of the ballots of each and every political party cast in each of the boxes, and each box in which ballots were cast shall be carefully sealed up before the election officers shall separate, so that nothing put in may be taken from them, and the signatures of the registrar and judges of each precinct shall be inscribed at the same time on a seal placed on each box of the precinct, and no box shall be opened except upon the written order of the county board of elections or a proper order of court. The State Board of Elections, in preparing the printed form for returns to be made by the judges and registrars of the several precincts to the county boards of elections, and in preparing the forms for the returns to be made by the county boards of elections to the State Board of Elections of the result of primary elections, shall prepare them in such form as will show the number of votes cast for each candidate for nomination for office. (1915, c. 101, s. 21; 1917, c. 179, s. 1; 1917, c. 218; C. S., s. 6041; 1923, c. 111, s. 15.)

Editor's Note.—Prior to the 1923 amendment the judges and the registrars were required to preserve the original ballots for four months instead of two.

Determination of Results of Primary for County Officers.—In a primary for county officers the registrar and judges of election have the sole power, acting in their ministerial capacity, to determine whether votes cast in the wrong ballot box should be counted; and they may correct their tabulation of the results thereof to the county board of elections before the latter has judicially determined the results; the duties of the latter board being continuous, under the provisions of the statute, and such powers not being functus officio until they have finally determined the results of the election. Bell v. County Board, 188 N. C. 311, 124 S. E. 311 (1924).

§ 163-137. County board tabulates results of primaries; returns in duplicate.—The county boards of elections of the several counties shall tabulate the returns made by the judges and registrars of the several precincts in their

respective counties with reference to candidates in the primaries, so as to show the total number of votes cast for each candidate of each political party for each office, and, when thus compiled on blanks to be prepared and furnished by the State Board of Elections for the purpose, these returns, in the case of officers other than the State Senate in districts composed of only one county, the House of Representatives and county offices, shall be made out for each county in duplicate, and one copy shall be forwarded to the State Board of Elections and one copy shall be filed with the clerk of the superior court of the county from which such returns are made; in the case of member of the State Senate in district composed of only one county, member of the House of Representatives and county officers, such returns shall be made out in duplicate, and one copy thereof filed with the clerk of the superior court and one copy retained by the county board of elections, which shall forthwith, as to such last mentioned offices, publish and declare the results. (1915, c. 101, s. 21½; 1917, c. 218; C. S., s. 6042.)

Sufficient Declaration of Results — Request for Second Primary.—When the provisions of this section have been complied with and the result posted at the courthouse door of the county, the result of the election is sufficiently declared, and the contestant receiving the next highest vote, less than a majority, must file his written request for a second primary within five days thereafter, in accordance with the proviso of § 163-140. Johnston v. Board, 172 N. C. 162, 90 S. E. 143 (1916).

Mandamus by Candidate. — Where the county board of elections has assumed to pass upon the qualifications of the electors voting in a primary for the selection of a party candidate for a county office, and in so doing has declared certain of the electors disqualified, and has accordingly changed its returns and declared the one appearing to have received a smaller vote, the choice of the party as a candidate, an action will lie by the one appearing to have received the larger vote, against the county board, to compel them, by mandamus, to tabulate the returns made by the registrars and judges of the precinct, and then to publish and declare the same as the result of the election. Rowland v. Board, 184 N. C. 78, 113 S. E. 629 (1922).

Authority of County Board of Elections.—Under our primary law the right of a proposed elector to vote for the party's choice of a county official, in this case a register of deeds, is expressly referred to the precinct registrar and judges of election, without power of review, or otherwise, in the county board of elections, the authority of the county board extending only to supervise or to review "errors in tabulating returns or filling out blanks." Rowland v. Board, 184 N. C. 78, 113 S. E. 629 (1922).

Power to Pass on Qualification of Voters.—The primary law to select a party candidate for a county office repeals all laws inconsistent with its provisions, and by incorporating therein certain provisions of the general election law, confers no authority on the county board of electors to pass upon the qualifications of the voters of a precinct, and thereby change the result of the election from that appearing upon the face of the returns it had officially tabulated. Rowland v. Board, 184 N. C. 78, 113 S. E. 629 (1922).

§ **163-138. State Board tabulates returns and declares nominees.**—The State Board of Elections shall compile and tabulate the returns for each candidate for each office for each political party voted for in the primary except in cases in which it is in this article provided that the result shall be declared by the several county boards of elections, and if a majority of the entire votes cast for all the candidates of any political party for a particular office shall be for one candidate, he shall be declared by the State Board of Elections the nominee of his political party for such office. (1915, c. 101, s. 22; 1917, c. 218; C. S., s. 6043.)

§ **163-139. Returns of election boards to be under oath.**—The chairman or secretary of each of the county boards of elections and the chairman or secretary of the State Board of Elections shall file with all returns and declarations of results of election required by law to be filed by such boards an affidavit that the same are true and correct according to the returns made to them; and a judge of election or registrar shall accompany the precinct returns as to results of primary elections with an affidavit that the same are true and correct, ac-

cording to the votes cast and correctly counted by them. (1915, c. 101, s. 23; 1917, c. 218; C. S., s. 6044.)

§ 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 receiving the second highest number of votes shall, within five days after the result of such primary election shall have been officially declared, and such aspirant has been notified by the appropriate board of elections, file in writing with the appropriate 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 such appropriate board.

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 positions 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. (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.)

Editor's Note. — The provisions contained in the last two paragraphs of this section were added by the 1927 amendment, except the last three sentences of the last paragraph which were added by the 1931 amendment.

Effect of Failure to Comply with Provisions within Required Time.—Applying the rule of construction that every part of a statute should be given effect when possible, it was held that § 24 of the State Primary Law, ch. 101, Laws of 1915, providing, among other things, that the successful candidate for certain offices, shall receive a majority of the votes cast, when construed in connection with the proviso of the same section, that the one receiving the next highest vote, under a majority, shall file a request, in writing, with the appropriate board of elections for a second primary, entitles the one receiving the highest number of votes to be the candidate of the party to the office, upon the failure of the one receiving the next highest vote to comply with the provision within the time stated, i. e., within five days after the result of the primary has been officially declared. Johnston v. Board, 172 N. C. 162, 90 S. E. 143 (1916).

Same—Mandamus.—Where a candidate for membership in the General Assembly who has received the next highest vote in a legalized primary, but less than a majority of the votes cast, has failed to comply with the proviso of this section, in giving the written notice to the board of elections for a second primary within the time prescribed, and after duly declaring the result of the election, the board then orders the second primary, the ministerial duty of recognizing the one receiving the highest vote as the candidate and putting his name on the ticket as such will be enforced by mandamus. Johnston v. Board, 172 N. C. 162, 90 S. E. 143 (1916).

The plaintiff in proceedings for mandamus to compel the county board of elections to declare him the successful candidate of his party in a primary election, or that he is entitled to a second primary to select between himself and another candidate for the same office, must show the denial of a present, clear legal right, by the failure of such board to have done so. Umstead v. Board, 192 N. C. 139, 134 S. E. 409 (1926).

In order for a candidate for the party nomination for the legislature to obtain a writ of mandamus against the county board of elections to compel the ordering of a second primary, he must show that his opponents receiving the larger number of votes have not received a majority of the votes cast for said nomination, and within five days after the result has been officially declared and he has been notified thereof, he must have filed with the county board of elections a written request that the second primary be called by it. Umstead v. Board, 192 N. C. 139, 134 S. E. 409 (1926).

§ 163-141. Attorney General to aid board by advice and as to forms.—In the preparation and distribution of ballots, poll books, forms of returns to be made by registrars and judges, and forms of the returns to be made by the county boards of elections to the State Board of Elections and to be made by the State Board of Elections, and all other forms, it shall be the duty of the State Board of Elections to call to its aid the Attorney General of the State of North Carolina, and it shall be the duty of the Attorney General to advise and aid in the preparation of all such ballots, books, and forms. (1915, c. 101, s. 25; 1917, c. 218; C. S., s. 6046.)

§ 163-142. Returns, canvasses, and other acts governed by general election law.—The returns to be made by the registrars and judges as to the results of primary elections, and the canvassing by the county boards of elections of such results and declarations of such results, and the reports to be made by the county boards of elections to the State Board of Elections and other acts and things to be done in ascertaining and declaring the results of primary elections, unless otherwise provided herein, shall be done within the time before or after the primary election, and, as near as may be, under the circumstances prescribed for like acts and things done with reference to a general election, unless such acts and things prescribed to be done within certain times under the general election law shall, with respect to primary elections, be changed by general rules promulgated by the State Board of Elections for what may seem to them a good cause. (1915, c. 101, s. 26; 1917, c. 218; C. S., s. 6047.)

§ 163-143. Election board may refer to ballot boxes to resolve doubts.—When, on account of errors in tabulating returns and filling out blanks, the result of an election in any one or more precincts cannot be accurately known, the county board of elections and the State Board of Elections shall be allowed

access to the ballot boxes in such precincts to make a recount and declare the results, which shall be done under such rules as the State Board of Elections shall establish to protect the integrity of the election and the rights of the voters. (1915, c. 101, s. 27; 1917, c. 218; C. S., s. 6048.)

Local Modification. — Brunswick: 1951, c. 462; Halifax: 1951, c. 462.

Applicable in Case of Error.—This section applies only "when, on account of errors in tabulating returns or filling out blanks," the result of the election cannot be accurately known, and confers no authority on the courts, to investigate and pass upon the methods or manner in which the primary may have been conducted. Brown v. Costen, 176 N. C. 63, 96 S. E. 659 (1918).

§ 163-144. Political party defined for primary elections.—A political party within the meaning of the primary law shall mean any political group of voters which, at the last preceding general election, polled at least ten per cent of the total vote cast therein for such offices as are described in § 163-1. (1915, c. 101, s. 31; 1917, c. 218; C. S., s. 6052; 1933, c. 165, s. 17; 1949, c. 671, s. 2.)

Cross Reference. — As to definition of political party under general election law, see § 163-1.

Editor's Note. — The 1949 amendment substituted "ten per cent" for "three per cent."

The primary laws have no application to new political parties created by petition under § 163-1. By express legislative declaration, such laws apply only to existing political parties "which, at the last preceding general election, polled at least three (now ten) per cent of the total vote cast therein for" Governor, or for presidential electors. The law permits a new political party created by statutory petition to select its candidates in its own way. States' Rights Democratic Party v. State Board of Elections, 229 N. C. 179, 49 S. E. (2d) 379 (1948).

§ 163-145. Filling vacancies among candidates.—In the event that any person nominated in any primary election as the candidate of a political party for a State office shall die, resign, or for any reason become ineligible or disqualified between the date of such primary election and ensuing general election, the vacancy caused thereby may be filled by the action of the State executive committee of such political party; in the event of such vacancy in the case of a district office, the same may be filled by the action of the executive committee for such district of such political party; and in the event of such vacancy in the case of a county office, or the House of Representatives or the State Senate in a district composed of only one county, the same may be filled by the action of the executive committee of the party affected thereby in the county wherein such vacancy occurs: Provided, that should a vacancy occur in any office after the primary has been held, a nomination shall be made in like manner as above provided, and the name of the person so nominated shall be placed on the official ballot: Provided further, that after the time for filing notice of candidacy has expired and the candidate who has been declared the nominee for any office shall die before the date of the primary, the vacancy thus created may be filled by nomination in like manner as above provided, and the name of the person so nominated shall be placed on the official ballot: Provided further, that if, after the time for filing notice of candidacy has expired, any person who has filed notice of his candidacy in accordance with law, die, and there be only one other person who has filed notice of his candidacy for such office, the board of elections shall reopen the time for filing notice of candidacy, and fix a date upon which the primary election for such office shall be held. (1915, c. 101, s. 33; 1917, c. 179, s. 3; 1917, c. 218; C. S., s. 6053; 1923, c. 111, s. 16.)

Editor's Note. — The second and third provisos of this section were added by the 1923 amendment.

§ 163-146. Contests over primary results.—All contests over the results of a primary election shall be determined according to the law applicable to similar contests over the results of a general election. (1933, c. 165, s. 19.)

§ 163-147. Notice of candidacy to indicate vacancy; votes only effective for vacancy indicated.—In any primary when there are two or more vacancies for Chief Justice and Associate Justices of the Supreme Court of North Carolina or two vacancies in the United States Senate from North Carolina to be filled by nominations all candidates shall file with the State Board of Elections at the time of filing notice of candidacy a notice designating to which of said vacancies the respective candidate is asking the nomination. All votes cast for any candidate shall be effective only for the vacancy for which he has given notice of candidacy, as provided herein. (1921, c. 217; C. S., s. 6055(a); 1949, c. 932.)

Editor's Note. — The 1949 amendment made this section applicable to two vacancies for United States Senator.

Section Is Constitutional. — This section does not contravene Art. IV, § 21, of the State Constitution requiring justices to be elected in the same manner as members of the General Assembly, since the method of selection of nominees does not reach into and control the general election. Ingle v. State Board of Elections, 226 N. C. 454, 38 S. E. (2d) 566 (1946).

Effect of Failure to Indicate Vacancy.— Where there are two vacancies for the office of Associate Justice of the Supreme Court to be filled at the general election, a notice of candidacy for the nomination of a party which does not specify to which of the vacancies the candidate is asking the nomination is fatally defective. Ingle v. State Board of Elections, 226 N. C. 454, 38 S. E. (2d) 566 (1946).

SUBCHAPTER III. GENERAL ELECTION LAWS.

ARTICLE 20.

Election Laws of 1929.

§ 163-148. Applicable to all subdivisions of State.—The provisions of this article shall be applicable to all counties, cities, towns, townships and school districts in the State of North Carolina, without regard to population or number of inhabitants thereof. (1929, c. 164, s. 2.)

Local Modification.—Ashe: 1933, c. 557; 1935, c. 259; 1937, c. 170.

This article is to be construed in pari materia with article 10 of this chapter. Phillips v. Slaughter, 209 N. C. 543, 183 S. E. 897 (1936); McLean v. Durham County Board, 222 N. C. 6, 21 S. E. (2d) 842 (1942).

Cited in Harris v. Miller, 208 N. C. 746, 182 S. E. 663 (1935); State v. Proctor, 221 N. C. 161, 19 S. E. (2d) 234 (1942).

§ 163-149. Preparation and distribution of ballots; definitions.—All ballots cast in general elections for national, State, county, municipal, and district officers in the towns, counties, districts, cities and other political divisions, and in primaries for the nomination of candidates for such offices, shall be printed and distributed at public expense. The printing and distribution of all ballots other than the county or local ballots hereinafter designated and the ballots for elections in cities and towns and the ballots for elections on bonds or other local measures, shall be arranged and handled by the State Board of Elections and shall be paid for by the State; and the printing and distribution of ballots in all county and local elections or primaries shall be arranged and handled by the county board of elections and shall be paid for by the respective counties; the printing and distribution of ballots in all municipal elections shall be arranged and handled by the municipal authorities conducting such election or primary and shall be paid for by such municipality. The term "State elections" as used in this article shall apply to any election held for the choice of presidential electors, United States Senators, State, county or district officer or officers. The term "national elections" shall apply to any member of Congress of the United States. The term "city election" shall apply to any municipal election so held in a city or town, and the term "city officers" shall apply to any

person to be chosen by the qualified voters at such an election. (1929, c. 164, s. 3.)

Applied in Phillips v. Slaughter, 209 N. C. 543, 183 S. E. 897 (1936).

§ 163-150. Applicable to all issues submitted to people; form of ballot.—This article shall apply to and control all elections for the issuance of bonds and to all other elections in which any question or issue is submitted to a vote of the people. And the form of ballot in such elections shall be a statement of the question, with provisions to be answered "Yes" or "No" or "For" or "Against" as the case may be. (1929, c. 164, s. 4.)

§ 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 or general election ballots, only the name of the candidate shall appear and no appendage such as doctor, reverend, judge, et cetera, may be used either before or following the name of any candidate. (1929, c. 164, s. 5; 1945, c. 972.)

Editor's Note. — The 1945 amendment added the proviso at the end of this section.

Ballots Assured in Every County.—The language of this section is sufficiently broad to assure official printed ballots in each and every county. McLean v. Durham County Board, 222 N. C. 6, 21 S. E. (2d) 842 (1942).

The right of a candidate to have his name printed on the official ballot under this section is dependent upon his becoming a nominee in the required manner. McLean v. Durham County Board, 222 N. C. 6, 21 S. E. (2d) 842 (1942).

Cited in States' Rights Democratic Party v. State Board of Elections, 229 N. C. 179, 49 S. E. (2d) 379 (1948).

§ 163-152. Independent candidates put upon ballot, upon petition.—The boards of election shall cause to be printed upon said ballots as an independent or non-partisan candidate, the name of any qualified voter who has been requested to be a candidate for office by written petition signed by at least twenty-five per cent of those entitled to vote for a candidate for such office according to the vote cast in the last gubernatorial election in the political division in which such candidate may be voted for, when such petition is accompanied by an affidavit from such proposed candidate that he seeks to become an independent or non-partisan candidate and does not affiliate with any political party: Provided, such petition is filed with said board of elections at or before the time prescribed by law for the nomination of candidates by the political parties within the particular political division. The written petition provided herein, in municipal elections shall be signed by at least twenty-five per cent of the votes cast for the candidate running, in the last municipal election, for the particular office. (1929, c. 164, s. 6; 1931, c. 223; 1935, c. 236.)

Editor's Note. — The 1931 amendment added the last sentence to this section. The amendment, badly worded, apparently means that in municipal elections, the number who must sign the petition must be equal to ten per cent (now twenty-five per cent) of the votes cast for the successful candidate for that office in the last municipal election. 9 N. C. Law Rev. 373.

The 1935 amendment substituted "twenty-five per cent" for "ten per cent" in the first and last sentences.

§ 163-153. Becoming candidate after the official ballots have been printed; provision as to the ballots.—If any candidate dies or resigns, or otherwise become disqualified after his name has been printed on an official election ballot, and if any person is nominated, as authorized by law, to fill such vacancy, then the name of the candidate so nominated to fill said vacancy shall not be printed upon said ballots, but the name of such candidate so nominated shall be certified by the party executive committee making the nomination to the chairman of the board of elections charged with the duty of printing such ballots, and a vote cast by a voter for the name of the candidate printed on the ballot who has either died or resigned, shall be counted as a vote for the candidate nominated to fill such vacancy and whose name is on file with said board of elections. After the official ballots have been printed by the proper election board the death or resignation of a candidate whose name is printed on the official ballot, shall not cause the said board of elections to reprint the official ballots: Provided, that the board of elections having jurisdiction over the printing and distribution of the ballots concerned may cause said ballots to be reprinted and be substituted in all respects for the first printed ballots if, in its judgment, such substitution is feasible and advisable. (1929, c. 164, s. 7; 1931, c. 254, s. 1; 1947, c. 505, s. 8.)

Editor's Note. — The 1947 amendment rewrote this section as changed by the 1931 amendment.

§ 163-154. Withdrawal of candidate.—After the proper officer has been notified of the nomination, as hereinbefore specified, of any candidate for any office, he shall not withdraw same unless upon the written request of the candidate so nominated, made at least thirty days before the day of the election. (1929, c. 164, s. 8.)

§ 163-155. Number of ballots; what ballots shall contain; arrangement.—There shall be seven kinds of ballots, called respectively: official ballot for presidential electors; official ballot for United States Senator; official ballot for members of Congress; official State ballot; official county ballot; official township ballot; and official ballot on constitutional amendments or other proposition submitted. In addition to these, there shall be a definite form of ballot for primary elections as hereinafter provided and a ballot for municipal elections as hereinafter provided: Provided, further, that the State Board of Elections, or the county board of elections may, in their discretion, combine any one or more of the ballots for either the primary or the general election. The ballots herein provided for shall be used for the purpose for which their names severally indicate, and not otherwise, that is to say:

(a) On the official presidential ballot, the names of candidates for electors of President and Vice-President of the United States of any political party or group of petitioners, who have qualified under the provisions of § 163-1 of the General Statutes of North Carolina as a political party, shall not be placed on the ballot, but shall after nomination be filed with the Secretary of State. In place of their names, there shall be printed first on the ballot the names of the candidates for President and Vice-President of the United States, respectively, of each such political party or group of petitioners, who have qualified under the provisions of § 163-1 of the General Statutes of North Carolina as a political party, and they shall be arranged under the title of the offices. The party columns shall be separated by black ink lines. At the head of each party column shall be printed the party name in large type and below this a circle one-half inch in diameter, below this the names of the candidates for President and Vice-President in the order prescribed. Each party circle shall be surrounded by the following instructions plainly printed: "For a straight ticket, mark within this circle."

If the State Board of Elections, in its discretion, should combine the presidential

ballot with some other kind of ballots, such as the State, senatorial, or congressional ballots, then in that event, there shall be printed at the left of the names of such candidates for President and Vice-President of each party or group, a single voting square large enough so that a voter, desiring to vote for candidates for other officers of another party, may vote for the candidates for President and Vice-President together in the one single square. When the presidential ballot is combined with another ballot, instruction number two on the State ballot shall be included with the instructions given herein for the presidential ballot.

On the face of the ballot, at the top, shall be printed in heavy black type the following instructions:

1. To vote a straight ticket, make a cross (X) mark in the circle of the party you desire to vote for.

2. A vote for the names of candidates for President and Vice-President is a vote for the electors of that party, the names of whom are on file with the Secretary of State.

3. If you tear or deface or wrongly mark this ballot, return it and get another.

On the bottom of the ballot shall be printed the following:

. . . . . .

Facsimile of signature of chairman of State Board of Elections.

(aa) On the official ballot for United States Senator the names of the nominees or candidates for United States Senator, of each party, and of each independent candidate, if any, shall be printed and so arranged in columns as to show above such names the party with which all such nominees or candidates are affiliated. At the head of each party column shall be printed the party name in large type, and below this a circle one-half inch in diameter, and below this the names of the respective nominees, or independent candidates, if any. At the left of each name shall be printed a voting square, and all voting squares shall be arranged in the same perpendicular line. Each party circle shall be surrounded by the following instructions plainly printed: "For a straight ticket mark within this circle." The column for any independent candidate or candidates shall be similar to the party columns, except that at the top of said column there shall be printed the words "independent candidates." The columns shall be arranged upon the ballots as directed by the State Board of Elections, as to all ballots herein required to be printed and distributed by such State Board of Elections, and by the county board of elections with respect to all ballots required to be printed and distributed by the county board of elections. On the face of the ballot, at the top, shall be printed in heavy type the following instructions:

1. To vote a straight ticket, make a cross (X) mark in the circle of the party you desire to vote for.

2. If you tear or deface or wrongly mark this ballot, return it and get another.

On the bottom of the ballot shall be printed the following:

. . . . . .

Facsimile of signature of chairman of State Board of Elections.

(aaa) On the official ballot for members of Congress, the names of the nominees or candidates for members of Congress, of each party, and of each independent candidate, if any, shall be printed and so arranged in columns as to show above such names the party with which all such nominees or candidates are affiliated. At the head of each party column shall be printed the party name in large type, and below this a circle one-half inch in diameter, and below this the names of the respective nominees, or independent candidates, if any. At the left of each name shall be printed a voting square, and all voting squares shall be arranged in the same perpendicular line. Each party circle shall be surrounded by the following instructions plainly printed: "For a straight ticket mark within this circle." The column for any independent candidate or candidates shall be similar to the party columns, except that at the top of said column there shall be printed the words "independent candidates." The columns shall be arranged upon the ballots as

directed by the State Board of Elections, as to all ballots herein required to be printed and distributed by such State Board of Elections, and by the county board of elections, with respect to all ballots required to be printed and distributed by the county board of elections. On the face of the ballot, at the top, shall be printed in heavy type the following instructions:

1. To vote a straight ticket, make a cross (X) mark in the circle of the party you desire to vote for.

2. If you tear or deface or wrongly mark this ballot, return it and get another.

On the bottom of the ballot shall be printed the following:

.....

Facsimile of signature of chairman of State Board of Elections.

(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 mixed ticket, or in other words for candidates of different parties, either omit making a cross (X) mark in the party circle at the top and mark in the voting squares opposite the name of each candidate on the ballot for whom you wish to vote; or, make a cross (X) mark in the party circle above the name of the party for some of whose candidates you wish to vote, and then mark in the voting squares opposite the names of any candidates of any other party for whom you wish to vote.

3. If you tear or deface or wrongly mark this ballot, return it and get another.

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.

(c) On the official county ballot shall be printed the names of all candidates for solicitor for the judicial district in which the county is situated; for member of the General Assembly, and all county offices. It shall conform as nearly as possible

to the rules prescribed for printing the State official ballot, but on the bottom thereof shall be printed the following:

.....

Facsimile of signature of chairman of county board of elections.

(d) The township ballot shall contain the names of the candidates for constable and justices of the peace, and the municipal ballot shall contain the names of all offices to be filled in the municipality at the election for which the ballot is to be used, and shall conform as near as may be to the provisions herein set out with respect to the county ballot.

(e) On the official ballot on constitutional amendments or other propositions submitted shall be printed each amendment or proposition submitted in the form laid down by the legislature, county commission, convention, or other body submitting such amendment or proposition. Each amendment or proposition shall be printed in a separate section and the section shall be numbered consecutively, if there be more than one. The form of the constitutional amendment or referendum ballot shall be prepared by the State Board of Elections and approved by the Attorney General of North Carolina.

(f) In primary elections there shall be no provision for designating the choice of a party ticket by one act or mark, but there shall be a separate ballot for each party and of different colors. The ballots containing the names of the respective candidates shall be so printed that the names of the opposing candidates for any office shall, as far as practicable, alternate in position upon the ballot, to the end that the name of each candidate shall occupy with reference to the name of every other candidate for the same office, first position, second position and every other position, if any, upon an equal number of ballots, and the said ballots shall be distributed impartially and without discrimination. A square shall be to the left of the name of each candidate in which the voter may make a cross (X) mark indicating his choice for each candidate. On the bottom of each ballot in such primary election printed by the State Board of Elections shall be printed the following:

.....

Facsimile of signature of chairman of State Board of Elections.

And on the bottom of each ballot printed by the county board of elections shall be printed the following:

.....

Facsimile of signature of chairman of county board of elections.

(g) In all city or municipal elections and primaries there shall be an official ballot on which shall be printed the names of all candidates for city or town offices. It shall conform as nearly as possible to the rules prescribed for the printing of the official general ballot, but on the bottom thereof shall be printed the following:

.....

Facsimile of signature of city clerk. (1929, c. 164, s. 9; 1931, c. 254, ss. 2-10; 1933, c. 165, ss. 20, 21; 1939, c. 116, s. 1; 1947, c. 505, s. 9; 1949, c. 672, s. 2.)

Editor's Note.—This section was changed in several particulars by the 1931 amendment. The provision as to combining ballots was inserted in the first paragraph, and changes were made as to the instructions, etc., to be printed on the ballots.

The 1939 amendment changed instruction 2 under subsection (b).

The 1947 amendment rewrote subsection (e), and the 1949 amendment inserted in the first paragraph of subsection (a) the clause as to having qualified as a political party under § 163-1.

§ 163-156. Ballots for each precinct wrapped separately.—All ballots for use in each precinct shall be wrapped in packages, each package to contain whatever number of ballots the chairman of the county board of elections may deem advisable for the respective precincts in his own county, but each package shall have written or stamped thereon the number of ballots contained therein

so the registrar will know how many ballots to account for in his precinct. (1929, c. 164, s. 10; 1933, c. 165, s. 22.)

§ **163-157. Number of ballots to be furnished polling places.** — There shall be provided for each voting place at which an election or primary is to be held such a number of ballots that there shall be at least one hundred and five ballots for every one hundred registered voters at each polling place, or an excess of ballots of five per cent over the registration at each precinct. (1929, c. 164, s. 11; 1933, c. 165, s. 22; 1951, c. 849, ss. 1, 2.)

Editor's Note. — The 1951 amendment changed this section so as to require five per cent instead of twenty-five per cent of excess ballots over the total registration.

§ **163-158. Ballot boxes.**—The county board of elections shall provide for each precinct ballot boxes for official ballots, as herein specified, which boxes shall respectively be plainly marked "Presidential Electors," "Ballot Box Members of Congress," "Ballot Box United States Senator," "Official State Ballot Box," "Official County Ballot Box," "Official Township Ballot Box," and "Official Propositions Ballot Box," and also one additional box for spoiled ballots, to be plainly marked "For Spoiled Ballots." Each box shall be supplied with a lock and key and with an opening in the top large enough to allow a single folded ballot to be easily passed through, but no larger. (1929, c. 164, s. 12; 1931, c. 254, s. 11.)

Editor's Note. — The 1931 amendment deleted a provision as to providing a box for ballot stubs.

§ **163-159. Sample ballots.**—The State Board of Elections shall prepare sample ballots of each kind of ballot printed by the State for the purpose of instructing voters in marking their ballots, which sample ballots shall be printed on colored paper and with the words "Sample Ballots" printed conspicuously thereon and shall distribute the same to the county boards of elections. The county boards of elections shall likewise print on colored paper and distribute county and township sample ballots for instructing said voters. (1929, c. 164, s 13; 1931, c. 254, s. 12.)

Editor's Note. — The 1931 amendment rewrote this section.

§ **163-160. Distribution of ballots and boxes.** — The county board of elections shall deliver to the registrar in each precinct the proper number of ballots and boxes, as required by the provisions of this article, three days before the day of election, and shall obtain from each registrar a receipt for same. (1929, c. 164, s. 14.)

§ **163-161. Destroyed or stolen ballots; how replaced; reports as to.** —In case the ballots furnished to any precinct in accordance with the provisions of this article shall be destroyed or stolen, it shall be the duty of the county board of elections to cause other ballots to be prepared in the form of the ballots so wanting. Within three days after the close of the polls on election days, the registrars having lost such ballots shall make a written report of the whole circumstances of the loss of the ballots, under oath, to the county board of elections. (1929, c. 164, s. 15.)

§ **163-162. Duties and compensation of registrars; bystander sworn in on failure of registrar or judge to serve.**—In addition to the compensation for performance of the duties required in the registration of voters, each registrar shall receive for his services on election day the sum of five dollars. If any registrar or judge of election fails or refuses to serve as herein provided, the officer holding the election shall swear in a bystander of the same political faith as the registrar not serving, and if none such be present then any other qualified

elector. The bystander sworn in to act as registrar or judge shall receive the same compensation as the registrar is entitled to. One of the judges appointed for such purpose by the precinct election officers shall have charge of the ballots and furnish them to the voters in manner hereinafter set forth. The registrar shall promptly, at the close of the registration period, certify to the county board of elections the number of voters registered in his precinct. (1929, c. 164, s. 16; 1939, c. 264.)

§ 163-163. Voting booths; arrangement and number of; provisions as to.—The county board of elections in each county whose duty it is to hold the election and appoint polling places therein, as herein provided for, shall cause the same to be suitably provided with a sufficient number of voting booths, equipped with the tables or shelves on which voters may conveniently mark their ballots. Each voting booth shall be at least three feet square and six feet high and shall contain three sides and have a door or curtain in front, which door or curtain shall extend within two feet of the floor; and each booth shall be so arranged that it shall be impossible for one voter in one voting booth to see another voter at another voting booth in the act of marking his ballot. The arrangement shall be such that the ballot boxes and voting booths shall be in plain view of the judges of election. The number of such voting booths shall be not less than one for each hundred voters qualified to vote at such polling places. Each voting booth shall be kept properly lighted and provided with proper supplies and conveniences for marking ballots. The county board of elections may provide buildings by lease or otherwise in which the elections are to be conducted, or they may cause a space not more than one hundred feet from the ballot box to be roped off, in which space no person shall be allowed to enter except through a way not exceeding three feet in width for the entrance and exit of voters. They may prescribe the manner in which the place for holding elections shall be prepared in every precinct so as to properly effectuate the purpose of this article. The county board of elections shall also be entitled to demand and use any school or other public building for the purpose of holding any election and require that such building be vacated for such purpose. (1929, c. 164, s. 17.)

§ 163-164. Regulations for opening polls; oath of judges and registrars.—The judges of election and registrars of each precinct shall meet at the polling places therein at least one-half hour before the time set for opening polls for each election referred to in this article, and shall proceed to arrange the space within the enclosures set apart for election, and to prepare the booths for the orderly and legal conduct of the election. They shall then and there have the official ballot boxes, herein referred to, together with the boxes for ballot stubs and the boxes for spoiled ballots as hereinbefore provided, the sealed packages of official ballots, the registration book, the polling book, and the required supplies.

They shall see that the voting booths are supplied with pencils, or pen and ink; unlock the official ballot boxes; see that the same are empty; allow the authorized watchers present and any other electors who may be present to examine said boxes, and shall lock the same again while empty. After such official ballot boxes are relocked they shall not be unlocked or opened until the closing of the polls, and except as authorized by law no ballot or other matter shall be placed in such boxes. Each judge of election and registrar shall before the opening of the polls take the following oath:

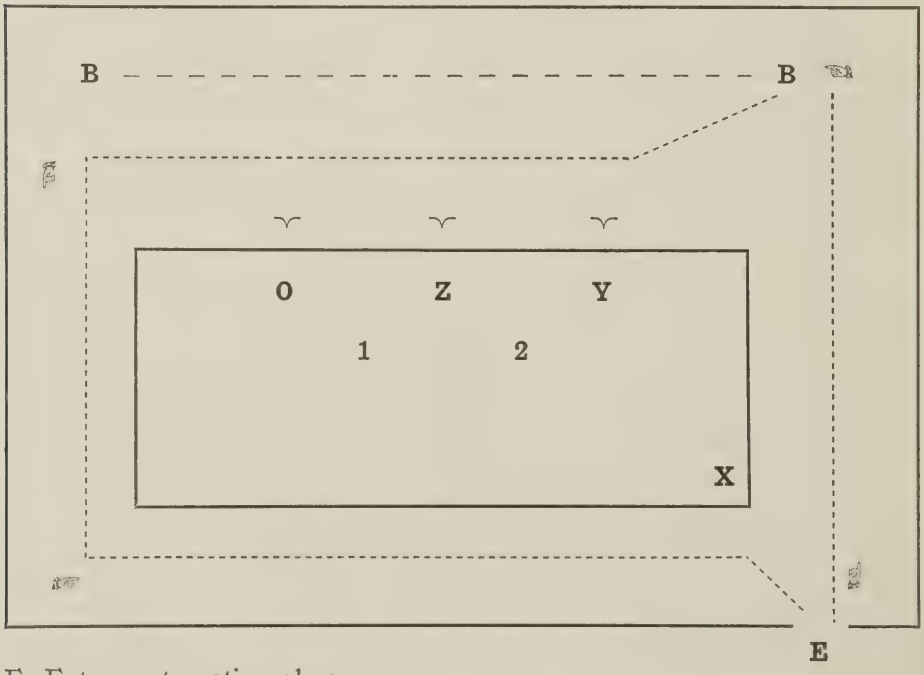
"I do solemnly swear that I will administer the duties of my office without fear or favor; that I will not in any manner request or seek to persuade or induce any voter to vote for or against any particular candidate or proposition, and that I will not keep or make any memorandum of anything occurring within the voting booths, except I be called upon to testify in a judicial proceeding for a violation of the election laws of this State: so help me God."

This oath shall be administered at the time hereinbefore prescribed by the

registrar to the two judges of election and by one of them to the registrar. The same oath shall be taken before the registrar or judge by every person rendering assistance. They shall then open the sealed package of ballots, and one of the judges shall make proclamation that the polls are open and of the time when they will be closed. From the time of opening of the polls until the announcement of the result of the canvass of the votes after the close of the polls and the signing of the official returns the official ballot boxes and the other boxes herein provided for and all the official ballots herein provided for shall be kept within the precinct election enclosures. (1929, c. 164, s. 18.)

§ 163-165. No loitering or electioneering allowed within 50 feet of polls; regulations for voting at polling places; banners or placards; guard-rail; diagram.—No person shall, while the polls are open at polling places, loiter about or do any electioneering within such polling place or within fifty feet thereof, and no political banner, poster, or placard shall be allowed in or upon such polling places during the day of the election. The election officials and ballot boxes shall at all times be in plain view of the qualified voters who are present, and a guard-rail shall be placed not nearer than ten feet nor further than twenty feet from the said election officials and ballot boxes.

The arrangement of the polling place shall be substantially according to the following diagram, and shall conform as nearly thereto as the building or other place in which said election is held will permit:



E. Entrance to voting place.
X. Judge with ballots and box for spoiled ballots.
B. Voting booths.
Y. Polls book.
Z. Ballot box.
O. Box for stubs.
1, 2. Other election officials.
- - - - - Direction of entry and exit of voter.

(1929, c. 164, s. 19.)

§ 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. (1929, c. 164, s. 20; 1931, c. 254, s. 13.)

Editor's Note. — The 1931 amendment deleted the former last two sentences of this section which read as follows: "Such judge shall then with pen and ink mark upon the top margin of the face thereof the number of the voter upon the polling list and the initials of such judge's name, and shall thereupon deliver the ballot or ballots to the voter. No person other than such designated judge shall deliver to any voter any ballot."

§ 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, and marking a cross (X) opposite thereto. 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.)

§ 163-168. Folding and depositing of ballots; signature of voter if challenged; delivery of poll books to chairman of county board of elections.—When the voter shall have prepared his ballot or ballots, he shall leave the voting booth with his ballot folded so as to conceal the face of the ballot, and keep it so folded, shall proceed at once to the judge of election designated to receive ballots and shall offer them to such judge who shall then deposit the ballots 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 official ballot folded shall be unfolded outside of the voting booth until it is 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 leave 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.)

Editor's Note. — The 1931 amendment rewrote this section.

§ **163-169. Manner and time of voting.** — On receiving his ballot the voter shall forthwith, and without leaving the enclosed space, retire alone, unless he be one that is entitled to assistance as hereinafter provided, to one of the voting booths, and without undue delay unfold and mark his ballots. No voter shall be allowed to occupy a booth already occupied by another, or to occupy a booth more than five minutes in case all the booths are in use and voters are waiting. It shall be unlawful purposely to deface or tear an official ballot in any manner, or to erase any name or mark written thereon by a voter. If a voter wrongly mark or deface or tear a ballot he may obtain others successively one at a time, but not more than three of any one kind, upon returning to the judge each ballot so spoiled. (1929, c. 164, s. 23.)

§ **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. 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.)

Local Modification. — Cumberland: 1937, c. 426.

§ **163-171. Ballots not taken from polls; other ballots for spoiled ballots; delivery to county board of elections.**—No person shall take or remove any ballots from the polling place before the close of the polls. If any voter spoils a ballot, he may successively obtain others, one at a time, not exceeding three in all, upon returning each spoiled one to the registrar, and the registrar shall deposit said spoiled ballot in the box kept for the purpose by him. Within three days after each election or primary the registrar of each precinct shall deliver to the county board of elections in an envelope to be furnished by the county board of elections for such purpose the spoiled ballots so deposited at such precinct, and shall at the same time in another envelope furnished for such purpose, deliver to the said county board of elections the unused ballots from said precinct. The county board of elections shall thereupon make a check to ascertain whether the total of such spoiled ballots and such unused ballots when added to the number of ballots cast at such precinct shall equal the total number of ballots furnished to the registrar of such precinct prior to such election or primary. (1929, c. 164, s. 25.)

§ **163-172. Assistance to voters in elections.**—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. 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 assisting shall vacate the booth and withdraw from the voting arena. This section is not applicable to primary elections. (1929, c. 164, s. 26; 1933, c. 165, s. 24; 1939, c. 352, s. 1.)

Local Modification. — Brunswick: 1933, c. 164; 1935, c. 221; Cherokee: 1935, c. 461; 1937, c. 391; Cumberland: 1937, c. 426; Sampson: 1941, c. 166.

Editor's Note. — The 1939 amendment repealed this and § 163-173 insofar as said sections apply to primaries and in lieu thereof enacted § 163-174.

§ 163-173. Aid to persons suffering from physical disability or illiteracy.—Any person who, on account of physical disability, is obviously unable to enter the booth without assistance, or who on account of such disability, or because of illiteracy, or for any other good reason, shall request assistance from the registrar or judges of election, may, upon such declaration and upon his own request, have assistance from any one of the markers or assistants provided for in § 163-172. The voter may indicate which of the markers he desires to assist him; whereupon the registrar shall direct that the marker or assistant so indicated by the voter accompany said voter into the booth and give him such aid as may be requested in the preparation of his ballot, whereupon said marker or assistant shall withdraw from said booth and to his place within the rail, and shall not accompany the voter to the ballot box unless assistance be required on account of physical infirmity and such assistance is requested by the voter, or have any further conversation with said voter prior to the time that he deposits his ballot. In the event the voter does not request the assistance of any particular marker or assistant, then the registrar shall appoint from among the official markers or assistants some person to aid the voter in preparing his ballot. This section is not applicable to primary elections. (1929, c. 164, s. 27; 1939, c. 352, s. 1.)

Local Modification.—Brunswick: 1933, c. 164; 1935, c. 221; Cherokee: 1935, c. 461; 1937, c. 391; Cumberland: 1937, c. 426; Sampson: 1941, c. 166.

Editor's Note. — See note to § 163-172.

§ 163-174. Assistance to illiterate or disabled voter in primary.—Any qualified voter entitled to vote in any primary, but who by reason of any physical disability or illiteracy is unable to mark his ballot may upon statement

to the registrar of his incapacity and upon his request be aided by a near relative (husband or wife, brother or sister, parent or child, grandparent or grandchild), who shall be admitted to the booth with such voter, or if no near relative is present such voter may call to his assistance any other voter of his precinct who has not given aid to another voter, and who shall likewise be admitted to the booth with such voter: Provided, that if the voter needs and is entitled to the assistance as herein provided for, and there is no near relative present, or anyone else authorized hereunder to give assistance, the voter may call to his assistance the registrar or one of the judges of the election: Provided, further, that any voter may upon his request be accompanied into the voting booth by a near relative (as above defined), and obtain such assistance from said member of the family as he may desire whether disabled or not. It shall be unlawful for any person to give, receive, or permit assistance in the voting booth during any primary to any voter otherwise than as is herein provided for. (1939, c. 352, s. 2.)

Local Modification. — Cumberland, Wilson: 1939, c. 402.

§ 163-175. Method of marking ballots; improperly marked ballots; when not counted.—The voter shall observe the following rules in marking his ballot:

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.

2. If the elector desires to vote a mixed ticket, or in other words for candidates of different parties, he shall, either:

(a) Omit making a cross mark in the party circle above the name of any party and make a cross mark in the voting square opposite the name of each candidate for whom he desires to vote on whatever ticket he may be; or

(b) Make a cross mark in the party circle above the name of the party for some of whose candidates he desires to vote, and then make a cross mark in the voting square opposite the name of any candidates of any other party for whom he may desire to vote, in which case, the cross mark in the party circle above the name of a party will cast the elector's vote for every candidate on the ticket of such party, except for those candidates whose names are opposite the specially marked opposing candidates and the cross mark before the names of such opposing candidates will cast the elector's vote for them: 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.

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, and making a cross (X) mark in the blank space at the left of the name so written in. 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.

4. If the elector marks more names than there are persons to be elected to an office, or, if for any reason, it is impossible to determine the voter's choice for an office to be filled, his ballot shall not be counted for such office but shall be returned as a blank vote for such office.

5. If a voter shall do any act extrinsic to the ballot itself, such as enclosing any paper or other article in the folded ballot, such ballot shall be void.

6. No ballot shall be rejected for any technical error which does not make it impossible to determine the voter's choice.

7. Every elector who does not vote a ballot delivered by the election officer shall, before leaving the polling place, return such ballot to such officer.

8. A cross (X) mark shall consist of any straight line crossing any other straight line at an angle within a voting circle or square. A voter may designate his choice of candidate by the cross (X) mark or by a check mark, or any other clear indicative mark. Any ballot which is defaced or torn by the voter shall be void. (1929, c. 164, s. 28; 1931, c. 254, s. 15; 1933, c. 165, s. 23; 1939, c. 116, s. 2; 1947, c. 505, s. 10.)

Editor's Note. — The 1939 amendment added paragraph (b) of subsection 2, and made slight changes in the wording of paragraph (a).

The 1947 amendment rewrote the latter part of paragraph (b) of subsection 2, and added the last sentence of subsection 3.

§ 163-176. Offenses of voters; interference with voters; penalty. —A voter who shall, except as herein otherwise provided, allow his ballot to be seen by any person, or who shall take or remove, or attempt to take or remove, any ballot from the polling place or any person who shall interfere with, or attempt to interfere with any voter when inside said enclosed space, or when marking his ballot, or who shall remain longer than the specified time allowed by this article in the booth, after being notified that his time has expired, or who shall endeavor to induce any voter, while within the enclosure, before voting, to show how he marks or has marked his ballot, or aid, or attempt to aid, any voter by means of any mechanical device, or any other means whatever, while within the enclosure, in marking his ballot, shall be guilty of a misdemeanor and upon conviction shall be fined or imprisoned, or both, in the discretion of the court; and election officers shall cause any person committing any of the offenses herein set forth to be arrested and shall cause charges to be preferred against the person so offending, in a court of competent jurisdiction. (1929, c. 164, s. 29.)

§ 163-177. Offenses of election officers.—Any judge of election or registrar, or other election officer, after having qualified, who willfully and knowingly refuses or fails to perform the duties herein prescribed, or who willfully and knowingly violates the provisions of this article, shall be guilty of a misdemeanor and subject to a fine, or to imprisonment in the county jail not less than ten nor more than ninety days, at the discretion of the court. (1929, c. 164, s. 30.)

§ 163-178. Reading and numbering the ballots; certificate of result; delivery of boxes to board of elections.—When the polls are closed the registrar and judge shall, in the presence of the watchers appointed by the respective executive committees of the several political parties and any other electors of the precinct who choose to be present open the box and count and record the number of the votes received by each candidate and on each question or measure. The said judge of election and registrar shall not adjourn or postpone the canvass of the vote in such precinct until it shall be fully completed. The judges of election may, at their discretion, open the ballots of absent electors immediately after the close of the polls, subject to the rights of challenge now allowed by law. A certificate setting forth the results of such election shall be signed by the registrar and judges of election. Upon the close of the counting of the ballots, as herein provided, the said election official shall replace said ballots in the official ballot box and lock the same. The ballot box shall then be delivered to such place as may be designated by the county board of elections. (1929, c. 164, s. 32.)

§ 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 o'clock A. M. and shall close at the hour of six-thirty

o'clock P. M. Eastern Standard Time. (1929, c. 164, s. 33; 1937, cc. 258, 457; 1941, c. 222.)

Editor's Note.—Prior to the 1937 amendment this section provided that in all elections the polls should be open from sunrise until sunset. The 1941 amendment changed the hours of opening and closing from 7 A. M. and 7 P. M., as provided by the 1937 amendment, to 6:30 A. M. and 6:30 P. M., respectively.

§ 163-180. Application to all primary elections; repeal of conflicting law; one-party primary officials selected from party.—The provisions of this article shall apply to any and all primary elections held in this State, or in any county thereof, as fully as it applies to general elections, as herein provided, and § 163-126 is hereby repealed, in so far as it conflicts with this article, the intent being to provide the same laws for the conduct of primaries as for general elections: Provided, further, that in any primary election held under the provisions of this article, when only one political party participates in such primary, then, all of the election officials selected for holding such primary shall be chosen only from the political party so participating. (1929, c. 164, s. 34.)

§ 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. 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.)

§ 163-182. Watchers; challengers.—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 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 watchers shall in no case enter the guard-rail, but may be present at the opening of the boxes and the canvass of the ballots at the close of the election: 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. (1929, c. 164, s. 36.)

§ 163-183. Supervision over primaries and elections; regulations.—The State Board of Elections shall have general supervision over the primaries and elections provided for herein, and may delegate its authority to county boards appointed by it, and in case where sufficient provision may not appear to have been made herein may make such regulations and provisions as it may deem necessary: Provided, none of the same shall be in conflict with any of the provisions of this article. (1929, c. 164, s. 37.)

State Board of Elections May Make Regulations Not in Conflict with Law. — The General Assembly has conferred upon the State Board of Elections power to make reasonable rules and regulations for carrying into effect the law it was created to administer, but has annexed to the grant of this power the express limitation that such rules and regulations must not conflict with any provisions of such law. It seems clear that this specific restriction would have been inseparably wedded to the authority granted even if the statutes had been silent with respect to it. This is true because the

Constitution forbids the legislature to delegate the power to make law to any other body. States' Rights Democratic Party v. State Board of Elections, 229 N. C. 179, 49 S. E. (2d) 379 (1948).

§ 163-184. Ballots furnished absentee electors; when deemed voted before sunset; deposit in boxes.—The ballots to be furnished absentee electors under the provisions of article 10 shall be the same as the official ballots hereinbefore designated. No vote of an absent elector shall be counted unless upon the official ballot printed as prescribed in this article.

Any absentee ballots received by the registrar during the hours now fixed by law for the receipt thereof shall be deemed to be voted before sunset, and, if the convenience of the voters or officers holding the election will be promoted thereby, may in their discretion be opened and deposited in the box immediately after the closing of the polls. (1929, c. 164, s. 39.)

Applied in Phillips v. Slaughter, 209 N. C. 543, 183 S. E. 897 (1936).

§ 163-185. Fraud in connection with absentee vote; forgery.—Any person attempting to aid and abet fraud in connection with any absentee vote cast, or to be cast, under the provisions of this article, shall be guilty of a misdemeanor, and, upon conviction, be fined or imprisoned, in the discretion of the court. Any person attempting to vote by fraudulently signing the name of a regularly qualified voter shall be guilty of forgery, and be punished accordingly. (1929, c. 164, s. 40.)

§ 163-186. Public officials violating subchapter disqualified from holding office and voting.—Any public official who knowingly and willfully violates any of the provisions of this article, and thereby aids in any way the illegal casting or attempting to cast a vote, or who shall connive to nullify any provision of this article in order that fraud may be perpetrated, shall upon conviction therefor be disqualified from holding office in the State of North Carolina, and shall be disqualified from exercising the right of franchise, as now provided in case of conviction for felony. (1929, c. 164, s. 41.)

§ 163-187. Definitions as applied to municipal primaries and elections.—With respect to all municipal primaries and elections, wherever in this article appear the words "county board of elections" shall be deemed to be written the words "city or town governing body;" and wherever appear the words "chairman of board of elections" shall be deemed to be written the words "mayor of town or city." (1929, c. 164, s. 42.)

Applied in Phillips v. Slaughter, 209 N. C. 543, 183 S. E. 897 (1936).

Cited in State v. Proctor, 221 N. C. 161, 19 S. E. (2d) 234 (1942).

§ 163-187.1. Automatic voting machines.—Any county or city of the State may, at the expense of such county or city, adopt and purchase, upon an installment basis or otherwise, or lease, with or without option to purchase, voting machines for use at all primaries and elections held within such county or city, or within any one or more precincts thereof, in such manner and upon such terms as are deemed to be in the best interest of such county or city. The use of any voting machines approved by the State Board of Elections in any primary or election held in any county or city shall be as valid as the use of paper ballots by the voters. (1949, c. 301.)

Article 21.

Corrupt Practices Act of 1931.

§ 163-188. Title of article.—This article may be cited as the Corrupt Practices Act of one thousand nine hundred thirty-one. (1931, c. 348, s. 1.)

Editor's Note.—This article makes more effective the control of the State over corrupt practices in primaries and elections. 9 N. C. Law Rev. 371.

§ 163-189. Definitions.—When used in this article:

(a) The term "candidate" means an individual whose name is presented for any office to be voted upon on any ballot at any primary, general or special election;

(b) The term "campaign committee" includes any committee, association or organization which accepts contributions or makes expenditures for the purpose of influencing or attempting to influence the nomination or election of any candidate at any primary, general or special election;

(c) The term "contribution" means any gift, payment, subscription, loan, advance, deposit of money, or anything of value, and includes any contract, promise or agreement to give, subscribe for, pay, loan, advance or deposit any money or other thing of value to or for the benefit of any candidate at any primary, general or special election, and whether or not said contract, promise or agreement is legally enforceable;

(d) The term "expenditure" means a payment, distribution, loan, advance, deposit or gift of money or anything else of value whatsoever, and includes a contract, promise or agreement to pay, distribute, give, loan, advance, or deposit any money or anything of value whatsoever, and whether or not such contract, promise or agreement is legally enforceable;

(e) The term "person" includes an individual, partnership, committee, association, corporation or any other organization or group of persons. (1931, c. 348, s. 2.)

§ 163-190. Detailed accounts to be kept by candidates and others.—It shall be the duty of every candidate and the chairman and treasurer of any and every campaign committee to keep a detailed and exact account of:

(1) All contributions made to or for such candidate or committee;

(2) The name and address of every person making any such contribution, and the date thereof;

(3) All expenditures made by or on behalf of such candidate or committee;

(4) The name and address of every person to whom any such expenditure is made, and the date thereof. (1931, c. 348, s. 3.)

§ 163-191. Detailed accounting to candidates of persons receiving contributions.—Every person who receives a contribution for a candidate or for a campaign committee in any primary, general or special election shall render such candidate or campaign committee, within five days after receipt of such contribution, a detailed account thereof, including the name and address of the person making such contribution. (1931, c. 348, s. 4.)

§ 163-192. Detailed accounting of persons making expenditures.—Every person who makes any expenditure in behalf of any candidate or campaign committee in any primary, general or special election shall render to such candidate or campaign committee, within five days after making such expenditure, a detailed account thereof, including the name and address of the person to whom such expenditure was made. (1931, c. 348, s. 5.)

§ 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 con-

tributions 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. (1931, c. 348, s. 6.)

§ 163-194. Contents of such statements.—The statement of contributions and expenditures as required by the preceding section shall be itemized as follows:

(1) The name and address of each person who has made a contribution to or for such candidate or to or for his campaign committee within the calendar year, together with the amount and date of such contribution;

(2) The total sum of all contributions made to or for such candidate or to or for his campaign committee during the calendar year;

(3) The name and address of each person to whom, during the calendar year, an expenditure has been made by or in behalf of such candidate or by or in behalf of his campaign committee, and the amount, date, and purpose of such expenditure;

(4) The name and address of each person by whom an expenditure has been made during the calendar year in behalf of such candidate or his campaign committee and reported to such candidate or campaign committee, and the amount, date, and purpose of such expenditure;

(5) The total sum of all expenditures made during the calendar year in behalf of such candidate or his campaign committee by any person and reported to such candidate or his campaign committee, and the amount, date, and purpose of such expenditure;

(6) The total sum of all expenditures made by such candidate or his campaign committee, or any person in his behalf during the calendar year. (1931, c. 348, s. 7.)

§ 163-195. Statements required of campaign committees covering more than one county; verification of statements required.—A like statement as that required in the preceding section shall be filed by any and all campaign committees as hereinbefore defined with the Secretary of State not more than fifteen days nor less than ten days before any primary, general or special election, and not more than twenty days after any such primary, general or special election, if said campaign committee is making expenditures in more than one county; and if such campaign committee is making expenditures in only one county, a like or similar report so itemized shall be made within the same periods to the clerk of the superior court of such county.

All of the statements or reports of contributions or expenditures as in this article required of any candidate or campaign committee must be verified by the oath or affirmation of the person filing such statement or report, taken before any officer authorized to administer oaths. (1931, c. 348, s. 8.)

§ 163-196. Certain acts declared misdemeanors.—Any person who shall, in connection with any primary or election in this State, do any of the acts and things declared in this section to be unlawful, shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned, or both, in the discretion of the court. It shall be unlawful:

(1) For any person to fail, as an officer or as a judge or registrar of a primary or election, or as a member of any board of elections to prepare the books, tickets and return blanks which it is his duty under the law to prepare, or to distribute the same as required by law, or to perform any other duty imposed upon him within the time and in the manner required by law;

(2) For any person to continue or attempt to act as a judge or registrar of a primary or election, or as a member of any board of elections, after having been legally removed from such position and after having been given notice of such removal;

(3) For any person to break up or by force or violence to stay or interfere with the holding of any primary or election, to interfere with the possession of any ballot box, election book, ticket or return sheet by those entitled to possession of the same under the law, or to interfere in any manner with the performance of any duty imposed by law upon any election officer or member of any board of elections;

(4) For any person to be guilty of any boisterous conduct so as to disturb any member of any election or any registrar or judge of elections in the performance of his duties as imposed by law;

(5) For any person to bet or wager any money or other thing of value on any election;

(6) For any person, directly or indirectly, to discharge or threaten to discharge from employment, or otherwise intimidate or oppress any legally qualified voter on account of any vote such voter may cast or consider or intend to cast, or not to cast, or which he may have failed to cast;

(7) For any person to make any contribution or expenditure to aid, or in behalf of any candidate or campaign committee, in any primary, general or special election, unless the same be reported immediately to such candidate or campaign committee, to the end that it may be included by him or it in the reports required of him by law;

(8) For any candidate or any chairman or treasurer of a campaign committee to fail to make under oath the report or reports required of him or it by §§ 163-193 to 163-195, or for any campaign committee to fail to furnish to a candidate a duplicate copy of the report to be made by it or its chairman or treasurer.

It shall be the duty of the Secretary of State, after the time has expired for the filing of said statement of campaign contributions and expenditures with the Secretary of State by candidates in a primary election, as is provided in § 163-193, to immediately thereafter report to the Attorney General of North Carolina the names and addresses of all candidates for federal, State, or district offices who have failed to file such statement in compliance with the provisions of §§ 163-193 and 163-194. Upon the receipt of said report from the Secretary of State, it shall be the duty of the Attorney General of North Carolina to notify the proper prosecuting officer who shall prosecute any person violating the provisions of this article;

(9) For any person to publish in a newspaper or pamphlet or otherwise, any charge derogatory to any candidate or calculated to affect the candidate's chances of nomination or election, unless such publication be signed by the party giving publicity to and being responsible for such charge;

(10) For any person to publish or cause to be circulated derogatory reports with reference to any candidate in any primary or election, knowing such report to be false or in reckless disregard of its truth or falsity, when such report is calculated or intended to affect the chances of such candidate for nomination or election;

(11) For any person to give or promise, in return for political support or influence, any political appointment or support for political office;

(12) For any chairman of a county board of elections or other returning officer to fail or neglect, willfully or of malice, to perform any duty, act, matter or thing required or directed in the time, manner and form in which said duty, matter or thing is required to be performed in relation to any primary, general or special election and the returns thereof;

(13) For any register of deeds or clerk of the superior court to refuse to make and give to any person applying in writing for the same a duly certified copy of the returns of any primary or election or of a tabulated statement in a primary

or election, the returns of which are by law deposited in his office, upon the tender of the fees therefor;

(14) For any corporation doing business in this State, either under domestic or foreign charter, directly or indirectly, to make any contribution or expenditure in aid or in behalf of any candidate or campaign committee in any primary or election held in this State, or for any political purpose whatsoever, or for the reimbursement or indemnification of any person for money or property so used, or for any contribution or expenditure so made; or for any officer, director, stockholder, attorney or agent of any corporation to aid, abet, advise or consent to any such contribution or expenditure, or for any person to solicit or knowingly receive any such contribution or expenditure.

Any officer, director, stockholder, attorney or agent of any corporation aiding or abetting in any contribution or expenditure made in violation of this subsection shall, in addition to being guilty of a misdemeanor as hereinbefore set out, be liable to such corporation for the amount of such contribution or expenditure, and the same may be recovered of him upon suit by any stockholder thereof;

(15) For any person willfully and knowingly to impose upon any blind or illiterate voter a ballot in any primary or election contrary to the wish or desire of such voter, by falsely representing to such voter that the ballot proposed to him is such as he desires. (1931, c. 348, s. 9; 1951, c. 983, s. 1.)

Editor's Note. — The 1951 amendment added the second paragraph to subsection (8), deleted former subsection (9) and renumbered the following subsections accordingly.

Applied, as to paragraph (11), in State v. Pritchard, 227 N. C. 168, 41 S. E. (2d) 287 (1947).

§ 163-197. Certain acts declared felonies.—Any person who shall, in connection with any primary, general or special election held in this State, do any of the acts or things declared in this section to be unlawful, shall be guilty of a felony and upon conviction shall be imprisoned in the State's prison not less than four months or fined not less than one thousand dollars, or both, in the discretion of the court. It shall be unlawful:

(1) For any person fraudulently to cause his name to be placed upon the registration books of more than one election precinct or fraudulently to cause or procure his name or that of any other person to be placed upon the registration books in any precinct when such registration in that precinct does not qualify such person to vote legally therein, or to impersonate falsely another registered voter for the purpose of voting in the stead of such other voter;

(2) For any person to give or promise or request or accept at any time, before or after any such primary or election, any money, property or other thing of value whatsoever in return for the vote of any elector;

(3) For any person who is an election officer, a member of the election board or other officer charged with any duty with respect to any primary or election, knowingly to make any false or fraudulent entry on any election book or any false or fraudulent returns, or knowingly to make or cause to be made any false statement on any ticket, or to do any fraudulent act, or knowingly and fraudulently omit to do any act to make any report legally required of such person;

(4) For any person knowingly to swear falsely with respect to any matter pertaining to any primary or election;

(5) For any person, convicted of a crime which excludes him from the right of suffrage, to vote at any primary or election without having been restored to the right of citizenship in due course and by the method provided by law;

(6) For any person to take corruptly the oath prescribed for voters, and the person so offending shall be guilty of perjury;

(7) For any person with intent to commit a fraud to register or vote at more than one box or more than one time, or to induce another to do so, in the same primary or election, or to vote illegally at any primary or election;

(8) For any registrar or any clerk or copyist to make any entry or copy with intent to commit a fraud;

(9) For any election official or other officer or person to make, certify, deliver or transmit any false returns of any primary or election, or to make any erasure or alteration in any registration or poll books with intent to commit a fraud;

(10) For any person to assault any registrar, judge of election or other election officer while in the discharge of his duty in the registration of voters or in conducting any primary or election;

(11) For any person, by threats, menaces or in any other manner, to intimidate or attempt to intimidate any registrar, judge of election or other election officer in the discharge of the duties in the registration of voters or in conducting any primary or election;

(12) For any registrar, poll holder, member of a board of elections, assistant, marker, or other election official, directly or indirectly, to seek, receive or accept money or the promise of money, the promise of office, or other reward or compensation from a candidate in any primary or election or from any source other than such compensation as may be provided by law for his services;

(13) For any person falsely to make or present any certificate or other paper to qualify any person fraudulently as an elector, or to attempt thereby to secure to any person the privilege of voting. (1901, c. 89, s. 13; Rev., s. 3401; 1913, c. 164, s. 2; C. S., s. 4186; 1931, c. 348, s. 10; 1943, c. 543.)

Editor's Note. — The 1943 amendment inserted the words "or person" in subsection (9).

§ 163-198. Compelling self-incriminating testimony; person so testifying excused from prosecution.—No person shall be excused from attending or testifying or producing any books, papers or other documents before any court or magistrate upon any investigation, proceeding or trial for the violation of any of the provisions of the two preceding sections, upon the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate or degrade him, but such person may be subpoenaed and required to testify by and for the State relative to any offense arising under the provisions of the said two preceding sections; but such person shall not be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may so testify or produce evidence, documentary or otherwise, and no testimony so given or produced shall be used against him upon any criminal investigation or proceeding, but such person so compelled to testify with respect to any acts of his own shall be immune from prosecution on account thereof, and shall be pardoned for any violation of law about which such person shall be so required to testify. (1931, c. 348, s. 11.)

Editor's Note. — For a general discussion of the limits to self incrimination, see 15 N. C. Law Rev. 229.

§ 163-199. Duty of Attorney General and solicitors to investigate violations of article.—It shall be the duty of the Attorney General, the solicitors of the several judicial districts, and all prosecuting attorneys of courts inferior to the superior court, to make diligent inquiry and investigation with respect to any violations of this article, and said officers are authorized and empowered to subpoena and compel the attendance of any person or persons before them for the purpose of making such inquiry and investigation. (1931, c. 348, s. 12.)

§ 163-200. Duty of Secretary of State and superior court clerks to call for required statements and report violations.—It shall be the duty of the Secretary of State and the several clerks of the superior court to call upon the candidates and chairmen and treasurers of campaign committees for the reports required to be made to them by §§ 163-193 to 163-195. If any candidate or chairman or treasurer of a campaign committee shall fail or neglect to make to the Secretary of State the reports required by said sections, then the Secretary of State shall bring such failure to the attention of the Attorney General, whose duty

it shall then be to initiate a prosecution against such candidate or chairman or treasurer of such campaign committee for such violation of this article. If the Attorney General shall be a candidate in any such primary or election, such duty as herein required to be performed by him with respect to any contest in which he participates shall be performed by the solicitor of the judicial district of which Wake County is a part. If a candidate or the chairman or treasurer of a campaign committee fails to make the report to the clerk of the superior court as required by said sections, then said clerk of the superior court shall bring such failure to the attention of the solicitor of the district in which such county is a part, and said solicitor shall institute a prosecution for violation of this article. (1931, c. 348, s. 13.)

Article 22.

Other Offenses against the Elective Franchise.

§ 163-201. Intimidation of voters by officers made misdemeanor.— It shall be unlawful for any person holding any office, position, or employment in the State government, or under and with any department, institution, bureau, board, commission, or other State agency, or under and with any county, city, town, district, or other political subdivision, directly or indirectly, to discharge, threaten to discharge, or cause to be discharged, or otherwise intimidate or oppress any other person in such employment on account of any vote such voter or any member of his family may cast, or consider or intend to cast, or not to cast, or which he may have failed to cast, or to seek or undertake to control any vote which any subordinate of such person may cast, or consider or intend to cast, or not to cast, by threat, intimidation, or declaration that the position, salary, or any part of the salary of such subordinate depends in any manner whatsoever, directly or indirectly, upon the way in which such subordinate or any member of his family casts, or considers or intends to cast, or not to cast his vote, at any primary or election. Any person violating this section shall be guilty of a misdemeanor and punished by fine and/or imprisonment, in the discretion of the court. (1933, c. 165, s. 25.)

§ 163-202. Disposing of liquor at or near polling places. — If any person shall give away or shall sell any intoxicating liquor, except for medical purposes and upon the prescription of a practicing physician, at any place within five miles of the polling place, at any time within twelve hours next preceding or succeeding any public election, whether general, local or municipal, or during the holding thereof, he shall be guilty of a misdemeanor, and shall be fined not less than one hundred nor more than one thousand dollars. (1901, c. 89, s. 76; 1901, c. 531; Rev., s. 3389; C. S., s. 4188.)

Editor's Note.—In State v. Edwards, 134 N. C. 636, 46 S. E. 766 (1904), the court discusses the former provisions regulating this subject. Public Laws 1901, ch. 89, § 76, omitted the words "or sell" from the section and hence it was decided that it was no offense for a person who has a license, to sell liquors on an election day, although they could not be given away. This case was decided in 1904 and by Public Laws 1905, ch. 531, the words "or shall sell" were again inserted in the section.

Form of Indictment.—An indictment for selling or giving away spirituous liquors during a public election should set forth the name of the person to whom the liquor was sold or given; also the indictment should negative the selling upon "the prescription of a practicing physician and for medical purposes," which is allowed by the statute. State v. Stamey, 71 N. C. 202 (1874).

§ 163-203. False oath of voter in registering. — If any person shall knowingly register under the permanent registration law who is not qualified within the meaning of that law and article six, section four, of the Constitution, or if any person shall knowingly take any false oath in registering under the same, he shall be guilty of a misdemeanor, and upon conviction shall be fined not more than one thousand dollars or imprisoned not more than five years. (1901, c. 550, s. 12; Rev., s. 3392; C. S., s. 4191.)

§ **163-204. Willful failure of registration officer to discharge duty.** —If any officer charged with any duty under the permanent registration law willfully fails and neglects to perform the same, he shall be guilty of a misdemeanor, and upon conviction shall forfeit his office and be fined not more than one thousand dollars or imprisoned not more than five years. (1901, c. 550, s. 11; Rev., s. 3393; C. S., s. 4194.)

§ **163-205:** Repealed by Sessions Laws 1943, c. 543.

§ **163-206. Using funds of insurance companies for political purposes.**—No insurance company or association, including fraternal beneficiary associations, doing business in this State shall, directly or indirectly, pay or use, or offer, consent or agree to pay or use, any money or property for or in aid of any political party, committee or organization, or for or in aid of any corporation, joint-stock company, or other association organized or maintained for political purposes, or for or in aid of any candidate for political office or for nomination for such office, or for any political purpose whatsoever, or for the reimbursement or indemnification of any person for money or property so used. Any officer, director, stockholder, attorney or agent of any corporation or association which violates any of the provisions of this section, who participates in, aids, abets, advises or consents to any such violation, and any person who solicits or knowingly receives any money or property in violation of this section, shall be guilty of a misdemeanor, and shall be punished by imprisonment for not more than one year and a fine of not more than one thousand dollars. Any officer aiding or abetting in any contribution made in violation of this section shall be liable to the company or association for the amount so contributed. The Insurance Commissioner may revoke the license of any company violating this section. No person shall be excused from attending and testifying, or producing any books, papers or other documents before any court or magistrate, upon any investigation, proceeding or trial for a violation of any of the provisions of this section, upon the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate or degrade him; but no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may so testify or produce evidence, documentary or otherwise, and no testimony so given or produced shall be used against him upon criminal investigation or proceeding. (1907, c. 121; C. S., s. 4199.)

§ **163-207. Convicted officials; removal from office.**—Any public official who shall be convicted of any violation of any of the provisions of article 21 or article 22 of this chapter, in addition to the punishment provided by law for such violation, may be removed from office by the judge presiding at the trial and shall be ineligible to hold any other public office until his citizenship is restored as provided by law in case of conviction of a felony, and for a period of two years in case of conviction of a misdemeanor. (1949, c. 504.)

Division XIX. Concerning the General Statutes of North Carolina; Veterans; Civil Defense.

Chapter 164.

Concerning the General Statutes of North Carolina.

Article 1.

The General Statutes.

Article 2.

The General Statutes Commission.

ARTICLE 1.

The General Statutes.

§ 164-1. Title of revision.—This revision shall be known as the "General Statutes of North Carolina" and may be cited in either of the following ways: "General Statutes of North Carolina"; or "General Statutes"; or "G. S."

Editor's Note.—Acts 1945, c. 157 inserted the heading of this article.

§ 164-2. Effect as to repealing other statutes.—All public and general statutes not contained in the General Statutes of North Carolina are hereby repealed with the exceptions and limitations hereafter mentioned in this chapter. No statute or law which has been heretofore repealed shall be revived by the repeal contained in any of the sections of the General Statutes of North Carolina or by the omission of any repealing statute from the General Statutes. All public and general statutes enacted at the regular session of the General Assembly of 1943 shall be deemed to repeal any conflicting provisions of the General Statutes of North Carolina.

§ 164-3. Repeal not to affect rights accrued or suits commenced.—The repeal of the statutes described in § 164-2 shall not affect any act done, any right accruing, accrued or established, or any action or proceeding had or commenced in any case before the time when such repeal shall take effect, but the proceedings in any such case shall be conformed, when necessary, to the provisions of the General Statutes of North Carolina.

§ 164-4. Offenses, penalties and liabilities not affected.—No offense committed, no penalty or forfeiture incurred, no liability arising, and no remedy

availed of, under any of the statutes hereby repealed, before the time when such repeal shall take effect shall be affected by the repeal.

§ **164-5. Pending actions and proceedings not affected.**—No action or proceeding pending at the time of the repeal, for any offense committed, or for the recovery of any penalty or forfeiture incurred under any of the statutes hereby repealed shall be affected by such repeal, except that the proceedings in such action or proceeding shall be conformed, when necessary, to the provisions of the General Statutes of North Carolina.

§ **164-6. Effect of repeal on persons holding office.**—All persons who at the time the General Statutes of North Carolina becomes effective shall hold any office under any of the statutes hereby repealed shall continue to hold the same according to the tenure thereof.

§ **164-7. Statutes not repealed.**—The General Statutes of North Carolina shall not have the effect of repealing statutes or provisions of statutes which affect only a particular locality, public-local or private statutes, statutes exempting pending litigation from operation of statutes, statutes relating to the boundary of the State or of any county, acts ceding or relating to the ceding of lands of the State to the federal government, statutes relating to the Cherokee lands, statutes relating to the construction or interpretation of statutes, statutes by virtue of which bonds have been issued and are outstanding on the effective date of the General Statutes, validating acts or curative statutes, or acts granting pensions to named individuals if such statutes were in force on the effective date of the General Statutes.

§ **164-8. General Statutes of North Carolina effective December 31, 1943.**—All provisions, chapters, subdivisions of chapters and sections contained in the General Statutes of North Carolina shall be in force from and after the thirty-first day of December one thousand nine hundred and forty-three.

Quoted in Kirby v. Stokes County Board of Education, 230 N. C. 619, 55 S. E. (2d) 322 (1949).

§ **164-9. Completion of General Statutes by Division of Legislative Drafting and Codification of Statutes.**—The Division of Legislative Drafting and Codification of Statutes of the State Department of Justice, under the direction and supervision of the Attorney General, shall complete and perfect the General Statutes, as enacted by the General Assembly of 1943, by changing all references therein to the "Code," "North Carolina Code," "Code of 1943" or "North Carolina Code of 1943" to read "General Statutes," and by causing to be inserted therein all such general public statutes as may be enacted at the 1943 session of the General Assembly and all amendments, in their proper places in sections under the appropriate chapter and subdivisions of chapters, and by deleting all sections or portions of sections found to be expressly repealed, or found to be repealed by virtue of the repeal of any cognate sections or parts of sections of the Consolidated Statutes or session laws, and by deleting repealed provisions and substituting in lieu thereof all proper amendments of the General Statutes or of cognate sections of the Consolidated Statutes or session laws; and the Division is hereby authorized to change the number of sections and chapters, transfer sections, chapters and subdivisions of chapters and make such other corrections which do not change the law, as may be found by the Division necessary in making an accurate, clear, and orderly statement of said laws. After the completion of such codification of the general and public laws of 1943, such laws, as they appear in the printed volumes of the General Statutes, shall be deemed an accurate codification of the statutes of 1943 contained therein. (1943, c. 15, s. 3.)

§ 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:

(a) 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 four volumes of 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.

(b) 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.

(c) In the preparation of the general and permanent laws enacted by the General Assembly for inclusion in the cumulative pocket supplements, the Division is hereby authorized:

(1) To rearrange the order of chapters, subchapters, articles, sections and other divisions or subdivisions;

(2) To provide titles for any such divisions or subdivisions and section titles or catchlines when they are not provided by such laws;

(3) 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;

(4) To rearrange definitions in alphabetical order;

(5) To rearrange lists of counties in alphabetical order; and

(6) 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.)

Editor's Note. — The 1947 amendment rewrote subsection (c). The 1951 amendment inserted the words "and any replacement or recompiled volumes thereof" in paragraph (a).

For brief comment on the 1947 amendment, see 25 N. C. Law Rev. 460.

§ 164-11. Supplements prima facie statement of laws; method of citation.—(a) The supplements to the General Statutes of North Carolina, or to any replacement or recompiled volumes of the General Statutes, when printed under the supervision of the Division of Legislative Drafting and Codification of Statutes of the Department of Justice, shall establish prima facie the general and permanent laws of North Carolina contained in said supplements.

(b) The cumulative pocket supplement may be cited as "G. S., Supp. 19.." and the interim supplement may be cited as ".... G. S. In. Supp. 19....," the blank in front of "G. S." to be filled in with the number of the interim supplement for that year. (1945, c. 863; 1951, c. 1149, s. 2.)

Cross Reference.—For subsequent law, see § 164-11.1.

Editor's Note. — The 1951 amendment inserted the words "or to any replacement or recompiled volumes of the General Statutes" in subsection (a).

§ 164-11.1. 1945, 1947, 1949 and 1951 Cumulative Supplements prima facie evidence of laws. — The 1945 and the 1947 and the 1949 and 1951 Cumulative Supplements to the General Statutes of North Carolina of 1943, 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.)

Cross Reference.—See § 164-11.

Editor's Note. — The 1951 amendment inserted the words and figures "and the 1949 and 1951".

For brief comment on this section, see 27 N. C. Law Rev. 478.

§ 164-11.2. Adoption of Volumes 2A, 2B and 2C of the General Statutes. — The chapters, subchapters, articles and sections, now comprising Volume 2 of the General Statutes of North Carolina and the Cumulative Supplements thereto, consisting of §§ 26-1 through 105-462 now in force as amended, are hereby re-enacted and designated Volumes 2A, 2B and 2C, respectively, of the General Statutes of North Carolina: Provided, that this enactment of Volumes 2A, 2B and 2C shall not include any appended annotations, editorial notes, comments, cross references, legislative or historial references, or other material collateral or supplemental to the said chapters, subchapters, articles and sections, but not contained in the body thereof. (1951, c. 900.)

Article 2.

The General Statutes Commission.

§ 164-12. Creation; name.—There is hereby created and established a commission to be known as "The General Statutes Commission." (1945, c. 157.)

§ 164-13. Duties.—It shall be the duty of the Commission: (a) 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).

(b) 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).

(c) To make a continuing study of all matters involved in the preparation and publication of modern codes of law.

(d) To recommend to the General Assembly the enactment of such substantive changes in the law as the Commission may deem advisable.

(e) To budget and expend any funds made available for utilizing the services of persons specially qualified to assist in the work of the Commission and necessary clerical assistance, to which end funds may be allotted to the Commission from the contingency and emergency fund. (1945, c. 157; 1951, c. 761.)

Cross Reference.—As to subsequent statute relating to duties of Revisor of Statutes in regard to § 114-9(c), see § 114-9.1.

Editor's Note. — The 1951 amendment added subsections (d) and (e).

§ 164-14. Membership; appointments; terms; vacancies. — (a) The Commission shall consist of nine members, who shall be appointed as follows: (1) one member, by the president of the North Carolina State Bar; (2) one member, by the president of the North Carolina Bar Association; (3) one member, by the dean of the school of law of the University of North Carolina; (4) one member, by the dean of the school of law of Duke University; (5) one member, by the dean of the school of law of Wake Forest College; (6) one member, by the Speaker of the House of Representatives of each General Assembly from the membership of the House; (7) one member, by the President of the Senate of each General Assembly from the membership of the Senate; (8) two members, by the Governor.

(b) Appointments of original members of the Commission made by the president of the North Carolina State Bar, the president of the North Carolina Bar Association, and the deans of the schools of law of Duke University, the University of North Carolina, and Wake Forest College shall be for one year. Appointments of original members of the Commission made by the Speaker of the House of Representatives, the President of the Senate, and the Governor shall be for two years.

(c) After the appointment of the original members of the Commission, appointments by the president of the North Carolina State Bar, the president of the North Carolina Bar Association, and the deans of the schools of law of Duke University, the University of North Carolina, and Wake Forest College shall be made in the even numbered years, and appointments made by the Speaker of the House of Representatives, the President of the Senate, and the Governor shall be made in the odd numbered years. Such appointments shall be made for two-year terms beginning June first of the year when such appointments are to become effective and expiring May thirty-first two years thereafter. All such appointments shall be made not later than May thirty-first of the year when such appointments are to become effective.

(d) If any appointment provided for by this section is not made prior to June first of the year when it should become effective, a vacancy shall exist with respect thereto, and the vacancy shall then be filled by appointment by the Governor. If any member of the Commission dies or resigns during the term for which he was appointed, his successor for the unexpired term shall be appointed by the person who made the original appointment, as provided in § 164-14, or by the successor of such person; and if such vacancy is not filled within thirty days after the vacancy occurs, it shall then be filled by appointment by the Governor.

(e) All appointments shall be reported to the secretary of the Commission. (1945, cc. 157, 635; 1947, c. 114, s. 3.)

Editor's Note. — The 1947 amendment struck out the words "with the approval of the council thereof" formerly appearing after the word "Bar" in clause (1) of subsection (a).

For comment on the 1947 amendment, see 25 N. C. Law Rev. 459.

§ **164-15. Meetings; quorum.**—The Commission shall hold not less than two regular meetings each year, of which one shall be held in June and one in November, at such times during those months as may be fixed therefor by the Commission itself. The Commission may hold such other regular meetings as it may provide for by its rules. Special meetings may be called by the chairman, or by any two members of the Commission, upon such notice and in such manner as may be fixed therefor by the rules of the Commission. The regular June and November meetings of the Commission shall be held in Raleigh, but the Commission may provide for the holding of other meetings from time to time at any other place or places in the State. The first meeting of the Commission shall be held in June one thousand nine hundred and forty-five upon the call of the Attorney General at such time and upon such notice as he may designate. A majority of the members of the Board shall constitute a quorum. (1945, c. 157.)

§ **164-16. Officers.** — At its regular June meeting in the odd numbered years the Commission shall elect a chairman and a vice-chairman for a term of two years and until their successors are elected and assume the duties of their positions. The Revisor of Statutes shall be ex officio secretary of the Commission. (1945, c. 157; 1947, c. 114, s. 2.)

Editor's Note. — The 1947 amendment substituted "Revisor of Statutes" for "Director of the Division of Legislative Drafting and Codification of Statutes" in the second sentence.

For comment on the 1947 amendment, see 25 N. C. Law Rev. 459.

§ **164-17. Committees; rules.**—The Commission may elect, or may authorize its chairman to appoint, such committees of the Commission as it may deem proper. The Commission may adopt such rules not inconsistent with this article as it may deem proper with respect to any and all matters relating to the discharge of its duties under this article. (1945, c. 157.)

§ **164-18. Reports.**—The Commission shall submit to each regular session of the General Assembly a report of its work during the preceding two years, together with such recommendations as it may deem proper. (1945, c. 157.)

§ **164-19. Compensation.**—Members of the Commission shall be paid ten dollars a day for attendance upon meetings of the Commission, or upon attendance of meetings of committees of the Commission, together with such subsistence and travel allowance as may be provided by law. (1945, c. 157.)

Chapter 165.

Veterans.

ARTICLE 1.

North Carolina Veterans Commission.

§ **165-1. Short title.**—This article may be cited as "The North Carolina Veterans Commission Act." (1945, c. 723, s. 1.)

§ **165-2. Definition of terms.**—Wherever used in this article, unless the context otherwise requires, the terms defined in this section shall have the following meaning:

(a) "Commission" means the North Carolina Veterans Commission.

(b) "Director" means the Director of the North Carolina Veterans Commission.

(c) "Veteran" means any person who has served at any time in the armed forces of the United States during any war in which the United States was a belligerent, or any person who is entitled to any benefits or rights under the laws of the United States, particularly the Servicemen's Readjustment Act of one thousand nine hundred and forty-four, or any rules, regulations or directives issued pursuant thereto, by reason of service in the armed forces of the United States during any war in which the United States has engaged.

(d) "Veterans organization" means a nationally recognized veterans organization whose membership is composed of veterans as defined in this section and which has been chartered by an act of the United States Congress. (1945, c. 723, s. 1; 1949, c. 430, s. 1.)

Editor's Note. — The 1949 amendment added subsection (d).

§ **165-3. Purpose of article.** — The purpose of this article is to create a Commission whose functions, purpose and duty it shall be to co-ordinate, harmonize, and perform the services now being rendered veterans by various State departments, agencies, and instrumentalities to the end that such State services may be more effectively and economically administered; and that such co-ordinated State services may give to all veterans, through this Commission, a definite and practical means of availing themselves of all such rights and benefits as they may be entitled to as veterans, without unnecessary inconvenience or delay. In no sense is this Commission intended to supersede or duplicate the work of federal, private, or civic agencies rendering service to veterans, it being the function of this Commission to furnish a means of contact and co-ordination between veterans and all governmental, private, or civic service facilities in order to make more fully and readily available to all veterans, all rights and benefits to which they may be entitled. (1945, c. 723, s. 1.)

§ **165-4. Creation; name.**—There is hereby created a Commission to be known as the North Carolina Veterans Commission. (1945, c. 723, s. 1.)

§ **165-5. Membership; vacancies; chairman; meetings; compensation.**—(1) The membership of the Commission shall consist of five persons appointed by the Governor, who shall be veterans as defined in § 165-2 of this article. Both major political parties in the State shall be represented on the Commission. The department commander or official head of each recognized veterans organization in this State shall be an ex officio member of the Commission but shall have no vote as a member of said Commission.

(2) For the initial term of the members of the Commission, one shall be appointed for a term of one year, one for a term of two years, one for a term of three years, one for a term of four years, and one for a term of five years; thereafter the successors of each shall be appointed for terms of five years and until their successors are appointed and qualify.

(3) Vacancies in the Commission shall be filled by the Governor for the unexpired term.

(4) The Commission shall select one of its members to act as chairman.

(5) The Commission shall meet quarterly in January, April, June, and October, and at such other times as may be fixed by the chairman. The Commission may be convoked at such other times as the Governor or chairman may deem necessary.

(6) Members and ex officio members of the Commission shall receive a per diem of seven dollars ($7.00) while attending meetings of the Commission and, in addition thereto, shall be allowed reasonable travel and subsistence expenses

in accordance with the applicable schedules and procedure of the Budget Bureau. (1945, c. 723, s. 1; 1945, c. 1087; 1949, c. 430, s. 2; 1951, c. 1048, ss. 1, 2.)

Editor's Note. — The 1949 amendment added the last sentence of subsection (1).

The 1951 amendment deleted the words "nor receive compensation per diem or other expenses for services rendered" formerly appearing at the end of subsection (1), and inserted the words "and ex officio members" in the first line of subsection (6).

§ 165-6. Powers and duties of the Commission; limitation.—(a) The Commission shall have the following powers and duties:

(1) To acquaint itself, the Director, and such other assistants and employees as may be employed for carrying out the purposes of this article, with the laws, rules, and regulations, federal, State, and local, enacted for the benefit of veterans, their families, and dependents.

(2) To collect data and information as to the facilities and services available to veterans, their families, and dependents and to co-operate with agencies furnishing information or services throughout the State in order to inform such agencies regarding the availability of (a) education, training and retraining facilities, (b) health, medical, rehabilitation, and housing services and facilities, (c) employment and reemployment services, (d) provisions of federal, State, and local laws, rules, and regulations affording rights, privileges, and benefits to veterans, their families, and dependents, and in respect to such other matters of similar, related, or appropriate nature not herein set out.

(3) To assist veterans, their families, and dependents in the presentation, processing, proof, and establishment of such claims, privileges, rights, and benefits as they may be entitled to under federal, State, or local laws, rules, and regulations.

(4) To co-operate with the national, State, and local governmental, private, and civic agencies and instrumentalities securing services or any benefits to veterans, their families, and dependents.

(5) To accept any property, funds, service, or facilities from any source, public or private, granted in aid or furtherance of the administration of the provisions of this article: Provided, that no financial obligation shall be thereby incurred without the authorization and approval of the Director of the Budget.

(6) Subject to the approval of the Director of the Budget to establish in any county, city, or town of the State such branch or district offices as the Commission may find necessary for the proper administration of this article.

(7) Subject to the approval of the Director of the Budget, to enter into any contract or agreement with any person, firm, or corporation, or governmental agency or instrumentality in furtherance of the purposes of this article, and to make all rules and regulations necessary for the proper and effective administration of its duties.

(b) Any county, city, or town may employ one or more persons to serve in such county, city, or town, under the supervision of the Commission and to perform such duties as the Commission may direct in carrying out the provisions and purposes of this article; and such county, city, or town is hereby authorized to pay the salaries of such persons so employed, together with such other expense for quarters, equipment, supplies, and incidentals as may be necessary to give proper effect to this article: Provided, that the Commission is hereby authorized and empowered in its discretion to contribute to the salaries and expenses of such persons as are employed by counties, cities, or towns, in order to provide for joint maintenance of the service rendered by them.

(c) There is hereby appropriated to the North Carolina Veterans Commission out of the general fund of the State the sum of fifty thousand dollars for the fiscal year beginning July 1, 1949, and ending June 30, 1950, and a like sum for the fiscal year beginning July 1, 1951, to be expended as set out below.

There may be paid by North Carolina Veterans Commission, in its discretion, to any county of the State, in quarterly installments, for each fiscal year of the

next biennium a sum equal to such amount as the board of county commissioners of such county appropriates for the employment during such fiscal year of a county veterans service officer, not exceeding one thousand dollars ($1000) to any one county, such money to be expended by the recipient county in supplementing its own appropriation for payment of the salary and other necessary expenses of a county veterans service officer.

The board of county commissioners of each county of the State is hereby authorized to appropriate such amount as it may deem necessary to pay the salary of a county veterans service officer, and to secure supplementary funds from the State, and the payment of such salary is hereby declared to be for a public purpose. (1945, c. 723, s. 1; 1949, c. 1292.)

Editor's Note. — The 1949 amendment added subsection (c).

§ **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 at a salary to be fixed by the Commission and approved by the Director of the Budget.

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.)

§ **165-8. Biennial report.**—The Commission shall biennially prepare and submit to the Governor and the General Assembly a report of its activities during the preceding two years. (1945, c. 723, s. 1.)

§ **165-9. Quarters.**—The Board of Public Buildings and Grounds shall provide in the city of Raleigh, adequate quarters for the central office of the Commission. The Division of Purchase and Contract shall arrange for leasing or shall otherwise provide such necessary quarters as the Commission may require for the transaction of its business in other sections of the State. (1945, c. 723, s. 1.)

§ **165-10. Appropriation.**—The Governor, with the approval of the Council of State, is hereby authorized and empowered to allocate from time to time from the contingency and emergency fund, such funds as may be necessary to carry out the intent and purposes of this article. (1945, c. 723, s. 1.)

§ **165-11. Transfer of veterans activities.** — As promptly as he may deem practicable after the appointment of the Commission, the Governor shall transfer to the Commission such facilities, properties, and activities now being held or administered by the State for the benefit of veterans, their families, and dependents as he may deem proper.

(a) The Governor may transfer to the Commission all such funds or appropriations now available for any veterans service, including appropriations and allocations for the impending biennium.

(b) The provisions of subsection (a) of this section shall not apply to the War Veterans Loan Administration, this agency being in the process of liquidation.

(c) The provisions of subsection (a) of this section shall not apply to the

activities of the North Carolina Employment Security Commission in respect to veterans. (1945, c. 723, s. 1.)

Editor's Note. —The words "Unemployment Compensation Commission" in subsection (c) have been changed to "Employment Security Commission" by virtue of G. S. 96-1.1.

Article 2.

Minor Veterans.

§ **165-12. Short title.**—This article may be cited as "The Minor Veterans Enabling Act." (1945, c. 770.)

Editor's Note. — For discussion of this article, see 23 N. C. Law Rev. 359.

§ **165-13. Definition.**—In this article, unless the context or subject matter otherwise requires, the term, "Servicemen's Readjustment Act" means the Servicemen's Readjustment Act of one thousand nine hundred and forty-four as enacted by the Congress of the United States (58 Statutes at Large 284, 38 U. S. Code 693 and following), together with any amendments thereof or related legislation supplemental or in addition thereto, and any rules, regulations, or directives issued pursuant thereto. (1945, c. 770.)

§ **165-14. Application of article.**—This article applies to every person, either male or female, eighteen years of age or over, but under twenty-one years of age, who is, or who may become, entitled to any rights or benefits under the Servicemen's Readjustment Act. (1945, c. 770.)

§ **165-15. Purpose of article.**—The purpose of this article is to remove the disqualification of age which would otherwise prevent persons to whom this article applies from taking advantage of any right or benefit to which they may be or may become entitled under the Servicemen's Readjustment Act, and to assure those dealing with such minor persons that the acts of such minors shall not be invalid or voidable by reason of the age of such minors, but shall in all respects be as fully binding as if said minors had attained their majority; and this article shall be liberally construed to accomplish that purpose. (1945, c. 770.)

§ **165-16. Rights conferred; limitation.** — (a) Every person to whom this article applies is hereby authorized and empowered, in his or her own name without order of court or the intervention of any guardian or trustee:

(1) To purchase or lease any property, either real or personal, or both, which such person may deem it desirable to purchase or lease in order to avail himself or herself of any of the benefits of the Servicemen's Readjustment Act, and to take title to such property in his or her own name or in the name of himself or herself and spouse.

(2) To execute any note or similar instrument for any part or all of the purchase price of any property purchased pursuant to paragraph (1) of this section and to secure the payment thereof by retained title contract, mortgage, deed of trust or other similar or appropriate instrument.

(3) To execute any other contract or instrument which such person may deem necessary in order to enable such person to secure the benefits of the Servicemen's Readjustment Act.

(4) To execute any contract or instrument which such person may deem necessary or proper in order to enable such person to make full use of any property purchased pursuant to the provisions of the Servicemen's Readjustment Act, including the right to dispose of such property; such contracts to include but not to be limited to the following:

(A) With respect to a home: Contracts for insurance, repairs, and services such as gas, water, and lights, and contracts for furniture and other equipment.

(B) With respect to a farm: Contracts such as are included in paragraph (A) of this subparagraph (4) above, together with contracts for livestock, seeds, fertilizer and farm equipment and machinery, and contracts for farm labor and other farm services.

(C) With respect to a business: Contracts such as are included in paragraph (A) of this subparagraph (4), together with such other contracts as such person may deem necessary or proper for the maintenance and operation of such business.

(b) Every person to whom this article applies may execute such contracts as are hereby authorized in his own name without any order from any court, and without the intervention of a guardian or trustee, and no note, mortgage, conveyance, deed of trust, contract, or other instrument, conveyance or action within the purview of this article shall be invalid, voidable or defective by reason of the fact that the person executing or performing the same was at the time a minor.

(c) In respect to any action at law or special proceeding in relation to any transaction within the purview of this article, every minor person to whom this article applies shall appear and plead in his or her own name and right without the intervention of any guardian or trustee, and every such minor person shall be considered a legal party to any such action at law or special proceeding in all respects as if such person had attained the age of twenty-one years. No such minor shall hereafter interpose the defense of lack of legal capacity by reason of age in connection with any transaction within the purview of this article, nor disavow any such transaction upon coming of age.

(d) All such authority and power as are conferred by this article are subject to all applicable provisions of the Servicemen's Readjustment Act. (1945, c. 770.)

Article 3.

Minor Spouses of Veterans.

§ **165-17. Definition.**—For the purposes of this article, the term "veteran" means any person who is entitled to any benefits or rights under the laws of the United States or any rules, regulations or directives issued pursuant thereto by reason of service in the armed forces of the United States during any war in which the United States has engaged. (1945, c. 771.)

§ **165-18. Rights conferred.**—(a) Any person under the age of twenty-one years who is the husband or wife of a veteran, is hereby authorized and empowered in his or her own name, and without any order of court or the intervention of a guardian or trustee, to execute any and all contracts, conveyances, and instruments, to take title to property, to defend any action at law, and to do all other acts necessary to make fully available to such veteran, his or her family or dependents, all rights and benefits under the Servicemen's Readjustment Act of one thousand nine hundred and forty-four, or other statutes enacted in the interest of veterans, their families or dependents, and all laws, rules and regulations amendatory or supplemental thereto, in as full and ample manner as if such minor husband or wife of such veteran had attained the age of twenty-one years.

(b) Any person under the age of 21 years, who is the husband or wife of a veteran, is hereby authorized and empowered in his or her own name, and without any order of court or the intervention of a guardian or trustee, to join in the execution of any contract, deed, conveyance or other instrument which may be deemed necessary to enable his or her veteran spouse to make full use of any property purchased pursuant to the provisions of the foregoing section, including the right to dispose of such property.

(c) With respect to any action at law or special proceeding in relation to any transaction within the purview of this article, every minor person to whom this

article applies shall appear and plead in his or her own name and right without the intervention of any guardian or trustee; and every such minor person shall be considered a legal party to any such action at law or special proceeding in all respects as if such person had attained the age of twenty-one years. No such minor shall hereafter interpose the defense of lack of legal capacity by reason of age in connection with any transaction within the purview of this article, nor disavow any such transaction upon coming of age. (1945, c. 771; 1947, c. 905, ss. 1, 2.)

Editor's Note. — The 1947 amendment inserted present subsection (b) and designated former subsection (b) as (c).

Article 4.

Copies of Records Concerning Veterans.

§ **165-19. Meaning of "veteran."**—For the purpose of this article the term "veteran" shall be given the meaning set forth in § 165-2. (1945, c. 1064.)

§ **165-20. Copies to be furnished by Bureau of Vital Statistics.**—Upon application to the Bureau of Vital Statistics by a representative of the North Carolina Veterans Commission, it shall be the duty of the Bureau of Vital Statistics to furnish forthwith to such applicant without charge or fee certified copies of all such vital statistical records or other records, including but not limited to birth certificates and death certificates, concerning any veteran which, in the judgment of such representative of the North Carolina Veterans Commission may be necessary or desirable in order to secure for such veteran, his or her family or dependents, any right or benefit under any federal, State, or local law, rule or regulation relating to veterans: Provided, that the provisions of this section shall be subject to those provisions of chapter forty-eight of the General Statutes which relate to the records in adoption proceedings. (1945, c. 1064.)

Editor's Note. — As to furnishing statistical records to officers of veterans' organizations, see § 130-103.

§ **165-21. Copies to be furnished by registers of deeds.**—Upon application to the register of deeds of any county by a representative of the North Carolina Veterans Commission, it shall be the duty of such register of deeds to furnish forthwith to such applicant, without charge or fee, certified copies of any such marriage certificate or any other such official record or document concerning any veteran as in the judgment of such representative of the North Carolina Veterans Commission may be necessary or desirable in order to secure for such veteran, his or her family or dependents any right or benefit under any federal, State or local law, rule or regulation relating to veterans. (1945, c. 1064.)

§ **165-22. Officials relieved of liability for fees.**—No official chargeable with the collection of any fee or charge under the laws of the State of North Carolina in connection with his official duties shall be held accountable on his official bond or otherwise for any fee or charge remitted pursuant to the provisions of this article. (1945, c. 1064.)

Article 5.

Veterans' Recreation Authorities.

§ **165-23. Short title.**—This article may be referred to as the "Veterans' Recreation Authorities Law." (1945, c. 460, s. 1.)

This article is valid, as it is for a public purpose and in the public interest. Brumley v. Baxter, 225 N. C. 691, 36 S. E. (2d) 281, 162 A. L. R. 930 (1945).

Article Does Not Authorize City to Make Absolute Grant.—The act under which the veterans' recreational center was created does not authorize the city to make an absolute grant of its property upon such terms that in the event the grantee determines the public purpose has failed, or the recreational facilities placed thereon for veterans are not being sufficiently used, the grantee may dispose of the property in its discretion and apply the proceeds to such charity as it may elect. Brumley v. Baxter, 225 N. C. 691, 36 S. E. (2d) 281, 162 A. L. R. 930 (1945).

§ **165-24. Finding and declaration of necessity.**—It is hereby declared that conditions resulting from the concentration in various cities and towns of the State having a population of more than one hundred thousand inhabitants of persons serving in the armed forces in connection with the present war, or who after having served in the armed services during the present war, or previously have been honorably discharged, require the construction, maintenance and operation of adequate recreation facilities for the use of such persons; that it is in the public interest that adequate recreation facilities be provided in such concentrated centers; and the necessity, in the public interest, for the provisions hereinafter enacted is hereby declared as a matter of legislative determination. (1945, c. 460, s. 2.)

§ **165-25. Definitions.**—The following terms, wherever used or referred to in this article, shall have the following respective meanings, unless a different meaning clearly appears from the context:

(1) "Authority" or "recreation authority" shall mean a public body and a body corporate and politic organized in accordance with the provisions of this article for the purposes, with the powers and subject to the restrictions hereinafter set forth.

(2) "City" shall mean the city or town having a population of more than one hundred thousand inhabitants (according to the last federal census) which is, or is about to be, included in the territorial boundaries of an authority when created hereunder.

(3) "Council" shall mean the legislative body, council, board of commissioners, board of trustees, or other body charged with governing the city.

(4) "City clerk" and "mayor" shall mean the clerk and mayor, respectively, of the city or the officers thereof charged with the duties customarily imposed on the clerk and mayor, respectively.

(5) "Commissioner" shall mean one of the members of an authority appointed in accordance with the provisions of this article.

(6) "State" shall mean the State of North Carolina.

(7) "Government" shall include the State and federal governments and any subdivision, agency or instrumentality, corporate or otherwise, of any of them.

(8) "Federal government" shall include the United States of America, the Federal Emergency Administration of Public Works or any agency, instrumentality, corporate or otherwise, of the United States of America.

(9) "Veterans' recreation project" shall include all real and personal property, buildings and improvements, offices and facilities acquired or constructed, or to be acquired or constructed, pursuant to a single plan or undertaking to provide recreation facilities for veterans in concentrated centers of population. The term "veterans' recreation project" may also be applied to the planning of the buildings and improvements, the acquisition of property, the construction, reconstruction, alteration and repair of the improvements, and all other work in connection therewith.

(10) "Real property" shall include lands, lands under water, structures, and any and all easements, franchises and incorporeal hereditaments and every estate and right therein, legal and equitable, including terms for years and liens by way of judgment, mortgage or otherwise.

(11) "Veteran" shall include every person who has enlisted or who has been inducted, warranted or commissioned, and who served honorably in active duty

in the military or naval service of the United States at any time, and who is honorably separated or discharged from such service, or who, at the time of making use of the facilities, is still in active service, or has been retired, or who has been furloughed to a reserve. This definition shall be liberally construed, with a view completely to effectuate the purpose and intent of this article. (1945, c. 460, s. 3.)

§ **165-26. Creation of authority.**—If the council of any city in the State having a population of more than one hundred thousand, according to the last federal census, shall, upon such investigation as it deems necessary, determine:

(1) That there is a lack of adequate veterans' recreation facilities and accommodations from the operations of public or private enterprises in the city and surrounding area; and/or

(2) That the public interest requires the construction, maintenance or operation of a veterans' recreation project for the veterans thereof, 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 the council has made the aforesaid determination after such investigation, 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 recreation 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 and the principal office of the proposed Corporation. The application shall be subscribed and sworn to by each of the 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.

The boundaries of such authority 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 nor any area included within the boundaries of another authority. In case an area lies within ten miles of the boundaries of more than one city, such area shall be deemed to be within the boundaries of the authority embracing such area which was first established, all priorities to be determined on the basis of the time of the issuance of the aforesaid certificates by the Secretary of State. After the creation of an authority, the subsequent existence within its territorial boundaries of more than one city shall in no way affect the territorial boundaries of such authority.

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 evidence in any such suit, action or proceeding, and shall be conclusive proof of the filing and contents thereof. (1945, c. 460, s. 4.)

§ 165-27. Appointment, qualifications and tenure of commissioners. —An authority shall consist of five commissioners appointed by the mayor, and he shall designate the first chairman.

Of the commissioners who are first appointed, two shall serve for a term of one year, two for a term of three years, and one for a term of five years, and thereafter, the terms of office for all commissioners shall be five years. A commissioner shall hold office until his successor has been appointed and qualified. Vacancies shall be filled for the unexpired term. Vacancies occurring by expiration of office or otherwise shall be filled in the following manner: The mayor and the remaining commissioners shall have a joint session and shall unanimously select the person to fill the vacancy; but if they are unable to do so, then such fact shall be certified to the resident judge of the superior court of the county in which the authority is located, and he shall fill the vacancy. The mayor shall file with the city clerk a certificate of the appointment or reappointment of any commissioner, and such certificate shall be conclusive evidence of the due and proper appointment of such commissioner. A commissioner shall receive no compensation for his services, but he shall be entitled to the necessary expenses, including traveling expenses, incurred in the discharge of his duties.

When the office of the first chairman of the authority becomes vacant, the authority shall select a chairman from among its members. An authority shall select from among its members a vice-chairman, and it may employ a secretary, technical experts and such other officers, agents and employees, permanent and temporary, as it may require, and shall determine their qualifications, duties, and compensation. An authority may employ its own counsel and legal staff. An authority may delegate to one or more of its agents or employees such powers or duties as it may deem proper. (1945, c. 460, s. 5.)

§ 165-28. Duty of the authority and commissioners of the authority. —The authority and its commissioners shall be under a statutory duty to comply or to cause compliance strictly with all provisions of this article and the laws of the State, and in addition thereto, with each and every term, provision and covenant in any contract of the authority on its part to be kept or performed.

The commissioners shall provide separate recreational centers for persons of the colored and white races, and they may, in the exercise of their discretion, limit the use of recreational centers under their control in whole or in part to veterans of one sex. They shall have the authority to make rules and regulations regarding the use of the recreational centers and other matters and things coming within their jurisdiction.

They shall have the authority to appoint one or more advisory committees consisting of representatives of various veterans' organizations and others and may delegate to such committee or committees authority to execute the policies and programs of activity adopted by the commissioners. (1945, c. 460, s. 6.)

§ 165-29. Interested commissioners or employees.—No commissioner or employee of any authority shall acquire any interest, direct or indirect, in any veterans' recreation project or in any property included or planned to be included in any project, nor shall he have any interest, direct or indirect, in any contract or proposed contract for materials or services to be furnished or used in connection with any such project. If any commissioner or employee of an authority owns or controls an interest, direct or indirect, in any property included or planned to be included in any veterans' recreation project, he shall immediately disclose

the same in writing to the authority and such disclosure shall be entered upon the minutes of the authority. Failure so to disclose such interest shall constitute misconduct in office. (1945, c. 460, s. 7.)

§ **165-30. Removal of commissioners.**—The mayor may remove a commissioner for inefficiency or neglect of duty or misconduct in office, but only after the commissioner shall have been given a copy of the charges against him (which may be made by the mayor) at least ten days prior to the hearing thereon and had an opportunity to be heard in person or by counsel.

If, after due and diligent search, a commissioner to whom charges are required to be delivered hereunder cannot be found within the county where the authority is located, such charges shall be deemed served upon such commissioner if mailed to him at his last known address as same appears upon the records of the authority.

In the event of the removal of any commissioner, the mayor shall file in the office of the city clerk a record of the proceedings, together with the charges made against the commissioner removed, and the findings thereon. (1945, c. 460, s. 8.)

§ **165-31. Powers of authority.** — An authority shall constitute a public body and a body corporate and politic, exercising public powers, and having all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this article, including the following powers in addition to others herein granted:

To sue and be sued in any court; to make, use and alter a common seal; to purchase, acquire by devise or bequest, hold and convey real and personal property; to elect and appoint, in such manner as it determines to be proper, all necessary officers and agents, fix their compensation and define their duties and obligations; to make bylaws and regulations consistent with the laws of the State, for its own government and for the due and orderly conduct of its affairs and management of its property; without limiting the generality of the foregoing, to do any and every thing that may be useful and necessary in order to provide recreation for veterans. (1945, c. 460, s. 9.)

§ **165-32. Zoning and building laws.**—All recreation projects of an authority shall be subject to the planning, zoning, sanitary and building laws, ordinances and regulations applicable to the locality in which the recreation project is situated. (1945, c. 460, s. 10.)

§ **165-33. Tax exemptions.**—The authority shall be exempt from the payment of any taxes or fees to the State or any subdivisions 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, municipal and county taxes, and for the purpose 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. (1945, c. 460, s. 11.)

§ **165-34. Reports.**—The authority shall, at least once a year, file with the mayor of the city an audit report by a certified public accountant of its activities for the preceding year, and shall make any recommendations with reference to any additional legislation or other action that may be necessary in order to carry out the purposes of this article. (1945, c. 460, s. 12.)

§ **165-35. Exemption from Local Government and County Fiscal Control Acts.**—The authority shall be exempt from the operation and provisions of chapter sixty of the Public Laws of North Carolina of one thousand nine hundred and thirty-one, known as the "Local Government Act," and the amendments thereto, and from chapter one hundred and forty-six of the Public Laws of North Carolina of one thousand nine hundred and twenty-seven, known as the "County Fiscal Control Act" and the amendments thereto. (1945, c. 460, s. 13.)

§ **165-36. Conveyance, lease or transfer of property by a city or**

county to an authority.—Any city or county, in order to provide for the construction, reconstruction, improvement, repair or management of any veterans' recreation project, or in order to accomplish any of the purposes of this article, may, with or without consideration or for a nominal consideration, lease, sell, convey or otherwise transfer to an authority within the territorial boundaries of which such city or county it is wholly or partly located, any real, personal or mixed property, and in connection with any such transaction, the authority involved may accept such lease, transfer, assignment and conveyance, and bind itself to the performance and observation of any agreements and conditions attached thereto. Any city or county may purchase real property and convey or cause same to be conveyed to an authority. (1945, c. 460, s. 14.)

§ **165-37. Contracts, etc., with federal government.** — In addition to the powers conferred upon the authority by other provisions of this article, the authority is empowered to borrow money and/or accept grants from the federal government for or in aid of the construction of any veterans' recreation project which such authority is authorized by this article to undertake, to take over any land acquired by the federal government for the construction of such a project, to take over, lease or manage any recreation project constructed or owned by the federal government, and to these ends, to enter into such contracts, mortgages, trust indentures, leases and other agreements which the federal government shall have the right to require. It is the purpose and intent of this article to authorize every authority to do any and all things necessary to secure the financial aid and the co-operation of the federal government in the construction, maintenance and operation of any veterans' recreation project which the authority is empowered by this article to undertake. (1945, c. 460, s. 15.)

§ **165-38. Article controlling.**—Insofar as the provisions of this article are inconsistent with the provisions of any other law, the provisions of this article shall be controlling: Provided, that nothing in this article shall prevent any city or municipality from establishing, equipping and operating a veterans' recreation project, or extending recreation facilities under the provisions of its charter or any general law other than this article. (1945, c. 460, s. 17.)

Article 6.

Powers of Attorney.

§ **165-39. Validity of acts of agent performed after death of principal.**—No agency created by a power of attorney in writing given by a principal who is at the time of execution, or who, after executing such power of attorney, becomes, either (a) a member of the armed forces of the United States, or (b) a person serving as a merchant seaman outside the limits of the United States, included within the forty-eight states and the District of Columbia; or (c) a person outside said limits by permission, assignment or direction of any department or official of the United States government, in connection with any activity pertaining to or connected with the prosecution of any war in which the United States is then engaged, shall be revoked or terminated by the death of the principal, as to the agent or other person who, without actual knowledge or actual notice of the death of the principal, shall have acted or shall act, in good faith, under or in reliance upon such power of attorney or agency, and any action so taken, unless otherwise invalid or unenforceable, shall be binding on the heirs, devisees, legatees, or personal representatives of the principal. (1945, c. 980, s. 1.)

§ **165-40. Affidavit of agent as to possessing no knowledge of death of principal.**—An affidavit, executed by the attorney in fact or agent, setting forth that he has not or had not, at the time of doing any act pursuant to the power of attorney, received actual knowledge or actual notice of the revocation or termination of the power of attorney, by death or otherwise, or notice of any

facts indicating the same, shall, in the absence of fraud, be conclusive proof of the nonrevocation or nontermination of the power at such time. If the exercise of the power requires execution and delivery of any instrument which is recordable under the laws of this State, such affidavit (when authenticated for record in the manner prescribed by law) shall likewise be recordable. (1945, c. 980, s. 2.)

§ 165-41. Report of "missing" not to constitute revocation.—No report or listing, either official or otherwise, of "missing" or "missing in action," as such words are used in military parlance, shall constitute or be interpreted as constituting actual knowledge or actual notice of the death of such principal or notice of any facts indicating the same, or shall operate to revoke the agency. (1945, c. 980, s. 3.)

§ 165-42. Article not to affect provisions for revocation.—This article shall not be construed so as to alter or affect any provision for revocation or termination contained in such power of attorney. (1945, c. 980, s. 4.)

Article 7.

Miscellaneous Provisions.

Cross References. — As to guardians of children of servicemen, see § 33-67. As to Veterans' Guardianship Act, see chapter 34. As to federal records and reports that person dead, missing, captured, etc., see §§ 8-37.1 through 8-37.3. As to conservators of estates of persons reported missing, captured or interned, see §§ 33-63 through 33-66. As to absentee voting by members of armed forces, see §§ 163-58, 163-70 to 163-77.12. As to registration of official discharges from military and naval forces, see §§ 47-109 to 47-114. As to instruments proved or acknowledged before officers of certain ranks, see §§ 47-2, 47-2.1. As to salary increments for experience to teachers, etc., serving in armed forces, see § 115-359.1. As to exemption of veterans' pensions from taxation, see § 105-344. As to exemption of veterans from peddlers' license tax, see § 105-53. As to educational advantages for children of veterans, see §§ 116-149 through 116-151. As to furnishing statistical records to veterans' organizations, see § 130-103. As to exemption of property of veterans' organizations from taxation, see §§ 105-296, 105-297. As to exemption of veterans' organizations from tax on billiard and pool tables, see § 105-64. As to pensions for Confederate veterans, widows and servants, see § 112-15 et seq.

§ 165-43. Protecting status of State employees in armed forces, etc.—Any employee of the State of North Carolina, who has been granted a leave of absence for service in either (1) the armed forces of the United States; or (2) the merchant marine of the United States; or (3) outside the continental United States with the Red Cross, shall, upon return to State employment, if reemployed in the same position and if within the time limits set forth in the leave of absence, receive an annual salary of at least (1) the annual salary the employee was receiving at the time such leave was granted; plus (2) an amount obtained by multiplying the step increment applicable to the employee's classification as provided in the classification and salary plan for State employees by the number of years of such service, counting a fraction of a year as a year; provided that no such employee shall receive a salary in excess of the top of the salary range applicable to the classification to which such employee is assigned upon return. (1945, c. 220.)

Chapter 166.

Civil Defense Agencies.

§ **166-1. Short title.**—This chapter may be cited as "North Carolina Civil Defense Act of 1951." (1951, c. 1016, 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.

(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.)

§ **166-3. State Civil Defense Agency.**—The State Council of Civil Defense, hereinafter called the "Civil Defense Agency", created by North Carolina Emergency War Powers Proclamation No. XVII, shall continue to function as the Civil Defense Agency of this State, which Council is composed, ex officio, of the following membership:

1. The Governor, as chairman.
2. Commissioner of Motor Vehicles, as executive vice-chairman.
3. Executive secretary of the State Board of Health.
4. The chancellor of the North Carolina State College of Agriculture and Engineering.
5. Director of the State Bureau of Investigation.
6. General counsel for the North Carolina League of Municipalities. (1951, c. 1016, s. 3.)

§ **166-4. Director of Civil Defense and other personnel.**—(a) The Director of Civil Defense, hereinafter referred to as the "Director", shall be a full-time administrative officer, appointed by the State Council of Civil Defense, with the approval of the Governor, and his salary shall be fixed by said Council with the approval of the Governor but not to exceed eight thousand dollars ($8,000) per annum.

(b) The Director, with the consent of the Council, 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 or 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 shall be responsible to the Civil Defense Agency and 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.)

§ 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 beyond local control, due to hostile action, 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. (1951, c. 1016, s. 3.)

§ 166-6. Additional powers of Governor in event of war or imminent danger of attack.—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:

(1) 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.

(2) 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.

(3) To employ such measures and give such directions to the State or local boards of health as may be reasonably necessary for the purpose of securing compliance with the provisions of this chapter or with the findings or recommendations of such boards of health by reason of conditions arising from enemy attack or the threat of enemy attack or otherwise.

(4) On behalf of this State to enter into reciprocal aid agreements or compacts with other states and the federal government, either on a State-wide basis or local political subdivision basis or with a neighboring state or province of a foreign country. Such mutual aid arrangements 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 the State; health, medical and related services; fire fighting, rescue, transportation, and construction services 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, fire fighting, and police units and health units; and on such terms and conditions as are deemed necessary. (1951, c. 1016, s. 4.)

§ **166-7. Mobile support units.**—(a) The Governor or his duly designated representative is authorized to create and establish such number of mobile support units as may be necessary to reinforce civil defense organizations in stricken areas and with due consideration of the plans of the federal government and of other states. He shall appoint a commander for each such unit who shall have primary responsibility for the organization, administration and operation of such unit. Mobile support units shall be called to duty upon orders of the Governor and shall perform their functions in any part of the State, or, upon the conditions specified in this section, in other states.

(b) Whenever a mobile support unit of another state shall render aid in this State pursuant to the orders of the Governor of its home state and upon the request of the Governor of this State, this State shall reimburse such other state for the compensation paid and actual and necessary travel, subsistence and maintenance expenses of the personnel of such mobile support unit while rendering such aid, and for all payments for death, disability or injury of such personnel incurred in the course of rendering such aid, and for all losses of or damage to supplies and equipment of such other state or a political subdivision thereof resulting from the rendering of such aid: Provided, that the laws of such other state contain provisions substantially similar to this section or that provisions to the foregoing effect are embodied in a reciprocal mutual-aid agreement or compact or that the federal government has authorized or agreed to make reimbursement for such mutual aid as above provided.

(c) No personnel of mobile support units of this State shall be ordered by the Governor to operate in any other state unless the laws of such other state contain provisions substantially similar to this section or unless the reciprocal mutual-aid agreements or compacts include provisions providing for such reimbursement or unless such reimbursement will be made by the federal government by law or agreement. (1951, c. 1016, s. 5.)

§ 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. 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. 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, 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; 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, 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.)

§ 166-9. Mutual aid agreements.—(a) The director of each local organization for civil defense may, in collaboration with other public and private agencies within this State, develop or cause to be developed mutual aid arrangements for reciprocal civil defense aid and assistance in case of disaster too great to be dealt with unassisted. Such arrangements shall be consistent with the State civil defense plan and program, and in time of emergency it shall be the duty of each local organization for civil defense to render assistance in accordance with the provisions of such mutual aid arrangements.

(b) The director of each local organization for civil defense may, subject to the approval of the Governor, enter into mutual aid arrangements with civil defense agencies or organizations in other states for reciprocal civil defense aid and assistance in case of disaster too great to be dealt with unassisted. (1951, c. 1016, s. 7.)

§ 166-10. Appropriations and levy of taxes; authority to accept services, gifts, grants and loans.—(a) The performance by political subdivisions of this State of any or all of the functions authorized by this chapter to be so performed is hereby declared to be for a public purpose, and the expendi-

ture of funds therefor is for a necessary expense and the levy of taxes therefor is for a special purpose. Each political subdivision is hereby authorized, in accordance with the procedure and limitations established for the expenditure of public funds by local units of government by the General Statutes, for the purpose of performing such functions, in addition to all other taxes authorized by law, and each political subdivision may make appropriations and expend funds to perform any or all of such functions or to carry out the purposes of this chapter. In addition thereto, appropriations may be made by political subdivisions, for the purposes above described, immediately following the effective date of this chapter, such appropriations to be made from surplus funds or any other available funds not otherwise appropriated.

(b) Whenever the federal government or any agency or officer thereof shall offer to the State, or through the State to any political subdivision thereof, services, equipment, supplies, materials, or funds by way of gift, grant or loan, for the purposes of civil defense, the State, acting through the Governor, or such political subdivision, acting with the consent of the Governor and through its governing body, may accept such offer and upon such acceptance the governor of the State or governing body of such political subdivision may authorize any officer of the State or of the political subdivision, as the case may be, to receive such services, equipment, supplies, materials, or funds on behalf of the State or such political subdivision, and subject to the terms of the offer and the rules and regulations, if any, of the agency making the offer.

(c) Whenever any person, firm or corporation shall offer to the State or to any political subdivision thereof, services, equipment, supplies, materials, or funds by way of gift, grant, or loan, for purposes of civil defense, the State, acting through the Governor, or such political subdivision acting through its governing body, may accept such offer and upon such acceptance the Governor of the State or governing body of such political subdivision may authorize any officer of the State or of the political subdivision, as the case may be, to receive such services, equipment, supplies, materials, or funds on behalf of the State or such political subdivision, and subject to the terms of the offer. (1951, c. 1016, s. 8.)

§ **166-11. Utilization of existing services and facilities.**—In carrying out the provisions of this chapter, the Governor and the governing bodies of the political subdivisions of the State are authorized to utilize the services, equipment, supplies and facilities of existing departments, offices, and agencies of the State and of the political subdivisions thereof to the maximum extent practicable, and the officers and personnel of all such departments, offices, and agencies are authorized to co-operate with and extend such services and facilities to the Governor and to the civil defense organizations of the State upon request. (1951, c. 1016, s. 9.)

§ **166-12. Eligibility of civil defense personnel; oath required.**—(a) No person shall be employed or associated in any capacity in any civil defense organization established under this chapter who advocates or has advocated a change by force or violence in the constitutional form of the government of the United States or in this State, or the overthrow of any government in the United States by force or violence, or who has been convicted of or is under indictment or information charging any subversive act against the United States, or has ever been a member of the Communist Party. Each person who is appointed to serve in an organization for civil defense shall, before entering upon his duties, take an oath, in writing, before a person authorized to administer oaths in this State, which oath shall be substantially as follows:

"I ....., do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution of the State of North Carolina, against all enemies, foreign and domestic; and that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully

discharge the duties upon which I am about to enter. And I do further swear (or affirm) that I do not advocate, nor am I, nor have I ever knowingly been, a member of any political party or organization that advocates the overthrow of the government of the United States or of this State by force or violence; and that during such time as I am a member of the State Civil Defense Agency, I will not advocate nor become a member of any political party or organization that advocates the overthrow of the government of the United States or of this State by force or violence, so help me God."

(b) No person shall be barred from holding office in any capacity under this chapter by reason of the prohibition against double office holding. (1951, c. 1016, s. 10.)

§ **166-13. Duration of chapter.**—This chapter and all powers conferred by it shall expire and become null and void and all civil defense organizations created under the provisions hereof shall be disbanded on March 1, 1953. On said date all authority for whatever purpose herein contained or granted shall absolutely cease to exist. (1951, c. 1016, s. 12.)

STATE OF NORTH CAROLINA

Department of Justice

Raleigh, North Carolina

January 31, 1952

I, Harry McMullan, Attorney General of North Carolina, do hereby certify that the foregoing recompilation of 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.

Harry McMullan,
Attorney General of North Carolina