THE GENERAL STATUTES OF NORTH CAROLINA

1969 CUMULATIVE SUPPLEMENT

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

UNDER THE DIRECTION OF
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Volume 3D

Place in Pocket of Corresponding 1964 Replacement Volume of Main Set and Discard Previous Supplement

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Preface

This Cumulative Supplement to Replacement Volume 3D contains the general laws of a permanent nature enacted at the 1965, 1966, 1967 and 1969 Sessions of the General Assembly, which are within the scope of such volume, and brings to date the annotations included therein.

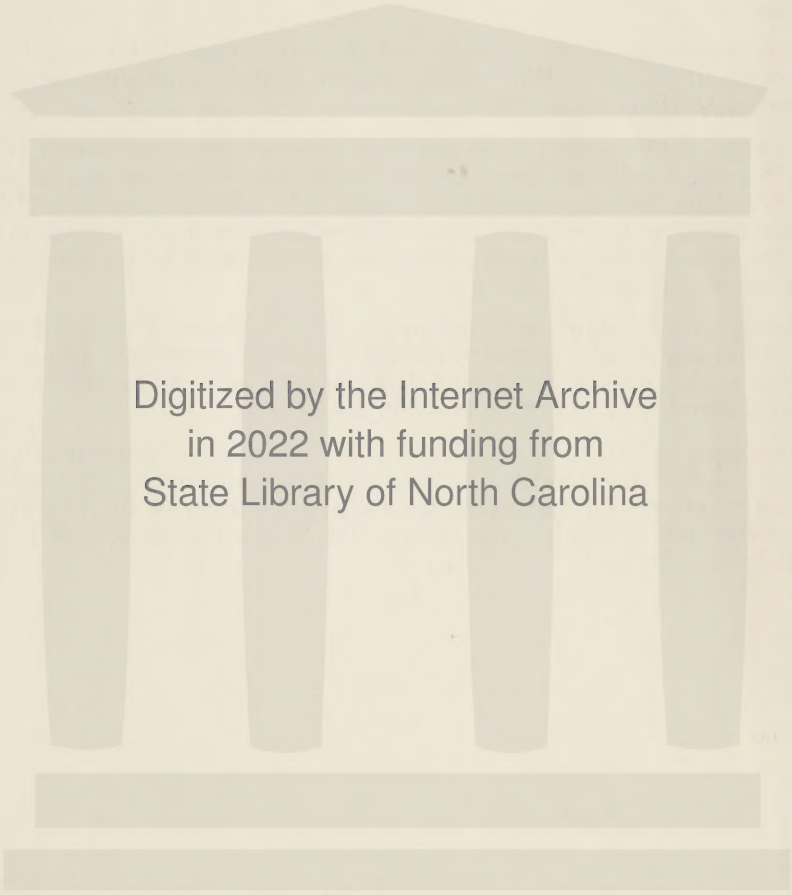
Amendments of former laws are inserted under the same section numbers appearing in the General Statutes, and new laws appear under the proper chapter headings. Editors' notes point out many of the changes effected by the amendatory acts.

Chapter analyses show new sections and also old sections with changed captions. An index to all statutes codified herein appears in the Cumulative Supplement to Replacement Volumes 4B and 4C.

A majority of the Session Laws are made effective upon ratification but a few provide for stated effective dates. If the Session Law makes no provision for an effective date, the law becomes effective under G.S. 120-20 "from and after thirty days after the adjournment of the session" in which passed. All legislation appearing herein became effective upon ratification, unless noted to the contrary in an editor's note or an effective date note.

Beginning with the opinions issued by the North Carolina Attorney General on July 1, 1969, any opinion which construes a specific statute will be cited as an annotation to that statute. For a copy of an opinion or of its headnotes write the Attorney General, P.O. Box 629, Raleigh, N.C. 27602.

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



Scope of Volume

Statutes:

Permanent portions of the general laws enacted at the 1965, 1966, 1967 and 1969 Sessions of the General Assembly affecting Chapters 157 through 167 of the General Statutes.

Annotations:

Sources of the annotations:
North Carolina Reports volumes 260 (p. 133)-275 (p. 341).
North Carolina Court of Appeals Reports volumes 1-5 (p. 227).
Federal Reporter 2nd Series volumes 317-410 (p. 448).
Federal Supplement volumes 217-298 (p. 1200).
United States Reports volumes 373-394 (p. 575).
Supreme Court Reporter volumes 83 (p. 1560)-89 (p. 2151).
North Carolina Law Review volumes 41 (p. 665)-47 (p. 731).
Wake Forest Intramural Law Review volumes 2-5.

The General Statutes of North Carolina
1969 Cumulative Supplement

VOLUME 3D

Chapter 157.

Housing Authorities and Projects.

Article 1.

Housing Authorities Law.

ARTICLE 1.

Housing Authorities Law.

§ 157-1. Title of article.

Editor's Note.—

For comment on the public purpose doctrine, see 3 Wake Forest Intra. L. Rev. 37 (1967).

For comment on eviction in public housing, see 4 Wake Forest Intra. L. Rev. 112 (1968).

Property Exempt, etc.—

The case of Wells v. Housing Authority, 213 N.C. 744, 197 S.E. 693 (1938), construed this article with respect to ad valorem taxes only. Housing Authority v. Johnson, 261 N.C. 76, 134 S.E.2d 121 (1964).

Collection of Sales Tax from Housing Authority Is Not Prohibited.—Neither the Constitution of this State nor the Constitution and laws of the United States prohibit the collection of a sales tax on purchases of tangible personal property made by a housing authority duly created, organized and existing under and by virtue of the Housing Authorities Law enacted in 1935 by the General Assembly of North Carolina. Housing Authority v. Johnson, 261 N.C. 76, 134 S.E.2d 121 (1964).

Such Authority Is Not Entitled to Refund of Sales Taxes as City or Town.—A housing authority created pursuant to the provisions of the Housing Authorities Law is a municipal corporation but is not an incorporated city or town, and is not entitled to the refund of sales taxes paid on purchases of tangible personal property pursuant to the provisions of § 105-164.14 (c). Housing Authority v. Johnson, 261 N.C. 76, 134 S.E.2d 121 (1964).

Nor as Charitable Organization.—A municipal corporation or public agency created, organized and existing under and by virtue of the laws of this State, more particularly the Housing Authorities Law, codified as this article, is not a charitable organization within the meaning of the refund provisions of § 105-164.14 (b). Housing Authority v. Johnson, 261 N.C. 76, 134 S.E.2d 121 (1964).

Defendant housing authority was created and organized pursuant to the provisions of this section hence, all housing projects of defendant are subject to the planning, zoning, sanitary and building laws, ordinances and regulations applicable to the locality in which the housing project is situated. Philbrook v. Chapel Hill Housing Authority, 269 N.C. 598, 153 S.E.2d 153 (1967).

Cited in Redevelopment Comm'n v. Guilford County, 1 N.C. App. 512, 162 S.E.2d 108 (1968).

§ 157-4.1. Alternative organization.—(a) In lieu of creating a housing authority as authorized herein, the council of any city may, if it deems wise, either designate a redevelopment commission created under the provisions of chapter 160 of the General Statutes to exercise the powers, duties, and responsibilities of a housing authority as prescribed herein, or may itself exercise such powers, duties, and responsibilities. Any such designation shall be by passage of a resolution adopted in accordance with the procedure and pursuant to the finding specified in the first and second paragraphs of G.S. 157-4. In the event the council of any city

designates itself to exercise the powers, duties, and responsibilities of a housing authority, then where any act, proceeding, or approval is required to be done, recommended, or approved both by a housing authority and by the council of the city, then the performance, recommendation, or approval thereof once by the council of the city shall be sufficient to make such performance, recommendation, or approval valid and legal. In the event the council of the city designates itself to exercise the powers, duties, and responsibilities of a housing authority, it may assign the administration of the housing programs, projects, and policies to any existing or new department of the city.

(b) The council of any city which has prior to July 1, 1969 created, or which may hereafter create, a housing authority may, in its discretion, by resolution abolish such housing authority, such abolition to be effective on a day set in such resolution not less than 90 days after its adoption. Upon the adoption of such a resolution, the housing authority of the city is hereby authorized and directed to take such actions and to execute such documents as will carry into effect the provisions and the intent of the resolution, and as will effectively transfer its authority, responsibilities, obligations, personnel, and property, both real and personal, to the city. Any city which abolishes a housing authority pursuant to this subsection may, at any time subsequent to such abolition or concurrently therewith, exercise the authority granted by subsection (a) of this section.

On the day set in the resolution of the council:

(1) The housing authority shall cease to exist as a body politic and corporate and as a public body;

(2) All property, real and personal and mixed, belonging to the housing authority shall vest in, belong to, and be the property of the city;

(3) All judgments, liens, rights of liens, and causes of action of any nature in favor of the housing authority shall remain, vest in, and inure to the benefit of the city;

(4) All rentals, taxes, assessments, and any other funds, charges or fees, owing to the housing authority shall be owed to and collected by the city;

(5) Any actions, suits, and proceedings pending against, or having been instituted by the housing authority shall not be abated by such abolition, but all such actions, suits, and proceedings shall be continued and completed in the same manner as if abolition had not occurred, and the city shall be a party to all such actions, suits, and proceedings in the place and stead of the housing authority and shall pay or cause to be paid any judgments rendered against the housing authority in any such actions, suits, or proceedings, and no new process need be served in any such action, suit, or proceeding;

(6) All obligations of the housing authority, including outstanding indebtedness, shall be assumed by the city, and all such obligations and outstanding indebtedness shall be constituted obligations and indebtedness of the city;

(7) All ordinances, rules, regulations and policies of the housing authority shall continue in full force and effect until repealed or amended by the council of the city. (1969, c. 1217, s. 2.)

§ 157-11. Eminent domain.

Editor's Note. — For an article urging revision and recodification of North Carolina's eminent domain laws, see 45 N.C.L. Rev. 587 (1967).

§ 157-13. Zoning and building laws.

Applied in Philbrook v. Chapel Hill Housing Authority, 269 N.C. 598, 153 S.E.2d 153 (1967).

§ 157-26. Tax exemptions.

Since a housing authority, etc.—

The case of Wells v. Housing Authority, 213 N.C. 744, 197 S.E. 693 (1938) construed this article with respect to ad valorem taxes only. Housing Authority v. Johnson, 261 N.C. 76, 134 S.E.2d 121 (1964).

Authority Is Not Entitled to Refund of Sales Taxes.—A housing authority created pursuant to the provisions of the Housing Authorities Law is a municipal corporation but is not an incorporated city or town, and is not entitled to the refund of sales taxes paid on purchases of tangible personal property pursuant to the provisions of § 105-164.14 (c). Housing Authority v. Johnson, 261 N.C. 76, 134 S.E.2d 121 (1964).

A municipal corporation or public agency created, organized and existing under and by virtue of the laws of this State, more particularly the Housing Authorities Law, codified as this article, is not a charitable organization within the meaning of the refund provisions of § 105-164.14 (b). Housing Authority v. Johnson, 261 N.C. 76, 134 S.E.2d 121 (1964).

§ 157-33. Notice, hearing and creation of authority for a county.—Any twenty-five (25) residents of a county 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 (i) whether insanitary or unsafe inhabited dwelling accommodations exist in the county and/or (ii) 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 either (i) determine that the board of county commissioners shall itself constitute and act ex officio as an authority or (ii) 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, except where the authority consists of the board of county commissioners ex officio;
(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; 1969, c. 785, s. 1.)

Editor's Note.—
The 1969 amendment deleted "having a population of more than sixty thousand (60,000)" following the word "county" the first time such word appears in the first sentence of the first paragraph, inserted, in the first sentence of the third paragraph, "either (i) determine that the board of county commissioners shall itself constitute an act ex officio as an authority or (ii)" and added "except where the authority consists of the board of county commissioners ex officio" to subdivision (3) of the fourth paragraph.

§ 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; provided, that the board of county commissioners may determine in the case of any authority for its county that the board of county commissioners itself shall constitute and act ex officio as the authority. 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 subdivision (4)

of § 157-29 of the housing authorities law with respect to housing projects for farmers of low income. (1941, c. 78, s. 4; 1969, c. 785, s. 2.)

Editor's Note.—The 1969 amendment divided the section, which formerly comprised only one sentence, into two sentences and added the proviso to the present first sentence.

§ **157-39.5. Consolidated housing authority.**—If the governing body of each of two or more municipalities (with a population of less than five hundred, but having an aggregate population of more than five hundred) by resolution declares that there is a need for one housing authority for all of such municipalities to exercise in such municipalities the powers and other functions prescribed for a housing authority, a public body corporate and politic to be known as a consolidated housing authority (with such corporate name as it selects) shall thereupon exist for all of such municipalities and exercise its powers and other functions within its area of operation (as herein defined), including the power to undertake projects therein; and thereupon any housing authority created for any of such municipalities shall cease to exist except for the purpose of winding up its affairs and executing a deed of its real property to the consolidated housing authority: Provided, that the creation of a consolidated housing authority and the finding of need therefor shall be subject to the same provisions and limitations of this Housing Authorities Law as are applicable to the creation of a regional housing authority and that all of the provisions of this Housing Authorities Law applicable to regional housing authorities and the commissioners thereof shall be applicable to consolidated housing authorities and the commissioners thereof: Provided, further that the area of operation or boundaries of a consolidated housing authority shall include all of the territory within the boundaries of each municipality joining in the creation of such authority together with the territory within ten miles of the boundaries of each such municipality, except that such area of operation may be changed to include or exclude any municipality or municipalities (with its aforesaid surrounding territory) in the same manner and under the same provisions as provided in this article for changing the area of operation of a regional housing authority by including or excluding a contiguous county or counties: Provided, further, that for all such purposes the term "board of county commissioners" shall be construed as meaning "governing body" except in § 157-36, where it shall be construed as meaning "mayor" or other executive head of the municipality, the term "county" shall be construed as meaning "municipality," the term "clerk" shall be construed as meaning "clerk of the municipality or officer with similar duties," the term "region" shall be construed as meaning "area of operation of the consolidated housing authority" and the terms "county housing authority" and "regional housing authority" shall be construed as meaning "housing authority of the city" and "consolidated housing authority," respectively, unless a different meaning clearly appears from the context.

The governing body of any such municipality for which a housing authority has not been created may adopt the above resolution if it first determines that there is a need for a housing authority to function in said municipality, which determination shall be made in the same manner and subject to the same conditions as the determination required by § 157-4 for the creation of a housing authority for a city: Provided, that after notice given by the clerk (or officer with similar duties) of the municipality, the governing body of the municipality may, without a petition therefor, hold a hearing to determine the need for a housing authority to function therein.

Except as otherwise provided herein, a consolidated housing authority and the commissioners thereof shall, within the area of operation of such consolidated housing authority, have the same functions, rights, powers, duties, privileges, immunities and limitations as those provided for housing authorities created for cities, counties, or groups of counties and the commissioners of such housing authorities, in the same

manner as though all the provisions of law applicable to housing authorities created for cities, counties, or groups of counties were applicable to consolidated housing authorities. (1943, c. 636, s. 5; 1961, c. 200, s. 3; 1965, c. 431, s. 3.)

Editor's Note.—
The 1965 amendment substituted "five hundred" for "five thousand" at the end of the phrase in parentheses near the beginning of the section.

Article 2.

Municipal Co-operation and Aid.

§ 157-42. Conveyance, lease or agreement in aid of housing project.

Editor's Note.—
For comment on the public purpose doctrine, see 3 Wake Forest Intra. L. Rev. 37 (1967).

§ 157-43. Advances and donations by the city and municipality.

Editor's Note.—For comment on the public purpose doctrine, see 3 Wake Forest Intra. L. Rev. 37 (1967).

Article 3.

Eminent Domain.

§ 157-50. Eminent domain for housing projects.

Discretion of Housing Authority in Selection of Site.—
In accord with 1st paragraph in original. See Philbrook v. Chapel Hill Housing Authority, 269 N.C. 598, 153 S.E.2d 153 (1967).

In accord with 2nd paragraph in original. See Philbrook v. Chapel Hill Housing Authority, 269 N.C. 598, 153 S.E.2d 153 (1967).

In accord with 3rd paragraph in original. See Philbrook v. Chapel Hill Housing Authority, 269 N.C. 598, 153 S.E.2d 153 (1967).

Chapter 158.

Local Development.

Article 1.

Local Development Act of 1925.

§ 158-1. Purposes of article; expenditures and levy of taxes authorized; elections and levies validated.

Local Modification.—City of Burlington: 1969, c. 642.

Editor's Note.—
For comment on the public purpose doctrine, see 3 Wake Forest Intra. L. Rev. 37 (1967).

Opinions of Attorney General. — Mrs. Christine Boring, Clerk, Town of Franklin, 7/9/69.

§ 158-2. Ratification or petition of voters required; exception as to appropriations from nontax sources.

Editor's Note.—
Chapter 236, Session Laws 1967, amended s. 1½ of c. 1229, Session Laws 1963, referred to in note in original, by deleting Forsyth County. Chapter 315, Session Laws 1967, amended s. 1½ of c. 1229, Session Laws 1963, by deleting Guilford County.

Opinions of Attorney General. — Mrs. Christine Boring, Clerk, Town of Franklin, 7/9/69.

§ 158-7. Disposition of surplus revenues.

Local Modification.—City of Burlington: 1969, c. 642.

Article 2.

Economic Development Commissions.

§ 158-14. Regional planning and economic development commissions authorized.—Any municipalities and/or counties desiring to exercise the powers granted by this article may, at their option, create a regional planning and economic development commission, which shall have and exercise all of the powers and duties granted to a regional economic development commission under this article and in addition the powers and duties granted to a regional planning commission under article 23 of chapter 153. In the event that such a combined commission is created, it shall keep separate books of accounts for appropriations and expenditures made pursuant to this article and for appropriations and expenditures made pursuant to article 23 of chapter 153. The financial limitations set forth in each such article shall govern expenditures made pursuant to such article. (1961, c. 722, s. 2; 1965, c. 431, s. 2.)

Editor's Note.—The 1965 amendment changed the references at the end of the first and second sentences from article 22 of chapter 153 to article 23 of chapter 153.

Article 3.

Tax Elections for Industrial Development Purposes.

§ 158-24. Counties to which article applies.—The provisions of this article shall apply only to the following counties: Alexander, Burke, Caswell, Chowan, Edgecombe, Franklin, Harnett, Haywood, Hertford, Mitchell, Northampton, Onslow, Pasquotank, Perquimans, Person, Polk, Rockingham, Rutherford, Tyrrell, Vance and Warren. (1959, c. 212, s. 2; 1961, cc. 208, 228, 339, 560, 683, 701, 1011, 1058; 1963, c. 157, s. 2; cc. 443, 504, 506, 613, 1101; 1965, cc. 189, 523, 622.)

Editor's Note.—

The first 1965 amendment added Hertford and Northampton, the second 1965 amendment added Rockingham, and the third 1965 amendment added Pasquotank to the list of counties.

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.

§ 159-3. 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 the amount provided in G.S. 138-5 for each day actually spent in the service of the Commission, but shall receive no salary or other compensation, and all members shall be entitled to their necessary traveling and other expenses. The Director shall appoint some competent person as secretary of the Commission and assistant to the Director and may appoint a deputy secretary and such other assistants as may be necessary, who shall be responsible to the Director. The salaries of the secretary of the Commission and the deputy secretary shall be set by the Governor subject to the approval of the Advisory Budget Commission. The deputy secretary shall have and exercise each and every power of whatsoever nature and kind as the secretary of the Commission himself may exercise, and all actions taken by the deputy secretary and the signing by him of any and all documents and papers provided for in this article shall be effective the same as though the secretary of the Commission himself had taken such action or signed such documents and papers. The Commission shall have power to adopt such rules and regulations as may be necessary for carrying out its duties under this article. The Commission shall hold quarterly regular meetings in the city of Raleigh or at such place and times as may be designated by the Commission, and may hold special meetings at any time upon notice to each member personally given or sent by mail or telegraph not later than the fifth day before the meeting, which notice need not state the purpose of the meeting. It shall have the right to call upon the Attorney General or any assistant thereof for legal advice in relation to its powers and duties. The functions of the Local Government Commission and of the Director of Local Government shall be maintained and operated as a separate and distinct division of the department of the State treasury. (1931, c. 60, s. 7; c. 296, s. 8; 1933, c. 31, s. 1; 1957, c. 541, s. 18; 1963, c. 1130; 1969, c. 445, s. 1.)

Editor's Note.—
The 1969 amendment substituted "the amount provided in G.S. 138-5" for "ten dollars" in the sixth sentence.

§ **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 (i) 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 (ii) 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 (i) of this section; and provided, further, that upon request of the board or body authoriz-

ing 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 an official bank check, a cashier's check or a certified check upon an incorporated bank or trust company payable unconditionally to the order of the State Treasurer for two percent of the face value of the bonds and one half of one percent on notes bid for, drawn upon an incorporated 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 thereto 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, c. 296, s. 1; 1933, c. 258, s. 1; 1969, c. 943.)

Editor's Note.—

The 1969 amendment inserted "an official bank check, a cashier's check or" near the middle of the fourth sentence, and substituted "upon an incorporated bank" for "on some bank" near the end of the fourth sentence.

§ **159-17.1. Facsimile seals and signatures on bonds, notes or other obligations.**—All laws, whether general, local, private or special, authorizing and providing for the issuance of bonds, notes or other obligations of a unit within the meaning of G.S. 159-2, a part of the Local Government Act, as it may be amended from time to time, are hereby amended and supplemented to provide that the governing body of a unit may, in its discretion, authorize (i) the imprinting of a facsimile of the seal of the unit on any bond, note or other obligation of the unit in lieu of physically affixing such seal thereon and (ii) the execution of any bond, note or other obligation by facsimile rather than manual signatures; provided, however, that at least one manual signature must appear on every bond, note or other obligation which signature may be the manual signature of the representative of the Local Government Commission to the certificate of the Commission on such bond, note or other obligation.

The powers granted by this section are in addition to and not in substitution for any other powers heretofore or hereafter granted by any other law. (1969, c. 29.)

§ **159-20. Contract for services must be approved by Commission.**

Cited in North Carolina Turnpike Authority v. Pine Island, Inc., 265 N.C. 109, 143 S.E.2d 319 (1965).

§ **159-25. Investment of unit sinking funds.**—Sinking funds shall be deposited or invested as provided in this chapter, and such deposits and investments shall be subject to the approval of the Director of Local Government. (1931, c. 60, s. 29; 1933, cc. 143, 436; 1939, c. 146; 1967, c. 798, s. 2.)

Editor's Note.—

The 1967 amendment rewrote this section.

§ **159-28.1. Investment of unit funds.**—(a) From time to time the governing body of a unit may deposit at interest or invest, as provided in subsections (b) and (c), all or part of the cash balance of any unit fund, including but not

limited to the funds whose investment is authorized by G.S. 115-80.3, G.S. 153-142.24, G.S. 153-135.1, G.S. 159-25, G.S. 159-49.1, G.S. 160-411.5, and G.S. 160-431. The governing body may by resolution designate any officer, employee, or member of the governing body to manage the unit's deposits and investments on behalf of the governing body subject to whatever restrictions the governing body may impose, and such designee shall have the power to purchase, sell, and exchange securities on behalf of the governing body. The governing body shall exercise due diligence to assure that temporarily idle cash is invested or deposited at a reasonable rate of interest but shall be available to the unit when needed for the purpose for which it was raised.

(b) Moneys made available for investment may be deposited at interest in any bank or trust company in this State in the form of time deposits, certificates of deposit, or such other form of deposit as the Director of Local Government may approve. Such deposits shall be secured as provided in § 159-28.

(c) Moneys made available for investment may be invested in the following classes of securities, and no others:

(1) Obligations of the United States of America;

(2) Obligations of any agency or instrumentality of the United States of America if the payment of interest and principal of such obligations is fully guaranteed by the United States of America;

(3) Obligations of the State of North Carolina;

(4) Bonds and notes of any North Carolina Local Government Unit, subject to such restrictions as the Director of Local Government may impose;

(5) Shares of any savings and loan association organized under the laws of this State and shares of any federal savings and loan association having its principal office in this State, to the extent that the investment in such shares is insured by the United States of America or an agency thereof or by any mutual deposit guaranty association authorized by the Commissioner of Insurance of North Carolina to do business in North Carolina pursuant to article 7A of Chapter 54 of the General Statutes, provided that in the case of a savings and loan association which is insured by a mutual deposit guaranty association, the maximum investment each governing body may make in each such savings and loan association shall be fifteen thousand dollars ($15,000.00);

(6) Obligations of the Federal Intermediate Credit Banks, the Federal Home Loan Banks, the Federal National Mortgage Association, Banks for Cooperatives, and the Federal Land Banks maturing no later than eighteen months after the date of purchase.

(d) (1) The purchase, sale, and trade of securities authorized by this section may be by private negotiation, and units are authorized to pay all incidental costs thereof and all reasonable costs of administering the investment and deposit program. Provisions shall be made for the adequate safe keeping of the evidences of investment and the adequate bonding of persons charged with their custody or management. Proper recording and accounting shall be made of all investment and deposit transactions.

(2) Interest earned on deposits and investments shall be credited to the fund whose cash is deposited or invested. Cash of several funds may be combined for deposit or investment if not otherwise prohibited by law; and when such joint deposits or investments are made, interest earned shall be prorated and credited to the various funds on the basis of the amounts thereof invested, figured according to an average periodic balance or other sound accounting principle prescribed by the governing body. Interest earned on the deposit or investment of bond funds may be used for the purpose for which the bonds were sold or may be applied to the payment of principal or interest of the bonds.

(3) If funds are invested in registered securities, the securities may be released from registration and transferred on the books of registry kept by or on behalf of the issuer by signature of a person designated to carry out that function by the governing body.

(e) Insofar as the provisions of any other statute, whether general, local, or special, are inconsistent with the provisions of this section, this section shall be controlling. (1967, c. 798, s. 1; 1969, c. 862.)

Editor's Note.—The 1969 amendment added at the end of subdivision (5) of subsection (c) the provisions as to insurance by a mutual deposit guaranty association authorized to do business in North Carolina.

§ 159-42. Law applicable to all counties, cities and towns. — The provisions of this article shall apply to every unit having the power to levy taxes ad valorem, regardless of any provisions to the contrary in any general, special or local act enacted before the adjournment of the regular session of the General Assembly in 1969. (1931, c. 60, s. 74; 1935, c. 356, s. 3; 1941, c. 191; 1947, c. 992; 1949, c. 925; 1955, c. 1276; 1961, c. 1106; 1969, c. 788.)

Editor's Note.—
The 1969 amendment substituted "1969" for "1961" at the end of the section.

§ 159-47.1. Issuance of bonds without coupons. — Notwithstanding the provisions of any general, local, private or special laws authorizing and providing for the issuance of bonds of a unit, the governing body of a unit may authorize, subject to the approval of the Local Government Commission, the issuance, in lieu of coupon bonds, of a single bond without coupons in a denomination equal to the aggregate principal amount of such coupon bonds and payable in installments corresponding to the maturities of such coupon bonds. Such bond without coupons shall bear interest at the same rate or rates as such coupon bonds and shall be registered as to both principal and interest. At the request of the holder of a single bond without coupons, the governing body of such unit shall within ninety days after its receipt of such request, cause to be prepared and executed and delivered to the holder in exchange for such single bond without coupons, coupon bonds in an aggregate principal amount equal to the principal amount of such single bond with coupons then unpaid and having maturities corresponding to the maturities of the installments of the principal of such single bond without coupons then unpaid and bearing interest at the same rate or rates as provided in such single bond without coupons. Upon any such exchange, such single bond without coupons shall be cancelled. The reasonable expenses and charges of the unit and the Commission in connection with such exchange shall, at the option of the governing body of the unit, be paid by the holder or the unit. Until so exchanged, such single bond without coupons shall in all respects be entitled to the same benefits as the coupon bonds to be issued. (1969, c. 685, s. 1.)

Editor's Note.—Session Laws 1969, c. 685, s. 2, provides: "The powers granted by this act are in addition to and not in substitution for any other powers heretofore or hereafter granted by any other law."

§ 159-49.1. Investment of bond proceeds.—Bond proceeds may be deposited at interest or invested as provided by G.S. 159-28.1. (1943, c. 14; 1967, c. 798, s. 2.)

Editor's Note. —
The 1967 amendment rewrote this section.

§ 159-49.2: Repealed by Session Laws 1967, c. 798, s. 2.

Editor's Note.—The repealing act provides that it is the intent and purpose of the act that the investment of bond proceeds shall be as provided by §§ 159-28.1 and 159-49.1.

Chapter 160.

Municipal Corporations.

SUBCHAPTER I. REGULATIONS INDEPENDENT OF ACT OF 1917.

Article 2.

Municipal Officers.

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Sec.

160-9.1. Governing board to fix compensation.

Part 2. Mayor.

160-13 to 160-16. [Repealed.]

Part 3. Constable and Policemen.

160-20.2. Law-enforcement officers of one political subdivision to assist officers of another political subdivision upon request.

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160-25. Officers elected by the people must be qualified voters.

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160-28. [Repealed.]

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Article 5.

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160-58.1. Delinquent taxes.

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160-61.2. Sale, lease, exchange, and joint use of governmental property.

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160-138. Records and reports.

160-139. Appeals in general.

160-140. Establishment of fire limits.

160-141. Restrictions within primary fire limits.

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160-143. Failure to establish primary fire limits.

160-144 to 160-154. [Repealed.]

Article 12.

Recreation Systems and Playgrounds.

160-163. Petition for establishment of system and levy of tax; election; increase or decrease in tax.

Article 12B.

Rural Recreation Districts.

160-166.3. Election to be held upon petition of voters.

160-166.4. Duties of county board of commissioners as to conduct of election; cost of holding.

SUBCHAPTER I. REGULATIONS INDEPENDENT OF ACT OF 1917.

Article 1.

General Powers.

§ 160-1. Body politic.

Powers.—

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, or such powers as are necessarily implied by those given. State v. Hord, 264 N.C. 149, 141 S.E.2d 241 (1965).

Same—Discretion, etc.—

A municipal corporation may exercise all the powers within the fair intent and purpose of its creation which are reasonably necessary to give effect to the powers expressly granted, and in doing this it may exercise discretion as to the means to the end. Keeter v. Town of Lake Lure, 264 N.C. 252, 141 S.E.2d 634 (1965).

An incorporated city or town is an agency created by the State. It has no governmental power or authority except such as has been granted to it by the legislature, expressly or by necessary implication from the powers expressly conferred. State v. Furio, 267 N.C. 353, 148 S.E.2d 275 (1966).

It Has No Inherent Police Powers.—An incorporated city or town has no inherent police powers. State v. Furio, 267 N.C. 353, 148 S.E.2d 275 (1966).

The implied powers, etc.—

A municipal corporation is authorized by implication to do an act if the doing of such act is necessarily or fairly implied in or incident to the powers expressly granted, or is essential to the accomplishment of the declared objects and purposes of the corporation. Harrelson v. City of Fayetteville, 271 N.C. 87, 155 S.E.2d 749 (1967).

Ordinances Having Effect outside Territorial Limits of Corporation.—While the legislature may confer upon a municipal corporation the power to enact ordinances having effect in territory contiguous to the corporation, in the absence of the grant of such power a city or town may not, by its ordinance, prohibit acts outside its territorial limits or impose criminal liability therefor. State v. Furio, 267 N.C. 353, 148 S.E.2d 275 (1966).

Franchise for Limousine Service to Airport. — See same catchline in note to § 63-2.

§ 160-2. Corporate powers.

(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 forty years, for the supply of water and, not exceeding thirty years, for the supply of light or other public commodity.

Local Modification.—Towns of Biscoe, Candor, Mount Gilead, Star and Troy, as to subdivision (6): 1969, c. 346.

Editor's Note.—

The 1967 amendment rewrote the portion of subdivision (6) that follows the proviso.

A franchise need not be exclusive. Indeed, if it is exclusive, an additional question as to its validity arises under N.C. Const., Art. I, §§ 7 and 31. Kornegay v. City of Raleigh, 269 N.C. 155, 152 S.E.2d 186 (1967).

City Must Follow Procedural Restrictions of Charter.—Where the charter of a city provides procedural restrictions upon the granting by the city of franchises, such city must follow such procedural restrictions of its charter in granting a franchise regardless of whether the authority to grant the particular franchise is conferred upon the city by this section or by its own charter. Shaw v. City of Asheville, 269 N.C. 90, 152 S.E.2d 139 (1967).

"Public Utilities". — The status of the grantee is a material factor is determining the validity of a grant of a franchise under the authority of this section, for this section

authorizes municipal corporations to grant franchises only to "public utilities," though it does not necessarily follow that such grantee must be the operator of a business within the definition of "public utility" contained in § 62-3. Kornegay v. City of Raleigh, 269 N.C. 155, 152 S.E.2d 186 (1967).

It may well be that the term "public utility" as used in this section is a broader term than it is as used in chapter 62 of the General Statutes. Shaw v. City of Asheville, 269 N.C. 90, 152 S.E.2d 139 (1967).

Grant of Right to Construct City-Wide Television Cable System.—The grant by a city to a person, firm or corporation of the right to construct a city-wide television cable system of towers, poles, cables, wires, and other apparatus in, along and over its streets and other public ways and to operate such systems for the profit of the grantee is clearly a franchise, for it is the grant of a right not held by all persons in common and which may be granted only by the act of the sovereign or its authorized agent. Kornegay v. City of Raleigh, 269 N.C. 155, 152 S.E.2d 186 (1967). See subdivision (6a) of this section.

Cited in Pitt & Greene Elec. Membership Corp. v. Carolina Power & Light Co., 261 N.C. 716, 136 S.E.2d 124 (1964).

(6a) To grant upon reasonable terms franchises for the operation of cable television systems, such grants not to exceed the period of 20 years, to levy reasonable franchise taxes under authority of G.S. 160-56 on the business of operating cable television systems, and to prohibit the operation of cable television systems without a franchise. For the purposes of this subdivision, "cable television system" shall include any system or facility which, by means of a master antenna and wires or cables, or of wires and cables alone, receives, amplifies, modifies, transmits, or distributes any television, radio, or electronic signal, audio or video or both, to subscribing members of the public for compensation; provided, that "cable television system" shall not include the providing by any person, firm, or corporation of master antenna service only to property owned or leased by such person, firm, or corporation, if no part of any public right-of-way or easement is used in providing such service; and further provided, that this subdivision shall not apply to communication services rendered to such a cable television system by a public utility and which services are subject to regulation by the North Carolina Utilities Commission or the Federal Communications Commission.

Cross Reference.—See note to subdivision (6) of this section.

Editor's Note. — Session Laws 1967, c. 1122, s. 1, added subdivision (6a). Section 2 of the amendatory act provides that nothing in the act shall be construed so as to affect in any manner any franchise granted prior to the effective date of the act, which is July 4, 1967.

Subdivision (6a) is a grant of power to cities and towns. It imposes no duties. Cablevision of Winston-Salem v. City of Winston-Salem, 3 N.C. App. 252, 164 S.E.2d 737 (1968).

(12) Any county, city, town, incorporated village, sanitary district or other local governmental unit which is a political subdivision of the State of North Carolina is authorized and empowered to submit to a vote of the people any lease, contract, agreement or other contractual obligation the effect of which is to create a debt for a local governmental unit within the meaning of Article V, § 4, or Article VII, § 6, of the Constitution of North Carolina. Any referendum held pursuant to the provisions of this subdivision shall be conducted according to the law applicable to bond elections for the particular local governmental unit concerned. (Code, ss. 704, 3117; 1901, c. 283; 1905, c. 526; Rev., s. 2916; 1907, c. 978; P. L. 1917, c. 223; C. S., s. 2623; Ex. Sess. 1921, c. 58; 1927, c. 14; 1933, c. 69; 1949, c. 938; 1955, c. 77; 1959, c. 391; 1961, c. 308; 1967, c. 100, s. 2; c. 1122, s. 1; 1969, c. 944.)

Editor's Note. — The 1969 amendment added subdivision (12).

Only Part of Section Set Out. — Only the subdivisions added or changed by the amendments are set out.

§ 160-3. How corporate powers exercised.

Opinions of Attorney General. — Mr. Richard A. Williams, Maiden Town Attorney, 7/29/69.

§ 160-4.1. Estimate of municipal population authorizing participation in state-collected funds.—Whenever a municipality of the State of North Carolina is not included in the last federal decennial census, said municipality shall be entitled to participate in all state-collected funds allocated to the local units of governments of the State by filing with the department or agencies of the State government charged with the responsibility of distributing such funds an estimate of the population of such municipality. Such estimate shall be approved by the governing body of the municipality and by the county board of commissioners of the county wherein such municipality is located. And when so approved the estimate of the population shall be the official census of said municipality until the next federal decennial census is released. All departments or agencies of the State government charged with the responsibility of distributing such funds are hereby authorized and directed to accept such estimate of population in distributing and allocating such funds. (1953, c. 79; 1969, c. 873.)

Editor's Note.—The 1969 amendment deleted "by reason of its being unincorporated at the time said census was taken and certified" following "census" and deleted "becoming incorporated after such census" following "said municipality" in the first sentence.

Article 2.

Municipal Officers.

Part 1. Commissioners.

§ 160-9. Commissioners appoint other officers and fix salaries.

Editor's Note. — Session Laws 1969, c. 181, s. 3, reenacted this section without change.

§ 160-9.1. Governing board to fix compensation. — The governing board of any city or town in this State may fix its own compensation and allowances, and the compensation and allowances of the mayor, in such sums as may be just and reasonable, effective following the next regular municipal election for seats on said board. The compensation and allowances of a mayor elected as such shall not be reduced during the then current term of office. Any action taken under this section shall be published at least once in some newspaper having a general circulation in the municipality as provided by G.S. 1-597, and shall not be taken after 14 days before the deadline for filing notice of candidacy for the municipal governing board, or, if no such deadline is prescribed by law or ordinance, after 90 days before the municipal election. (1969, c. 181, s. 1.)

Editor's Note.—Session Laws 1969, c. 181, s. 2, as amended by Session Laws 1969, c. 253, provides: "Notwithstanding the deadline for action prescribed in § 1 of this act, cities and towns may take action hereunder in 1969 on or before the first day of May."

Session Laws 1969, c. 181, s. 3, repeals all portions of municipal charters fixing the compensation and allowances of municipal officers and employees.

Session Laws 1969, c. 181, s. 4, provides: "Notwithstanding the repeal of local acts fixing salaries and allowances of municipal officers and employees, persons incumbent on the effective date of this act [April 4, 1969] shall continue to receive the compensation and allowances now prescribed by law until the governing board shall provide otherwise in accordance with the provisions of this act."

Part 2. Mayor.

§§ 160-13 to 160-16: Repealed by Session Laws 1967, c. 826, s. 1.

Effective Dates of Repeal.—Section 3, c. 826, Session Laws 1967, provides:

"This act shall become effective in accordance with the following schedule:

"(a) Upon its ratification, in those counties comprising the first, the twelfth, the fourteenth, the sixteenth, the twenty-fifth, and the thirtieth judicial districts;

"(b) On the first Monday in December, 1968, in those counties comprising the second, the third, the fourth, the fifth, the sixth, the seventh, the eighth, the ninth, the tenth, the eleventh, the thirteenth, the fifteenth, the eighteenth, the twentieth, the twenty-first, the twenty-fourth, the twenty-sixth, the twenty-seventh, and the twenty-ninth judicial districts;

"(c) On the first Monday in December, 1970, in those counties comprising the seventeenth, the nineteenth, the twenty-second, the twenty-third, and the twenty-eighth judicial districts."

The act was ratified June 20, 1967.

Part 3. Constable and Policemen.

§ 160-18.1. Right of police officers to transport prisoners and attend court beyond territorial jurisdiction.

Local Modification.—Richmond: 1969, c. 52; city of Gastonia and city of Kings Mountain: 1969, c. 835; city of Morganton: 1969, c. 168; town of Atlantic Beach: 1969, c. 327; town of Dobson: 1969, c. 709; town of Maneto: 1969, c. 154.

§ 160-20. Policemen appointed.—The governing body of any municipality is hereby authorized to employ police officers, and the persons so employed may reside outside the corporate limits of the municipality. (R. C., c. 111, s. 16; Code, s. 3803; Rev., s. 2926; C. S., s. 2641; 1969, c. 23, s. 1.)

Editor's Note.—The 1969 amendment rewrote this section.

Stated in State v. Hord, 264 N.C. 149, 141 S.E.2d 241 (1965).

§ 160-20.1. Certain policemen authorized to issue warrants.

Section Is Unconstitutional and Void.—This section, purporting to confer judicial power on persons who are not officers of the General Court of Justice and who were not vested with such judicial power on November 6, 1962, violates N.C. Const., Art. IV and is unconstitutional and void. State v. Matthews, 270 N.C. 35, 153 S.E.2d 791 (1967).

The General Assembly cannot confer upon a police officer judicial power sufficient to authorize the issuance of a valid warrant under any circumstances, even where the complainant is a private citizen and has no connection with any law-enforcement agency. State v. Matthews, 270 N.C. 35, 153 S.E.2d 791 (1967).

Cited in State v. Wiggs, 269 N.C. 507, 153 S.E.2d 84 (1967).

§ 160-20.2. Law-enforcement officers of one political subdivision to assist officers of another political subdivision upon request. — (a) The governing body of any political subdivision of the State upon the request of the governing body of any other political subdivision of the State may send any law-enforcement officer or officers to assist the law-enforcement officers of such requesting political subdivision in the performance of their duties in cases of emergency. A complete record of the request and sending together with the names of the officers sent shall be recorded in the minutes of the next regular or special meeting of the governing bodies of both the requesting and the sending political subdivisions.

(b) Such assistance shall be rendered only in emergencies and such emergency shall be declared by the chief elected official of the requesting political subdivision, or, in his absence, the person normally acting in his stead in case of absence. Provided, however, that no political subdivision shall request or send law-enforcement officers unless the requesting and sending political subdivisions have an agreement to do so, which agreement shall be spread upon the minutes of both governing bodies and duly signed. Such agreement may pro-

vide for the reimbursement to the sending political subdivision for the services of the law-enforcement officers to be sent and any other expenses involved in such sending.

(c) When law-enforcement officers are sent to another political subdivision pursuant to this section, the jurisdiction, authority, rights, privileges and immunities, including coverage under the workmen's compensation laws, which they have in the sending political subdivision shall be extended to and include the area in which like benefits and authorities are or could be afforded to the law-enforcement officers of the requesting political subdivision and the area between the two political subdivisions when said officer or officers are acting within the scope of the authority conferred by this section. When so sent they shall have the same authority to make arrests and to execute criminal process as is vested by law in the law-enforcement officers of the requesting political subdivision, but this section shall not extend the effect of the laws of the sending political subdivision. (1967, c. 846.)

§ 160-20.3. Auxiliary police.—The governing body of any city or town may by ordinance provide for the organization of an auxiliary police department, made up of volunteer members. Duly appointed and sworn members of any auxiliary police department shall, while undergoing official training and while performing duties on behalf of the city or town pursuant to orders or instructions of the police chief of the city or town, be entitled to all powers, privileges, and immunities afforded by law to regularly employed policemen, including benefits under the North Carolina Workmen's Compensation Act. (1969, c. 206, s. 1.)

§ 160-21. Policemen execute criminal process.

Local Modification.—Richmond: 1969, c. 52; city of Charlotte: 1969, c. 1170; city of Gastonia and city of Kings Mountain: 1969, c. 835; city of Morganton: 1969, c. 168; town of Atlantic Beach: 1969, c. 327; town of Dobson: 1969, c. 709; town of Manteo: 1969, c. 154; town of Richlands: 1965, c. 45.

Duty to Submit Peaceably to Arrest.—When a person has been lawfully arrested by a lawful officer and understands that he is under arrest, it is his duty to submit peaceably to the arrest. State v. Cooper, 4 N.C. App. 210, 166 S.E.2d 509 (1969).

The words "submit peaceably to arrest" imply the yielding to the authority of a lawful officer, after being lawfully arrested. State v. Cooper, 4 N.C. App. 210, 166 S.E.2d 509 (1969).

Quoted in State v. Hord, 264 N.C. 149, 141 S.E.2d 241 (1965).

Part 4. Planning Boards.

§ 160-22. Creation and duties.

Local Modification.—By virtue of Session Laws 1965, c. 457, Vance should be stricken from the replacement volume.

Part 5. General Qualification of Officers.

§ 160-25. Officers elected by the people must be qualified voters.—No person shall hold any elective office of any city or town unless he shall be a qualified voter therein. Residence within a city or town shall not be a qualification for or prerequisite to appointment to any nonelective office of any city or town, unless the governing body thereof shall by ordinance so require. (1870-1, c. 24, s. 3; Code, s. 3796; Rev., s. 2941; C. S., s. 2646; 1951, c. 24; 1969, c. 134, s. 1.)

Editor's Note.—

The 1969 amendment substituted "hold any elective office" for "be a mayor, commissioner, councilman, or alderman" in the first sentence and added the present second sentence.

Session Laws 1969, c. 134, s. 2, provides: "This act shall not apply to any office within its purview, duly filled by election or appointment prior to the effective date of this act [March 27, 1969], until the expiration of the current term of such office."

Section Does Not Deal with Character of Office.—This section deals merely with the qualification of the appointee and not with the character of the office. State v. Hord, 264 N.C. 149, 141 S.E.2d 241 (1965).

Thus, 1951 Amendment Does Not Affect Question of Whether Policeman Is Public Officer.—The change in the law occasioned by the 1951 amendment has no bearing whatever on the question as to whether or not a chief of police or a policeman is a public officer. State v. Hord, 264 N.C. 149, 141 S.E.2d 241 (1965).

Part 6. Reduction of Salaries.

§ **160-28:** Repealed by Session Laws 1969, c. 870.

Part 7. Defense of Employees and Officials.

§ **160-28.1. Defense of employees and officials.**—Upon request made by or in behalf of any employee or official, or former employee or official, any municipality or county may provide for the defense of any civil or criminal action or proceeding brought against him either in his official or in his individual capacity, or both, on account of any act done or omission made, or any act allegedly done or omission allegedly made, in the scope and course of his employment or duty as an employee or official of such municipality or county. Such defense may be provided by the municipality or county by its own counsel, or by employing other counsel, or by purchasing insurance which requires that the insurer provide the defense. Providing for a defense pursuant to this section is hereby declared to be for a public purpose, and the expenditure of funds therefor is hereby declared to be a necessary expense. Nothing in this section shall be deemed to require any municipality or county to provide for the defense of any action or proceeding of any nature. (1967, c. 1093.)

ARTICLE 3.

Elections Regulated.

§ **160-29. Application of law and exceptions.**—All elections held in any city or town shall be held under the following rules and regulations, except in the cities of Charlotte, Fayetteville and Greensboro, and in the towns in the counties of Bertie, Cabarrus, Caldwell, Catawba, Davidson, Edgecombe, Gaston, Nash, Pitt, Robeson, Stokes, Surry, Vance, Wayne and Wilson; provided that the elections held in the city of Newton and the towns of Castalia and Pilot Mountain and Maxton and Tarboro shall be governed by the provisions of this article. (1901, c. 750, ss. 1, 21; 1903, cc. 184, 218, 626, 769, 777; Rev., s. 2944; 1907, c. 165; Ex. Sess. 1908, c. 63; 1909, c. 365; C. S., s. 2649; 1931, c. 369; 1933, c. 102; 1935, c. 215, s. 1; c. 353; 1953, c. 431; 1957, c. 242, s. 1; c. 446, s. 1; 1959, c. 53, s. 1; cc. 174, 192; 1963, c. 523, s. 2; 1967, c. 618.)

Local Modification.—Town of Valdese: 1965, c. 217; town of Whitakers: 1965, c. 996, s. 1.

Editor's Note.—

The 1963 amendment added the town of Maxton to the list of excepted places and the 1967 amendment added Tarboro to the list.

§ **160-31. Polling places.**

Local Modification.—Town of Bessemer City: 1965, c. 1059, s. 4; town of Edenton: 1969, c. 108.

§ **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 notify the persons selected. If any regis-

trar 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, 1967, c. 241, s. 1.)

Editor's Note. — The 1967 amendment substituted "notify the persons selected" for "cause a notice to be served upon the registrars by the sheriff of the county or the township constable" at the end of the first sentence.

§ 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., 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; 1967, c. 241, s. 2.)

Editor's Note. — The 1967 amendment deleted "Eastern Standard Time" following "six thirty o'clock p.m."

§ 160-45. Who may vote.

Local Modification.—Towns of Clayton and Mayodan: 1969, c. 257.

§ 160-49. Meeting of board of canvassers. — The board of canvassers shall meet on the next day after the election at twelve o'clock noon at a place designated by the board of commissioners, 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; 1967, c. 241, s. 3.)

Editor's Note. — The 1967 amendment substituted "twelve o'clock noon at a place designated by the board of commissioners" for "twelve o'clock m., at the mayor's office."

Article 4.

Ordinances and Regulations.

§ 160-52. General power to make ordinances.

The courts will not inquire into the motives which prompt a municipality's legislative body to enact an ordinance which is valid on its face. Clark's Greenville, Inc. v. West, 268 N.C. 527, 151 S.E.2d 5 (1966).

Classification of Occupations.—

The enactment of Sunday regulations comes within the police power, and the General Assembly or a municipal governing board exercising delegated power may enact such regulations provided the classifications of those affected are based upon reasonable distinctions, affect all persons similarly situated, and have some reasonable relation to the public peace, welfare, and safety. Clark's Charlotte, Inc v. Hunter, 261 N.C. 222, 134 S.E.2d 364 (1964).

A municipal ordinance prohibiting generally the operation of all businesses within a municipality on Sunday, but excepting certain businesses, including hotels, drugstores, magazine stands, etc., does not result in unlawful discrimination in regard to general department stores, even though such stores have departments selling the same types of goods as stores within the classifications excepted from the ordinance, since the classification of general department stores as distinguished from drugstores, bakeries, etc., is based upon a reasonable distinction and the ordinance operates equally upon all within the several classifications. Clark's Charlotte, Inc. v. Hunter, 261 N.C. 222, 134 S.E.2d 364 (1964).

Sunday Ordinances.—

The General Assembly, by this section and § 160-200 (6), (7) and (10), has delegated to municipalities the power and authority to enact ordinances requiring the observance of Sunday. These are general statutes, conferring authority upon all cities and towns within the State, without exception. High Point Surplus Co. v. Pleasants, 264 N.C. 650, 142 S.E.2d 697 (1965).

When enacted by cities and towns under general laws, Sunday-observance ordinances which are reasonable and do not discriminate within a class of competitors similarly situated have been upheld as a valid exercise of delegated police power. All such ordinances, when they proscribe buying and selling, whether it be, say, tangible merchandise or a ticket to an amusement or a sporting event, regulate trade under the

broad definition of trade which has been adopted by the Supreme Court. Since, however, these city ordinances are passed under general laws, this section and § 160-200 (6), (7), and (10), with reference to them there is no conflict between the exercise of the police power and N.C. Const., Art. II, § 29. State v. Smith, 265 N.C. 173, 143 S.E.2d 293 (1965).

An ordinance regulating sale of merchandise on Sunday was valid. Clark's Greenville, Inc. v. West, 268 N.C. 527, 151 S.E.2d 5 (1966).

A Sunday observance ordinance which classifies "sporting goods and toys" as prohibited items and live bait as permitted items cannot be considered unreasonable, arbitrary or discriminatory. S.S. Kresge Co. v. Tomlinson, 275 N.C. 1, 165 S.E.2d 236 (1969).

Cited in Charles Stores Co. v. Tucker, 263 N.C. 710, 140 S.E.2d 370 (1965).

§ 160-54. Repair of streets and bridges.

I. IN GENERAL.

Statutory Obligation of State Highway Commission. — This section and §§ 136-66.1 and 136-93 indicate that the Highway Commission is under a statutory obligation with reference to the construction, maintenance and repair of all city streets, including culverts which support city streets, which constitute a part of the State highway system. Milner Hotels, Inc. v. City of Raleigh, 271 N.C. 224, 155 S.E.2d 543 (1967).

May Not Be Assumed by Municipality. —This section and §§ 136-66.1 and 136-93 do not authorize a municipality, in the absence of specific legislative authority, to contract to take over the responsibilities of the Highway Commission with reference to the construction, maintenance and repair of city streets and supporting culverts which constitute a part of the State highway system. Milner Hotels, Inc. v. City of Raleigh, 271 N.C. 224, 155 S.E.2d 543 (1967).

IV. LIABILITY FOR DEFECTS OR OBSTRUCTIONS CAUSING INJURY.

This section imposes on a municipality the positive duty to maintain its streets, etc.—

In accord with 2nd paragraph in original. See Mosseller v. City of Asheville, 267 N.C. 104, 147 S.E.2d 558 (1966).

A municipality is responsible for the condition of its sidewalks. Dunning v. Forsyth Warehouse Co., 272 N.C. 723, 158 S.E.2d 893 (1968).

But one other than the municipality may be held liable for injuries caused by a defect in the sidewalk if he created the defect. Dunning v. Forsyth Warehouse Co., 272 N.C. 723, 158 S.E.2d 893 (1968).

Liability of Abutting Owner as to Pedestrians.—Insofar as pedestrians are concerned, any liability of owner, or of occupant of abutting property, for hazardous condition existent upon adjacent sidewalk is limited to conditions created or maintained by him, and must be predicated upon his negligence in that respect. Dunning v. Forsyth Warehouse Co., 272 N.C. 723, 158 S.E.2d 893 (1968).

It is the duty of the city to exercise a reasonable and continuing supervision over its streets in order that it may know their condition and it is held to have knowledge of a defect which such inspection would have disclosed to it. Mosseller v. City of Asheville, 267 N.C. 104, 147 S.E.2d 558 (1966).

Liability arises only for a negligent breach of duty.

In accord with original. See Mosseller v. City of Asheville, 267 N.C. 104, 147 S.E.2d 558 (1966).

And to Use Due Care to Keep Them in Reasonably Safe Condition. — While the city is not an insurer of the safety of one who uses its streets and sidewalks, it is under a duty to use due care to keep its streets and sidewalks in a reasonably safe condition for the ordinary use thereof. Mosseller v. City of Asheville, 267 N.C. 104, 147 S.E.2d 558 (1966).

But City's Duty Does Not Go beyond Exercise of Reasonable Care.—The city's duty to inspect and discover defects in its streets does not go beyond the duty to exercise reasonable care in that respect. Mosseller v. City of Asheville, 267 N.C. 104, 147 S.E.2d 558 (1966).

Plaintiff Must Prove Notice. —

It is necessary for a complaining party to show more than the existence of a defect in the street or sidewalk and the injury; he must also show that the officers of the town or city knew, or by ordinary diligence, might have known of the defect, and the character of the defect was such that injuries to travellers using its street or sidewalk in a proper manner might reasonably be foreseen. Mosseller v. City of Asheville, 267 N.C. 104, 147 S.E.2d 558 (1966).

Notice of Defect Itself Must Be Shown. —The notice, actual or implied, of a highway defect causing injuries which a mu-

nicipality must receive as a condition precedent of liability for those injuries, is notice of the defect itself which occasioned the injury, and not merely of conditions naturally productive of that defect and subsequently in fact producing it. Mosseller v. City of Asheville, 267 N.C. 104, 147 S.E.2d 558 (1966).

Implied Notice.—
In accord with 2nd paragraph in original. See Mosseller v. City of Asheville, 267 N.C. 104, 147 S.E.2d 558 (1966).

Character of Defect Must Be Shown.— To recover for injuries received from a fall on a defective street, the plaintiff must not only show that the city knew of the defect but must go further and show that "the character of the defect was such that injuries to travellers using its street or sidewalk in a proper manner might reasonably be foreseen." Mosseller v. City of Asheville, 267 N.C. 104, 147 S.E.2d 558 (1966).

Trivial Defects Will Not Make City Liable.—It is not every defect in a street or sidewalk which will render a city liable to a person who falls as a result thereof. Trivial defects, which are not naturally dangerous, will not make the city liable for injuries occasioned thereby. Mosseller v. City of Asheville, 267 N.C. 104, 147 S.E.2d 558 (1966).

Article 5.

Municipal Taxation.

§ 160-56. Commissioners may levy taxes.

Local Modification. — Town of Whitakers: 1965, c. 996, s. 1.

§ 160-58.1. Delinquent taxes. — The governing body of any municipality may, in its discretion, direct the payment into the general fund of all or any part of the proceeds of taxes which are collected subsequent to the end of the second fiscal year following the fiscal year for which they were levied. (1967, c. 704.)

Article 6.

Sale of Municipal Property.

§ 160-59. Public sale by governing body; private sale to other governmental units.

Local Modification. — Town of Biscoe: 1967, c. 176; 1969, c. 346; towns of Candor, Mount Gilead: 1969, c. 346; town of Scotland Neck: 1967, c. 160; towns of Star and Troy: 1969, c. 346; town of Vass: 1965, c. 482; town of Whiteville: 1967, c. 38.

Opinions of Attorney General. — Mr. Kyle Hayes, North Wilkesboro Town Attorney, 9/10/69.

This section specifies the terms upon which cities and towns are empowered to sell their property. Bagwell v. Town of Brevard, 267 N.C. 604, 148 S.E.2d 635 (1966).

Compliance with this section is required before a town can make a valid sale of its property. Bagwell v. Town of Brevard, 267 N.C. 604, 148 S.E.2d 635 (1966).

Effect of Noncompliance with Requirements as to Notice.—If the publication of notice fails to comply in substance with the law, especially as to the time of publication, a purchaser does not acquire a marketable title. Bagwell v. Town of Brevard, 267 N.C. 604, 148 S.E.2d 635 (1966).

Advertisement Held Not to Relate Back to Prior Publication of Notice. — An advertisement for the sale of municipal property on a date less than 30 days after the first publication of the notice cannot relate back to a prior publication of notice, even though the prior notice related to substantially the same land, when the prior notice stipulates a different date for the sale and contains material differences in the terms of payment, as well as a discrepancy in the quantity of land to be sold and whether the land would be offered for sale as a whole or in separate tracts; therefore, the purported sale on the date specified in the second advertisement is a nullity. Bagwell v. Town of Brevard, 267 N.C. 604, 148 S.E.2d 635 (1966).

§ 160-61.1. Certain counties and municipalities authorized to execute warranty deeds; relief from personal liability.

(c) : Repealed by Session Laws 1969, c. 1003, s. 5, effective July 1, 1969. (1945, c. 962; 1955, c. 935; 1969, cc. 48, 223, 332; c. 1003, s. 5.)

Editor's Note.—

The 1969 amendment, effective July 1, 1969, repealed former subsection (c), which restricted the application of this section to certain named counties and the municipal corporations therein. Subsection (c) had previously been amended by Session Laws 1969, cc. 48, 223 and 332.

As subsections (a) and (b) were not affected by the amendments, they are not set out.

§ 160-61.2. Sale, lease, exchange, and joint use of governmental property.—(a) For the purposes of this section "governmental unit" shall include any municipality or agency thereof; any county or agency thereof; any board of education of a school administrative unit; the State Highway Commission; and any other department, agency, board of [or] commission of the State.

(b) Any governmental unit may, upon such terms and conditions as it deems wise, exchange with, lease to, lease from, sell to, purchase from, or enter into agreements regarding the joint use by, any other governmental unit of any interest in real property which it may own.

(c) Action authorized by the preceding subsection shall be taken by the governing body or other body or department or agency in charge of the property of the governmental unit. Action taken hereunder by a muncipality or agent thereof, county or agency thereof, or a board of education of a school administrative unit shall be taken only after a public hearing on the proposed action, notice of which shall have been published twice in a newspaper having general circulation in the county or municipality, the first publication of which shall have been published at least 15 days prior to the date set for the public hearing. Action hereunder by any department, agency, or board of the State, other than the State Highway Commission, shall be taken only after approval thereof by the Division of Property Control and Disposition of the Department of Administration. (1969, c. 806.)

Editor's Note. — The word "or" in brackets in subsection (a) is suggested as a correction of "of," which appears in the 1969 Session Laws.

Article 8.

Public Libraries.

§ 160-65. Establishment of library.

The operation of a public library meets the test of "governmental function." Siebold v. Kinston-Lenoir County Pub. Library, 264 N.C. 360, 141 S.E.2d 519 (1965).

§ 160-70. Powers and duties of trustees.—(a) The board of trustees of a county or municipal library shall organize immediately after its appointment and shall elect one of its members as chairman. It may elect a secretary and a treasurer and such other officers as it may deem necessary, either from the membership of the board or from the employees of the library.

The board of trustees shall have the power

(1) To adopt such bylaws, rules and regulations for its own guidance and for the government of the library as may be necessary and in conformity with law;

(2) With the consent of the governing body of the county or municipality, to lease or purchase and occupy an appropriate building or buildings, or to erect an appropriate building or buildings upon lands acquired by gift, devise or purchase;

(3) To supervise and care for the physical facilities constructed, leased or set apart for library purposes;

(4) To appoint a chief librarian or director of library service, and, upon

recommendation of such librarian or director, to appoint assistant librarians and other employees, and to remove such librarians or employees; provided, that no vacancies existing or occurring in the position of chief librarian or director in any such library shall be filled by the appointment or designation of any person who is not certified as a professional librarian by the North Carolina Library Certification Board under the provisions of G.S. 125-9 or G.S. 125-10; the employees of a county or municipal library shall be for all purposes the employees of the county or municipality, as the case may be;

(5) To fix the compensation of the chief librarian or director, and in consultation with such librarian or director to fix the compensation of the assistant librarians and other employees of the library; provided, (i) that all salaries and other compensation for library employees shall be in accordance with the provisions of any pay plan applying to all employees of the governmental unit and which has been approved by the county or municipal governing board, and, (ii) that all salaries and other compensation for library employees must be in accordance with appropriations for salaries and other compensation for library employees approved by the county or municipal governing body in the annual budget for such county or municipality;

(6) To prepare the annual budget for the library for submission to the governing body of the county or municipality;

(7) To extend the privileges and use of such library to nonresidents of the county or municipality, upon such terms and conditions as it may prescribe.

(1969, c. 488.)

Editor's Note.—The 1969 amendment, effective July 1, 1969, added, at the end of subdivision (4) of subsection (a), "the employees of a county or municipal library shall be for all purposes the employees of the county or municipality, as the case may be."

As the rest of the section was not changed by the amendment, only subsection (a) is set out.

§ **160-72. Special tax for library.**—Subsequent to the establishment of a library by a county or municipality, the governing body of the county or municipality may upon its own motion and shall, upon a petition signed by voters of the county or municipality equal in number to at least fifteen percent (15%) of the total number of votes cast for the office of Governor in the last preceding general election in such county or municipality, submit to the voters at a special election the question of whether a special tax shall be levied for the support of such library.

Such question shall be submitted to the voters either at the next general election for county officers in the case of a county, or at the next general election for municipal officers in the case of a municipality, or at a special election to be called by the governing body of the county or municipality for that purpose: Provided, that no special election shall be held within sixty (60) days of any general election for State, county or municipal officers. Such special election shall be conducted according to the laws governing general elections for county or municipal officers in such county or municipality.

The form of the question as stated on the ballot shall be in substantially the words: "For the levy of a special library tax of not more than ..... cents (.....¢)."; and "Against the levy of a special library tax of not more than ..... cents (.....¢)." Such affirmative and negative forms shall be printed upon one ballot, containing squares opposite the affirmative and the negative forms, in one of which squares the voter may make a mark (X). Provided, that the maximum tax levy to be submitted to the voters shall be determined by the governing body of such county or municipality.

If a majority of the qualified voters in such election favor the levy of the tax,

the governing body of the county or municipality shall levy and cause to be collected as other general taxes are collected, a special library tax within the limits approved by the voters in an amount which, when taken with nontax revenues, will be sufficient to meet annual appropriations for library purposes approved by the governing body of such county or municipality.

In any county or municipality in which a tax for library purposes has been voted under this section, or under any other general, public-local, private or special law, the governing body of such county or municipality may, on its own motion with the recommendation of the board of trustees of the library, and shall, upon a petition signed by voters of the county or municipality equal in number to at least fifteen percent (15%) of the total number of votes cast for Governor in the last preceding general election in such county or municipality, submit to the voters of such county or municipality the question of an increase or decrease of such tax. Such question shall be submitted to the voters in the manner provided by this section. (1953, c. 721; 1963, c. 945; 1967, c. 703, ss. 1, 2.)

Editor's Note.—The 1967 amendment deleted, at the end of the third paragraph, "or in the petition requesting such election, which maximum shall in no event exceed fifteen cents (15¢) on the one hundred dollars ($100.00) valuation of property" and deleted, at the end of the first sentence of the fifth paragraph, "within the limitations of this section."

Article 8A.

Regional Councils of Local Officials.

§ **160-77.1. Creation of regional councils authorized.** — Any two or more municipalities, or counties, or municipalities and counties, may create a regional council of local officials to have and exercise such of the powers and duties herein granted as shall be specified in the creating resolutions or in amendments thereto. The membership of any regional council of local officials shall be limited to elected members of the governing bodies of the creating governmental units. Creation of a regional council shall be accomplished by the adoption of identical resolutions by the governing bodies of the creating governmental units. Such resolutions shall specify the name of the council and the powers, duties, and functions which the council may exercise and perform. Such resolutions shall establish the number of council members to represent the respective governmental units, the terms of members, procedures for replacing members, and the method for determining the financial support to be given the council by each governmental unit. Such resolutions shall require that the fiscal procedures of the council substantially comply with the Municipal Fiscal Control Act or the County Fiscal Control Act. Such resolutions may provide for compensation of council members and for reimbursement of expenses of council members, and may establish rules and regulations by which the council shall conduct its business. Any governmental unit may withdraw from a regional council at the end of any fiscal year after having given at least 60 days' notice to the other member units. Any municipality or county may at any time join an existing regional council with the concurrence of the member governmental units, by adoption of a resolution identical to the ones under which such council is then operating. (1967, c. 797.)

§ **160-77.2. Organization of council; rules and regulations.**—Upon its creation, a regional council shall meet at a time and place agreed upon by the governing bodies of the member governmental units. It shall elect from among its individual members a chairman and such other officers as it may choose, for such terms as may be prescribed in its rules and regulations. The council shall adopt such rules and regulations for the conduct of its business as it may deem necessary for the proper discharge of its specified duties and the performance of its specified functions, not inconsistent with any rules and regulations established by the

resolutions under which it operates. The chairman may appoint such committees as may be authorized in its rules and regulations. The council shall meet regularly, at such times and places as may be specified in its rules and regulations, and special meetings may be called pursuant to such rules and regulations. All meetings of the council shall be open to the public. (1967, c. 797.)

§ **160-77.3. Staff; contracts.**—If granted power to do so by the resolutions under which it operates, and within the limit of funds available to it, any regional council may:

(1) Hire and fix the compensation of such employees as may be necessary in order for it to perform the duties and functions specified in the resolutions under which it operates;

(2) Contract with consultants and other experts for such services as may be required in order for it to perform the duties and functions specified in such resolutions;

(3) Contract with the State of North Carolina or the federal government, or any agency or department thereof, for such services as may be provided by such agencies to assist it in performing the duties and functions specified in such resolutions;

(4) Contract with any member governmental unit for the services of any officers or employees of such unit useful to it in performing the duties and functions specified in such resolutions. (1967, c. 797.)

§ **160-77.4. Fiscal affairs generally; reports; appropriations.**—Any regional council may accept, receive, and disburse in furtherance of the duties and functions specified in the resolutions under which it operates any funds, grants, and services made available by the State of North Carolina and its agencies; the federal government and its agencies; any municipality or county or other governmental unit, whether or not a member of such council; and private and civic sources. The fiscal procedure of all regional councils shall substantially comply with the Municipal Fiscal Control Act or the County Fiscal Control Act. Each regional council shall prepare each year a report of its activities, including a financial statement, to be distributed to its member governmental units, and shall prepare and distribute such other reports as may be required by the resolutions under which it operates.

Each municipality and county having membership on a regional council shall have authority to appropriate funds to the council and may also levy annually taxes for the payment of such appropriation as a special purpose, in addition to any allowed by the Constitution. The levy of taxes and the expenditure of the proceeds thereof for the purposes of this article are hereby declared to be a necessary expense and a special purpose, and the special approval of the General Assembly is hereby given for such levy and expenditure. In the event a court of competent jurisdiction should declare that such levy and expenditure is not a necessary expense, then any municipality or county shall have the authority to call and conduct a referendum upon the question of the levy of taxes or the expenditure of tax funds for such purposes, to be conducted in accordance with the laws governing elections for members of its governing body. Services of personnel, use of equipment and office space, and other services may also be made available to the council, and such services may be accepted from member governmental units as a part of their financial support. (1967, c. 797.)

§ **160-77.5. Powers and duties which may be granted.**—(a) A regional council shall have the power to:

(1) Study such of the following area governmental problems common to two or more of its member governmental units as may be specified in the resolutions under which its operates: Matters affecting health, safety, welfare, education, recreation, economic conditions, regional planning, or regional development;

(2) Promote cooperative arrangements and coordinated action among its member governmental units;
(3) Make recommendations for review and action to its member governmental units and other public agencies which perform functions within the region in which its member governmental units are located.

(b) A regional council may exercise such other powers as are exercised or capable of exercise by its member governmental units and necessary or desirable for dealing with problems of mutual concern, and which are specified in the resolutions under which it operates. (1967, c. 797.)

§ 160-77.6. Powers granted supplementary.—The powers granted to municipalities and counties by this article shall be deemed supplementary to any powers heretofore or hereafter granted by any other general or local law for the same or similar purposes, and in any case where the provisions of this article conflict with or differ from the provisions of any other such law, the municipal or county governing body may in its discretion proceed in accordance with the provisions of this article or in accordance with the provisions of such other law or in accordance with the provisions both of this article and of such other law. (1967, c. 797.)

Article 9.

Local Improvements.

§ 160-78. Explanation of terms.

Cross Reference. — As to authority of municipalities bounded in part by the Atlantic Ocean to assess the cost of beach erosion control or flood and hurricane protection works, see § 153-341.

§ 160-85. Assessments levied.

I. GENERAL CONSIDERATION.

School Property Subject to Assessment.—

The case cited at the end of the paragraph in original is found in 223 N.C. at page 316.

§ 160-89. Appeal to the superior court.

Appeal Is Not Limited to Amount of Assessment.—This section does not limit the property owner's appeal from an assessment for public improvements solely to the amount to be charged against his land. Smith v. City of Rockingham, 268 N.C. 697, 151 S.E.2d 568 (1966).

§ 160-90. Power to adjust assessment.

Quoted in Smith v. City of Rockingham, 268 N.C. 697, 151 S.E.2d 568 (1966).

§ 160-100. Assessment books prepared; alternative methods of maintaining records.—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.

As an alternative to preparation of a Special Assessment Book, the governing body may in its discretion cause the information required by this section to be recorded or stored on any ledgertype cards or machine cards or similar cards, or on magnetic or other recording tape, or on or in any machine or device or system of machines or devices, designed for and capable of the accurate storage and retrieval of intelligence or information. In the event any method authorized by this paragraph is used to record or store the required information, such information shall be made available in writing to any person upon request. (1915, c. 56, s. 13; C.S., s. 2722; 1967, c. 763, s. 1.)

Editor's Note. — The 1967 amendment added the last paragraph.

Section 2, Session Laws 1967, c. 763, provides: "The prior use by any municipality of any method authorized by this act for recording or storing the information required by G.S. 160-100 is hereby in all respects validated."

§ 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: Provided, further, that the above two provisos of this section shall not be applicable to any railroad property which is subject to assessment for local improvements under the terms of G.S. 160-520 and 160-521 and as to such property the railroad company or companies shall be treated like any other property owners. (1931, c. 222, s. 1; 1965, c. 839, s. 1.)

Local Modification.—City of Lincolnton: 1969, cc. 198, 762.

Editor's Note.—

The 1965 amendment added the last proviso.

Article 11.

Regulation of Buildings.

§ 160-115. Inspection department.—The governing board of every city and town in the State is hereby authorized to create an inspection department, and shall appoint one or more inspectors who may be given the titles of building inspector, electrical inspector, plumbing inspector, housing inspector, zoning inspector, heating and air-conditioning inspector, fire prevention inspector, or deputy or assistant inspector, or such other titles as may be generally descriptive of the

duties assigned. Such department may be headed by a superintendent or director of inspections. (1969, c. 1065, s. 1.)

Revision of Article.—Session Laws 1969, c. 1065, s. 1, revised and rewrote this article, substituting present §§ 160-115 and 160-116 through 160-143 for former §§ 160-115 through 160-154. No attempt has been made to point out the changes effected by the revision, but, whether appropriate, the historical citations to the former sections have been added to corresponding sections of the new article.

Session Laws 1969, c. 1065, s. 5, provides: "The powers granted by this act are intended to supplement and be in addition to any existing powers of municipalities. Subject to this overriding intention, all laws and clauses of laws in conflict herewith are repealed to the extent of such conflict."

§ **160-115.1. Firemen; residence.** — The governing bodies of every incorporated city and town are authorized to employ members of the fire department and to prescribe their duties. Persons employed as members of the fire department may reside outside the corporate limits of the municipality. (1969, c. 23, s. 2.)

§ **160-116. Duties and responsibilities.**—The duties and responsibilities of any such inspection department and of the inspectors therein shall be to enforce within their territorial jurisdiction such State and local laws relating to

(1) The construction of buildings and other structures;
(2) The installation of such facilities as plumbing systems, electrical systems, heating systems, refrigeration systems, and air-conditioning systems;
(3) The maintenance of buildings and other structures in a safe, sanitary, and healthful condition; and
(4) Other matters, as may be specified by the local governing board.

Such duties shall include the receipt of applications for permits and the issuance or denial of permits, the making of any necessary inspections, the issuance of denial of certificates of compliance, the issuance of orders to correct violations, the bringing of judicial actions against actual or threatened violations, the keeping of adequate records, and such other actions as may be required in order adequately to enforce those laws. The municipal governing body shall have the authority to enact such reasonable and appropriate provisions governing the enforcement of such laws, not inconsistent with law, as it may deem necessary. (1969, c. 1065, s. 1.)

§ **160-117. Territorial jurisdiction.**—Unless otherwise specified by law, the territorial jurisdiction within which a municipal inspection department may enforce the State Building Code (including plumbing, heating, refrigeration, and electrical regulations), a fire prevention code, and any minimum housing standards ordinance adopted pursuant to article 15 of this chapter shall be the area within the municipal limits. (1969, c. 1065, s. 1.)

§ **160-118. Joint inspection department; other arrangements.** — A municipal governing board may enter into and carry out contracts with

(1) Any other municipality for municipalities,
(2) Any county or counties, or
(3) Any combination of municipalities and counties, under which the parties agree to create and support a joint inspection department for the enforcement of such State and local laws as may be specified in the agreement.

The governing boards of the units which are parties to the agreement shall be authorized to make any necessary appropriations for such a purpose.

In lieu of a joint inspection department, a municipal governing board may designate an inspector from any other municipality or county to serve as a member of its inspection department, with the approval of the governing body of said municipality or county. Such inspector shall, while exercising the duties of such position, be considered a municipal employee.

The governing board of any municipality may request that the board of county commissioners of the county in which the municipality is located direct one or more county building inspectors to exercise their powers within part or all of the municipality's jurisdiction, and they shall thereupon be empowered to do so until such time as the municipal governing board officially withdraws its request.

Where a county is not exercising its authority to enforce building, electrical, and plumbing regulations within an area which is regulated by a municipality's validly-enacted zoning ordinance, the governing board of the municipality may request in writing prior to April 1 of any fiscal year that the county initiate such enforcement no later than the beginning of the next fiscal year. If the county declines in writing to exercise such powers or if it fails to initiate enforcement by the beginning of the next fiscal year, the municipality shall thereupon be empowered to enforce all such regulations within said area. (1969, c. 1065, s. 1.)

§ **160-119. Financial support.** — The governing board of the municipality may appropriate for the support of the inspection department such funds as it deems necessary. It may provide for paying inspectors fixed salaries or it may in lieu thereof reimburse them for their services by paying over part or all of any fees collected. It shall have power to fix such reasonable fees for issuance of permits, inspections, and other services of the inspection department as it deems necessary. (1969, c. 1065, s. 1.)

§ **160-120. Conflicts of interest.**—No member of an inspection department shall be financially interested in the furnishing of labor, material, or appliances for the construction, alteration, or maintenance of any building or any part or system thereof, or in the making of plans or specifications therefor, unless he is the owner of such building. No member of an inspection department shall engage in any work which is inconsistent with his duties or with the interests of the municipality. (1969, c. 1065, s. 1.)

§ **160-121. Failure to perform duties.**—If any member of an inspection department shall willfully fail to perform the duties required of him by law, or willfully shall improperly issue a permit, or shall give a certificate of compliance without first making the inspections required by law, or willfully shall improperly give a certificate of compliance, he shall be guilty of a misdemeanor. (1969, c. 1065, s. 1.)

§ **160-122. Permits.**—No person shall commence or proceed with

(1) The construction, reconstruction, alteration, repair, removal, or demolition of any building or structure,

(2) The installation, extension, or general repair of any plumbing system.

(3) The installation, extension, alteration, or general repair of any heating or cooling equipment system, or

(4) The installation, extension, alteration, or general repair of any electrical wiring, devices, appliances, or equipment,

without first securing from the inspection department with jurisdiction over the site of the work any and all permits required by the State Building Code and any other State or local laws applicable to such work. Any permit shall be in writing and shall contain a provision that the work done shall comply with the State Building Code and all other applicable State and local laws. No permits shall be issued unless the plans and specifications are identified by the name and address of the author thereof, and where the General Statutes of North Carolina require that plans for certain types of work be prepared only by a registered architect or registered engineer, no permit shall be issued unless such plans and specifications bear the North Carolina seal of a registered architect or of a registered engineer. Where any provision of the General Statutes of North Carolina or of any ordinance requires that work be done by a licensed specialty contractor of any kind, no permit for such work shall be issued unless it is to be performed by such a duly li-

censed contractor. (1905, c. 506, s. 26; Rev., s. 2986; 1915, c. 192, s. 3; C. S., s. 2748; 1957, c. 817; 1969, c. 1065, s. 1.)

Editor's Note. — Session Laws 1969, c. 1064, provided that § 160-122 of the General Statutes should be repealed and a new subdivision (47a) of § 153-9, relating to county electrical inspectors, be enacted in substitution therefor. The repealing act obviously had reference to former § 160-122, relating to county electrical inspectors, which appeared in this article before its revision by Session Laws 1969, c. 1065.

Permit Required before Construction or Repair of Building.—This section requires the owner of the property to obtain a permit before constructing or repairing a building. Warner v. W & O, Inc., 263 N.C. 37, 138 S.E.2d 782 (1964), decided under former § 160-126.

But Permit without Expenditure Is Not Existing Use Protected against Zoning Amendment.—If a property owner in good faith makes expenditures in reliance on a building permit issued to him, his right to construct the building will be protected as an existing use upon later amendment of the municipal zoning regulations, but the mere issuance of a building permit alone creates no property right in him, and he may not remain inactive and thereby deny the municipality the right to make needed changes in its ordinances. Warner v. W & O, Inc., 263 N.C. 37, 138 S.E.2d 782 (1964), decided under former § 160-126.

§ **160-123. Time limitations on validity of permits.**—Any permit issued pursuant to § 160-122 shall expire by limitation six months, or such lesser time as may be fixed by ordinance of the local governing board, after the date of issuance if the work authorized by the permit has not been commenced. If after commencement the work is discontinued for a period of 12 months, the permit therefor shall immediately expire. No work authorized by any permit which has expired shall thereafter be performed until a new permit therefor has been secured. (1969, c. 1065, s. 1.)

§ **160-124. Changes in work.**—After a permit has been issued, no changes or deviations from the terms of the application, plans and specifications, or the permit, except where such changes or deviations are clearly permissible under the State Building Code, shall be made until specific written approval of such changes or deviations has been obtained from the inspection department. (1969, c. 1065, s. 1.)

§ **160-125. Inspections of work in progress.**—As the work pursuant to a permit progresses, local inspectors shall make as many inspections thereof as may be necessary to satisfy them that the work is being done according to the provisions of any applicable State and local laws and of the terms of the permit. In exercising this power members of the inspection department shall have a right to enter on any premises within the jurisdiction of the department at all reasonable hours for the purposes of inspection or other enforcement action, upon presentation of proper credentials. (1969, c. 1065, s. 1.)

Editor's Note.—For comment as to warrants required for administrative health inspections, see 4 Wake Forest Intra. L. Rev. 117 (1968).

§ **160-126. Stop orders.**—Whenever any building or structure or part thereof is being demolished, constructed, reconstructed, altered, or repaired in a hazardous manner, or in substantial violation of any State or local building law, or in such manner as to endanger life or property, the appropriate inspector may order the specific part of such work which is in violation or presents such a hazard to be immediately stopped. Such order shall be in writing to the person doing the work, and shall state the specific work to be stopped, the specific reasons therefor, and the conditions under which the work may be resumed. The owner or builder may appeal from such order to the North Carolina Commissioner of Insurance within a period of five days after such order is issued. Notice of such appeal shall be given in writing to the Commissioner of Insurance, with a copy to the local inspector. The Commissioner of Insurance shall promptly conduct a

hearing at which the appellant and the inspector shall be permitted to submit relevant evidence, and he shall rule on such appeal as expeditiously as possible. Pending the ruling by the Commissioner of Insurance on said appeal no further work shall take place in violation of said order. Violation of a stop order shall constitute a misdemeanor. (1969, c. 1065, s. 1.)

Editor's Note. — By virtue of Session Laws 1943, c. 170, "Commissioner of Insurance" has been substituted for "Insurance Commissioner" in the last three sentences.

§ **160-127. Revocation of permits.**—The appropriate inspector may revoke and require the return of any permit by notifying the permit holder in writing stating the reason for such revocation. Permits shall be revoked for any substantial departure from the approved application, plans, or specifications; for refusal or failure to comply with proper orders of the inspector; for refusal or failure to comply with the requirements of any applicable State or local laws; or for false statements or misrepresentations made in securing such permit. Any permit mistakenly issued in violation of an applicable State or local law may also be revoked. (1969, c. 1065, s. 1.)

§ **160-128. Certificates of compliance.**—At the conclusion of all work done under a permit, the appropriate inspector shall make a final inspection, and if he finds that the completed work complies with all applicable State and local laws and with the terms of the permit, he shall issue a certificate of compliance. No new building or part thereof shall be occupied, and no addition or enlargement of any existing building shall be occupied, and no existing building after being altered or moved shall be occupied, until the inspection department has issued such a certificate; provided, however, that a temporary certificate of compliance may be issued permitting occupancy for a stated period of specified portions of the building which the inspector finds may safely be occupied prior to final completion of the entire building. (1969, c. 1065, s. 1.)

§ **160-129. Periodic inspections.**—The inspection department shall make such periodic inspections as the governing board shall direct, by ordinance or otherwise, for unsafe, insanitary, or otherwise hazardous and unlawful conditions in structures within their territorial jurisdiction. In addition, it shall make such other inspections as may be required when it has reason to believe that such conditions may exist in a particular structure. In exercising this power, members of the department shall have a right to enter on any premises within the jurisdiction of the department at all reasonable hours for the purposes of inspection or other enforcement action, upon presentation of proper credentials. (1905, c. 506, ss. 25, 29; Rev., ss. 3002, 3003; 1915, c. 192, ss. 10, 11; C. S., ss. 2764, 2765; 1969, c. 1065, s. 1.)

§ **160-130. Defects in buildings to be corrected.**—Whenever a local inspector finds any defects in a building, or finds that said building has not been constructed in accordance with the applicable State and local laws, or that a building because of its condition is dangerous or contains fire hazardous conditions, it shall be his duty to notify the owner or occupant of the building of its defects, hazardous conditions, or failure to comply with law. The owner or the owner of the contents shall immediately remedy such defects, hazardous conditions, or violations of law in the property he owns. (1905, c. 506, s. 28; Rev., s. 3009; 1915, c. 192, s. 14; C. S., s. 2771; 1969, c. 1065, s. 1.)

§ **160-131. Unsafe buildings condemned.**—Every building which shall appear to the inspector to be especially dangerous to life because of its liability to fire or because of bad condition of walls, overloaded floors, defective construction, decay, unsafe wiring or heating system, inadequate means of egress, 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. (1905, c. 506, s. 15; Rev., s. 3010; 1915, c. 192, s. 15; C. S., s. 2773; 1929, c. 199, s. 1; 1969, c. 1065, s. 1.)

§ **160-132. Removing notice from condemned building.**—If any person shall remove any notice which has been affixed to any building or structure by a local inspector of any municipality, which notice shall state the dangerous character of the building or structure, he shall be guilty of a misdemeanor. (1905, c. 506, s. 15; Rev., s. 3799; C. S., s. 2775; 1969, c. 1065, s. 1.)

§ **160-133. Action in event of failure to take corrective action.**—If the owner of a building or structure which has been condemned as unsafe pursuant to § 160-131 shall fail promptly to take corrective action, the local inspector shall give such owner written notice, by certified or registered mail to the last known address of the owner or by personal service,

(1) That said building or structure is in such a condition as appears to constitute a fire or safety hazard or to be dangerous to life, health, or other property;
(2) That a hearing will be held before the inspector at a designated place and time, which time shall be not less than ten days after the date of such notice, at which hearing the owner shall be entitled to be heard in person or by counsel and to present arguments and evidence pertaining to the matter; and
(3) That following the hearing, the inspector may issue such order to repair, close, vacate, or demolish the building or structure as appears appropriate.

If the name or whereabouts of the owner cannot after due diligence be discovered, such notice shall be considered properly and adequately served if a copy thereof is posted on the outside of the building or structure in question at least ten days prior to the hearing and a notice of the hearing published in a newspaper having general circulation in the municipality at least once and at least one week prior to the hearing. (1969, c. 1065, s. 1.)

§ **160-134. Order to take corrective action.**—If, upon a hearing held pursuant to the notice prescribed in § 160-133, the inspector shall find that the building or structure is in such a condition as to constitute a fire or safety hazard or to be dangerous to life, health, or other property, he shall make an order in writing, directed to the owner of such building or structure, requiring the owner to remedy such conditions by repairing, closing, vacating, or demolishing the building or structure or taking such other steps as may be necessary, within such period, not less than sixty days, as the inspector may prescribe. (1969, c. 1065, s. 1.)

§ **160-135. Appeal; finality of order if not appealed.**—Any owner who has received an order under § 160-134 shall have a right of appeal from such order to the municipal governing board, provided notice of such appeal is given in writing to the inspector and to the municipal clerk, as agent of the governing board, within ten days following issuance of the order. In the absence of such an appeal, the order of the inspector shall be final. The governing board shall, on receipt of an appeal, hear the same within a reasonable time and take such action to affirm, modify and affirm, or revoke the order as it deems reasonable and proper. (1969, c. 1065, s. 1.)

§ **160-136. Failure to comply with order.**—If the owner of a building or structure fails to comply with an order issued pursuant to § 160-134 from which no appeal has been taken, or fails to comply with an order of the municipal governing board following an appeal, he shall be guilty of a misdemeanor and

shall be punished in the discretion of the court. (1905, c. 506, s. 15; Rev., s. 3802; 1915, c. 192, s. 19; C. S., s. 2774; 1929, c. 199, s. 2; 1969, c. 1065, s. 1.)

§ **160-137. Equitable enforcement.**—Whenever any violation is denominated a misdemeanor under the provisions of this article, the proper local authorities of the municipality, either in addition to or in lieu of other remedies may initiate any appropriate action or proceedings to prevent, restrain, correct, or abate such action or violation or to prevent the occupancy of the building or structure involved. (1969, c. 1065, s. 1.)

§ **160-138. Records and reports.**—The inspection department shall keep complete, permanent, and accurate records in convenient form of all applications received, permits issued, inspections and reinspections made, defects found, certificates of compliance granted, and all other work and activities of said department. Periodic reports shall be submitted to the local governing body and to the Commissioner of Insurance as they shall by ordinance, rule, or regulation require. (1905, c. 506, ss. 30, 31; Rev., ss. 3004, 3005; 1915, c. 192, s. 12; C. S., ss. 2766, 2767; 1969, c. 1065, s. 1.)

§ **160-139. Appeals in general.**—Unless otherwise specified by law, appeals from any order, decision, or determination by a member of a local inspection department pertaining to the State Building Code or other State building laws shall be taken to the Commissioner of Insurance or other official specified in § 143-139, by filing a written notice with him and with the inspection department within a period of ten days after such order, decision, or determination. Further appeals may be taken to the State Building Code Council or to the courts as provided by law. (1969, c. 1065, s. 1.)

§ **160-140. Establishment of fire limits.**—The governing body of every incorporated city or town shall pass one or more ordinances establishing and defining fire limits, which shall include the principal business portions of said city or town and which shall be known as primary fire limits. In addition, such governing body may, in its discretion, establish and define one or more separate areas within the municipality as secondary fire limits. (1905, c. 506, s. 7; Rev., s. 2985; 1917, c. 136, sub-ch. 8, s. 2; C. S., ss. 2746, 2802; 1961, c. 240; 1969, c. 1065, s. 1.)

§ **160-141. Restrictions within primary fire limits.**—Within the primary fire limits of any city or town, as established and defined by ordinance, no frame or wooden building or structure or addition thereto shall hereafter be erected, altered, repaired, or moved (either into such limits or from one place to another within the limits), except upon the permit of the local inspection department approved by the Commissioner of Insurance. The local governing body may make such additional regulations as it shall deem necessary for the prevention, extinguishment, or mitigation of fires within such limits. (1905, c. 506, s. 8; Rev., s. 2988; 1915, c. 192, s. 5; C. S., s. 2750; 1969, c. 1065, s. 1.)

Editor's Note. — Session Laws 1969, c. 1229, s. 7, directed that § 160-141 be repealed and a new section, § 143-143.2, relating to electric wiring of houses, be substituted therefor. The repealing act obviously had reference to former § 160-141, relating to electric wiring of houses, which appeared in this article before its revision by Session Laws 1969, c. 1065.

By virtue of Session Laws 1943, c. 170, "Commissioner of Insurance" has been substituted for "Insurance Commissioner."

§ **160-142. Restrictions within secondary fire limits.**—Within any secondary fire limits of any city or town, as established and defined by ordinance, no frame or wooden building or structure or addition thereto shall be erected, altered, repaired, or moved except in accordance with such rules and regulations as the local governing body shall establish by ordinance for such areas. (1905, c. 506, s. 8; Rev., s. 2988; 1915, c. 192, s. 5; C. S., s. 2750; 1969, c. 1065, s. 1.)

§ 160-143. Failure to establish primary fire limits.—If the aldermen or commissioners of any city or town shall fail or refuse to establish and define the primary fire limits of such city or town as required by law, after having such failure or refusal called to their attention in writing by the State Commissioner of Insurance, the Commissioner shall have power to establish such limits upon making a determination that they are necessary and in the public interest. (1905, c. 506, s. 7; Rev., s. 3608; C. S., s. 2747; 1969, c. 1065, s. 1.)

§§ 160-144 to 160-154: Repealed by Session Laws 1969, c. 1065, s. 1.

Revision of Article. — See same catchline in note under § 160-115.

ARTICLE 12.

Recreation Systems and Playgrounds.

§ 160-155. Title.

Cited in Keeter v. Town of Lake Lure, 264 N.C. 252, 141 S.E.2d 634 (1965).

§ 160-158. Powers.

Editor's Note.—
For an article urging revision and recodification of North Carolina's eminent domain laws, see 45 N.C.L. Rev. 587 (1967).

§ 160-163. Petition for establishment of system and levy of tax; election; increase or decrease in tax.—A petition signed by at least fifteen percent 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 a special tax within such unit for providing, conducting, and maintaining a supervised recreation system; provided, that the maximum tax levy to be submitted to the voters shall be determined by the governing body if it submits the question without receipt of a petition pursuant to G.S. 160-159, or by the petition requesting such election.

(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.

In any unit in which a tax for recreation purposes has been voted under this section, or under any other general, public-local, private, or special law, the governing body of such unit may on its own motion, and shall, upon receipt of a petition signed by at least fifteen percent (15%) of the qualified and registered voters in the unit, submit to the voters of such unit the question of an increase or decrease of such tax. Such question shall be submitted to the voters in the manner provided by this section. (1923, c. 83, s. 8; C. S., s. 2776(h); 1945, c. 1052; 1951, c. 933, s. 1; 1967, c. 703, ss. 3, 4.)

Editor's Note.—
The 1967 amendment rewrote subdivision (2) and added the last paragraph of the section.

§ 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.

In addition to any other methods by which cities and counties may carry out the joint authority set out above, the participating cities and counties may adopt a resolution creating a commission for that purpose. The commission shall be composed of such persons as the participating governing bodies may determine, and may consist wholly or in part of members of the participating governing bodies. Membership by a member of a governing body on the commission is to be deemed an additional duty of his elected office on the governing board Upon the establishment of such commission by the adoption of an appropriate resolution by each of the participating governmental units, the said commission shall thereupon come into being and shall have the powers, duties, and responsibilities as specified herein. The commission member shall serve at the pleasure of the governing body appointing him.

The commission created pursuant to the authority of this section shall elect such officers for such terms as the said commission shall determine to be desirable. Members and officers of the commission shall serve without compensation. The governing bodies creating the commission may determine what the official name of the commission is to be.

The commission created pursuant to this section shall have the following powers and duties:

(1) To sue in any court of competent jurisdiction for the purpose of carrying into effect any of the powers or duties imposed by this section or the purposes for which the commission was created, or for the purpose of enforcing any contract or other obligation or liability to the commission; and, to be sued in any court of competent jurisdiction as to any cause of action not prohibited by this section or any other law, it being the intent of the General Assembly that the commission so created, upon establishment, shall for purposes of carrying out the powers and duties granted therein, be considered a body corporate;

(2) To make rules, not inconsistent with this section or the resolution of the governing bodies creating the said commission, governing its procedure and the manner of executing its powers and duties;

(3) To exercise all powers that are granted to the said commission by the resolution of the governing bodies creating same, which said powers may include all the powers that any one of the governing bodies participating in the creation of the commission would have if acting alone insofar as the control, management, lease, equipment, improvement, maintenance, operation, and regulation of parks, playgrounds, and other recreational facilities and activities are concerned;

(4) The commission shall not have authority to levy any taxes, issue any bonds, or create any debts which shall constitute a general liability of any of the governmental units participating in the creation of the commission or that will be enforceable as to the property of any of the said governmental units or any of its citizens, but shall operate pursuant to budgets submitted by the commission to the participating governmental units and appropriations made by the said governmental units, and no deviation from the approved budgets may be made without the approval of each of the participating governmental units;

(5) Subject to the general approval of the governmental units participating in the creation of the commission, to employ persons, fix their com-

pensation, and assign their duties, and to remove persons so employed for any reason satisfactory to the commission;

(6) Subject to the general approval of the governing bodies creating the said commission, to fix the rates and charges for all facilities and services at any facility or for any recreation program which is jointly established or operated through a commission as provided in this section;

(7) Subject to the approval of the governing bodies creating the commission, to make all rules and regulations governing the operation and use of any facility or program placed within the jurisdiction of the commission created hereunder, such rules and regulations not being inconsistent with lawful rules and regulations of any department or agency of the United States or of the State of North Carolina as established and existing from time to time, which rules and regulations shall be published as the commission shall prescribe;

(8) Subject to the approval of the governing bodies creating the commission, to enter into contracts of lease, license, concession, or otherwise with any person, partnership, or corporation for the operation and maintenance of any of the facilities placed under the jurisdiction of the commission;

(9) To collect all revenues derived from the operation of any of the facilities placed under the jurisdiction of the said commission, and to receive donations, grants, and any other like or similar revenues or property for use by said commission in carrying out the parks, playground and recreational facilities and programs placed under the jurisdiction of the said commission;

(10) To expend revenues or funds which the commission receives by way of appropriations from the participating governmental units, the amount of each governmental unit's participation being determined by agreement of all participating governmental units, or which the commission receives from operating the facilities placed under its jurisdiction, or from gifts, donations, grants-in-aid, or other sources, the entire budget of the commission having been approved by the participating governmental units.

All of the financial records of the commission created hereunder shall be subject to the supervison and inspection of a county or city accountant or such other officer or agent as shall be designated by the cooperating governmental units, and the commission shall make such reports from time to time as shall be required by the participating governmental units. The treasurer of the commission shall give a bond in such amount as shall be fixed by the commission, which bond shall be payable to the commission and shall be conditioned upon the faithful performance of his duties as treasurer and his making a lawful accounting of all funds as treasurer of the commission.

Nothing contained in this section shall interfere in any way with the establishment of parks or playgrounds or with the conduct of recreational programs by any one of the governmental units involved in the creation of the commission, acting alone, and nothing contained in this section shall in any way interfere with the conduct of recreational programs by any municipality or county pursuant to authority of law, it being the purpose of this section to supplement all other legal authority to conduct recreational programs and to operate and maintain recreational facilities, and the same is to be in addition to all other laws and is in no way to restrict same. (1945, c. 1052; 1967, c. 1228.)

Editor's Note. — The 1967 amendment added all of the section that follows the first paragraph therein.

Article 12B.

Rural Recreation Districts.

§ **160-166.3. Election to be held upon petition of voters.**—Upon the petition of fifteen percent (15%) of the resident freeholders living in an area lying outside the corporate limits of any city or town, which area is described in the petition and designated as "..... (Here insert name) Recreation District," the board of county commissioners of the county shall call an election in said district for the purpose of submitting to the qualified voters therein the question of levying and collecting a special tax on all taxable property in said district, of not exceeding fifteen cents (15¢) of the one hundred dollars ($100.00) valuation of property, for the purpose of providing recreational programs and facilities in said district.

Upon the petition of fifteen percent (15%) of the resident freeholders living in an area which has previously been established as a recreation district and in which there has been authorized by a vote of the people a special tax not exceeding ten cents (10¢) on the one hundred dollars ($100.00) valuation of property within the area, the board of county commissioners shall call an election in said area for the purpose of submitting to the qualified voters therein the question of increasing the allowable special tax for recreational programs and facilities within said district from ten cents (10¢) on the one hundred dollars ($100.00) valuation of [to] fifteen cents (15¢) on the one hundred dollars ($100.00) valuation on all taxable property within such district. Elections on the question of increasing the allowable tax rate for recreational programs and facilities shall not be held within the same district at intervals less than two years. (1969, c. 811.)

Editor's Note.—The word "to" has been inserted in brackets in the second paragraph of this section as set out above as a suggested correction of the word "of," which appears in the 1969 Session Laws.

§ **160-166.4. Duties of county board of commissioners as to conduct of election; cost of holding.**—For the election so called as provided in § 160-166.3, the board of commissioners of the county shall provide one or more polling places in said district, shall provide for a registrar or registrars and judges of election at said voting places, shall provide for the registration of all qualified voters living in said district, shall cause to be prepared the necessary ballots for voting at said election, shall fix the time and places for holding the same, and shall conduct said election in every other respect according to the provisions of the laws governing general elections so far as they may be applicable. The cost of holding the election shall be paid by the county. (1969, c. 811.)

§ **160-166.5. Ballots.**—At said election those voters who are in favor of levying a tax in said district for recreational programs and facilities therein shall vote a ballot on which shall be written or printed, "In favor of tax for recreational programs and facilities in ..... (Here insert name) Recreation District."

Those who are against levying said tax shall vote a ballot on which shall be written or printed the words, "Against tax for recreational programs and facilities for ..... (Here insert name) District."

Whenever an election is called pursuant to this article on the question of increasing the tax limit for recreational programs and facilities in any area, those voters in favor of such increase therein shall vote a ballot on which shall be printed, "In favor of tax increase for recreational programs and facilities in ..... Recreation District." Those who are against increasing the tax limit for recreational programs and facilities therein shall vote a ballot

on which shall be printed, "Against tax increase for recreational programs and facilities in ..... Recreation District." The failure of the election on the question of an increase in the tax for recreational programs and facilities shall not be deemed to be the abolishment of the special tax for recreational programs and facilities already in effect in said district. (1969, c. 811.)

§ 160-166.6. Tax to be levied and used for recreational programs and facilities.—If a majority of the qualified voters voting at said election vote in favor of levying and collecting a tax in said district, then the board of county commissioners is authorized and directed to levy and collect a tax in said district in such amount as it may deem necessary, not exceeding ten cents (10¢) on the one hundred dollars ($100.00) valuation of property in said district from year to year, and shall keep the same as a separate and special fund, to be used only for furnishing recreational programs and facilities within said district, as provided in §160-166.7.

Provided, that if a majority of the qualified voters voting at such elections vote in favor of levying and collecting a tax in such district, or vote in favor of increasing the tax limit in said district, then the board of county commissioners is authorized and directed to levy and collect a tax in such districts in such amount as it may deem necessary, not exceeding fifteen cents (15¢) on the one hundred dollars ($100.00) valuation of property in said district from year to year. (1969, c. 811.)

§ 160-166.7. Methods of providing recreational programs and facilities.—Upon the levy of such tax, the board of county commissioners shall, to the extent of the taxes collected hereunder, provide recreational programs and facilities for the district—

(1) By contracting with any incorporated city or town, with any incorporated nonprofit community recreation organization duly chartered under the laws of North Carolina and organized for the purposes set out in §§ 160-157 and 160-158, or,
(2) By furnishing recreational programs and facilities itself if the county maintains organized recreational programs and facilities, or
(3) By establishing a creation system within the district, or
(4) By utilizing any two or more of the above listed methods of furnishing recreational programs and facilities. (1969, c. 811.)

§ 160-166.8. Municipal corporations empowered to make contracts.—Municipal corporations are hereby empowered to make contracts to carry out the purposes of this article. (1969, c. 811.)

§ 160-166.9. Administration of special fund; recreation district commission.—The special fund provided by the tax herein authorized shall be administered to provide recreational programs and facilities as provided in § 160-166.7 by the board of county commissioners or the joint boards of county commissioners, if the area lies in more than one county, or by a recreation district commission of three qualified voters of the area, to be known as .... Recreation District said board to be appointed by
(Here insert name)
the board of county commissioners or the joint boards of county commissioners, if the area lies in more than one county, for a term of two years, said commission to serve at the discretion of and under the supervision of the board of county commissioners or boards of county commissioners if the area lies in more than one county. (1969, c. 811.)

§ 160-166.10. Authority, rights, privileges and immunities of counties, etc., performing services under article.—Any county, municipal corporation or recreation district performing any of the services authorized by this

article shall be subject to the same authority and immunities as a county would enjoy in the operation of a county recreation system within the county, or a municipal corporation would enjoy in the operation of a recreation system within its corporate limits.

Members of any county, municipal or recreation district shall have all of the immunities, privileges and rights, including coverage by workmen's compensation insurance, when performing any of the functions authorized by this article, as members of a county recreation system would have in performing their duties and for a county, or as members of a municipal recreation system would have in performing their duties in for and within the corporate limits of the municipal corporation. (1969, c. 811.)

§ **160-166.11. Procedure when area lies in more than one county.**— In the event that an area petitioning for a tax election under this article lies in more than one county said petition shall be submitted to the board of county commissioners of all the counties in which said area lies and election shall be called which shall be conducted by the joint boards of county commissioners and the cost of same shall be shared equally by all counties.

Upon paassage, the tax herein provided shall be levied and collected by each county on all of the taxable property in its portion of the recreation district; the tax collected shall be paid into a special fund and used for the purpose of providing recreation programs and facilities for the district. (1969, c. 811.)

§ **160-166.12. Means of abolishing tax district.**—Upon a petition of fifteen percent (15%) of the resident freeholders of any special recreation district or area, at intervals of not less than two years, the board of county commissioners or the joint boards of county commissioners, if the area lies in more than one county, shall call an election to abolish the special tax for recreation programs and facilities for the area, the election to be called and conducted as provided in § 160-166.4; if a majority of the registered voters vote to abolish said tax, the commissioners shall cease levy and collecting same and any unused funds of the district shall be turned over to and used by the county commissioners of the county collecting same as a part of its general fund, and any property or properties of the district or the proceeds thereof shall be distributed, used or disposed of equitably by the board of county commissioners or the boards of county commissioners. (1969, c. 811.)

§ **160-166.13. Changes in area of district.** — After a recreation district has been established under the provisions of this article and recreation commissioners have been appointed, changes in the area may be made as follows:

(1) The area of any recreation district may be increased by including within the boundaries of the district any adjoining territory upon the application of the owner, or a two-thirds majority of the owners, of the territory to be included, the unanimous recommendation in writing of the recreation commissioners of said district, and the approval of the board or boards of county commissioners in the county or counties in which said recreation district is located. However, before said recreation district change is approved by the county commissioners, notice shall be given once a week for two successive calendar weeks in a newspaper having general circulation in said district, and notice shall be posted at the courthouse door in each county affected, and at three public places in the area to be included, said notices inviting interested citizens to appear at a designated meeting of said county commissioners, said notice to be published the first time and posted not less than fifteen days prior to the date fixed for hearing before the county commissioners.

(2) The area of any recreation district may be decreased by removing therefrom any territory, upon the application of the owner or owners of

the territory to be removed, the unanimous recommendation in writing of the recreation commissioners of said district, and the approval of the board or boards of county commissioners of the county or counties in which the district is located.

(3) In the case of adjoining recreation districts having in effect the same rate of tax for recreational programs and facilities, the board of county commissioners, upon petition of the recreation commissioners shall have the authority to relocate the boundary lines between such recreation districts in accordance with the petition or in such other manner as to the board may seem proper. Upon receipt of such petition, the board of county commissioners shall set a date and time for a public hearing on the petition, and notice of such hearing shall be published in some newspaper having general circulation within the districts to be affected once a week for two weeks preceding the time of the hearing. Such hearings may be adjourned from time to time and no further notice is required of such adjourned hearings. In the event any boundaries of recreation districts are altered or relocated under this section, the same shall take effect at the beginning of the next succeeding fiscal year after such action is taken.

(4) In the case of adjoining recreation districts having in effect a different rate of tax for recreational programs and facilities, the board of county commissioners, upon petition of two thirds of the owners of the territory involved and after receiving a favorable recommendation of the recreation commissioners, may transfer such territory from one district to another and therefore relocate the boundary lines between such recreation districts in accordance with the petition or in such other manner as the board may deem proper. Upon receipt of such petition, the board of county commissioners shall set a date and time for a public hearing on the petition, and notice of such hearing shall be published in some newspaper having general circulation within the districts to be affected once a week for two weeks preceding the time of the hearing. Such hearings may be adjourned from time to time and no further notice is required of such adjourned hearings. In the event any boundaries of recreation districts are relocated under this section, the same shall take effect at the beginning of the next succeeding fiscal year after such action is taken. (1969, c. 811.)

§ 160-166.14. Privileges and taxes where territory added to district.—In case any territory is added to any recreation district, from and after such addition, the taxpayers and other residents of said added territory shall have the same rights and privileges and the taxpayers shall pay taxes at the same rates as if said territory had originally been included in the said recreation district. (1969, c. 811.)

§ 160-166.15. Privileges and taxes where territory removed from district.—In case any territory is removed from any recreation district from and after said removal, the taxpayers and other residents of said removed territory shall cease to be entitled to the rights and privileges vested in them by their inclusion in said recreation district, and the taxpayers shall no longer be required to pay taxes upon their property within said district. (1969, c. 811.)

§ 160-166.16. Contract with city or town to which all or part of district annexed concerning property of district and furnishing of recreational programs and facilities.—Whenever all or any part of the area included within the territorial limits of a recreation district is annexed to or becomes a part of a city or town, the governing body of such district may contract with the governing body of such city or town to give, grant or convey to such city or town, with or without consideration, in such manner and on such terms and conditions as

the governing body of such district shall deem to be in the best interests of the inhabitants of the district, all or any part of its property, including, but without limitation, any recreation equipment or facilities, and may provide in such contract for the furnishing of recreational programs and facilities by the city or town or by the district. (1969, c. 811.)

§ 160-166.17. When district or portion thereof annexed by municipality furnishing recreational programs and facilities.—When the whole or any portion of a recreation district has been annexed by a municipality furnishing recreational programs and facilities to its citizens, then such recreation district or the portion thereof so annexed shall immediately thereupon cease to be a recreation district or a portion of a recreation district; and such district or portion thereof so annexed shall no longer be subject to § 160-166.6 authorizing the board of county commissioners to levy and collect a tax in such district for the purpose of furnishing recreational programs and facilities therein.

Nothing herein shall be deemed to prevent the board of county commissioners from levying and collecting taxes for recreational programs and facilities in the remaining portion of a recreation district not annexed by a municipality, as aforesaid. (1969, c. 811.)

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. Such regulations may also provide that the board of adjustment or the local legislative body may issue special use permits or conditional use permits in the classes of cases or situations and in accordance with the principles, conditions, safeguards, and procedures specified therein, and may impose reasonable and appropriate conditions and safeguards upon such permits. (1923, c. 250, s. 1; C. S., s. 2776(r); 1967, c. 1208, s. 1.)

Local Modification.—City of Durham: 1969, c. 654.

Editor's Note.—

The 1967 amendment added the last sentence.

The original zoning power of the State reposes in the General Assembly. Schloss v. Jamison, 262 N.C. 108, 136 S.E.2d 691 (1964).

The power to zone is the power of the State and rests in the General Assembly originally. There, it is subject to the limitations imposed by the Constitution upon the legislative power forbidding arbitrary and unduly discriminatory interference with the rights of property owners. Zopfi v. City of Wilmington, 273 N.C. 430, 160 S.E.2d 325 (1968).

Similarity of Provisions.—The language of this section granting cities and towns the power to regulate by zoning, and § 153-266.10 granting the same power to boards of commissioners of counties, are almost identical in phraseology as are § 160-178 providing for a board of adjustment under a city ordinance and § 153-266.17 providing for a board of adjustment under a county ordinance. Jackson v. Guilford County Bd. of Adjustment, 2 N.C. App. 408, 163 S.E.2d 265 (1968).

Power Delegated.—

The General Assembly has delegated the zoning power to the "legislative body" of municipal corporations. Schloss v. Jamison, 262 N.C. 108, 136 S.E.2d 691 (1964).

The General Assembly has delegated its police powers to enact zoning regulations to municipal corporations. Armstrong v. McInnis, 264 N.C. 616, 142 S.E.2d 670 (1965).

The General Assembly may delegate power to a municipal corporation to enact zoning ordinances in the exercise of police power of the State. Jackson v. Guil-

ford County Bd. of Adjustment, 275 N.C. 155, 166 S.E.2d 78 (1969).

The General Assembly cannot delegate to a municipal corporation more extensive power to regulate the use of private property than the General Assembly, itself, possesses. Zopfi v. City of Wilmington, 273 N.C. 430, 160 S.E.2d 325 (1968).

A municipal corporation has no inherent power to zone its territory and restrict to specified purposes the use of private property in each such zone. Such power has, however, been delegated to the cities and incorporated towns of this State by the General Assembly. Zopfi v. City of Wilmington, 273 N.C. 430, 160 S.E.2d 325 (1968).

Delegation of Power to Zone Is Exception to General Rule.—The authority of the General Assembly to delegate to municipal corporations power to legislate concerning local problems, such as zoning, is an exception (established by custom in most, if not all, of the states) to the general rule that legislative powers, vested in the General Assembly by N.C. Const., Art. II, § 1, may not be delegated by it. This exception to the doctrine of nondelegation is not limited to a delegation of such legislative authority to incorporated cities and towns, but extends, as to other types of local matters, to a like delegation to counties and other units established by the General Assembly for local government. Jackson v. Guilford County Bd. of Adjustment, 275 N.C. 155, 166 S.E.2d 78 (1969).

Municipality exercises the police power of the State, within the limits of the zoning power delegated. Schloss v. Jamison, 262 N.C. 108, 136 S.E.2d 691 (1964).

In enacting and enforcing zoning regulations, a municipality acts as a governmental agency and exercises the police power of the State. Armstrong v. McInnis, 264 N.C. 616, 142 S.E.2d 670 (1965).

Zoning laws, when valid, are an exercise of the police power of the sovereign reasonably to regulate or restrict the use of private property to promote the public health, the public safety, the public morals or the public welfare. Zopfi v. City of Wilmington, 273 N.C. 430, 160 S.E.2d 325 (1968).

In enacting and enforcing zoning regulations, a municipality acts as a governmental agency and exercises the police power of the State. Taylor v. Bowen, 272 N.C. 726, 158 S.E.2d 837 (1968).

But Power Is Subject to Limitations of Enabling Act.—The power to zone, conferred upon the "legislative body" of a municipality, is subject to the limitations of the enabling act. Schloss v. Jamison, 262 N.C. 108, 136 S.E.2d 691 (1964).

The authority of a city or town to enact zoning ordinances is subject both to the limitations imposed by the Constitution and to the limitations of the enabling statute. Zopfi v. City of Wilmington, 273 N.C. 430, 160 S.E.2d 325 (1968).

Power Need Not Be Exercised.—The grant of the power to zone to a municipal corporation imposes no duty upon the city or town to exercise it and the courts may not require the city or town to enact zoning legislation. This is a matter within the discretion of the legislative body of the city or town. Zopfi v. City of Wilmington, 273 N.C. 430, 160 S.E.2d 325 (1968).

Power to Zone Cannot Be Delegated.—The legislative body of the municipal corporation may not delegate to the municipal board of adjustment the power to zone; that is, the power originally vested in the General Assembly to legislate with reference to the use which may be made of land and the structures which may be erected or located thereon. It follows that a county zoning ordinance may not delegate such legislative powers to the county board of adjustment. Jackson v. Guilford County Bd. of Adjustment, 275 N.C. 155, 166 S.E.2d 78 (1969).

Power Not Exhausted by Adoption of Zoning Ordinance. — The adoption of a zoning ordinance in exercise of the police power, thus delegated to a municipal corporation, does not exhaust that power. Zopfi v. City of Wilmington, 273 N.C. 430, 160 S.E.2d 325 (1968).

Validity of Ordinances.—

In accord with 7th paragraph in original. See County of Durham v. Addison, 262 N.C. 280, 136 S.E.2d 600 (1964).

Zoning ordinances are upheld when, but only when, they bear a substantial relation to the public health, safety, morals, or general welfare. Schloss v. Jamison, 262 N.C. 108, 136 S.E.2d 691 (1964).

The court will not substitute its judgment for that of the legislative body charged with the primary duty and responsibility of determining whether its action is in the interest of the public health, safety, morals, or general welfare. Schloss v. Jamison, 262 N.C. 108, 136 S.E.2d 691 (1964).

There is a presumption that the city council adopts a zoning ordinance in the proper exercise of the police power. Schloss v. Jamison, 262 N.C. 108, 136 S.E.2d 691 (1964).

When the most that can be said against an ordinance adopted in the proper exercise of the police power is that whether it was an unreasonable, arbitrary or unequal exer-

cise of power is fairly debatable, the courts will not interfere. Schloss v. Jamison, 262 N.C. 108, 136 S.E.2d 691 (1964).

If the police power is properly exercised in the zoning of a municipality, a resultant pecuniary loss to a property owner is a misfortune which he must suffer as a member of society. Schloss v. Jamison, 262 N.C. 108, 136 S.E.2d 691 (1964).

City Council May Adopt Comprehensive Zoning Ordinance.—This section and § 160-173 confer upon a city council legislative power to adopt a comprehensive zoning ordinance. Schloss v. Jamison, 262 N.C. 108, 136 S.E.2d 691 (1964).

And May Determine Signs Permitted in Each District. — Subject to constitutional limitations, a city council has authority to determine and define legislatively what signs will be permitted in each of the respective zones or districts. Schloss v. Jamison, 262 N.C. 108, 136 S.E.2d 691 (1964).

Burden of Establishing Invalidity of Ordinance. — A property owner who asserts the invalidity of a zoning ordinance adopted in the proper exercise of the police power has the burden of establishing its invalidity. Schloss v. Jamison, 262 N.C. 108, 136 S.E.2d 691 (1964).

Cited in Michael v. Guilford County, 269 N.C. 515, 153 S.E.2d 106 (1967).

§ 160-173. Districts.

Local Modification.—Town of Morehead City: Session Laws 1969, c. 879, s. 4, repealed Session Laws 1957, c. 629.

Editor's Note.—

Chapter 82, Session Laws 1965, amends § 4 of c. 1058, Session Laws 1963, by deleting "Gaston" so as to make § 160-173, as amended in 1963, applicable to Gaston County.

Chapter 373, Session Laws 1969, amends s. 4 of c. 1058, Session Laws 1963, by deleting "Vance," so as to make § 160-173, as amended in 1963, applicable to Vance County.

Chapter 482, Session Laws 1969, amends s. 4 of c. 1058, Session Laws 1963, by deleting "Cumberland," so as to make § 160-173, as amended by the 1963 act, applicable to Cumberland County.

City Council May Adopt Comprehensive Zoning Ordinance.—See same catchline in note to § 160-172.

And May Determine Signs Permitted in Each District.—See same catchline in note to § 160-172.

§ 160-174. Purposes in view.

Section Sets Out Purposes of Comprehensive Zoning Ordinance.—The purposes for which a municipal corporation may adopt a comprehensive zoning ordinance are set forth in this section. Schloss v. Jamison, 262 N.C. 108, 136 S.E.2d 691 (1964).

Spot zoning arises where a small area, usually a single lot or a few lots, surrounded by other property of similar nature, is placed arbitrarily in a different use zone from that to which the surrounding property is made subject. When such small area is subjected to a more burdensome restriction than that applicable to the surrounding property of like kind, the weight of authority is that the owner of the property so subjected to discriminatory regulation, may successfully attack the validity of the ordinance. Zopfi v. City of Wilmington, 273 N.C. 430, 160 S.E.2d 325 (1968).

The rule denying the validity of spot zoning ordinances has been applied where a small area previously in a residential zone has been removed, by an amending ordinance, from such zone and reclassified to permit business or commercial use over the objection of adjoining owners of residential property. Zopfi v. City of Wilmington, 273 N.C. 430, 160 S.E.2d 325 (1968).

§ 160-175. Method of procedure.

Local Modification.—City of Winston-Salem: 1969, c. 43.

Ordinance Is Presumed Valid.—

There is a presumption that a zoning ordinance, adopted pursuant to the prescribed procedures, is valid and the mere fact that it depreciates the value of the complainant's property is not enough to establish its invalidity. Zopfi v. City of Wilmington, 273 N.C. 430, 160 S.E.2d 325 (1968).

Court Will Not Substitute, etc.—

When the most that can be said against a zoning ordinance is that whether is was an unreasonable, arbitrary or unequal exercise of power is fairly debatable, the courts will not interfere. Under such circumstances the courts may not substitute their judgment for that of the legislative body of the municipality as to the wisdom of the legislation. Zopfi v. City of Wilmington, 273 N.C. 430, 160 S.E.2d 325 (1968).

§ 160-176. Changes; annexed territory.—Such regulations, restrictions and boundaries may from time to time be amended, supplemented, changed, modified or repealed. In case, however, of a protest against such change signed by the owners of twenty per cent or more either of the area of the lots included in such proposed change, or of those immediately adjacent thereto either in the rear thereof or on either side thereof, extending one hundred feet therefrom, or of those directly opposite thereto extending one hundred feet from the street frontage of such opposite lots, such amendment shall not become effective except by favorable vote of three-fourths of all the members of the legislative body of such municipality. The provisions of the previous section relative to public hearings and official notice shall apply equally to all changes or amendments. Whenever by reason of an annexation or of action by the General Assembly the territorial jurisdiction of a municipality is extended, the enactment of zoning regulations for the areas newly subject to municipal jurisdiction shall be deemed to be an amendment of the existing municipal zoning ordinance and not the enactment of a new zoning ordinance; provided, however, that the "protest" provisions of the second sentence of this section shall not apply to such amendment. When any such areas are, at the time municipal jurisdiction is extended, subject to the provisions of a duly enacted county zoning ordinance, they shall remain subject to the provisions of such county ordinance for a period of 60 days thereafter, at the conclusion of which time zoning jurisdiction shall pass to the municipality. During said sixty-day period the municipality may take any actions (including the holding of hearings) as may be required to adopt the necessary amendments to its ordinance, which amendments shall become effective at the expiration of the period. (1923, c. 250, s. 5; C. S., s. 2776(v); 1959, c. 434, s. 1; 1965, c. 864, s. 1.)

Editor's Note.—

The 1965 amendment added the last three sentences.

The enactment of a zoning ordinance is not a contract with property owners of the city and confers upon them no vested right to have the ordinance remain forever in force, or to demand that the boundaries of each zone or the uses to be made of property in each zone remain as declared in the original ordinance. Such legislation by the city may be repealed in its entirety, or amended as the city's legislative body determines from time to time to be in the best interests of the public, subject only to the limitations of the enabling statute and the limitations of the Constitution. Zopfi v. City of Wilmington, 273 N.C. 430, 160 S.E.2d 325 (1968).

Amendment Need Not Accomplish All Purposes Specified in Enabling Act.—It is not required that an amendment to a zoning ordinance accomplish or contribute specifically to the accomplishment of all of the purposes specified in the enabling act. It is sufficient that the legislative body of the city had reasonable ground upon which to conclude that one or more of those purposes would be accomplished or aided by the amending ordinance. Zopfi v. City of Wilmington, 273 N.C. 430, 160 S.E.2d 325 (1968).

Amending Ordinance Beyond Legislative Power of City.—If the amending ordinance is beyond the legislative power of the city, whether for the reason that it constitutes spot zoning or on some other ground, its adoption does not remove the designated area from the effect of the comprehensive zoning ordinance previously enacted. In that event, the proposed use remains unlawful and the right of owners of adjoining property to enjoin such use is not affected by the amending ordinance. Zopfi v. City of Wilmington, 273 N.C. 430, 160 S.E.2d 325 (1968).

Applied in Armstrong v. McInnis, 264 N.C. 616, 142 S.E.2d 670 (1965).

§ 160-177. Planning board; zoning plan; certification to legislative body.—In order to avail itself of the powers conferred by this article, such legislative body shall appoint a town or city planning board or a joint planning board under the provisions of G.S. 160-22 or of a special act of the General Assembly. The town or city planning board or joint planning board shall have the duty of preparing a zoning plan, including both the full text of a zoning ordinance and a map or maps showing proposed district boundaries. The planning board may hold such public hearings, if any, as it deems necessary in the course of preparing

this plan. Upon completion, the planning board shall certify this plan to the legislative body. The legislative body shall not hold its required public hearing or take action until it has received this certified plan from the planning board. Following its required public hearing, the legislative body may, if it deems wise, refer the plan back to the planning board for any further recommendations which said board may wish to make prior to final action by the legislative body in adopting, modifying and adopting, or rejecting the ordinance. (1923, c. 250, s. 6; C. S., s. 2776(w); 1967, c. 1208, s. 2.)

Editor's Note. — The 1967 amendment rewrote this section.

§ **160-178. Board of adjustment.**—Such legislative body may provide for the appointment and compensation 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 and provide compensation for alternate members to serve on such board in the absence, for any cause, of any regular member. Such alternate member or members shall be appointed for the same term or terms as regular members, and shall be appointed in the same manner as regular members and at the regular times for appointment; provided, however, that in the case of the first appointment of alternate members subsequent to March 18, 1947, the appointment shall be for a term which shall expire at the next time when the term of any regular member expires. Such alternate member, while attending any regular or special meeting of the board and serving in the absence of any regular member, shall have and exercise all the powers and duties of such regular member so absent. Such board of adjustment shall hear and decide appeals from and review any order, requirement, decision or determination made by an administrative official charged with the enforcement of any ordinance adopted pursuant to this article. It shall also hear and decide all matters referred to it or upon which it is required to pass under any such ordinance. The concurring vote of four members of the board shall be necessary to reverse any order, requirement, decision or determination of any such administrative official, or to decide in favor of the applicant any matter upon which it is required to pass under any such ordinance or to effect any variation in such ordinance. Every decision of such board shall, however, be subject to review by proceedings in the nature of certiorari. Such appeal may be taken by any person aggrieved or by an officer, department, board or bureau of the municipality. Such appeal shall be taken within such time as shall be prescribed by the board of adjustment by general rule, by filing with the officer from whom the appeal is taken and with the board of adjustment a notice of appeal, specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken. An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the board of adjustment, after the notice of appeal shall have been filed with him, that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property, in which case the proceedings shall not be stayed otherwise than by a restraining order, which may be granted by the board of adjustment or by a court of record on application, on notice to the officer from whom the appeal is taken and on due cause shown. The board of adjustment shall fix a reasonable time for the hearing of the appeal and give due notice thereof to the parties, and decide the same within a reasonable time. Upon the hearing, any party may appear in person or by agent or by attorney. The board of adjustment may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed

from, and shall make such order, requirement, decision or determination as in its opinion ought to be made in the premises, and to that end shall have all the powers of the officer from whom the appeal is taken. Where there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of such ordinance, the board of adjustment shall have the power, in passing upon appeals, to vary or modify any of the regulations or provisions of such ordinance relating to the use, construction or alteration of buildings or structures or the use of land, so that the spirit of the ordinance shall be observed, public safety and welfare secured and substantial justice done.

The chairman of the board of adjustment is authorized in his official capacity to administer oaths to witnesses in any matter coming before the board. Any member of the board while temporarily acting as chairman shall have and may exercise like authority. (1923, c. 250, s. 7; C. S., s. 2776(x); 1929, c. 94, s. 1; 1947, c. 311; 1949, c. 979, ss. 1, 2; 1963, c. 1058, s. 3; 1965, c. 864, s. 2; 1967, c. 197, s. 1.)

Editor's Note.—

The 1965 amendment inserted "and compensation" near the beginning of the first sentence, and inserted "and provide compensation for" in the second sentence.

The 1967 amendment deleted "not more than two" preceding "alternate members" in the second sentence.

Similarity of Provisions.—The language of § 160-172 granting cities and towns the power to regulate by zoning, and § 153-266.10 granting the same power to boards of commissioners of counties, are almost identical in phraseology, as are this section, providing for a board of adjustment under a city ordinance, and § 153-266.17, providing for a board of adjustment under a county ordinance. Jackson v. Guilford County Bd. of Adjustment, 2 N.C. App. 408, 163 S.E.2d 265 (1968).

Section Grants, etc.—

The board is not a law-making body and has no power to amend the zoning ordinance either to permit the construction of a building prohibited by ordinance or to prohibit the construction of one permitted by ordinance. In re Rea Constr. Co., 272 N.C. 715, 148 S.E.2d 887 (1968).

Nature of Power.—

In accord with 1st paragraph in original. See Jackson v. Guilford County Bd. of Adjustment, 2 N.C. App. 408, 163 S.E.2d 265 (1968).

The board of adjustment authorized in this section is an administrative agency, acting in a quasi-judicial capacity. Jackson v. Guilford County Bd. of Adjustment, 2 N.C. App. 408, 163 S.E.2d 265 (1968).

A board of adjustment, authorized by this section, is also an administrative agency which acts in a quasi-judicial capacity. In re Rea Constr. Co., 272 N.C. 715, 158 S.E.2d 887 (1968).

Within the class of quasi-judicial acts fall the board's conclusions as to whether a proposed building would be noxious or offensive or detrimental to the public safety or welfare by reason of its situation or the surrounding conditions. Jackson v. Guilford County Bd. of Adjustment, 2 N.C. App. 408, 163 S.E.2d 265 (1968).

The legislature may delegate to the board of adjustment, as a quasi-judicial body, the authority to determine facts and therefrom to draw conclusions as a basis of its official action. Jackson v. Guilford County Bd. of Adjustment, 2 N.C. App. 408, 163 S.E.2d 265 (1968).

But Can Merely, etc.—

The principal function of a board of adjustment is to issue variance permits so as to prevent injustice by a strict application of the ordinance. In re Rea Constr. Co., 272 N.C. 715, 158 S.E.2d 887 (1968).

Exercise of Discretion.—In exercising its discretion, the board of adjustment must abide by the rules provided by its charter—the local ordinance enacted in accord with and by permission of the State zoning law. Jackson v. Guilford County Bd. of Adjustment, 2 N.C. App. 408, 163 S.E.2d 265 (1968).

A special permit is not a legal right but is a concession in exceptional cases which the board, in the exercise of its discretion, may grant, subject to court review. Craver v. Zoning Bd. of Adjustment, 267 N.C. 40, 147 S.E.2d 599 (1966).

Waiver of Right to Insist That Witnesses Be under Oath.—By voluntary participation in a hearing, a party may waive the right to insist that the witnesses should be under oath. Craver v. Zoning Bd. of Adjustment, 267 N.C. 40, 147 S.E.2d 599 (1966).

Extent of Review.—

In accord with 2nd paragraph in original. See County of Durham v. Addison, 262 N.C. 280, 136 S.E.2d 600 (1964).

Cited in Yancey v. Heafner, 268 N.C. 263, 150 S.E.2d 440 (1966).

§ 160-179. Remedies.

Applied in City of Gastonia v. Parrish, 271 N.C. 527, 157 S.E.2d 154 (1967).

§ 160-181.2. Extraterritorial jurisdiction.—The legislative body of any municipality whose population at the time of the latest decennial census of the United States was one thousand two hundred fifty (1,250) or more, may exercise the powers granted in this article not only within its corporate limits but also within the territory extending for a distance of one mile beyond such limits in all directions; provided, that any ordinance intended to have application beyond the corporate limits of the municipality shall expressly so provide, and provided further that such ordinance be adopted in accordance with the provisions set forth herein. In the event of land lying outside a municipality and lying within a distance of one mile of more than one municipality, the jurisdiction of each such municipality shall terminate at a boundary line equidistant from the respective corporate limits of such municipalities, unless such municipalities shall agree in writing upon a different boundary line based upon geographical features and existing or projected patterns of development within the area. The legislative body may, if it deems wise, decline to exercise its regulatory powers over any part of its extraterritorial jurisdiction which lies in another county, or which is separated from the municipality or from the remainder of the area subject to municipal jurisdiction by a river, inlet, sound, or other major physical barrier to urban growth; such decision shall not affect the validity of any zoning regulations enacted for the remainder of the area over which the municipality has extraterritorial jurisdiction. No extraterritorial regulations shall affect bona fide farms, but any use of such property for nonfarm purposes shall be subject to such regulations.

As a prerequisite to the exercise of such powers, the membership of the zoning commission or planning board charged with the preparation of proposed regulations for the one-mile area outside of the corporate limits shall be increased to include additional members who shall represent such outside area. The number of additional members representing such outside area shall be equal in number to the members of the planning board or zoning commission, appointed by the governing body of the municipality. Such additional members shall be residents of the one-mile area outside the corporate limits and shall be appointed by the board of county commissioners of the county wherein the municipality is situated. Such members shall have equal rights, privileges, and duties with the other members of the zoning commission or planning board in all matters pertaining to the regulation of such area, both in preparation of the original regulations and in consideration of any proposed amendments to such regulations; provided, that the municipal legislative body may, if it deems wise, provide in its ordinance that such additional members shall have equal rights, privileges, and duties with the other members in all matters, wherever they might arise.

In the event that a municipal legislative body adopts zoning regulations for the area outside its corporate limits, it shall increase the membership of the board of adjustment by adding five additional members, and by adding alternate members equal to the number of alternate members appointed to the existing board of adjustment. Such members shall be residents of the one-mile area outside the corporate limits and shall be appointed by the board of county commissioners of the county wherein the municipality is situated. Such members shall have equal rights, privileges, and duties with the other members of the board of adjustment in all matters pertaining to the regulation of such area; provided, that the municipal legislative body may, if it deems wise, provide in its ordinance that such additional members shall have equal rights, privileges, and duties with the other members in all matters, wherever they might arise. The concurring vote of eight members of such enlarged board shall be necessary to reverse any order, requirement, decision, or determination of any administrative official charged with the enforcement of an ordinance.

In the event the board of county commissioners fails to make the appointments provided for in this section within ninety (90) days after receipt of a resolution from a municipal governing body requesting that such appointments be made, the municipal governing body thereupon may make such appointments.

Where the extraterritorial jurisdiction of a municipality extends into more than one county, and the municipal legislative body desires to exercise its entire jurisdiction, it may, with the approval of the several boards of county commissioners, by ordinance provide for the apportionment between or among the counties of the outside members of the zoning commission or planning board and of the board of adjustment, and the board of county commissioners of each county affected shall appoint the outside members apportioned to its county from among the residents of the area included in its county; such outside members shall have equal rights, privileges, and duties with the other members in all matters, wherever they might arise. In the event there is an insufficient number of qualified residents of the area to meet the membership requirements, the board of county commissioners may appoint as many other residents of the county as necessary to make up the requisite number.

The additional members appointed to the zoning commission or planning board and the board of adjustment as provided for herein may be appointed to serve for terms corresponding to the terms of present members or for such other terms as the governing body of the municipality may, by ordinance, determine.

Any municipal legislative body exercising the powers granted by this section may provide for the enforcement of its regulations for the outside area in the same manner as the regulations for the area inside of the city are enforced. The requirement that a municipality shall have a population of twelve hundred and fifty (1,250) or more shall not apply to Montgomery County or Moore County, or to the town of Aurora in Beaufort County, or to Mecklenburg County, or to the city of Mount Holly, in Gaston County, and this section shall be applicable to the city of Mount Holly, or to the town of Drexel in Burke County, or to the town of Glen Alpine in Burke County or to the town of Mount Pleasant in Cabarrus County. (1959, c. 1204; 1961, c. 103; c. 548, ss. 1, 1¾; c. 1217; 1963, cc. 519, 889, 1076, 1105; 1965, c. 121; c. 348, s. 2; c. 450, s. 1; c. 864, ss. 3-6; 1967, cc. 15, 22, 149; c. 197, s. 2; cc. 246, 685; c. 1208, s. 3; 1969, cc. 11, 53; c. 1010, s. 5; c. 1099.)

Local Modification.—Lee: 1967, c. 483; city of Belmont: 1965, c. 776, s. 1; towns of Carrboro and Chapel Hill: 1969, c. 1088, ss. 1, 2; town of Chocowinity: 1967, c. 44; town of Dallas: 1965, c. 776, s. 1; town of Fuquay-Varina: 1965, c. 111; town of Plymouth: 1965, c. 450, s. 2; town of Wallace: 1965, c. 958; town of Wendell: 1965, c. 273.

Editor's Note.—

The first 1965 amendment added the reference to Mecklenburg County in the second sentence of the last paragraph.

The second 1965 amendment deleted "Moore" from the list of counties in the first sentence of the last paragraph and added "or Moore County" in the second sentence of that paragraph.

The third 1965 amendment deleted "Washington" from the former list of counties in the first sentence of the last paragraph.

The fourth 1965 amendment added the language at the end of the second sentence of the first paragraph beginning with "unless such", inserted the present third sentence of that paragraph, added the proviso to the last sentence of the second paragraph and to the third sentence of the third paragraph, and rewrote the fifth paragraph.

The first 1967 amendment added to the second sentence of the last paragraph "or to the city of Mount Holly, in Gaston County, and this section shall be applicable to the city of Mount Holly."

The second 1967 amendment added at the end of the section a former provision making the section applicable to the town of Cherryville.

The third 1967 amendment added to the second sentence of the last paragraph "or to the town of Drexel in Burke County."

The fourth 1967 amendment added "and by adding alternate members equal to the number of alternate members appointed to the existing board of adjustment" at the end of the first sentence in the third paragraph.

The fifth 1967 amendment deleted "Orange" from the former list of counties in the first sentence of the last paragraph.

The sixth 1967 amendment added to the second sentence of the last paragraph "or to the town of Glen Alpine in Burke County."

The seventh 1967 amendment deleted "natural" preceding "physical barrier" near the middle of the third sentence of the first paragraph.

Session Laws 1969, c. 11, added to the second sentence of the last paragraph "or to the town of Mount Pleasant in Cabarrus County."

Session Laws 1969, c. 53, inserted "except Hamlet" following "Richmond" in the former proviso at the end of the first sentence of the last paragraph.

Session Laws 1969, c. 1010, ratified June 23, 1969, and made effective July 1, 1969, repealed, at the end of the first sentence of the last paragraph, a proviso removing certain named counties from the application of this section. Chapter 1010 also repealed the former last sentence of the section, which, at the time of ratification of the act, read as follows:

"This section shall be applicable to the town of Cherryville, in Gaston County."

Session Laws 1969, c. 1099, ratified June 30, 1969, and effective on ratification, amended the above-quoted sentence by inserting, between the word "applicable" and the word "to," the words "to the town of Pittsboro in Chatham County and."

The former last sentence of the section has been deleted in the section as set out above.

Cited in Taylor v. Bowen, 272 N.C. 726, 158 S.E.2d 837 (1968).

Article 14A.

Preservation of Open Spaces and Areas.

§ 160-181.7. Powers of governing bodies.

Local Modification.—Session Laws 1969, c. 35, s. 3 repealed c. 740, Session Laws 1965.

§ **160-181.9. Definitions.**—For the purposes of this article an "open space" or "open area" is any space or area (i) characterized by great natural scenic beauty or (ii) whose existing openness, natural condition, or present state of use, if retained, would enhance the present or potential value of abutting or surrounding urban development, or would maintain or enhance the conservation of natural or scenic resources.

For the purpose of this article "open space" or "open area" and the "public use and enjoyment" of interests or rights in real property shall also include open space land and open space uses. The term "open space land" means any undeveloped or predominantly undeveloped land in an urban area which has value for one or more of the following purposes: (i) park and recreational purposes, (ii) conservation of land and other natural resources, or (iii) historic or scenic purposes. The term "open space uses" means any use of open space land for (i) park and recreational purposes, (ii) conservation of land and other natural resources, or (iii) historic or scenic purposes. (1963, c. 1129, s. 7; 1969, c. 35, s. 1.)

Local Modification.—Session Laws 1969, c. 35, s. 3 repealed c. 740, Session Laws 1965.

Editor's Note. — The 1969 amendment added the second paragraph.

§ **160-181.10:** Repealed by Session Laws 1969, c. 1003, s. 9, effective July 1, 1969.

Editor's Note. — The repealed section had previously been amended by Session Laws 1969, c. 35, s. 2; cc. 643, 856.

Article 15.

Repair, Closing and Demolition of Unfit Dwellings.

§ **160-182. Exercise of police power by municipalities and counties authorized.**—It is hereby found and declared that the existence and occupation of dwellings in 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 or county of this State finds that there exists in such municipality or county 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 or county, power is hereby conferred upon such municipality or county to exercise its police powers to repair, close or demolish the aforesaid dwellings in the manner herein provided. No ordinance enacted by the governing body of a county pursuant to this article shall be applicable within the corporate limits of any municipality unless the governing body of the municipality has by resolution expressly given its approval thereto. Any ordinance adopted by the governing body of a municipality pursuant to this article may be made applicable to the territory outside its corporate limits and within its zoning jurisdiction if the governing body of the county within which such territory lies has by resolution expressly given its approval thereof. The governing body of any municipality or of any county which shall have by resolution pursuant to this section given its approval to application of an ordinance may by subsequent resolution withdraw its approval, such withdrawal to be effective one year following the adoption of the resolution. (1939, c. 287, s. 1; 1969, c. 913, s. 1.)

Editor's Note.—

The 1969 amendment deleted "municipalities of" preceding "this State" where that phrase first appears in the first sentence, inserted "or county" in four places in the second sentence and added the third, fourth and fifth sentences.

This section specifically authorizes any municipality to exercise its police power to repair, close, or demolish buildings if the municipality finds dwellings are unfit for habitation due to dilapidation, defects increasing the hazards of fire . . . rendering such dwellings unsafe or unsanitary, detrimental to health, safety or morals. State v. Walker, 265 N.C. 482, 144 S.E.2d 419 (1965).

Constitutionality.—It is not unconstitutional for a municipality to take upon itself a duty to see that repairs to buildings within its domain will be made in such manner as will prevent fire and structural hazards. This duty it is bound to exercise to protect the safety and health of the general public. To require a permit in order to implement such reasonable supervision is not in violation of any provision of the Constitution of the United States. Walker v. North Carolina, 262 F. Supp. 102 (W.D.N.C. 1966).

Incorporation of Provisions of Article in City Code.—The City Code of the city of Morganton, §§ 8-85 to 8-99, substantially incorporates the provisions of §§ 160-183 to 160-189, the governing body of the city having found to exist therein the conditions specified in this section as prerequisites to the adoption of an ordinance for the closing of a dwelling house unfit for human habitation. Dale v. City of Morganton, 270 N.C. 567, 155 S.E.2d 136 (1967).

§ 160-183. Definitions.

(2) "Governing body" shall mean the council, board of commissioners, board of aldermen, or other legislative body, charged with governing a municipality or county.

(3) "Municipality" shall mean any incorporated city or town, or any county. (1969, c. 913, s. 2.)

Local Modification.—Town of St. Pauls, as to subdivision (3): 1969, c. 641.

Editor's Note.—

The 1969 amendment added "or county" at the end of subdivision (2) and "or any county" at the end of subdivision (3).

As the rest of the section was not changed by the amendment, only subdivisions (2) and (3) are set out.

Cited in Dale v. City of Morganton, 270 N.C. 567, 155 S.E.2d 136 (1967).

§ 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 munici-

pality, the governing body of such municipality is hereby authorized to adopt and enforce ordinances relating to the dwellings within such municipality and any extraterritorial areas regulated by the municipality's zoning ordinance pursuant to article 14 of this chapter or any special or local act enacted by the General Assembly which are unfit for human habitation. Such ordinances shall include the following provisions:

(1) That a public officer be designated or appointed to exercise the powers prescribed by the ordinances.

(2) 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 (or 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.

(3) 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,

a. 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

b. 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.

(4) 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."

(5) 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 subdivisions (4) and (5) 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. Such ordinance shall be recorded in the office of the register of deeds in the county wherein the property or properties are located and shall be indexed in the name of the property owner in the grantor index.

(6) 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, which lien shall be filed, have the same priority and be collected as provided by article 9 of chapter 160 of the General Statutes. 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; 1969, c. 868, ss. 1, 2; c. 1065, s. 2.)

Local Modification. — Robeson, as to subdivisions (3) and (4): 1969, c. 1007; city of Durham, as to subdivisions (3), (4): 1969, c. 597; city of Rocky Mount, as to subdivision (2): 1969, c. 433.

Editor's Note.—The first 1969 amendment added the last sentence of subdivision (5) and added to the first sentence of subdivision (6) the provision as to filing, priority and collection of lien.

The second 1969 amendment inserted "and enforce" and "and any extra-territorial areas regulated by the municipality's zoning ordinance pursuant to article 14 of this chapter or any special or local act enacted by the General Assembly" in the first sentence of the opening paragraph.

Substantial compliance with the procedures required by this section is a condition precedent to the authority of the city to forbid the use of a dwelling house for human habitation. Dale v. City of Morganton, 270 N.C. 567, 155 S.E.2d 136 (1967).

Variation in Wording of Notice. — The variation between the wording of a posted notice reading "This Building Is Unsafe, And Its Use For Occupancy Has Been Prohibited By The Building Official" and that notice prescribed by this section is not material. Dale v. City of Morganton, 270 N.C. 567, 155 S.E.2d 136 (1967).

Applied in Walker v. City of Charlotte, 262 N.C. 697, 138 S.E.2d 501 (1964).

§ **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 or certified 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. Where service is made by publication, a notice of the pending proceedings shall be posted in a conspicuous place on the premises thereby affected. (1939, c. 287, s. 5; 1965, c. 1055; 1969, c. 868, ss. 3, 4.)

Editor's Note. — The 1965 amendment inserted "or certified" near the beginning of the first sentence.

The 1969 amendment rewrote the second sentence and deleted the former third sentence relating to filing the complaint or order in the proper office or offices for the filing of lis pendens notices.

§ **160-187. Remedies.**—(a) The governing body may provide for the creation and organization of a housing appeals board to which appeals may be taken

from any decision or order of the public officer, or may provide for such appeals to be heard and determined by its zoning board of adjustment.

(b) The housing appeals board, if created, shall consist of five members to serve for three-year staggered terms. It shall have power to elect its own officers, to fix the times and places for its meetings, to adopt necessary rules of procedure, and to adopt all other rules and regulations not inconsistent herewith which may be necessary for the proper discharge of its duties; and it shall keep an accurate record of all its proceedings.

(c) An appeal from any decision or order of the public officer may be taken by any person aggrieved thereby or by any officer, board or commission of the municipality. Any appeal from the public officer shall be taken within such 10 days from the rendering of the decision or service of the order, and shall be taken by filing with the public officer and with the board a notice of appeal which shall specify the grounds upon which the appeal is based. Upon the filing of any notice of appeal, the public officer shall forthwith transmit to the board all the papers constituting the record upon which the decision appealed from was made. When an appeal is from a decision of the public officer refusing to allow the person aggrieved thereby to do any act, his decision shall remain in force until modified or reversed. When any appeal is from a decision of the public officer requiring the person aggrieved to do any act, the appeal shall have the effect of suspending the requirement until the hearing by the board, unless the public officer certifies to the board, after the notice of appeal is filed with him, that by reason of the facts stated in the certificate (a copy of which shall be furnished the appellant), a suspension of his requirement would cause imminent peril to life or property, in which case the requirement shall not be suspended except by a restraining order, which may be granted for due cause shown upon not less than one day's written notice to the public officer, by the board, or by a court of record upon petition made pursuant to subsection (f) of this section.

(d) The appeals board shall fix a reasonable time for the hearing of all appeals, shall give due notice to all the parties, and shall render its decision within a reasonable time. Any party may appear in person or by agent or attorney. The board may reverse or affirm, wholly or partly, or may modify the decision or order appealed from, and may make such decision and order as in its opinion ought to be made in the matter, and to that end it shall have all the powers of the public officer, but the concurring vote of four members of the board shall be necessary to reverse or modify any decision or order of the public officer. The board shall have power also in passing upon appeals, in any case where there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the ordinance, to adapt the application of the ordinance to the necessities of the case to the end that the spirit of the ordinance shall be observed, public safety and welfare secured, and substantial justice done.

(e) Every decision of the board shall be subject to review by proceedings in the nature of certiorari instituted within 15 days of the decision of the board, but not otherwise.

(f) Any person aggrieved by an order issued by the public officer or a decision rendered by the board may petition the superior court for an injunction restraining the public officer from carrying out the order or decision and the court may, upon such petition, issue a temporary injunction restraining the public officer pending a final disposition of the cause; provided, however, that such petition shall be filed within thirty days after issuance of the order or rendering of the decision. Hearings shall be had by the court on any such petition within twenty days, 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 subsection.

(g) In case any dwelling is erected, constructed, altered, repaired, converted, maintained, or used in violation of this article or of any ordinance or code adopted under authority of this article or any valid order or decision of the public officer or board made pursuant to any ordinance or code adopted under authority of this article, the public officer or board may institute any appropriate action or proceedings to prevent such unlawful erection, construction, reconstruction, alteration or use, to restrain, correct or abate such violation, to prevent the occupancy of the dwelling, or to prevent any illegal act, conduct or use in or about the premises of the dwelling. (1939, c. 287, s. 6; c. 386; 1969, c. 868, s. 5.)

Editor's Note.—The 1969 amendment rewrote this section.

§ 160-189. Additional powers of public officer.

Editor's Note.—For comment as to warrants required for administrative health inspections, see 4 Wake Forest Intra. L. Rev. 117 (1968).

§ 160-191. Supplemental nature of article.

Applied in Dale v. City of Morganton, 270 N.C. 567, 155 S.E.2d 136 (1967).

Article 15A.

Liability for Negligent Operation of Motor Vehicles.

§ 160-191.1. Municipality empowered to waive governmental immunity.

Operation of Chemical Fogging Machine. — Where a municipal corporation procured liability insurance on a vehicle used in the operation of a chemical fogging machine it waived its governmental immunity for the negligent operation of the vehicle to the extent of the amount of the liability insurance. White v. Mote, 270 N.C. 544, 155 S.E.2d 75 (1967).

Operation of Public Library.—This section does not authorize or empower a municipality to waive its governmental immunity for injuries to a person proximately caused by its operation of a public library. Seibold v. City of Kinston, 268 N.C. 615, 151 S.E.2d 654 (1966).

Applied in Kinsey v. Town of Kenly, 263 N.C. 376, 139 S.E.2d 686 (1965).

Cited in Bethea v. Town of Kenly, 261 N.C. 730, 136 S.E.2d 38 (1964).

§ 160-191.4. Municipality liable only upon claims arising after procurement of insurance.

Stated in Seibold v. City of Kinston, 268 N.C. 615, 151 S.E.2d 654 (1966).

§ 160-191.5. Knowledge of insurance to be kept from jury.

Quoted in Seibold v. City of Kinston, 268 N.C. 615, 151 S.E.2d 654 (1966).

Article 15C.

Rescue Squads.

§ 160-191.11. Cities and counties authorized to expend funds for rescue squads.

Local Modification.—City of Asheboro: 1969, c. 419, s. 2.

SUBCHAPTER II. MUNICIPAL CORPORATION ACT OF 1917.

Article 17.

Organization under the Subchapter.

§§ 160-195 to 160-198: Repealed by Session Laws 1969, c. 673, s. 1.

Editor's Note.—Session Laws 1969, c. 673, s. 2, provides: "All corporate charters issued by the municipal board of control before the effective date of this act, and in effect as of the effective date of this act, are hereby ratified and confirmed notwithstanding sec. 1 of this act, and the municipal corporations so created shall be and remain municipal corporations within the corporate limits, under the form of government, and exercising the powers conferred by their charters, any acts of the General Assembly amendatory thereto, and the general laws of the State applicable to municipal corporations." The act was ratified June 2, 1969, and made effective on ratification.

Session Laws 1969, c. 1225, amends Session Laws 1969, c. 673, by adding a new section, reading as follows: "Sec. 2½. Notwithstanding any other provisions of this act, article 17 of chapter 160 of the General Statutes is hereby reenacted for the sole purpose of conferring upon the Municipal Board of Control the power and authority to hear and make a determination of any petition or other matter filed or pending with the Municipal Board of Control prior to June 2, 1969. Upon the determination of such pending matters, the Municipal Board of Control shall cease to exist."

Article 18.

Powers of Municipal Corporations.

Part 1. General Powers Enumerated.

§ 160-199. Powers applicable to all cities and towns.

Cited in High Point Surplus Co. v. Pleasants, 264 N.C. 650, 142 S.E.2d 697 (1965).

§ 160-200. Corporate powers.

(22) To acquire, establish, and maintain cemeteries and to regulate the burial of the dead.

(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. To purchase, with or without employee participation in payment of premiums, health, accident, disability and life group insurance for the benefit of city employees. 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.

(28)

Local Modification. — Morehead City: Session Laws 1969, c. 879, s. 4, repealed Session Laws 1957, c. 716.

(31) To provide for the regulation, diversion, and limitation of pedestrians and vehicular traffic upon public streets, highways, and sidewalks of the city and to regulate and limit vehicular parking on streets and highways in congested areas.

In the regulation and limitation of vehicular traffic and parking in cities and towns the governing bodies may, in their discretion, enact

ordinances providing for a system of parking meters designated to promote traffic regulation and requiring a reasonable deposit (not in excess of five cents (5¢) 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 for the purpose of making such regulation effective and for the expenses incurred by the city or town in the regulation and limitation of vehicular parking, and traffic relating to such parking, on the streets and highways of said cities and towns, or the proceeds derived from the use of such parking meters may be used to provide for the acquisition, construction, reconstruction, improvement, betterment, or extension and operation of parking facilities as defined in § 160-414 (4), and may be pledged to amortize bonds or other evidence of debts issued for such purposes. Nothing contained in chapter 2, section 29, of the Public Laws of 1921, or in section 61 of chapter 407 of the Public Laws of 1937 [§ 20-97] 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.

(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; to transfer and convey any municipal cemetery property to any religious organization, together with an accumulated perpetual care funds or trust funds set aside for maintenance of the cemetery, upon condition that the religious organization will continue the use of the property as a cemetery, will perpetually maintain the cemetery, and will apply any funds so transferred only for maintenance of the cemetery.

(37) To adopt personnel ordinances establishing an advisory personnel board with authority to administer tests, and to conduct hearings in case of suspension, demotion, or discharge; to adopt ordinances restricting the political activity of municipal employees; and to adopt ordinances providing for the classification of positions, a schedule of pay, hours of employment, holidays, annual leave, sick leave, special leave with full pay or with partial pay supplementing workmen's compensation payments for employees injured in accidents arising out of and in the course of employment, service award and incentive award programs, and any other measures which promote the hiring and retaining of capable, diligent, honest career employees.

(40) The governing body of any municipality or other political subdivision of the State may, in its discretion, establish and support a public art gallery, museum or art center, using for such establishment and support any nontax revenues which may be available for such purposes.

Such municipality or other political subdivision may, in its discretion, also support or assist in supporting any art gallery, museum or art center which is located in its territorial area and which is owned or operated by any nonprofit corporation provided such art gallery, museum or art center is open to the public, and to such end the municipality or other political subdivision may enter into a contract or other arrangement with such nonprofit corporation. The word "support" as used in this subdivision shall include, but is not limited to, purchase of land for art gallery, museum or art center buildings, purchase and erection of buildings for art gallery, museums or art centers, purchase of paintings and other artistic works, purchase of materials and equipment, compensation of art gallery, museum or art center personnel, and all maintenance expenses for necessary property and equipment.

The governing body of any municipality or other political subdivision of the State may, in its discretion, submit to the voters at a special election the question of whether a special tax shall be levied for the support of such art gallery, museum or art center. Such question shall be submitted to the voters either at the next general election for the officers of the municipality or other political subdivision of the State, or at a special election to be called by the governing body of the municipality or other political subdivision of the State for that purpose: Provided, that no special election shall be held within sixty (60) days of any general election for State, county or municipal officers. Such special election shall be conducted according to the laws governing general elections for officers in such municipality or other political subdivision of the State. The form of the question as stated on the ballot shall be in substantially the words: "For the levy of a special public art gallery, museum or art center tax of not more than ..... cents (¢)" and "Against the levy of a special public art gallery, museum or art center tax of not more than ..... cents (¢)." Such affirmative and negative forms shall be printed upon one ballot, containing squares opposite the affirmative and the negative forms, in one of which squares the voter may make a mark (X). Provided, that the maximum tax levy to be submitted to the voters shall be determined by the governing body of such municipality or other political subdivision of the State, which maximum shall in no event exceed ten cents (10¢) on the one hundred dollars ($100.00) valuation of property. If a majority of the qualified voters voting in such election favor the levy of the tax, the governing body of the municipality or other political subdivision of the State shall levy and cause to be collected as other general taxes are collected, a special public art gallery, museum or art center tax within the limits approved by the voters in an amount which, when taken with nontax revenues, will be sufficient to meet annual appropriations for public art gallery, museum or art center purposes approved by the governing body of such municipality or other political subdivision of the State.

Subject to the approval by the vote of a majority of the qualified voters of any municipality or other political subdivision of the State who shall vote thereon at any general or special election called for such purpose, the governing body of any such municipality or political subdivision is hereby authorized and empowered to issue bonds for the purpose of acquiring, erecting, improving, remodeling or enlarging buildings and facilities, and acquiring necessary land and equipment for public museums of all kinds, public art galleries or art centers owned or op-

erated by such municipality or political subdivision, and to levy a tax ad valorem upon all the taxable property therein for the payment of such bonds and the interest thereon. Any bonds so voted and any bond anticipation notes that may be issued to anticipate the receipt of the proceeds of such bonds shall be issued in accordance with the provisions of the Municipal Finance Act, 1921, as amended, and the Local Government Act, as amended. The question of issuing bonds under the provisions of this subdivision may be submitted to the voters at a general election for the officers of the municipality or political subdivision or at a special election called by the governing body of the municipality or political subdivision for that purpose; provided, however, that no special election shall be held within sixty days before or after any general election for State, county or municipal officers.

(43) The governing body of any municipality may provide by ordinance that whenever any motor vehicle is abandoned on the public streets or public grounds or is abandoned upon privately owned property, any such vehicle may be removed for safekeeping by or under the direction of a police officer or other official so designated by the governing body to a storage garage or area; provided that no such vehicle shall be so removed from privately owned premises without the written request of the owner, lessee or occupant of the premises unless the same has been declared by the governing body to be a health or safety hazard. Any such ordinance may also provide that the person at whose request such vehicle is removed from privately owned property shall indemnify such municipality against any loss or expense incurred by reason of the removal, storage or sale thereof. Written notice by mail of such removal shall be promptly given to the registered owner of the vehicle. The owner of such vehicle, before obtaining possession thereof, shall pay to the municipality all reasonable costs incidental to the removal, storage and locating the owner of the vehicle. Should such owner fail or refuse to pay the costs or should the identity or whereabouts of such owner be unknown and unascertainable after a diligent search has been made and after notice to him at his last known address and to the holder of any lien of record in the office of the Department of Motor Vehicles against the vehicle, the officer designated by the governing body of the municipality may, after holding the vehicle for 30 days and after having the value of the vehicle determined by three disinterested dealers or garagemen and after 20 days' notice has been given to the Department of Motor Vehicles before the date of sale, dispose of the same by public or private sale or in the event of an appraised value of less than fifty dollars ($50.00) by other means in the discretion of the governing body or the designated officer and the proceeds of any sale shall be forwarded to the treasurer or similar officer of the municipality. The treasurer or similar officer shall pay from the proceeds of any sale the cost of removal, storage, investigation as to ownership and sale, and liens in that order. Subject to (b) below, any remaining proceeds shall be deposited in the general fund of the municipality. Upon receipt of a municipality's bill of sale from a purchaser or other person entitled to receive any vehicle disposed of as hereinbefore provided, the Department of Motor Vehicles shall issue a certificate of title to said person if a certificate of title for such vehicle is required by law.

a. For the purposes of this section, a vehicle shall be determined to have been abandoned in the following circumstances:

1. It has been left upon a street or highway in violation of a law or ordinance prohibiting parking; or
2. The vehicle fails to display a current license plate; or

3. It is partially dismantled or wrecked; or
4. It is incapable of self-propulsion or being moved in the manner for which it was originally intended; or
5. It is left on property owned or operated by the municipality for a period of not less than 24 hours; or
6. It is left on private property without the consent of the owner, occupant or lessee thereof for a period of not less than two hours;
7. It is left on any public street or highway of said municipality for a period of not less than seven days.

b. If, after the sale, the ownership of any vehicle at the time of its removal is established satisfactorily to the officer so designated by the governing body by the person claiming such ownership, the owner shall be paid by such officer so much of the proceeds from the sale of such vehicle as remains after paying the cost of removal, storage, investigation of ownership and sale and any liens as hereinabove required.

c. Any ordinance adopted pursuant hereto may provide that no person shall abandon within the above definitions any vehicle within the municipality and that no person shall leave or allow to remain any partially dismantled, nonoperating, junked or otherwise discarded vehicle on property under his control.

d. No person shall be held to answer in any civil or criminal action to any owner or other person legally entitled to the possession of any abandoned, lost or stolen vehicle, or for disposing of such vehicle as provided by this subdivision.

e. The term "motor vehicle" or "vehicle" as used herein is hereby defined to include all machines designed to be self-propelled or pulled and intended to travel along the ground by means of wheels, treads, runners or slides.

f. Nothing herein shall be construed to apply to any vehicle in an enclosed building or vehicle on the premises of a business enterprise being operated in a lawful place and manner and the vehicle being necessary to the operation of such business enterprise, or to a vehicle in an appropriate storage place or depository maintained in a lawful place and manner by the municipality.

(44) The governing body of any municipality may provide by ordinance that whenever a vehicle is found to be an abandoned motor vehicle as defined in § 160-200 (43) a and, in addition, is found to be inoperable, dismantled or damaged, five years old or older, and worth less than fifty dollars ($50.00), it shall be deemed to be a junk motor vehicle. A junk motor vehicle may be removed from public or private property under the direction of an official designated by the municipality to a storage area or garage, provided no such vehicle shall be removed from private property without the written request of the owner, lessee or occupant of the property on which the vehicle is located, unless the same has been declared a health or safety hazard by the municipality. Any junk motor vehicles so removed shall be held at least 15 days. The owner of any such junk motor vehicle may reclaim his vehicle during the 15-day retention period by exhibiting proof of ownership to a designated official and paying all reasonable costs incident to the removal and storage of the vehicle and administrative expenses. If, after holding the vehicle 15 days, it remains unclaimed, said vehicle may be destroyed or otherwise disposed of as provided by ordinance or resolution of the municipality. Further, any municipality may, with the consent of the owner of the vehicle, remove and dispose of any

motor vehicle as a junk motor vehicle regardless of the value, condition or age of such vehicle and without waiting the aforesaid 15-day period. Any proceeds derived from the disposition of junk motor vehicles shall be retained by the municipality for deposit in the general fund. Notice shall be given within 15 days after final disposition to the Department of Motor Vehicles, that such vehicle has been deemed to be a junk motor vehicle and has been disposed of as such. The notice shall contain as full and accurate a description of the vehicle as can reasonably be determined. No person shall be held to answer in any civil or criminal action to any owner, lien holder or other person legally entitled to the possession of any abandoned, lost or stolen junk motor vehicle for disposing of such vehicle as contemplated by this subdivision.

(45) The governing body of any municipality is authorized to enact ordinances dealing with states of emergency as authorized by § 14-288.12.

(46) To plan and execute training and development programs for law-enforcement agencies, and for that purpose:

a. To contract with other municipalities, counties, and the State and federal governments and their agencies;

b. To accept, receive, and disburse funds, grants, and services;

c. To create joint agencies to act for and on behalf of participating municipalities and counties;

d. To make application for, receive, administer, and expend federal grant funds; and

e. To appropriate and expend available tax or nontax funds. (1917, c. 136, subch. 5, s. 1; 1919, cc. 136, 237; C. S., s. 2787; Ex. Sess. 1920, c. 3, s. 10; 1921, c. 8, s. 3; Ex. Sess. 1921, c. 21; 1923, cc. 20, 102; 1925, c. 200; 1935, c. 279, s. 1; 1939, c. 164; 1941, c. 153, ss. 1, 2; c. 272; 1943, c. 639, s. 1; 1945, c. 654, s. 2; 1947, c. 7; 1949, cc. 103, 352; c. 594, s. 2; 1953, c. 171; 1955, c. 1338; 1957, c. 1182; 1959, c. 95; 1961, c. 309; 1963, cc. 789, 790, 986; 1965, cc. 931, 945, 1019, 1156; 1967, cc. 1215, 1250; 1969, cc. 402, 845; c. 869, s. 3; c. 1031, s. 2; c. 1145, s. 3.)

I. GENERAL CONSIDERATION.

Editor's Note.—

The first 1965 amendment rewrote subdivision (37).

The second 1965 amendment substituted "used for the purpose" for "used exclusively for the purpose" near the beginning of the second sentence of the second paragraph of subdivision (31), and "parking facilities" for "off-street parking facilities" near the end of that sentence.

The third 1965 amendment added the last paragraph in subdivision (40) and the fourth 1965 amendment added subdivision (43).

The first 1967 amendment added subdivision (44).

The second 1967 amendment so changed subdivision (43) that a detailed comparison is not here practical. Among other things, the amendment added the last sentence in the first paragraph, rewrote subparagraph 1 of paragraph a, added subparagraphs 2, 3, 4 and 6 of paragraph a and added paragraphs c, e and f of the subdivision.

The first 1969 amendment, added at the end of subdivision (36) the provisions as to transfer and conveyance of municipal cemetery property.

The second 1969 amendment rewrote the second sentence of subdivision (25).

The third 1969 amendment added subdivision (45).

The fourth 1969 amendment, effective Oct. 1, 1969, deleted "and the registration of deaths, marriages, and births" at the end of subdivision (22).

The fifth 1969 amendment, effective July 1, 1969, added subdivision (46).

For article dealing with the legal problems in southern desegregation, see 43 N.C.L. Rev. 689 (1965).

Only Part of Section Set Out. — Only the subdivisions changed or added by the amendments are set out.

Opinions of Attorney General. — Mr. Jack R. Harris, Statesville City Attorney, 9/3/69 (subdivision (31)); Mr. F.L. Hutchinson, Division Engineer, State Highway Commission, 7/24/69 (subdivision (44)).

The courts will not inquire into the motives which prompt a municipality's legislative body to enact an ordinance which is valid on its face. Clark's Greenville, Inc. v. West, 268 N.C. 527, 151 S.E.2d 5 (1966).

Applied in Kent Corp. v. City of Winston-Salem, 272 N.C. 395, 158 S.E.2d 563 (1968).

Quoted in Schloss v. Jamison, 262 N.C. 108, 136 S.E.2d 691 (1964); State v. Furio, 267 N.C. 353, 148 S.E.2d 275 (1966).

Stated in Kistler v. City of Raleigh, 261 N.C. 775, 136 S.E.2d 78 (1964); Horton v. Redevelopment Comm'n, 262 N.C. 306, 137 S.E.2d 115 (1964).

Cited in Charles Stores Co. v. Tucker, 263 N.C. 710, 140 S.E.2d 370 (1965); City of Charlotte v. Robinson, 2 N.C. App. 429, 163 S.E.2d 289 (1968).

II. STREETS AND PARKING.

Adjoining Owner Takes Title Subject to City's Powers.—The purchaser of a lot abutting a public street, whatever the origin of the street, takes title subject to the authority of the city to control and limit its use, and to abandon or close it under lawful procedure. Wofford v. North Carolina State Highway Comm'n, 263 N.C. 677, 140 S.E.2d 376 (1965).

Closing Streets.—

Whether a street lies in a subdivision or is of other origin, the city may close all or part of it upon compliance with statutory procedure. Wofford v. North Carolina State Highway Comm'n, 263 N.C. 677, 140 S.E.2d 376 (1965).

The closing of a street must not deprive a property owner of reasonable ingress or egress. Wofford v. North Carolina State Highway Comm'n, 263 N.C. 677, 140 S.E.2d 376 (1965).

An individual may restrain the wrongful obstruction of a public way, of whatever origin, if he will suffer injury thereby as distinct from the inconvenience to the public generally, and he may recover such special damages as he has sustained by reason of the obstruction. Wofford v. North Carolina State Highway Comm'n, 263 N.C. 677, 140 S.E.2d 376 (1965).

The installation and maintenance, etc.—

Subsections (11) and (31) authorize the erection of automatic traffic control lights by municipalities. Upchurch v. Hudson Funeral Home, Inc., 263 N.C. 560, 140 S.E.2d 17 (1965).

The installation and maintenance of electrical traffic control signals in and by municipalities are governmental functions and not proprietary or corporate functions. Rappe v. Carr, 4 N.C. App. 497, 167 S.E.2d 49 (1969).

While municipalities are not required to install electrical traffic control signals, they may do so as an exercise of their police power. Rappe v. Carr, 4 N.C. App. 497, 167 S.E.2d 49 (1969).

A city may make provision for the removal of motor vehicles abandoned or disabled in its streets so as to promote the free flow of traffic therein. S & R Auto & Truck Serv., Inc. v. City of Charlotte, 268 N.C. 374, 150 S.E.2d 743 (1966).

A city may acquire and operate its own tow-in vehicles. In such case, it may direct its police officers to call city owned tow-in vehicles exclusively, where the owner of the disabled automobile makes no selection himself, and it may, in the interest of safety, forbid privately owned tow-in vehicles to go to the scene of an accident without first having been called by the owner of a disabled vehicle or by the police. S & R Auto & Truck Serv., Inc. v. City of Charlotte, 268 N.C. 374, 150 S.E.2d 743 (1966).

Or May Instruct Police Officers to Call Privately Owned Towing Service. — In lieu of using its own vehicles, a city may instruct its police officers to call a privately owned towing service; it may leave the selection of such service to the discretion of the officer at the scene of the accident. S & R Auto & Truck Serv., Inc. v. City of Charlotte, 268 N.C. 374, 150 S.E.2d 743 (1966).

IV. SUNDAY ORDINANCES.

Cross Reference.—See § 160-200.1.

Ordinances Constitutional.—

When enacted by cities and towns under general laws, Sunday-observance ordinances which are reasonable and do not discriminate within a class of competitors similarly situated have been upheld as a valid exercise of delegated police power. State v. Smith, 265 N.C. 173, 143 S.E.2d 293 (1965).

Sunday-observance ordinances, when they proscribe buying and selling, whether it be tangible merchandise or a ticket to an amusement or a sporting event, regulate trade under the broad definition of trade which has been adopted by the Supreme Court. Since, however, these city ordinances are passed under general laws, § 160-52 and subdivisions (6), (7), and (10) of this section, with reference to them there is no conflict between the exercise of the police power and N.C. Const., Art. II, § 29. State v. Smith, 265 N.C. 173, 143 S.E.2d 293 (1965).

Ordinance regulating sale of merchan-

dise on Sunday held valid. Clark's Greenville, Inc. v. West, 268 N.C. 527, 151 S.E.2d 5 (1966).

A Sunday observance ordinance which classifies "sporting goods and toys" as prohibited items and live bait as permitted items cannot be considered unreasonable, arbitrary or discriminatory. S.S. Kresge Co. v. Tomlinson, 275 N.C. 1, 165 S.E.2d 236 (1969).

Municipalities May Enact.—

The General Assembly, by subdivisions (6), (7) and (10) of this section and § 160-52, has delegated to municipalities the power and authority to enact ordinances requiring the observance of Sunday. These are general statutes, conferring authority upon all cities and towns within the State, without exception. High Point Surplus Co. v. Pleasants, 264 N.C. 650, 142 S.E.2d 697 (1965).

V. POWERS AS TO PARTICULAR MATTERS.

Regulation of Massage Parlors. — See Cheek v. City of Charlotte, 273, N.C. 293, 160 S.E.2d 18 (1968).

Prevention of Disturbing Noises.—The protection of the well-being and tranquility of a community by the reasonable prevention of disturbing noises is within the city's power to control nuisances. State v. Dorsett, 3 N.C. App. 331, 164 S.E.2d 607 (1968).

§ 160-200.1. Validity of ordinances relating to business activity on Sundays; public hearings required.—No ordinance prohibiting business activity on Sundays, or regulating the hours of business activity on Sundays, shall be valid nor shall the same be enforced unless prior to its enactment the board of commissioners, other governing body or legislative body of the municipality shall have held a public hearing on the subject of regulating business activity on Sundays pursuant to public notice as hereinafter required which notice shall fix the date, hour and place of such public hearing; and such public notice shall contain a statement by or on behalf of such board or legislative body holding such hearing, of the intent, purpose, and one or more reasons for the enactment of the ordinance to be proposed for adoption at such public hearing; and public notice, public hearing, and reasonable opportunity for citizens to be heard shall be essential to the validity and enforcement of any such ordinance. The public notice herein provided for shall be published once each week for four successive weeks prior to the date of the public hearing in a newspaper published in the municipality. If there be no such newspaper, the municipality shall post the notice in at least five public places within the municipality for 27 days prior to the date of the public hearing; provided, this section shall not apply to ordinances enacted pursuant to G.S. 18-107. (1967, c. 1156, s. 1.)

Cross Reference.—See note to § 160-200.

Editor's Note.—Section 2 of the act adding this section provides that no provision of the section shall be construed so as to apply to any municipal ordinance enacted prior to July 1, 1967. Section 4 of c. 1156 makes the act effective Aug. 1, 1967.

Part 2. Power to Acquire Property.

§ 160-204. Acquisition by purchase.

Local Modification.—City of Dunn: 1969, c. 648.

Applied in Town of Hertford v. Harris, 263 N.C. 776, 140 S.E.2d 420 (1965).

Stated in Kistler v. City of Raleigh, 261 N.C. 775, 136 S.E.2d 78 (1964).

Cited in Redevelopment Comm'n v. Abeyounis, 1 N.C. App. 270, 161 S.E.2d 191 (1968); City of Charlotte v. Robinson, 2 N.C. App. 429, 163 S.E.2d 289 (1968).

§ 160-205. By condemnation.

Local Modification. — City of Dunn: 1969, c. 648; City of Durham: 1967, c. 506.

Editor's Note.—

For an article urging revision and recodification of North Carolina's eminent domain laws, see 45 N.C.L. Rev. 587 (1967).

Section Prescribes When and How Power to Condemn Exercised.—When and how the power to condemn may be exercised is prescribed in this section. Kistler v. City of Raleigh, 261 N.C. 775, 136 S.E.2d 78 (1964).

Attempt to Acquire, etc.—

This section requires one vested with the

power to take by eminent domain to first attempt to acquire from the owner by private negotiation. Such an allegation is jurisdictional. Town of Hertford v. Harris, 263 N.C. 776, 140 S.E.2d 420 (1965).

Before a municipality can use the method to condemn provided in this section, it must make a good faith effort to agree with the owner on the price to be paid. Kistler v. City of Raleigh, 261 N.C. 775, 136 S.E.2d 78 (1964).

If the facts alleged plainly show that the petitioner has been unable to acquire title, and the reason why, that is a compliance with this section. Town of Hertford v. Harris, 263 N.C. 776, 140 S.E.2d 420 (1965).

Same—Property Owned by Several Persons.—Inability to acquire title of some of the owners makes it unnecessary to negotiate with the others. Town of Hertford v. Harris, 263 N.C. 776, 140 S.E.2d 420 (1965).

Condemnor is not required, when several are asserting title to the lands to be acquired, to unravel the divergent interests and negotiate with each claimant. Any other rule would needlessly delay a governmental agency in work proposed for the protection of society. Town of Hertford v. Harris, 263 N.C. 776, 140 S.E.2d 420 (1965).

Right of Condemnor to Claim Part of Award. — When a town sought to have property valued free of any claims which it could assert, the town could not, after the value had been fixed, claim any part of the award. Town of Hertford v. Harris, 263 N.C. 776, 140 S.E.2d 420 (1965).

Cited in Redevelopment Comm'n v. Abeyounis, 1 N.C. App. 270, 161 S.E.2d 191 (1968); City of Charlotte v. Robinson, 2 N.C. App. 429, 163 S.E.2d 289 (1968).

§ **160-205.1. Acquisition of whole parcel or building.**—(a) Whenever the proposed right-of-way of a street or highway necessitates the taking of a portion of a parcel of land leaving a remainder of such shape, size or condition so as to be of little value, a municipality may acquire, by purchase, the entire parcel of land. Provided, the municipality must make a determination either

(1) That a partial taking would substantially destroy the economic value or utility of the remainder; or

(2) That an economy in the expenditure of public funds will be promoted thereby; or

(3) That the interest of the public will be best served by the acquisition of the entire parcel.

(b) Residues acquired under this section may be disposed of in the manner provided for the disposition of municipal property or may be exchanged for other property required by the municipality.

(c) Where the proposed right-of-way of a street or highway necessitates the taking of a portion of a building or structure, the municipality may acquire, by purchase, the entire building or structure, together with the right to enter upon the surrounding land for the purpose of removing the building or structure. Provided, the municipality must make a determination that the partial taking will substantially destroy the economic value or utility of the building or structure and a determination either

(1) That an economy in the expenditure of public funds will be promoted thereby; or

(2) That it is not feasible to cut off a portion of the building without destroying the entire building; or

(3) That the convenience, safety or improvement of the street or highway will be promoted thereby.

Provided, further, nothing herein contained shall be deemed to compel the municipal authority to condemn the underlying fee of the portion of any building or structure which lies outside the right-of-way of any existing or proposed public road, street or highway.

(d) That the powers herein granted shall be in addition to and supplementary to those powers granted in any local act, charter or in any other General Statute, and in any case in which the provisions of this section are in conflict with the

provisions of any local act, charter or any other provisions of any General Statute, then the governing body of the municipality may in its discretion proceed in accordance with the provisions of such local act, charter or other General Statute, or, as an alternative method of procedure, in accordance with the provisions of this section. (1969, c. 601.)

§ 160-210. Hearing; appointment of commissioners; damages and benefits.

Editor's Note.—Session Laws 1969, c. 181, s. 3, reenacted this section without change.

§ **160-214. Limit of assessments; exceptions; transfer to court for trial; appeal to appellate division.** — 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 appellate division, 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 appellate division 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; 1969, c. 44, s. 79.)

Editor's Note.—
The 1969 amendment substituted "appellate division" for "Supreme Court" near the beginning and near the end of the third sentence.

Part 3A. Subdivisions.

§ 160-226. Municipal legislative body as platting authority.

Local Modification. — City of Roanoke Rapids: 1965, c. 987; town of Lake Waccamaw: 1969, c. 364; town of Wallace: 1965, c. 959, s. 2.

§ 160-226.2. Procedure for filing plat.

Local Modification. — City of Roanoke Rapids: 1965, c. 987.

§ 160-227. Powers granted herein supplementary.

Local Modification. — City of Roanoke Rapids: 1965, c. 987.

§ 160-227.1: Repealed by Session Laws 1969, c. 1010, s. 6, effective July 1, 1969.

Editor's Note. — The repealed section had been previously amended by Session Laws 1969, cc. 272, 435.

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, 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; 1965, c. 729.)

Editor's Note.—

The 1965 amendment deleted "Harnett" from the list of counties in the next to last sentence.

Fluoridation Ordinance. — A municipal ordinance for the fluoridation of the city water supply is enacted in the exercise of public policy, and the courts will not interfere therewith in the absence of a showing that the ordinance is so unreasonable, oppressive, and subversive as to amount to an abuse rather than a legitimate exercise of the legislative power. Stroupe v. Eller, 262 N.C. 573, 138 S.E.2d 240 (1964).

Part 6. Fire Protection.

§ 160-235. Establish and maintain fire department.

Local Modification. — Scotland: 1969, c. 855 (garnishment and attachment and lien for collection of delinquent fire protection service charges).

§ 160-236. Fire chief.—The governing body may elect a chief of the fire department, fix his term of office, prescribe his duties and obligations, and fix his compensation. (1969, c. 1065, s. 3.)

Editor's Note. — Session Laws 1969, c. 1065, s. 3, repealed former § 160-236, which authorized the governing body to establish fire limits, and enacted the above section in its place.

For present provisions as to establishment of fire limits, see §§ 160-140 through 160-143.

§ 160-237. Duties of fire chief.—Where not otherwise prescribed, the duties of the fire chief shall be to preserve and care for fire apparatus, have charge of the fighting and extinguishing of fires, have charge of the training of the fire department, seek out and have corrected all places and conditions dangerous to the safety of the municipality and its citizens from fire, and to make annual reports to the governing body concerning such duties. (1969, c. 1065, s. 3.)

Editor's Note. — Session Laws 1969, c. 1065, s. 3, repealed former § 160-237, which authorized a governing body to make rules and regulations governing the construction of buildings, and enacted the above section in its place.

For present provisions relating to regulation of the construction of buildings, see §§ 160-115 through 160-143.

§ 160-238. Fire protection for property outside city limits; injury to employee of fire department.

Opinions of Attorney General.—Mr. E. M. Johnson, Pembroke Town Attorney, 9/18/69.

Part 7. Sewerage.

§ 160-239. Establish and maintain sewerage system.

Applied in City of Raleigh v. Mercer, 271 N.C. 114, 155 S.E.2d 551 (1967).

§ 160-241. Order for construction or extension of system; assessment of cost; payment of assessment.

Local Modification.—City of Albemarle: 1969, c. 592; city of Raleigh: 1965, c. 1056; town of Edenton: 1969, c. 960.

Applied in City of Raleigh v. Mercer, 271 N.C. 114, 155 S.E.2d 551 (1967).

§ 160-244. Hearing on objections; action; entry of confirmation; lien of assessment; copy of roll to tax collector.

Applied in City of Raleigh v. Mercer, 271 N.C. 114, 155 S.E.2d 551 (1967).

§ 160-245. Notice of appeal; service of statement; no stay of work; trial of appeal.

Applied in City of Raleigh v. Mercer, 271 N.C. 114, 155 S.E.2d 551 (1967).

§ 160-249. Sewerage charges and penalties; no lien acquired; billing and collecting agent for sewerage service where municipalities do not also provide water service.

Local Modification. — Morehead City: Session Laws 1969, c. 879, s. 4, repealed Session Laws 1955, c. 517; town of Lake Lure: 1967, c. 766.

A municipality may establish a charge for sewerage service and require all its water customers to pay for such service whether such customers live within or without the corporate limits of such municipality. Covington v. City of Rockingham, 266 N.C. 507, 146 S.E.2d 420 (1966).

And Such Charge Is Not in the Nature of a Tax.—A properly adopted ordinance of a municipality establishing a sewerage service charge is not in the nature of a tax for the use of the users' sewer facilities, but it is a charge for the use of the sewer facilities of the municipality in the disposal of polluted water and sewage which drains into the disposal system of the municipality. Covington v. City of Rockingham, 266 N.C. 507, 146 S.E.2d 420 (1966).

Part 8. Light, Water, Sewer and Gas Systems.

§ 160-255. Authority to acquire and maintain light, water, sewer and gas systems.

Local Modification.—City of Durham: 1969, c. 596.

An ordinance for fluoridation of the city water supply is enacted in the exercise of public policy, and the courts will not interfere therewith in the absence of a showing that the ordinance is so unreasonable, oppressive, and subversive as to amount to an abuse rather than a legitimate exercise of the legislative power. Stroupe v. Eller, 262 N.C. 573, 138 S.E.2d 240 (1964).

The bare extension of the city limits does not amount to a wrongful taking or appropriation of the lines. Covington v. City of Rockingham, 266 N.C. 507, 146 S.E.2d 420 (1966).

Where there is no contract or municipal ordinance involved and the territory served by private water or sewer lines is annexed to a municipality, the owner of the lines may not recover the value thereof from the municipality unless it appropriates them and controls them as proprietor. Covington v. City of Rockingham, 266 N.C. 507, 146 S.E.2d 420 (1966).

Nor Does Voluntary Maintenance by City.—Maintenance as a voluntary act on the part of the city does not amount to a taking of the property. Covington v. City of Rockingham, 266 N.C. 507, 146 S.E.2d 420 (1966).

§ 160-256. Authority to fix and enforce rates.

Local Modification.—Town of Lake Lure: 1967, c. 766.

§ 160-257.1. Mutual aid contracts.—(a) The governing bodies of any two or more municipalities may enter into contracts with each other to provide mutual aid and assistance in restoring electric, water, sewerage, or gas services in the event of natural disasters or other emergencies under such terms and conditions as may be agreed upon. Such contracts may include provisions for the furnishing of personnel, equipment, apparatus, supplies, and materials; for reimbursement of the aiding municipality or municipalities for services rendered in giving such aid; for reimbursement or indemnification of the aiding municipality or municipalities for loss or damages incurred by reason of giving such aid; for delegation to a designated official or employee of the authority to send aid upon request; and any other provisions not inconsistent with law.

(b) Officials and employees furnished by one municipality in aid of another municipality pursuant to any contract entered under authority of this section shall be conclusively deemed for all purposes to remain officials or employees of the

aiding municipality, and while providing aid to another municipality, and while traveling to and from such other municipality pursuant to giving such aid, such officials and employees shall have all rights, privileges, and immunities, including coverage under the North Carolina Workmen's Compensation Act, which are afforded them while performing their normal duties.

(c) Notwithstanding G.S. 160-59 or any other general, local, or special act, any municipality may, pursuant to a contract entered under authority of this section, sell or otherwise convey to another municipality any personal property to be used in restoring utility services pursuant to such contract, without any declaration that such property is surplus.

(d) Nothing in this section shall be construed so as to deprive the governing body of any municipality of its discretion in sending or declining to send its personnel, equipment, and apparatus to another municipality under any circumstances, whether or not obligated by contract to do so. In no case shall a municipality or any of its officials or employees be held liable in damages for declining to send personnel, equipment, or apparatus to another municipality, whether or not obligated by contract to do so. (1967, c. 450.)

Part 9. Care of Cemeteries.

§ 160-260.1. Right to condemn and take over cemeteries adjoining municipal cemeteries.

Editor's Note.—
For an article urging revision and recodification of North Carolina's eminent domain laws, see 45 N.C.L. Rev. 587 (1967).

Article 19.

Exercise of Powers by Governing Body.

Part 2. Ordinances.

§ 160-270. How adopted.

Cited in Cablevision of Winston-Salem v. City of Winston-Salem, 3 N.C. App. 252, 164 S.E.2d 737 (1968).

§ 160-272. How ordinance pleaded and proved.

Warrant or Indictment Must Set Out or Plead Ordinance. — Criminal prosecution for violation of a municipal ordinance cannot be maintained if the warrant or indictment on which it is based does not set out the ordinance or plead it in a manner permitted by this section. State v. Wiggs, 269 N.C. 507, 153 S.E.2d 84 (1967).

Judicial Notice Not Taken of Ordinance. —Courts of general jurisdiction and the Supreme Court will not take judicial notice of a municipal ordinance. High Point Surplus Co. v. Pleasants, 263 N.C. 587, 139 S.E.2d 892 (1965).

Excerpt of Ordinance in Indictment May Be Construed with Entire Ordinance.—The courts, when called upon to construe an excerpt from an ordinance set out in a bill of indictment, may interpret the excerpt correctly by construing it with the rest of the ordinance, certainly when the entire ordinance is before the court by stipulation of the parties. High Point Surplus Co. v. Pleasants, 263 N.C. 587, 139 S.E.2d 892 (1965).

Nonsuit for Variance Allowed.—Where a warrant charging disorderly conduct does not contain any allegations, specific or general, to the effect that the prosecution was for the violation of a municipal ordinance, but the municipal ordinance is introduced in evidence and the trial proceeds as though defendant had been charged with the violation of the ordinance, nonsuit for variance must be allowed. State v. Wiggs, 269 N.C. 507, 153 S.E.2d 84 (1967).

Applied in City of Gastonia v. Parrish, 271 N.C. 527, 157 S.E.2d 154 (1967).

Cited in State v. Dorsett, 272 N.C. 227, 158 S.E.2d 15 (1967).

Part 3. Officers.

§ **160-277. Bonds required; blanket fidelity bonds.**—(a) 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.

(b) Cities and towns may adopt a system of blanket faithful performance or honesty bonding as an alternative to individual bonds. When such a system is adopted, statutory requirements of individual bonds, except as to treasurers or tax collectors by whatever title known, shall not apply to any officer or employee covered by the blanket bond. (1917, c. 136, sub-ch. 13, s. 15; C. S., s. 2828; 1945, c. 619; 1967, c. 800, s. 1.)

Editor's Note.—

The 1967 amendment designated the former provisions of this section as subsection (a) and added subsection (b).

Section 2, Session Laws 1967, c. 800, provides: "This act shall be controlling over all conflicting laws, whether general, local, or special."

Part 4. Contracts Regulated.

§ **160-281.3. Agreements under National Highway Safety Act.**—Any municipality is hereby authorized to enter into agreements with the State of North Carolina and its agencies, and with the federal government and its agencies, to secure the full benefits available to such municipality under the National Highway Safety Act of 1966, and to cooperate with State and federal agencies, other public and private agencies, interested organizations, and individuals, to effectuate the purposes of such act and subsequent amendments thereof. (1967, c. 1255.)

Part 5. Control of Public Utilities, Institutions, and Charities.

§ **160-283. How control exercised.**

Cited in Keeter v. Town of Lake Lure, 264 N.C. 252, 141 S.E.2d 634 (1965).

Article 21.

Amendment of City Charters.

Part 1. Composition and Mode of Election of Governing Board.

§ **160-291. Optional forms.**—The governing board of any city or town may amend its charter or the general law, whichever is applicable, to adopt a new form of municipal government composed of any combination of the options prescribed by this section:

(1) Name and style of the muncipal corporation:

a. The municipal corporation shall be styled the city of .....

b. The municipal corporation shall be styled the town of .....

c. The municipal corporation shall be styled the village of .....

(2) Style of governing board:

a. The governing board shall be known as the board of commissioners.

b. The governing board shall be known as the board of aldermen.
c. The governing board shall be known as the council.

(3) Terms of office of members of the governing board:
a. The board shall be elected for terms of two years.
b. The board shall be elected for terms of four years.
c. The board shall be elected for overlapping terms of four years.

If the board consists of an even number of members, at the first election following adoption of option c, one half of the members shall be elected for four-year terms, and one half shall be elected for two-year terms. If the board consists of an odd number of members, at the first election following adoption of option c, a simple majority of the members shall be elected for four-year terms and the remainder of the members shall be elected for two-year terms. In both cases those members elected with the highest number of votes shall serve the four-year terms. At all elections following the first election under option c, members shall be elected for four-year terms.

(4) Number of members of the governing board:
The board shall consist of any number of members not less than three nor more than twelve.

(5) Mode of election of the governing board:
a. All candidates shall be nominated and elected by all the qualified voters of the municipality.
b. The municipality shall be divided into wards; members of the board shall be apportioned to the wards so that each member represents the same number of persons as nearly as possible, except for members apportioned to the municipality at large, if any; the qualified voters of each ward shall nominate and elect candidates who reside in the ward for seats apportioned to that ward; and all the qualified voters of the municipality shall nominate and elect candidates apportioned to the municipality at large, if any.
c. The municipality shall be divided into wards; members of the board shall be apportioned to the wards so that each member represents the same number of persons as nearly as possible, except for members apportioned to the municipality at large; and candidates shall reside in and represent the wards according to the apportionment plan adopted, but all candidates shall be nominated and elected by all the qualified voters of the municipality.
d. The municipality shall be divided into wards; members shall be apportioned to each ward so that each member represents the same number of persons as nearly as possible, except members apportioned to the municipality at large, if any; the qualified voters of each ward shall nominate two candidates who reside in the ward for each seat apportioned to that ward in a nonpartisan primary, and the qualified voters of the entire municipality shall nominate two candidates for each seat apportioned to the municipality at large, if any; and all candidates shall be elected by all the qualified voters of the municipality.

If either of options b, c, or d is adopted, the governing board shall divide the municipality into the requisite number of wards according to the apportionment plan adopted, and shall cause a map of the wards so laid out to be drawn up and recorded in the office of the municipal clerk, where it shall be available for public inspection. The governing board shall have authority to revise ward boundaries from time to time to correct imbalances in ward population and to account for newly annexed territory. The governing board shall also have

authority to revise the apportionment plan from time to time in order to insure that each member represents the same number of persons as nearly as possible, but in no event may more than one half of the governing board be apportioned to the municipality at large. The initial ordinance or petition initiating adoption of either of options b, c, or d may specify the number of wards to be laid out, but the drawing of ward boundaries and apportionment of members to the wards shall be done in all cases by the governing board.

(6) Primaries:

a. There shall be no municipal primary but all candidates shall be nominated and elected at the regular municipal election.

b. There shall be a nonpartisan primary to nominate two candidates for each vacancy on the board to be filled at the regular municipal election.

c. There shall be a primary at which each political party shall nominate one candidate for each vacancy on the board to be filled at the regular municipal election.

Options a and c may not be adopted by any municipality which has adopted option d of subdivision (5) of this section.

(7) Selection of mayor:

a. The mayor shall be elected by all the qualified voters of the municipality for a term of two years.

b. The mayor shall be elected by all the qualified voters of the municipality for a term of four years.

c. The mayor shall be selected by the governing board from among its membership to serve at its pleasure. (1969, c. 629, s. 2.)

Revision of Article.—Session Laws 1969, c. 629, repealed articles 21, 22 and 23 of this chapter and enacted present article 21, consisting of §§ 160-291 to 160-305, in their place. Former article 21 consisted of §§ 160-291 to 160-307 and was codified from C. S., ss. 2842 to 2858; Session Laws 1917, c. 136, subch. 16, ss. 1-18; and Session Laws 1933, c. 80, s. 5. Former article 22 contained §§ 160-308 to 160-352, and was codified from C. S., ss. 2859 to 2899 and 2901; Session Laws 1917, c. 136, subch. 16, Parts II to VI; Session Laws 1919, c. 60, s. 1; c. 270, ss. 1, 2; Session Laws 1923, c. 203; Session Laws 1927, c. 243; Session Laws 1929, c. 32, s. 1; Session Laws 1933, c. 80, ss. 1 to 4; Session Laws 1935, c. 180; and Session Laws 1951, c. 153, ss. 1 and 2. Former article 23 consisted of §§ 160-353 to 160-363 and was codified from C. S., ss. 2902 to 2912; Session Laws 1917, c. 136, subch. 16, Part VII; Session Laws 1919, c. 534; and Session Laws 1921, c. 56.

Part 2. City Manager.

§ 160-292. Adoption of manager plan.—The governing board of any city or town may amend its charter by adopting G.S. 160-293 as a part of its charter. (The words "city" and "council" may be replaced with the correct terminology for the particular municipality.) (1969, c. 629, s. 2.)

§ 160-293. Appointment, powers and duties of city manager.—(a) Appointment of City Manager.—The council may appoint a city manager for an indefinite term and may fix his compensation. The manager shall be appointed solely on the basis of his executive and administrative qualifications. He need not be a resident of the city or State at the time of his appointment, but shall become a resident of the city as soon after his appointment as possible. He shall not be deemed an officer of the city within the meaning of Article XIV, § 7, or Article VI, § 7, of the Constitution of North Carolina.

(b) Powers and Duties of Manager.—The manager shall be the chief administrator of the city. He shall be responsible to the council for the administration of all municipal affairs placed in his charge by them, and shall have the following powers and duties:

(1) He shall appoint and, when he deems it necessary for the good of the service, suspend or remove all municipal employees in accordance with such general personnel rules, regulations, policies, or ordinances as the council may adopt, except the city attorney and the city clerk.
(2) He shall direct and supervise the administration of all departments, offices, and agencies of the city, subject to the general direction and control of the council, except as otherwise provided by law.
(3) He shall attend all meetings of the council and recommend for adoption such measures as he shall deem expedient.
(4) He shall see that all laws of the State and the ordinances, resolutions, and regulations of the council are faithfully executed within the city.
(5) He shall prepare and submit the annual budget and capital program to the council.
(6) He shall submit to the council and make available to the public a complete report on the finances and administrative activities of the city as of the end of the fiscal year.
(7) He shall make such other reports as the council may require concerning the operations of city departments, offices, and agencies subject to his direction and control.
(8) He shall perform such other duties as may be required or authorized by the council. (1969, c. 629, s. 2.)

§ **160-294. Existing charter provisions not affected.**—Sections 160-292 and 160-293 shall not apply to any city or town whose charter provides for the appointment of a city or town manager and shall not be construed to permit the amendment or repeal of any such provisions. (1969, c. 629, s. 2.)

Part 3. How Amendment Adopted.

§ **160-295. Initiative by governing board.**—(a) The governing board may adopt an ordinance amending the charter or general law applicable to the municipality in any of the particulars set out in §§ 160-291 and 160-293. The ordinance shall be passed for the first time not later than 90 days before the deadline for filing notice of candidacy for the municipal governing board, or, if no such deadline is prescribed by law or ordinance, not later than 120 days before the municipal election. The ordinance may combine adoption of the manager plan as permitted by § 160-293 with modification of the charter in the particulars permitted by § 160-291, or separate ordinances under §§ 160-291 and 160-293 may be adopted. If separate ordinances are adopted, they may be considered at the same meetings and the same public hearing, but shall be considered separate ordinances for the purposes of § 160-296. Following passage on first reading, the substance of the ordinance shall be published in some newspaper having a general circulation in the municipality. Following this publication the board shall call a public hearing on the ordinance. Following the public hearing, the board shall read the ordinance for a second time and if it shall pass its second reading, it shall take effect for the next succeeding regular municipal election, unless submitted or petitioned to a vote of the people as hereinafter provided.

(b) The governing board may not adopt an ordinance amending the charter between the time of registration of an initiative petition pursuant to § 160-298 and the time the plan proposed in such petition takes effect, unless the petition shall be declared invalid for failure to meet the requirements imposed by §§ 160-297 and 160-298, or unless the plan proposed by the petition fails of adoption by the voters: Provided, that this subsection shall not apply to an ordinance proposing charter amendments under § 160-291 if the petition proposes only adoption of the manager form of government under § 160-293, nor to an ordinance proposing adoption of the manager form of government under § 160-293 if the petition proposes only charter amendments under § 160-291. (1969, c. 629, s. 2.)

§ **160-296. Referendum on new plan initiated by the governing board.**—The governing board may of its own motion, and shall upon receipt of a valid petition bearing the signatures of a number of qualified voters of the municipality equal to at least fifteen percent (15%) of the whole number of voters who participated in the last regular municipal election, submit any ordinance adopted pursuant to § 160-295 to a vote of the people. No petition shall be valid unless delivered to the mayor or clerk at least 60 days prior to the deadline for filing notice of candidacy for the municipal governing board, or, if no such deadline is prescribed by law or ordinance, at least 90 days before the municipal election. (1969, c. 629, s. 2.)

§ **160-297. Initiative by the people.**—(a) The people may initiate a referendum on adoption of a new form of government by petition. The petition shall bear the signatures of a number of qualified voters of the municipality equal to at least twenty-five percent (25%) of the whole number of voters who participated in the last regular municipal election. It may propose only one form of government for submission to the voters and shall be in substantially the following form:

"To the (*governing board*) of (*municipality*)

We, the undersigned qualified voters of (*municipality*), do hereby request that you submit to the people the question of whether to adopt a new form of government as follows: (*describe the proposed plan briefly but completely and refer to the pertinent provisions of §§ 160-291 and/or 160-293*)." No petition shall be valid which proposes any form of government not entirely composed of the options set out in §§ 160-291 or 160-293. No petition shall be valid unless received by the mayor or clerk at least 120 days prior to the deadline for filing notice of candidacy for the municipal governing board, or, if no such deadline is prescribed by law or ordinance, at least 150 days before the municipal election. Upon receipt of such a valid petition, the governing board shall fix a date for submitting the new form of government to the people.

(b) No initiative petition shall be valid, nor shall any be registered, between the time of the first reading of an ordinance of the governing board initiating a new plan of government and the time such plan takes effect, unless the ordinance fails of passage on second reading or fails of adoption by the voters: Provided, that this subsection shall not apply to a petition proposing charter amendments under § 160-291 if the ordinance proposes only adoption of the manager form of government under § 160-293, nor to a petition proposing adoption of the manager form of government under § 160-293 if the ordinance proposes only charter amendments under § 160-291. (1969, c. 629, s. 2.)

§ **160-298. Registration and priority of petitions.**—Any person or group of persons proposing to circulate an initiative petition under § 160-297 shall register the petition with the municipal clerk before attempting to obtain signatures thereon. The clerk shall retain a copy of the petition and shall note thereon the date and hour of registration. Petitions shall be assigned priority in the order in which they are registered: Provided, that if a petition requesting charter amendments under § 160-291 but not under § 160-293 and a petition requesting adoption of the manager form of government under § 160-293 but not amendments under § 160-291 are both registered, both petitions shall be assigned equal priority, and shall both be submitted to the voters if validly completed and filed. (1969, c. 629, s. 2.)

§ **160-299. Submission of propositions; form of ballot.**—A proposition to approve an ordinance or petition under § 160-291 shall be printed on the ballot in substantially the following form:

"( ) FOR the ordinance (or petition) (*describe the effect of the ordinance or petition*).

( ) AGAINST the ordinance (or petition)"

A proposition to approve an ordinance or petition under § 160-293 shall be printed on the ballot in substantially the following form:

"( ) FOR the ordinance (or petition) adopting the city manager form of government.

( ) AGAINST the ordinance (or petition) adopting the city manager form of government."

The ballot shall be separate and distinct from all other ballots used at the election. If separate ordinances under §§ 160-291 and 160-293, or both an ordinance and a petition under § 160-297, or two petitions under § 160-297, are submitted at the same election, both propositions shall be printed on the same ballot in the appropriate form as provided above. If a majority of the votes cast on a proposition shall be in favor of the proposition, the plan contained therein shall be put into effect as provided by §§ 160-301 and 160-302 and may thereafter be altered only in accordance with §§ 160-295 or 160-297. If a majority of the votes cast shall be against the proposition, the ordinance proposing the amendments shall be void or the governing board shall take no action on the petition, as the case may be. (1969, c. 629, s. 2.)

§ **160-300. Plan to continue for two years.**—Should any new form of government be adopted as provided in this article, it shall continue in force for at least two years after the beginning of the term of office of the officers elected thereunder; and no ordinance or petition proposing a different plan shall be adopted or filed during the period of one year and six months after such adoption. (1969, c. 629, s. 2.)

§ **160-301. Municipal officers to carry out plan.**—It shall be the duty of the mayor, the governing board, the city clerk, and other city officials in office, and all boards of election and election officials, when any plan of government is adopted as provided by this article or if proposed for adoption, to comply with all requirements of this article, 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 new plan so adopted. (1969, c. 629, s. 2.)

§ **160-302. Effective date.**—The governing board may submit new forms of government proposed under this article at any regular or special municipal election, or at a special election called for that sole purpose. If plans are submitted at a special election held at least 180 days prior to a regular municipal election, any new form of government adopted shall take effect for the next succeeding regular municipal election. If plans are submitted at a special election held within 180 days before a regular municipal election, any new form of government adopted shall take effect for the regular municipal election held two years after the regular municipal election next succeeding the special election. If plans are submitted at a regular municipal election, any new form of government adopted shall take effect for the next succeeding regular municipal election. (1969, c. 629, s. 2.)

Part 4. Effect of Adoption.

§ **160-303. Municipal corporation continued.**—Any city or town which shall adopt a new form of government as provided in this article shall thereafter be governed by the provisions thereof, and the inhabitants of the city or town shall continue to be a municipal corporation, and shall have, exercise, and enjoy all the rights, immunities, powers, and privileges, and shall be subject to all the duties, liabilities, and obligations pertaining to or incumbent upon the city or town as a municipal corporation. (1969, c. 629, s. 2.)

§ **160-304. Ordinances remain in force.** — All ordinances, resolutions, orders, and other regulations of a city or town or of any authority, body, or officer thereof existing at the time when such city or town adopts a new form of govern-

ment as provided in this article shall continue in full force and effect until annulled, repealed, modified, or superseded. (1969, c. 629, s. 2.)

§ **160-305. Charters to remain in force.**—All special, local, or private acts of the General Assembly applicable to any city or town which adopts a new form of government as provided in this article shall continue in full force and effect notwithstanding adoption of a new form of government, except to the extent modified by an ordinance adopted under the authority conferred and pursuant to the procedures prescribed by this article. (1969, c. 629, s. 2.)

§§ **160-306, 160-307:** Repealed by Session Laws 1969, c. 629, s. 1.

Revision of Article.—See same catchline in note to § 160-291.

Article 22.

Different Forms of Municipal Government.

§§ **160-308 to 160-352:** Repealed by Session Laws 1969, c. 629, s. 1.

Cross Reference.—See note to § 160-291.

Editor's Note.—Session Laws 1969, c. 629, s. 3, provides: "Notwithstanding the repeal of article 22 of chapter 160 of the General Statutes of North Carolina by this act, any city or town whose charter heretofore enacted by the General Assembly incorporates by reference any of the provisions of chapter 160, article 22, shall continue to be governed by the provisions of said article as it read on January 1, 1969, until such time as the charter shall be amended, or the form of government changed as provided by this act."

Article 23.

Amendment and Repeal of Charter.

§§ **160-353 to 160-363:** Repealed by Session Laws 1969, c. 629, s. 1.

Cross Reference.—See note to § 160-291.

Article 23A.

Changing the Name of a Municipal Corporation.

§ **160-363.1. Calling an election to change the name of a municipal corporation.**—The governing body of any municipal corporation may, upon its own motion, or shall, upon receipt of a petition signed by fifteen percent (15%) of the qualified voters therein, call a special election for the purpose of changing the name of the municipality. At least 30 days before the date of the election, notice shall be published once a week for four weeks in a newspaper published or having general circulation within the municipality, setting forth the dates of registration and of the election and the proposed new name for the municipality. (1969, c. 680, s. 1.)

§ **160-363.2. Conducting an election; results.**—The election shall be conducted in the same manner and under the same laws governing regular municipal elections. If a majority of the qualified voters vote in favor of changing the name, then the proposed new name shall be adopted for the municipality. (1969, c. 680, s. 2.)

SUBCHAPTER III. MUNICIPAL FINANCE ACT.

Article 28.

Permanent Financing.

§ **160-382. Determining periods for bonds to run.**

(d) 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.:

(1) Sewer systems (either sanitary or surface drainage), forty years.
(2) Water supply systems, or combined water and electric light systems, or combined water, electric light, and power systems, forty years.
(3) Gas systems, thirty years.
(4) Electric light and power systems, separate or combined, thirty years.
(5) Plants for the incineration or disposal of ashes, or garbage, or refuse (other than sewage), twenty years.
(6) 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.
(7) Playgrounds, fifty years.
(8) Buildings for purposes not stated in this section, if they are:
    a. 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.
    b. 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.
    c. Of other construction, twenty years.
(9) Bridges and culverts (including retaining walls and approaches), forty years, unless constructed of wood, and in that case, ten years.
(10) Land for purposes not stated in this section, fifty years.
(11) 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:
    a. Is constructed of sand and gravel, five years;
    b. Is of waterbound macadam or penetration process, ten years;
    c. Is of bricks, blocks, sheet asphalt, bitulithic, or bituminous concrete, laid on a solid foundation, or is of concrete, twenty years.
(12) Land for roads, streets, highways, or sidewalks, or grading, or constructing or reconstructing culverts, or retaining walls, or surface, or subsurface drains, fifty years.
(13) Constructing sidewalks, curbs, or gutters of brick, stone, concrete, or other material of similar lasting character, twenty years.
(14) Installing fire or police alarms, telegraph or telephone service, or other system of communication for municipal use, thirty years.
(15) 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.
(16) Land for cemeteries, or the improvement thereof, thirty years.
(17) 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.

(18) The elimination of any grade crossing or crossings and improvements incident thereto, thirty years.

(19) Equipment, apparatus, or furnishings not included in the foregoing subdivisions of this subsection, ten years.

(20) Any improvement or property not included in other subdivisions of this subsection, forty years.

(21) Land, including grading and drainage, buildings, equipment and other improvements for airports or landing fields, thirty years.

(22) Cable television systems, thirty years.

(1967, c. 1086, ss. 4, 5; 1969, c. 834.)

Editor's Note.—

The 1967 amendment rewrote subdivision (21) of subsection (d) and repealed a former subdivision (22) of that subsection. Section 6 of the amendatory act provides that the act shall also apply to bonds authorized but not issued at the effective date of the act, which became effective upon ratification, July 3, 1967.

The 1969 amendment added a new subdivision (22) to subsection (d). Former subdivision (22) was repealed by Session Laws 1967, c. 1086, s. 5.

As the rest of the section was not changed by the amendments, only subsection (d) is set out.

§ **160-383. Sworn statement of indebtedness.**—(a) 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:

(1) 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:

a. Outstanding debt not evidenced by bonds.

b. Outstanding bonded debts.

c. Bonded debt to be incurred under ordinances passed or introduced.

(2) The deductions to be made from gross debt in computing net debt, which deductions shall be as follows:

a. Amount of unissued funding or refunding bonds included in gross debt.

b. 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.

c. 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.

d. 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.

e. 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.

f. The amount of bonded debt included in the gross debt and incurred or to be incurred for sanitary sewer system purposes if the Local Government Commission determines that (i) the revenues of the sanitary sewer system and the water system or

(ii), in the event the sanitary sewer system is operated with the water system as a consolidated system, the revenues of such consolidated system or (iii), in the event the sanitary sewer system and the water system are consolidated during but not for the entire five-year period hereinafter mentioned, the revenues of such sanitary sewer and water systems and such consolidated system during such period, including any surplus from prior years, were, in each of the five complete fiscal years immediately preceding the filing of this statement, sufficient to pay the operating expenses of such systems or such consolidated system or such combination thereof and the principal of and the interest on all bonds issued therefor as the same became due and payable.

g. 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.

h. Indebtedness for school purposes.

(3) The net debt, being the difference between the gross debt and the deductions.

(4) The assessed valuation of property as last fixed for municipal taxation.

(5) The percentage that the net debt bears to said assessed valuation.

(b) 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) percent 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 Board of Water and Air Resources, which Board is hereby authorized to make such order, or by a court of competent jurisdiction or are bonds for erosion control purposes or are bonds for erecting jetties or other protective works to prevent encroachment by the ocean, sounds or other bodies of water.

(1967, c. 892, s. 4; 1969, c. 1092.)

Editor's Note.—

The 1967 amendment substituted "Board of Water and Air Resources" for "State Stream Sanitation Committee" in subsection (b).

The 1969 amendment rewrote paragraph f of subdivision (2) of subsection (a).

Session Laws 1969, c. 995, which purported to amend this section, was declared null and void and repealed by Session Laws 1969, c. 1288.

As the rest of the section was not changed by the amendments, only subsections (a) and (b) are set out.

§ 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, payable semiannually or otherwise, and the times and place or places of payment of the principal and interest of the bonds, shall be fixed by resolution or resolutions of the governing body. Such bonds may be made subject to redemption prior to their respective maturities with or without premium as the governing body may provide in such resolution or resolutions, with the approval of the Local Government Commission. The bonds authorized by a bond ordinance, or by two or more bond ordinances if the bonds so authorized shall be consolidated into a single issue, may be issued either all at one time as a single issue or from time to time in series, and different provisions may be made for different series. (1917, c. 138, s. 25; 1919, c. 178, s. 3 (25); C. S., s. 2951; 1921, c. 8, s. 1; Ex.

Sess., 1921, c. 106, s. 1; 1933, c. 259, s. 1; 1951, c. 440, s. 1; 1953, c. 1206, s. 3; 1969, c. 686.)

Editor's Note.—
The 1969 amendment deleted "not exceeding six per centum per annum" preceding "payable semiannually" in the first sentence.

§ 160-393. Formal execution of bonds.

Cross Reference.—
As to facsimile seals and signatures on bonds, notes or other obligations of county, city, town, etc., see § 159-17.1.

§ 160-397. Taxes levied for payment of bonds.

Editor's Note.—
Session Laws 1967, c. 799, s. 1, effective July 1, 1967, reenacted the third paragraph of this section "for the purpose of making the authority granted therein applicable to all cities and towns." Section 3 of the 1967 act repealed all laws and clauses of laws in conflict, whether general, local or special.

This section earmarks the income from municipally owned revenue-producing enterprises, first to the payment of all expenses of operating, managing, maintaining, repairing, enlarging, and extending such enterprises; then to the payment of interest payable in the next succeeding year on bonds issued for such enterprises; and, finally, 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. Yokley v. Clark, 262 N.C. 218, 136 S.E.2d 564 (1964).

After Paying Operation and Maintenance Expenses.—
The governing body of the city may make such use of the gross revenues of the system as they may think wise for maintaining, repairing, enlarging or extending the system, but they may not divert its revenues to other purposes so as to dissipate the net revenues which the law requires to be applied on principal and interest of waterworks bonds. Yokley v. Clark, 262 N.C. 218, 136 S.E.2d 564 (1964), citing George v. City of Asheville, 80 F.2d 50, 103 A.L.R. 568 (4th Cir. 1935).

Article 29.

Restrictions upon the Exercise of Municipal Powers.

§ 160-399. In borrowing or expending moneys.

Local Modification. — Alamance, Buncombe, Cleveland, Durham, Rockingham and Wake: 1969, c. 551.

Cited in Horton v. Redevelopment Comm'n, 262 N.C. 306, 137 S.E.2d 115 (1964).

§ 160-402. Limitation of tax for general purposes.

Local Modification.—City of Hendersonville: 1969, c. 1078, amending 1959, c. 868; town of Elizabethtown: 1969, c. 710.

SUBCHAPTER IV. FISCAL CONTROL.

Article 33.

Fiscal Control.

§ 160-410.3. Budget ordinance.

Local Modification. — Town of Whitakers: 1965, c. 996, s. 1.

§ 160-411.5. Investment of funds.—The cash balances, or parts thereof, of municipal funds may be deposited at interest or invested as provided by G.S. 159-28.1. (1957, c. 864, s. 1; 1967, c. 798, s. 2.)

Editor's Note.—
The 1967 amendment rewrote this section.

§ 160-412.5. Application of article.

Local Modification. — Town of Whitakers: 1965, c. 996, s. 1.

Article 34.

Revenue Bond Act of 1938.

§ 160-413. Title of article.

Editor's Note.—

For comment on the public purpose doctrine, see 3 Wake Forest Intra. L. Rev. 37 (1967).

The very purpose of the Revenue Bond Act, etc.—

In accord with original. See Keeter v. Town of Lake Lure, 264 N.C. 252, 141 S.E.2d 634 (1965).

Activity Must Be Adjudicated to Be for Public Purpose.—A municipality may not issue bonds to construct off-street parking lots until there has been an adjudication in a manner provided by law that the construction of such parking lots is for a public purpose in that particular municipality. Horton v. Redevelopment Comm'n, 262 N.C. 306, 137 S.E.2d 115 (1964).

Cited in Horton v. Redevelopment Comm'n, 264 N.C. 1, 140 S.E.2d 728 (1965).

§ 160-414. Definitions.

(4) The term "parking facilities" shall mean any area or place for the off-street parking or storing of motor and other vehicles, open to public use for a fee, and shall include, without limiting the foregoing, 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. 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.

(5) The word "revenue" or "revenues" shall mean all moneys received by a municipality from, in connection with or as a result of its ownership or operation of an undertaking, including, without limitation and if deemed advisable by the municipality, moneys received from the United States of America, or any agency thereof, pursuant to an agreement with the municipality pertaining to the undertaking.

(6) 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:

a. 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, clubhouses and golf courses, and parking facilities.

b. Systems, plants, works, instrumentalities, and properties:

1. 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,
2. Used or useful in connection with the collection, treatment, and disposal of sewage, garbage, waste and storm water,
3. 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. (Ex. Sess. 1938, c. 2, s. 2; 1939, c. 295; 1941, c. 207, s. 2; 1951, c. 703, s. 1; 1953, c. 901, ss. 4, 5; c. 922, s. 1; 1965, c. 997; 1969, c. 1118, s. 1.)

Local Modification.—City of Thomasville, as to subdivision (5) b: 1969, c. 420.

Editor's Note.—

The 1965 amendment rewrote the first sentence in subdivision (4).

The 1969 amendment again rewrote the first sentence of subdivision (4), inserted present subdivision (5) and renumbered former subdivision (5) as (6).

As the rest of the section was not changed by the amendments, only subdivisions (4), (5) and (6) are set out.

Applied in Keeter v. Town of Lake Lure, 264 N.C. 252, 141 S.E.2d 634 (1965).

Cited in Horton v. Redevelopment Comm'n, 262 N.C. 306, 137 S.E.2d 115 (1964).

§ 160-415. Additional powers.

(7) To pledge all or part of any proceeds derived from the use of on-street parking meters to the payment of

a. The cost of operating, maintaining and improving parking facilities and

b. The principal of and the interest on any revenue bonds issued for parking facilities.

(1969, c. 1118, s. 2.)

Editor's Note.—

The 1969 amendment rewrote subdivision (7).

As the rest of the section was not changed by the amendment, only subdivision (7) is set out.

Section Is Integral Part of Local Bond Issue.—See Keeter v. Town of Lake Lure, 264 N.C. 252, 141 S.E.2d 634 (1965).

Municipalities May Purchase Hydroelectric Systems by Sale of Revenue Bonds.—It is clear that the General Assembly has by general enactment of the Revenue Bond Act of 1938 authorized municipalities to acquire by purchase revenue-producing properties of various kinds, including hydroelectric plants or systems or works or properties, and to finance such purchase with funds derived from the sale of revenue bonds, payable solely out of the revenues from the undertaking. Keeter v. Town of Lake Lure, 264 N.C. 252, 141 S.E.2d 634 (1965).

§ 160-416. Procedure for authorization of undertaking and revenue bonds; obtaining funds in advance of delivery of bonds sold to United States or agency thereof.—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 eighteen months thereafter, on money borrowed or which it is estimated will be borrowed pursuant to this article.

At any time or from time to time prior to actual delivery of bonds sold to the United States of America, or to an agency thereof, the governing body may, by resolution adopted as hereinabove provided, authorize the borrowing of money from the United States of America, or from such agency, by execution of a request for advance of funds repayable from the sale proceeds of such bonds. The governing body shall cause a certified copy of each such resolution and a statement as to amount of advance made pursuant thereto, its date and interest rate, if any, to be filed with the Local Government Commission before said delivery, and the State Treasurer is hereby authorized to apply, at the time of delivery, proceeds from sale of the bonds to payment of the aggregate principal amount of all such advances and interest accrued thereon, if any. (Ex. Sess. 1938, c. 2, s. 4; 1967, c. 711, s. 1; 1969, c. 1118, s. 3.)

Editor's Note. — The 1967 amendment added the second paragraph.

The 1969 amendment substituted "eighteen months" for "six months" in the last sentence of the first paragraph.

Cited in Horton v. Redevelopment Comm'n, 264 N.C. 1, 140 S.E.2d 728 (1965).

§ 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 forty years from their respective dates, or, in the case of a single registered bond, may be payable in installments; may bear interest at such rate or rates, 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; 1967, c. 100, s. 1; c. 711, s. 2; 1969, c. 688, s. 1.)

Editor's Note.—

The first 1967 amendment substituted "forty years" for "thirty-five years" near the beginning of the section.

The second 1967 amendment inserted "or, in the case of a single registered bond, may be payable in installments" near the beginning of the section.

The 1969 amendment deleted "not exceeding six per centum (6%) per annum" following "rate or rates" near the middle of the first sentence.

§ 160-419. No municipal liability on bonds.

Section Is Integral Part of Local Bond Issue.—See Keeter v. Town of Lake Lure, 264 N.C. 252, 141 S.E.2d 634 (1965).

§ 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, and except, further, that upon the filing with said Commission of a resolution of the governing body of a municipality requesting that its revenue bonds issued pursuant to this article be sold at private sale and without advertisement and upon the approval of such request by said Commission, such bonds may be sold by said Commission at private sale and without advertisement to any purchaser or purchasers thereof, such sale to be for such price as said Commission shall determine to be for the best interests of the municipality and as shall be approved by the governing body of the municipality. 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; 1967, c. 555; 1969, c. 688, s. 2.)

Editor's Note.—

The 1967 amendment added to the first sentence the provisions as to sale of bonds at private sale upon the filing of a resolution of the governing body of a municipality requesting such sale.

The 1969 amendment deleted, at the end of the first sentence, a provision to the effect that no such sale should be made at a price so low as to require the payment of interest on the money received therefor at more than six per centum per annum, and providing the manner of computation of such interest.

Stated in Keeter v Town of Lake Lure, 264 N.C. 252, 141 S.E.2d 634 (1965)

§ 160-421.1. Revenue refunding bonds.—A municipality is hereby authorized to provide for the issuance of revenue refunding bonds of the municipality for the purpose of refunding any revenue bonds then outstanding which shall have been issued under the provisions of this article and any revenue bonds then outstanding issued by such municipality under other than the provisions of this article for an undertaking the revenues of which are pledged to the payment of such bonds, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds, and, if deemed advisable by the municipality, for the combined purpose of refunding any such bonds and to finance in whole or in part the reconstruction, improvement, betterment or extension of the undertaking for which the bonds to be refunded shall have been issued, or the acquisition, construction, reconstruction, improvement, betterment or extension of any undertaking combined or to be combined with the undertaking for which the bonds to be refunded shall have been issued.

The issuance of such bonds, the maturities and other details thereof, and the

rights, duties and obligations of the municipality in respect of the same, shall be governed by the provisions of this article insofar as the same may be applicable. (1953, c. 692; 1969, c. 1118, s. 4.)

Editor's Note. — The 1969 amendment rewrote the first paragraph.

SUBCHAPTER V. CAPITAL RESERVE FUNDS.

Article 35.

Capital Reserve Funds.

§ 160-431. Investments.—The cash balance, or parts thereof, of the capital reserve fund may be deposited at interest or invested as provided by G.S. 159-28.1. (1957, c. 863, s. 1; 1967, c. 798, s. 2.)

Editor's Note.—The 1967 amendment rewrote this section.

SUBCHAPTER VI. EXTENSION OF CORPORATE LIMITS.

Article 36.

Extension of Corporate Limits.

Part 1. In General.

§ 160-445. Procedure for adoption of ordinance extending limits; effect of adoption when no election required; public hearing and notice thereof.—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. Provided, that it shall be essential and necessary to the validity of any ordinance extending the corporate limits of any municipality by annexation, pursuant to this section, to actually hold a public hearing pursuant to the notice herein required, and that a statement by or on behalf of the municipal governing body, of the purpose or reasons for the proposed extension of the corporate limits be made at the beginning of the public hearing, and that reasonable opportunity to be heard be given any who attend such public hearing with regard thereto. The public notice shall (i) fix the date, hour and place of the public hearing, and (ii) describe clearly the boundaries of the area under consideration. 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; 1967, c. 929.)

Editor's Note.—

The 1967 amendment added the second and third sentences.

Annexation Renders Ineffectual Zoning Authority of Prior Municipality.—Where property within the zoning authority of one municipal corporation is lawfully annexed by another municipal corporation, the zoning authority of the prior municipality becomes ineffectual immediately upon the annexation. Taylor v. Bowen, 272 N.C. 726, 158 S.E.2d 837 (1968).

§ 160-452. Annexation by petition.

Local Modification.—City of Fayetteville: 1969, c. 715.

Undeveloped Lands Should Only Be Annexed on Petition.—Large tracts of agricultural or vacant lands, where no evidence of urban development can be shown, should not be annexed in any event, except upon petition of the landowners. Lithium Corp. of America, Inc. v. Town of Bessemer City, 261 N.C. 532, 135 S.E.2d 574 (1964).

Part 2. Municipalities of Less than 5,000.

§ 160-453.1. Declaration of policy.

Proceeding Is Summary.—A proceeding by a municipality to annex territory pursuant to this part is summary in nature. Southern Ry. v. Hook, 261 N.C. 517, 135 S.E.2d 562 (1964).

And the material statutory requirements must be complied with. Southern Ry. v. Hook, 261 N.C. 517, 135 S.E.2d 562 (1964).

Applied in Lithium Corp. of America, Inc. v. Town of Bessemer City, 261 N.C. 532, 135 S.E.2d 574 (1964); Safrit v. Costlow, 270 N.C. 680, 155 S.E.2d 252 (1967).

§ 160-453.2. Authority to annex.

Local Modification.—Cumberland: 1969, c. 1058, subject to referendum.

§ 160-453.3. Prerequisites to annexation; ability to serve; report and plans.

Local Modification.—Franklin: 1969, c. 1232.

Local Modification Held Unconstitutional. — Chapter 1189, Session Laws 1963, amending paragraph b of subdivision (3) of this section solely as it applies to the town of Beaufort and providing that a municipality shall not be required to extend sewage outfalls into an area annexed by it in the event that the municipal sewerage system shall have been declared a source of unlawful pollution is a local act relating to health and sanitation within the meaning of N.C. Const., Art. II, § 29, and is unconstitutional and void. Gaskill v. Costlow, 270 N.C. 686, 155 S.E.2d 148 (1967); Safrit v. Costlow, 270 N.C. 680, 155 S.E.2d 252 (1967).

Remedy Where Municipality Has Not Carried Out Service Plans Adopted under Subdivision (3). — The statutory remedy for owners of property in annexed territory where the municipality has not followed through on its service plans adopted under the provisions of subdivision (3) of this section and subsection (e) of § 160-453.5 is by writ of mandamus. Safrit v. Costlow, 270 N.C. 680, 155 S.E.2d 252 (1967).

§ 160-453.4. Character of area to be annexed.

This section was not copied from the laws of other states, but is a result of a study and recommendations made by the Municipal Government Study Commission, which was established in accordance with Joint Resoluton 51 of the General Assembly of 1957. Lithium Corp. of America, Inc. v. Town of Bessemer City, 261 N.C. 532, 135 S.E.2d 574 (1964).

Two Tests Provided for Determining Availability. — The General Assembly adopted a standard containing two tests for determining availability for annexation: (1) The use test—that not less than 60% of the lots and tracts in the area must be in actual use, other than for agriculture, and (2) the subdivision test—not less than 60% of the acreage which is in residential use, if any, and is vacant must consist of lots and tracts of five acres or less in size. Lithium Corp. of America, Inc. v. Town of Bessemer City, 261 N.C. 532, 135 S.E.2d 574 (1964).

Both Tests Must Be Complied with.—The fact that the General Assembly connected the two test clauses in subsection (c) of this section with the conjunctive "and," and the clear abuses and hardships which a literal application of the use test, if alone applied, would produce, leads to the conclusion that the legislative intent is that both tests be complied with. Lithium Corp. of America, Inc. v. Town of Bessemer City, 261 N.C. 532, 135 S.E.2d 574 (1964).

But Application of Both Tests May Cause Absurd Results in Extreme Cases. —Literal insistence upon the application of both tests in subsection (c) might in some extreme and improbable circum-

stances bring about absurd results adverse to municipalities. Lithium Corp. of America, Inc. v. Town of Bessemer City, 261 N.C. 532, 135 S.E.2d 574 (1964).

"Use" means "to put into service" under subsection (c). Southern Ry. v. Hook, 261 N.C. 517, 135 S.E.2d 562 (1964).

Tract Held for Future Development Is Not "Used."—Where about a tenth of a tract of land, marked off by a bumper strip or barrier, is used for parking, and the rest of the tract is graded and held by the owner for possible future industrial development, the vacant part of the tract is not "used" for industrial purposes within the purview of subsection (c). Southern Ry. v. Hook, 261 N.C. 517, 135 S.E.2d 562 (1964).

Reason for Judicial Review.—The difficulties of applying the standards of this section in extreme cases are the reason the Municipal Government Study Commission recommended a provision for court review, set out in § 160-453.6, to determine whether the agency making the decision made a reasonable decision in accord with statutory standards. Lithium Corp. of America, Inc. v. Town of Bessemer City, 261 N.C. 532, 135 S.E.2d 574 (1964).

Nothing to Review Unless Compliance Is in Doubt. — If a municipality clearly complies with the standards of subsection (c) of this section, there is nothing to review with respect to the availability of an area proposed for annexation. Where compliance is in doubt, the determination must be made upon the facts in the particular case. Lithium Corp. of America, Inc. v. Town of Bessemer City, 261 N.C. 532, 135 S.E.2d 574 (1964).

§ 160-453.5. Procedure for annexation.

(h) Remedies for Failure to Provide Services.—If, not earlier than one year from the effective date of annexation, and not later than fifteen months from the effective date of annexation, any person owning property in the annexed territory shall believe that the municipality has not followed through on its service plans adopted under the provisions of §§ 160-453.3 (3) and 160-453.5 (e), such person may apply for a writ of mandamus under the provisions of article 40, chapter 1 of the General Statutes. Relief may be granted by the judge of superior court

(1) If the municipality has not provided the services set forth in its plan submitted under the provisions of § 160-453.3 (3) a on substantially the same basis and in the same manner as such services were provided within the rest of the municipality prior to the effective date of annexation, and

(2) If at the time the writ is sought such services set forth in the plan submitted under the provisions of § 160-453.3 (3) a are still being provided on substantially the same basis and in the same manner as on the date of annexation of the municipality.

Relief may also be granted by the judge of superior court

(1) If the plans submitted under the provisions of § 160-453.3 (3) c require the construction of major trunk water mains and sewer outfall lines and

(2) If contracts for such construction have not yet been let.

If a writ is issued, costs in the action, including a reasonable attorney's fee for such aggrieved person, shall be charged to the municipality. (1959, c. 1010, s. 5; 1967, c. 1226, s. 1.)

Editor's Note. — The 1967 amendment substituted "writ" for "unit" near the beginning of the last sentence in subsection (h). Section 4 of the amendatory act provides that it shall be construed as declaring the law as it existed prior to the enactment of the 1967 act and not as modifying the law.

As only subsection (h) was affected by the amendment, the rest of the section is not set out.

Where annexation is completed without being challenged in the manner prescribed by § 160-453.6, it becomes an accomplished fact and the remedies of property owners and citizens within the annexed areas are those provided in subsection (h) of this section. Gaskill v. Costlow, 270 N.C. 686, 155 S.E.2d 148 (1967).

Remedy Where Municipality Has Not Carried Out Service Plans Adopted under Subsection (e). — The statutory remedy for owners of property in annexed territory where the municipality has not followed through on its service plans adopted under the provisions of subdivision (3) of

§ 160-453.3 and subsection (e) of this section is by writ of mandamus. Safrit v. Costlow, 270 N.C. 680, 155 S.E.2d 252 (1967).

Time for Bringing Action for Mandamus. — The owner of property within territory annexed by a municipality may bring an action for mandamus after the expiration of one year from the effective date of annexation and prior to the expiration of 15 months from such date, to compel the municipality to follow through on its plans for furnishing essential municipal services to the area annexed in accordance with the plans filed in the proceedings. Safrit v. Costlow, 270 N.C. 680, 155 S.E.2d 252 (1967).

Cited in Lithium Corp. of America, Inc. v. Town of Bessemer City, 261 N.C. 532, 135 S.E.2d 574 (1964).

§ 160-453.6. Appeal.

Section Provides Only Procedure Available to Property Owners to Prevent Annexation.—The statutory remedy provided by this section is the only procedure available to property owners to prevent the annexation provided by an annexation ordinance. Gaskill v. Costlow, 270 N.C. 686, 155 S.E.2d 148 (1967).

Property Owner May Petition for Review within Thirty Days after Passage of Ordinance.—Any person owning property in annexed territory has a right, within thirty days following the passage of the annexation ordinance, to challenge its validity by petition for review filed in the superior court. Gaskill v. Costlow, 270 N.C. 686, 155 S.E.2d 148 (1967).

Thereafter, Remedies Are Those Provided in Subsection (h) of § 160-453.5. — Where annexation is completed without being challenged in the manner prescribed by this section, it becomes an accomplished fact and the remedies of property owners and citizens within the annexed areas are those provided in subsection (h) of § 160-453.5. Gaskill v. Costlow, 270 N.C. 686, 155 S.E.2d 148 (1967).

And Independent Action to Have Ordinance Declared Void Ab Initio May Not Be Maintained.—An owner of land in an area annexed by a municipality may attack the validity of the annexation ordinance only by filing a petition within 30 days following the passage of the ordinance seeking a review of the action of the municipal board of commissioners, in accordance with the procedure provided by this section, and an independent action instituted some 22 months after the adoption of the ordinance and seeking to have it declared void ab initio will be dismissed. Gaskill v. Costlow, 270 N.C. 686, 155 S.E.2d 148 (1967).

Reason for Judicial Review.—The difficulties of applying the standards of § 160-453.4 in extreme cases are the reason the Municipal Government Study Commission recommended a provision for court review, set out in this section, to determine whether the agency making the decision made a reasonable decision in accord with statutory standards. Lithium Corp. of America, Inc. v. Town of Bessemer City, 261 N.C. 532, 135 S.E.2d 574 (1964).

Nothing to Review if Compliance Is Clear.—If a municipality clearly complies with the standards of subsection (c) of § 160-453.4, there is nothing to review with respect to the availability of an area proposed for annexation. Lithium Corp. of America, Inc. v. Town of Bessemer City, 261 N.C. 532, 135 S.E.2d 574 (1964).

Where compliance is in doubt, the determination must be made upon the facts in the particular case with respect to the availability of an area proposed for annexation under subsection (c) of § 160-453.4. Lithium Corp. of America, Inc. v. Town of Bessemer City, 261 N.C. 532, 135 S.E.2d 574 (1964).

Applied in Safrit v. Costlow, 270 N.C. 680, 155 S.E.2d 252 (1967).

Cited in Southern Ry. v. Hook, 261 N.C. 517, 135 S.E.2d 562 (1964).

§ 160-453.11. Effect of part on other laws.—From and after July 1, 1959, this part shall be in full force and effect with respect to all municipalities having a population of less than five thousand (5,000) persons according to the last preceding federal decennial census. The provisions of part 1 of article 36 of chapter 160 of the General Statutes of North Carolina shall remain in full force and effect with respect to such municipalities as an alternative procedure until June 30, 1962. From and after July 1, 1962, all the provisions of part 1 of article 36 of chapter 160 of the General Statutes of North Carolina, with the exception of § 160-452 as it exists at the time of the passage of this part or as it may be amended at this session of the General Assembly, shall be repealed. Insofar as the provisions of this part are inconsistent with the provisions of any

other law, the provisions of this part shall be controlling. (1959, c. 1010, s. 11; 1961, c. 655, s. 1; 1967, c. 1226, s. 2.)

Local Modification.—Cumberland: 1969, c. 1058.

Editor's Note.—

The 1967 amendment inserted "part 1 of" preceding "article" in the second and third sentences. Section 4 of the amendatory act provides that it shall be construed as declaring the law as it existed prior to the enactment of the 1967 act and not as modifying the law.

§ 160-453.12. Counties excepted from part; part 1 continued for such counties.—The provisions of this part shall not apply to the following counties: Alleghany, Edgecombe, Halifax, Iredell, Nash, except for the towns of Nashville, Spring Hope, Castalia and Middlesex, Pender, Perquimans and Person, provided the provisions of this part shall apply to the towns of Whitakers, Sharpsburg, and Battleboro in Edgecombe and Nash counties. This part shall not apply to the town of King in Stokes County.

Notwithstanding any other provisions of this part, part 1 of article 36 of chapter 160 of the General Statutes of North Carolina and specifically G.S. 160-452, as the same may be rewritten or amended, shall remain in full force and effect as to the counties herein named. (1959, c. 1010, s. 12; 1961, c. 1081; 1965, cc. 782, 875; 1967, c. 156, s. 1; 1969, c. 438, s. 1; c. 1058, s. 1; c. 1232.)

Editor's Note.—

The first 1965 amendment inserted "except for the towns of Nashville, Spring Hope, Castalia and Middlesex" between "Nash" and "Pender" and substituted "towns of Whitakers, Sharpsburg, and" for "town of," all in the first paragraph.

The second 1965 amendment added the last sentence in the first paragraph.

Chapter 156, Session Laws 1967, effective July 1, 1967, deleted "Randolph" from the list of counties in the first paragraph.

The first 1969 amendment struck "Harnett" from the list of counties in the first paragraph.

The second 1969 amendment deleted "Cumberland" and the third 1969 amendment deleted "Franklin" from the list of counties in the first paragraph.

Chapter 1056, Session Laws 1967, as amended by c. 455, Session Laws 1969, struck out "Halifax" from the list of counties in the first paragraph. Chapter 1056, as amended, shall not be effective if, at a special election to be held in Halifax County on the same date as the 1970 primary election, a majority of the votes shall be cast "against 1959 annexation laws."

Cited in Southern Ry. v. Hook, 261 N.C. 517, 135 S.E.2d 562 (1964).

Part 3. Municipalities of 5,000 or More.

§ 160-453.14. Authority to annex.

Local Modification.—Cumberland: 1969, c. 1058, subject to referendum.

§ 160-453.15. Prerequisites to annexation; ability to serve; report and plans.

Local Modification.—Franklin: 1969, c. 1232.

§ 160-453.17. Procedure for annexation.

The extension by a city of sewer lines and other services into the annexed area, pursuant to the plan of annexation, is not a condition precedent to annexation, the statutory remedy for failure to extend such services being an application, by a person owning property in the annexed territory, for a writ of mandamus to compel such performance of the plan. Dale v. City of Morganton, 270 N.C. 567, 155 S.E.2d 136 (1967).

§ 160-453.19. Annexation recorded.

Requirement That Map and Ordinance Be Recorded Is Not Condition Precedent to Annexation.—The requirement in this section that a map of the annexed territory, together with a certified copy of the ordinance, be recorded in the office of the register of deeds and in the office of the Secretary of State is, obviously, not a

condition precedent to the effective annexation of the territory but the imposition of a duty to be performed after the annexation is complete. Dale v. City of Morganton, 270 N.C. 567, 155 S.E.2d 136 (1967).

§ 160-453.23. Effect of part on other laws.—From and after July 1, 1959, this part shall be in full force and effect with respect to all municipalities having a population of five thousand (5,000) or more persons according to the last preceding federal decennial census. The provisions of part 1 of article 36 of chapter 160 of the General Statutes of North Carolina shall remain in full force and effect with respect to such municipalities as an alternative procedure until June 30, 1962. From and after July 1, 1962, all the provisions of part 1 of article 36 of chapter 160 of the General Statutes of North Carolina, with the exception of § 160-452 as it exists at the time of the passage of this part or as it may be amended at this session of the General Assembly, shall be repealed. Insofar as the provisions of this part are inconsistent with the provisions of any other law, the provisions of this part shall be controlling. (1959, c. 1009, s. 11; 1961, c. 655, s. 2; 1967, c. 1226, s. 3.)

Editor's Note.—

The 1967 amendment inserted "part 1 of" preceding "article" in the second and third sentences. Section 4 of the amendatory act provides that it shall be construed as declaring the law as it existed prior to the enactment of the 1967 act and not as modifying the law.

Authorities Granted by Part 2 in Full Force on and after July 1, 1959. — Although chapter 1009 of the Session Laws of 1959 provided that the laws theretofore governing the annexation of territory by municipalities should remain in force to 1 July 1962, the authorities granted to municipalities by the 1959 act were and have been in full force on and after 1 July 1959. Dale v. City of Morganton, 270 N.C. 567, 155 S.E.2d 136 (1967).

§ 160-453.24. Counties excepted from part; part 1 continued for such counties.—The provisions of this part shall not apply to the following counties: Columbus, Halifax, Pender and Perquimans.

Notwithstanding any other provisions of this part, part 1 of article 36 of chapter 160 of the General Statutes of North Carolina and specifically G.S. 160-452, as the same may be rewritten or amended, shall remain in full force and effect as to the counties herein named. (1959, c. 1009, s. 12; 1961, cc. 468, 787; 1963, c. 728; 1967, c. 156, s. 2; 1969, c. 438, s. 2; c. 1058, s. 1; c. 1232.)

Local Modification.—Cumberland: 1969, c. 1058; city of Dunn: 1965, c. 1075, was repealed by 1969, c. 818, s. 4.

Editor's Note.—

Chapter 156, Session Laws 1967, effective July 1, 1967, deleted "Randolph" from the list of counties.

The first 1969 amendment deleted "Harnett" from the list of counties.

The second 1969 amendment deleted "Cumberland" and the third 1969 amendment deleted "Franklin" from the list of counties.

Chapter 1056, Session Laws 1967, as amended by c. 455, Session Laws 1969, deleted "Halifax" from the list of counties. Chapter 1056, as amended, shall not be effective if, at a special election to be held in Halifax County on the same date as the 1970 primary election, a majority of the votes shall be cast "against 1959 annexation laws."

SUBCHAPTER VII. URBAN REDEVELOPMENT.

Article 37.

Urban Redevelopment Law.

§ 160-454. Short title.

Editor's Note. — For comment on the public purpose doctrine, see 3 Wake Forest Intra. L. Rev. 37 (1967).

Constitutionality.—

The constitutionality of this article has been upheld by the Supreme Court. Horton v. Redevelopment Comm'n, 262 N.C. 306, 137 S.E.2d 115 (1964).

A redevelopment commission is a municipal corporation for the purpose of tax exemption. Redevelopment Comm'n v. Guilford County, 274 N.C. 585, 164 S.E.2d 476 (1968).

A redevelopment commission is a municipal corporation and exempt from ad valorem taxation. Redevelopment Comm'n v. Guilford County, 1 N.C. App. 512, 162 S.E.2d 108 (1968).

A redevelopment commission, just as any other municipal corporation, is to be taxed for property held by it for purposes other than governmental. Redevelopment Comm'n v. Guilford County, 1 N.C. App. 512, 162 S.E.2d 108 (1968).

Properties owned by a redevelopment commission, both improved and unimproved, from which income is being derived are subject to ad valorem taxes. It is only the nonincome producing properties, both improved and unimproved, which are to be exempt from taxation. Redevelopment Comm'n v. Guilford County, 1 N.C. App. 512, 162 S.E.2d 108 (1968).

Cited in Hagins v. Redevelopment Comm'n, 275 N.C. 90, 165 S.E.2d 490 (1969); Hagins v. Redevelopment Comm'n, 1 N.C. App. 40, 159 S.E.2d 584 (1968); Redevelopment Comm'n v. Abeyounis, 1 N.C. App. 270, 161 S.E.2d 191 (1968); Chambers v. Redevelopment Comm'n, 2 N.C. App. 355, 163 S.E.2d 121 (1968).

§ 160-456. Definitions.

(1) "Area of operation"—The area within the territorial boundaries of the city or county for which a particular commission is created.

(2) "Blighted area" shall mean an area in which there is a predominance of buildings or improvements (or which is predominantly residential in character), and which, by reason of dilapidation, deterioration, age or obsolescence, inadequate provision for ventilation, light, air, sanitation, or open spaces, high density of population and overcrowding, unsanitary or unsafe conditions, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, substantially impairs the sound growth of the community, is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency and crime, and is detrimental to the public health, safety, morals or welfare; provided, no area shall be considered a blighted area nor subject to the power of eminent domain, within the meaning of this article, unless it is determined by the planning commission that at least two thirds of the number of buildings within the area are of the character described in this subdivision and substantially contribute to the conditions making such area a blighted area; provided that if the power of eminent domain shall be exercised under the provisions of this article, the property owner or owners or persons having an interest in property shall be entitled to be represented by counsel of their own selection and their reasonable counsel fees fixed by the court, taxed as a part of the costs and paid by the petitioners.

(7) "Governing body"—In the case of a city or town, the city council or other legislative body. The board of county commissioners.

(9) "Municipality"—Any incorporated city or town, or any county.

(10) "Nonresidential redevelopment area" shall mean an area in which there is a predominance of buildings or improvements, whose use is predominantly nonresidential, and which, by reason of:

a. Dilapidation, deterioration, age or obsolescence of buildings and other structures,
b. Inadequate provisions for ventilation, light, air, sanitation or open spaces,
c. Defective or inadequate street layout,
d. Faulty lot layout in relation to size, adequacy, accessibility, or usefulness,
e. Tax or special assessment delinquency exceeding the fair value of the property,
f. Unsanitary or unsafe conditions,
g. The existence of conditions which endanger life or property by fire and other causes, or
h. Any combination of such factors
    1. Substantially impairs the sound growth of the community,
    2. Has seriously adverse effects on surrounding development, and
    3. Is detrimental to the public health, safety, morals or welfare;

provided, no such area shall be considered a nonresidential redevelopment area nor subject to the power of eminent domain, within the meaning of this article, unless it is determined by the planning commission that at least one half of the number of buildings within the area are of the character described in this subdivision and substantially contribute to the conditions making such area a nonresidential redevelopment area; provided that if the power of eminent domain shall be exercised under the provisions of this article, the property owner or owners or persons having an interest in property shall be entitled to be represented by counsel of their own selection and their reasonable counsel fees fixed by the court, taxed as a part of the costs and paid by the petitioners.

(1967, c. 1249; 1969, c. 1208, s. 1.)

Editor's Note.—

The 1967 amendment substituted "property owner or owners or persons having an interest in property" for "respondent or respondents" in the last proviso in subdivision (2) and in the last proviso in subdivision (10).

The 1969 amendment inserted "or county" in subdivision (1), added "The board of county commissioners" at the end of subdivision (7) and "or any county" at the end of subdivision (9).

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

Opinions of Attorney General. — Mr. William I. Cochran, Jr., Executive Director, Redevelopment Commission of the City of Washington, 8/4/69.

Areas which are in fact "blighted" cannot be enlarged to include areas which are not in fact "blighted." Any other conclusion would vest a redevelopment commission with authority which the legislature has expressly denied it. Horton v. Redevelopment Comm'n, 264 N.C. 1, 140 S.E.2d 728 (1965).

The legislature never intended to permit a planning commission or a redevelopment commission to include within the boundaries of a "blighted area" an area not meeting the statutory definition, even though the area might qualify as a nonresidential area, or as a rehabilitation, conservation and reconditioning area. Horton v. Redevelopment Comm'n, 264 N.C. 1, 140 S.E.2d 728 (1965).

But Conditions May Be Corrected in Redevelopment Area Embracing Blighted and Other Defined Areas. — A planning commission may correct objectionable conditions within a redevelopment area, consisting of a blighted area, a nonresidential redevelopment area, and a rehabilitation, conservation and reconditioning area. Horton v. Redevelopment Comm'n, 264 N.C. 1, 140 S.E.2d 728 (1965).

Property Must Be "Blighted" and Endanger Area for Condemnation in Rehabilitation, Conservation and Reconditioning Area.—In a "rehabilitation, conservation and reconditioning area," no individual tract, building or improvement shall be subject to the power of eminent domain,

within the meaning of the Urban Redevelopment Law (§ 160-454 et seq.), unless it is "blighted" property and substantially contributes to the condition endangering the area. Horton v. Redevelopment Comm'n, 262 N.C. 306, 137 S.E.2d 115 (1964).

§ 160-457.1. Alternative organization.—(a) In lieu of creating a redevelopment commission as authorized herein, the governing body of any municipality may, if it deems wise, either designate a housing authority created under the provisions of chapter 157 of the General Statutes to exercise the powers, duties, and responsibilities of a redevelopment commission as prescribed herein, or undertake to exercise such powers, duties, and responsibilities itself. Any such designation shall be by passage of a resolution adopted in accordance with the procedure and pursuant to the findings specified in G.S. 160-457 (a) and (b). In the event a governing body designates itself to preform the powers, duties, and responsibilities of a redevelopment commission, then where any act or proceeding is required to be done, recommended, or approved both by a redevelopment commission and by the municipal governing body, then the performance, recommendation, or approval thereof once by the municipal governing body shall be sufficient to make such performance, recommendation, or approval valid and legal. In the event a municipal governing body designates itself to exercise the powers, duties, and responsibilities of a redevelopment commission, it may assign the administration of redevelopment policies, programs and plans to any existing or new department of the municipality.

(b) The governing body of any municipality which has prior to July 1, 1969 created, or which may hereafter create, a redevelopment commission may, in its discretion, by resolution abolish such redevelopment commission, such abolition to be effective on a day set in such resolution not less than 90 days after its adoption. Upon the adoption of such a resolution, the redevelopment commission of the municipality is hereby authorized and directed to take such actions and to execute such documents as will carry into effect the provisions and the intent of the resolution, and as will effectively transfer its authority, responsibilities, obligations, personnel, and property, both real and personal, to the municipality. Any municipality which abolishes a redevelopment commission pursuant to this subsection may, at any time subsequent to such abolition or concurrently therewith, exercise the authority granted by subsection (a) of this section.

On the day set in the resolution of the governing body:

(1) The redevelopment commission shall cease to exist as a body politic and corporate and as a public body;

(2) All property, real and personal and mixed, belonging to the redevelopment commission shall vest in, belong to, and be the property of the municipality;

(3) All judgments, liens, rights of liens, and causes of action of any nature in favor of the redevelopment commission shall remain, vest in, and inure to the benefit of the municipality;

(4) All rentals, taxes, assessments, and any other funds, charges or fees, owing to the redevelopment commission shall be owed to and collected by the municipality;

(5) Any actions, suits, and proceedings pending against, or having been instituted by the redevelopment commission shall not be abated by such abolition, but all such actions, suits, and proceedings shall be continued and completed in the same manner as if abolition had not occurred, and the municipality shall be a party to all such actions, suits, and proceedings in the place and stead of the redevelopment commission and shall pay or cause to be paid any judgment rendered against the redevelopment commission in any such actions, suits, or proceedings, and no new process need be served in any such action, suit, or proceeding;

(6) All obligations of the redevelopment commission, including outstanding indebtedness, shall be assumed by the municipality, and all such obligations and outstanding indebtedness shall be constituted obligations and indebtedness of the municipality;

(7) All ordinances, rules, regulations and policies of the redevelopment commission shall continue in full force and effect until repealed or amended by the governing body of the municipality. (1969, c. 1217, s. 1.)

§ 160-457.2. Creation of a county redevelopment commission. — If the board of county commissioners of a county by resolution declares that blighted areas do exist in said county, and the redevelopment of such areas is necessary in the interest of public health, safety, morals, or welfare of the residents of such county, the county commissioners of said county are hereby authorized to create a separate and distinct body corporate and politic to be known as the redevelopment commission of said county by passing a resolution to create such a commission to function in the territorial limits of said county. Provided, however, that notice of the intent to consider passage of such a resolution or ordinance shall be published at least ten days prior to the meeting of the board of county commissioners for such purposes, and further provided that the redevelopment commission shall not function in an area where such a commission exists or in the corporate limits of a municipality without resolution of agreement by said municipality.

All of the provisions of article 37, chapter 160 of the General Statutes, shall be applicable to county redevelopment commissions, including the formation, appointment, tenure, compensation, organization, interest and powers as specified therein. (1969, c. 1208, s. 2.)

§ 160-457.3. Creation of a regional redevelopment commission.—If the board of county commissioners of two or more contiguous counties by resolution declare that blighted areas do exist in said counties and the redevelopment of such areas is necessary in the interest of public health, morals, or welfare of the residents of such counties, the county commissioners of said counties are hereby authorized to create a separate and distinct body corporate and politic to be known as the regional redevelopment commission by the passage of a resolution by each county to create such a commission to function in the territorial limits of the counties; provided, however, that notice of the intent to consider passage of such a resolution or ordinance shall be published at least ten days prior to the meeting of the board of county commissioners for such purposes, and further provided that the redevelopment commission shall not function in an area where such a commission exists or in the corporate limits of a municipality without resolution of agreement by the municipality.

The board of county commissioners of each county included in the regional redevelopment commission shall appoint one person as a commissioner and such a person may be appointed at or after the time of the adoption of the resolution creating the redevelopment commission. The board of county commissioners shall have the authority to appoint successors or to remove persons for misconduct who are appointed by them. Each commissioner to the redevelopment commission shall serve for a five-year term except that initial appointments may be for less time in order to establish a fair donation system of appointments. In the event that a regional redevelopment commission shall have an even number of counties, the Governor of North Carolina shall appoint a member to the commission from the area to be served. The appointed members as commissioners shall constitute the regional redevelopment commission and certification of appointment shall be filed with the Secretary of State as part of the application for charter.

All provisions of the "Urban Redevelopment Law" as defined in article 37 of chapter 160 of the General Statutes, shall apply to the creation and operation of a regional redevelopment commission, and where reference is made to municipality,

it shall be interpreted to apply to the area served by the regional redevelopment commission. (1969, c. 1208, s. 3.)

§ 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 such compensation, if any, as the municipal governing board may provide for this service, and 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; 1967, c. 932, s. 4.)

Editor's Note. — The 1967 amendment substituted "such compensation, if any, as the municipal governing board may provide" for "no compensation" and substituted "and" for "but" all in the last sentence.

§ 160-462. Powers of commission.

(18) To perform redevelopment project undertakings and activities in one or more contiguous or noncontiguous redevelopment areas which are planned and carried out on the basis of annual increments. (1951, c. 1095, s. 9; 1961, c. 837, ss. 5, 7; 1969, c. 254, s. 1.)

Editor's Note.—

The 1969 amendment added subdivision (18).

As the other subdivisions were not affected by the amendment, they are not set out.

The rule allowing evidence of value at times before or after the taking is analogous to the rule which allows evidence of the purchase price paid for property sometime prior to the date of taking. Wilson Redevelopment Comm'n v. Stewart, 3 N.C. App. 271, 164 S.E.2d 495 (1968).

Determining Fair Market Value.—In determining the fair market value of property taken in condemnation, it is generally regarded as competent to show the value of the property within a reasonable time before and/or after the taking as bearing upon its value at the time of the appropriation. The rule is necessarily one of variableness in the time limits, depending upon the nature of the property, its location and surrounding circumstances, and whether the evidence offered fairly points to its value at the time in question. Wilson Redevelopment Comm'n v. Stewart, 3 N.C. App. 271, 164 S.E.2d 495 (1968).

In determining whether evidence of the value at sometime prior to the taking is admissible to show fair market value at the time of the taking, the inquiry is whether under all the circumstances that appraisal fairly points to the value of the property at the time of the taking. Wilson Redevelopment Comm'n v. Stewart, 3 N.C. App. 271, 164 S.E.2d 495 (1968).

Sales prices of nearby property are admissible on cross-examination to test the witness' knowledge of values and for the purposes of impeachment. Wilson Redevelopment. Comm'n v. Stewart, 3 N.C. App. 271, 164 S.E.2d 495 (1968).

It would seem that the utmost freedom of cross-examination with reference to sales and sales prices in the vicinity should be accorded the landowner, subject to the right and duty of the presiding judge to exercise his sound discretion in controlling the nature and scope of the cross-examination in the interest of justice and in confining the testimony within the rules of competency, relevancy and materiality. It follows that the condemnor should be accorded similar freedom. Wilson Redevelopment Comm'n v. Stewart, 3 N.C. App. 271, 164 S.E.2d 495 (1968).

§ 160-463. Preparation and adoption of redevelopment plans.

(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; provided, however, that the commission may acquire, through negotiation, specific pieces of property in the redevelopment area prior to the approval of such plan when the governing body finds that advance acquisition of such properties is in the public interest and specifically approves such action.

(d) The redevelopment commission's redevelopment plan shall include, without being limited to, the following:

(1) The boundaries of the area, with a map showing the existing uses of the real property therein;

(2) A land use plan of the area showing proposed uses following redevelopment;

(3) Standards of population densities, land coverage and building intensities in the proposed redevelopment;

(4) A preliminary site plan of the area;

(5) A statement of the proposed changes, if any, in zoning ordinances or maps;

(6) A statement of any proposed changes in street layouts or street levels;

(7) A statement of the estimated cost and method of financing redevelopment under the plan; provided, that where redevelopment activities are performed on the basis of annual increments, such statement to be sufficient shall set forth a schedule of the activities proposed to be undertaken during the incremental period, together with a statement of the estimated cost and method of financing such scheduled activities only;

(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.

(j) Subject to the proviso in subsection (c) of this section, upon approval by the governing body of the redevelopment plan, the commission is authorized to acquire property, to execute contracts for clearance and preparation of the land for resale, and to take other actions necessary to carry out the plan, in accordance with the provisions of this article.

(1965, c. 808; 1969, c. 254, s. 2.)

Editor's Note.—

The 1965 amendment added the proviso in subsection (c), and inserted "Subject to the proviso in subsection (c) of this section" at the beginning of subsection (j).

The 1969 amendment rewrote subdivision (7) of subsection (d).

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

The procedures required by this section are designed to guard against arbitrary action by either the governing body of the community or the redevelopment commission, and thus afford protection to persons owning property in the affected area. Unless these procedures are strictly followed, a redevelopment commission has no authority to exercise the power of eminent domain. Redevelopment Comm'n v. Abeyounis, 1 N.C. App. 270, 161 S.E.2d 191 (1968).

Stating Cause of Action for Condemnation.—A redevelopment commission, in order to state a cause of action for condemnation, must properly allege, inter alia, a redevelopment plan which complies with this section; the compliance with the procedures for approval of the redevelopment plan; and the approval of the plan by the governing body of the area in which the project is located. Redevelopment Comm'n v. Abeyounis, 1 N.C. App. 270, 161 S.E.2d 191 (1968).

Plan Must Provide for Acquiring Redevelopment Area and Other Necessary Costs.—A redevelopment plan must, under subsection (d) (7) of this section, provide a method of financing of acquisition of the redevelopment area, and of all other costs necessary to prepare the area for redevelopment, which method must, of course, be legal and feasible. Horton v. Redevelopment Comm'n, 262 N.C. 306, 137 S.E.2d 115 (1964).

Stated in Horton v. Redevelopment Comm'n, 264 N.C. 1, 140 S.E.2d 728 (1965).

§ 160-464. Required procedures for contracts, purchases and sales; powers of commission in carrying out redevelopment project.—(a) A commission may privately contract for engineering, legal, surveying, professional or other similar services without advertisement or bid.

(b) In entering and carrying out any contract for construction, demolition, mov-

ing of structures, or repair work or the purchase of apparatus, supplies, materials, or equipment, a commission shall comply with the provisions of article 8 of chapter 143 of the General Statutes. In construing such provisions, the commission shall be considered to be the governing board of a "subdivision of the State," and a contract for demolition or moving of structures, shall be treated in the same manner as a contract for construction or repair. Compliance with such provisions shall not be required, however, where the commission enters into contracts with the municipality which created it for the municipality to furnish any such services, work, apparatus, supplies, materials, or equipment; the making of these contracts without advertisement or bids is hereby specifically authorized. Advertisement or bids shall not be required for any contract for construction, demolition, moving of structures, or repair work, or for the purchase of apparatus, supplies, materials, or equipment, where such contract involves the expenditure of public money in an amount less than five hundred dollars ($500.00).

(c) 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 specified in subsection (d) below.

(d) Except as hereinafter specified, no sale of any property by the commission or agreement relating thereto shall be effected except after advertisement, bids and award as hereinafter set out. The commission shall, by public notice, by publication once a week for two consecutive weeks in a newspaper having general circulation in the municipality, invite proposals and shall make available all pertinent information to any persons interested in undertaking a purchase of property or the redevelopment of an area or any part thereof. The commission may require such bid bonds as it deems appropriate. After receipt of all bids, the sale shall be made to the highest responsible bidder. All bids may be rejected. All sales shall be subject to the approval of the governing body of the municipality. Nothing herein, however, shall prevent the sale at private sale without advertisement and bids to the municipality or other public body, or to a nonprofit association or corporation operated exclusively for educational, scientific, literary, cultural, charitable or religious purposes, of such property as is specified in subdivisions (1), (2), (3), or (4) of subsection (e) of this section, provided that such sale is in accordance with the provisions of said subdivisions. The commission may also sell personal property of a value of less than five hundred dollars ($500.00) at private sale without advertisement and bids.

(e) In carrying out a redevelopment project, the commission may:

(1) With or without consideration and at private sale convey to the municipality in which the project is located such real property as, in accordance with the redevelopment plan, is to be laid out into streets, alleys, and public ways;

(2) With or without consideration, convey at private sale, grant, or dedicate easements and rights-of-way for public utilities, sewers, streets and other similar facilities, in accordance with the redevelopment plan; and

(3) With or without consideration and at private sale convey to the municipality, county or other appropriate public body such real property as, in accordance with the redevelopment plan, is to be used for parks, schools, public buildings, facilities or other public purposes.

(4) After a public hearing advertised in accordance with the provisions of § 160-463 (e), and subject to the approval of the governing body of the municipality, convey to a nonprofit association or corporation

organized and operated exclusively for educational, scientific, literary, cultural, charitable or religious purposes, no part of the net earnings of which inure to the benefit of any private shareholder or individual, such real property as, in accordance with the redevelopment plan, is to be used for the purposes of such associations or corporations. Such conveyance shall be for such consideration as may be agreed upon by the commission and the association or corporation, which shall not be less than the fair value of the property agreed upon by a committee of three professional real estate appraisers currently practicing in the State, which committee shall be appointed by the commission. All conveyances made under the authority of this subsection shall contain restrictive covenants limiting the use of property so conveyed to the purposes for which the conveyance is made.

(f) After receiving the required approval of a sale from the governing body of the municipality, the commission may execute any required contracts, deeds, and other instruments and take all steps necessary to effectuate any such contract or sale. Any contract of sale between a commission and a redeveloper may contain, without being limited to, any or all of the following provisions:

(1) Plans prepared by the redeveloper or otherwise and such other documents as may be required to show the type, material, structure and general character of the proposed redevelopment;

(2) A statement of the use intended for each part of the proposed redevelopment;

(3) A guaranty of completion of the proposed redevelopment 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 proposed redevelopment;

(6) Such other continuing controls as may be deemed necessary to effectuate the purposes of this article.

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.

(g) The commission may temporarily rent or lease, operate and maintain real property in a redevelopment project area, pending the disposition of the property for redevelopment, for such uses and purposes as may be deemed desirable even though not in conformity with the redevelopment plan. (1951, c. 1095, s. 11; 1961, c. 837, s. 9; 1963, c. 1212, ss. 1, 2; 1965, c. 679, s. 2; 1967, c. 24, s. 18; c. 932, s. 1.)

Local Modification. — City of Charlotte and city of Durham: 1965, c. 1206; 1967, c. 815.

Editor's Note.—

The 1965 amendment rewrote this section.

Section 4 of the 1963 amendatory act was amended by Session Laws 1965, c. 539, which struck Mecklenburg from the list of excepted counties, and by Session Laws 1965, c. 818, which struck Forsyth from the list of excepted counties.

The word "effected" in the first sentence of subsection (d) is "affected" in the 1965 Session Laws.

The first 1967 amendment inserted the word "of" following "provisions" near the beginning of subdivision (4) of subsection (e) and corrected the reference near the beginning of the same subdivision. The second 1967 amendment made exactly the same changes as the first.

Chapter 24, Session Laws 1967, was originally effective Oct. 1, 1967, but was amended by c. 1078 so as to become effective July 1, 1967.

§ **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 accordance with the provisions of article 2 of chapter 40 of the General Statutes, with the following modifications:

(1) Upon the request in writing of any party to the proceeding submitted as part of the petition or of any answer thereto, the clerk of superior court shall order and preside over a formal hearing before the commissioners of appraisal at the time of their first meeting. At such hearing any party or his attorney shall be afforded an opportunity to present such competent evidence as he may choose relating to the value of the property in question.

(2) Upon payment into court of the amount specified by the commissioners, as provided in § 40-19, title to the property or other interest specified in the petition, together with the right to immediate possession thereof, shall vest in the commission, and the court or judge shall enter such orders in the cause as may be required to place the commission in possession. Such property or interest therein shall be deemed to be condemned and the right to just compensation therefor shall vest in the person or persons owning said property or any compensable interest therein. Payment into court of this amount shall not prejudice the right of the commission to take an appeal as to the amount of compensation payable for the property.

(3) Following payment into court of the amount specified by the commissioners, the court may upon application of the person or persons owning said property or having any compensable interest therein (and subject to the provisions of § 40-23) order that the money deposited or any part thereof be paid to the person or persons entitled thereto. The court shall have power to make such orders with respect to encumbrances, liens, rents, taxes, assessments, insurance and other charges, if any, as shall be just and equitable.

Acceptance or receipt of money thus disbursed shall not prejudice the right of any party to further proceedings in the cause to determine just compensation, and in the event that an increased amount is awarded, the amount thus received shall be applied as a credit against the total compensation awarded. In the event that a lesser amount is awarded, the appropriate amount shall be returned to the court for repayment to the redevelopment commission, and the court shall have power to make any necessary orders requiring such repayment.

(4) To the amount awarded as damages by the commissioners, jury, or judge, the judge shall as a part of just compensation add interest at the rate of six percent (6%) per annum on said amount from the date of taking to the date of judgment; but interest shall not be allowed from the date of deposit on so much thereof as shall have been paid into court as provided in this section. For the purposes of this subdivision, the "date of taking" shall be the date on which the petition is filed.

(5) Pending disbursement of any funds thus paid into court, the clerk of superior court may in his discretion invest part or all of said funds as permitted by § 2-55. Any interest or dividends accruing from such deposit shall be applied to the sum finally ascertained to be due the owners of the property taken, and any excess resulting shall be returned to the redevelopment commission.

Subdivisions (2), (3), (4), (5) shall not be applicable in a suit against a corporation possessing the power of eminent domain under chapter 40 of the General Statutes in which such corporation, by its answer, raises the issue of the right of the commission to condemn the land or interest therein of such corporation.

Section 40-10 shall not apply to the 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. The Department of Administration is hereby empowered to give such consent on behalf of the State; the governing board of any municipality or county is authorized to give such consent on behalf of the municipality or county. (1951, c. 1095, s. 12; 1965, c. 679, s. 3; c. 1132; 1967, c. 932, ss. 2, 3.)

Editor's Note. — The first 1965 amendment rewrote this section. The second 1965 amendment, effective retroactively to May 25, 1965, added the second paragraph of present subdivision (5).

The 1967 amendment inserted present subdivision (1) and renumbered the following subdivisions accordingly, substituted "(2), (3), (4), (5)" for "(1), (2), (3), (4)" in the second paragraph of present subdivision (5) and added the last sentence of present subdivision (2).

For an article urging revision and recodification of North Carolina's eminent domain laws, see 45 N.C.L. Rev. 587 (1967).

Opinions of Attorney General. — Mr. William I. Cochran, Jr., Executive Director, Redevelopment Commission of the City of Washington, 8/4/69.

Strict Construction.—The exercise of the power of eminent domain is in derogation of common right, and all laws conferring such power must be strictly construed. Redevelopment Comm'n v. Abeyounis, 1 N.C. App. 270, 161 S.E.2d 191 (1968); Greensboro-High Point Airport Authority v. Irvin, 2 N.C. App. 341, 163 S.E.2d 118 (1968).

Prerequisites to Exercise of Power of Eminent Domain.—The basic prerequisites to a redevelopment commission's gaining the authority to exercise the power of eminent domain are now, and at all times have been, the prerequisite procedures required by chapter 40, article 2, and chapter 160, article 37, with the modifications as now set out in this section. Redevelopment Comm'n v. Abeyounis, 1 N.C. App. 270, 161 S.E.2d 191 (1968).

Instantaneous Condemnation. — Under the provisions of subdivision (2) of this section, there is an instantaneous condemnation merely by the act of the commission paying into court the sum specified by the commissioners of appraisal. Redevelopment Comm'n v. Abeyounis, 1 N.C. App. 270, 161 S.E.2d 191 (1968).

Cited in Redevelopment Comm'n v. Smith, 272 N.C. 250, 158 S.E.2d 65 (1967).

§ 160-466. Issuance of bonds.

Constitutionality.—

This section is not unconstitutional. Horton v. Redevelopment Comm'n, 262 N.C. 306, 137 S.E.2d 115 (1964).

Subsection (d) of this section does nothing more than provide alternative methods for the sale of bonds issued by the commission, and further provides that no such bonds shall be sold at less than par and accrued interest. Horton v. Redevelopment Comm'n, 262 N.C. 306, 137 S.E.2d 115 (1964).

§ 160-470. Grant of funds by community.

This section is not unconstitutional. Horton v. Redevelopment Comm'n, 262 N.C. 306, 137 S.E.2d 115 (1964).

Tax Can Only Be Levied for Expenses Necessary without Redevelopment Project. —Under this section, a municipality cannot legally levy a tax in connection with an urban redevelopment project for any purpose other than for streets, water, sewer and other such services as would constitute necessary expenses of the municipality, irrespective of whether or not a redevelopment project existed. Horton v. Redevelopment Comm'n, 262 N.C. 306, 137 S.E.2d 115 (1964).

And Bonds Cannot Be Issued for Unnecessary Expense without Election.—Pursuant to the following statement in this section, to wit: "To obtain funds for this purpose, the municipality may levy taxes and may in the manner prescribed by law issue and sell its bonds," a municipality could not issue and sell its bonds except in the manner prescribed by law, and the law requires that bonds issued to finance a project which is for a public purpose but not a necessary expense must be approved by the voters of the municipality if such bonds are obligations of the municipality. Horton v. Redevelopment Comm'n, 262 N.C. 306, 137 S.E.2d 115 (1964).

§ 160-474.1. Certain actions and proceedings validated.—All proceedings, resolutions, ordinances, motions, notices, findings, determinations, and other actions of redevelopment commissions, incorporated cities and towns, governing bodies, and planning boards and commissions, had and taken prior to January 1, 1965, pursuant to or purporting to comply with the Urban Redevelopment Law (G.S. 160-454 to 160-474.1) and incident to the creation and organization of redevelopment commissions and appointment of members thereof, designation of redevelopment and project areas, findings and determinations respecting conditions in redevelopment and project areas, preparation, development, review, processing and approval of urban redevelopment projects and plans, including redevelopment plans, calling and holding of public hearings, and the time and manner of giving and publishing notices thereof, are hereby in all respects legalized, ratified, approved, validated and confirmed, and all such actions are declared to be valid and lawfully authorized; provided, however, that no such actions shall be legalized, ratified, approved, validated or confirmed, under this section if they appertain to any redevelopment or project area, the acquisition or taking of any property in any such area, any urban redevelopment project or any redevelopment plan respecting which any decree or judgment has been rendered by the Supreme Court of North Carolina prior to May 25, 1965. (1963, c. 194; 1965, c. 680.)

Editor's Note.—
The 1965 amendment rewrote this section.

SUBCHAPTER VIII. PARKING AUTHORITIES AND FACILITIES.

Article 38.

Parking Authorities.

§ 160-476. Definitions.

(7) The term "parking project" shall mean any area or place operated or to to be operated by the authority for the parking or storing of motor and other vehicles, open to public use for a fee, 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, including on-street parking meters if so provided by the governing authority;

(1965, c. 998, s. 1.)

Editor's Note. — The 1965 amendment inserted "open to public use for a fee" near the beginning of subdivision (7) and added "including on-street parking meters if so provided by the governing authority" at the end of that subdivision.

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

§ 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 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; 1965, c. 998, s. 2.)

Editor's Note. — The 1965 amendment deleted "off-street" preceding "parking facilities" near the middle of the second sentence.

§ 160-482. Conveyance of property by the city to the authority; acquisition of property by the city or by the authority.

(c) 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 on-street 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.

(1965, c. 998, s. 3.)

Editor's Note. — The 1965 amendment substituted "on-street parking meters" for "such parking meters" in the third sentence of subsection (c).

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

ARTICLE 39.

Financing Parking Facilities.

§ 160-498. Definitions.

(4) The term "parking facilities" shall mean any area or place operated or to be operated by the authority for the parking or storing of motor and other vehicles open to public use for a fee, 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, including on-street parking meters if so provided by the governing authority.

(1965, c. 998, s. 4.)

Editor's Note. — The 1965 amendment rewrote subdivision (4). As the rest of the section was not affected by the amendment, it is not set out.

§ 160-504.1. Issuance of bonds under Revenue Bond Act of 1938 with additional financing by special assessments.—Notwithstanding any other provision of law a municipal corporation for the purpose of financing and paying the costs of off-street parking facilities may issue its revenue bonds as provided by the Revenue Bond Act of 1938, the same being article 34 of chapter 160 of the General Statutes, and in addition to pledging the revenues of such off-street parking facilities for the payment of said revenue bonds may also pledge the proceeds of special assessments, 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 in such event the amount of such bonds authorized shall be reduced by the amount of such payments. The special assessments herein referred to shall be assessed and collected in accordance with the procedure set forth in G.S. 160-504. (1965, c. 769, s. 1.)

Local Modification. — Craven: 1965, c. 769, s. 1½.

SUBCHAPTER X. ELECTRIC SERVICE IN MUNICIPAL AREAS.

ARTICLE 41.

Electric Service in Municipal Areas.

§ 160-510. Definitions.—With reference to electric service within a municipality, as used in this article, unless the context otherwise requires, the term:

(1) "Municipality" means the incorporated city or town;

(2) "Primary supplier" means the municipality, if it owns and maintains its own electric system, and means a person, firm, or corporation which furnishes electric service within the municipality pursuant to a franchise granted by, or contract with, the municipality, or which, having furnished service pursuant to a franchise or contract, is continuing to furnish service within the municipality after the expiration of the franchise or contract;

(3) "Secondary supplier" means a person, firm, or corporation which is furnishing electricity at retail to one or more consumers other than itself within the limits of the municipality, but which is not a primary supplier: Provided, that a primary supplier which furnishes electric service within the municipality pursuant to a franchise or contract which limits or restricts the classes of consumers or types of electric service permitted to such supplier shall, in and with respect to any area

annexed by the municipality after April 20, 1965, be a primary supplier for such classes of consumers or types of service and, if it is furnishing other electric service in the annexed area on the effective date of annexation, shall be a secondary supplier, in and with respect to such annexed area, for all other electric service; provided further, that a primary supplier which is continuing to furnish electric service after the expiration of a franchise or contract which limited or restricted such primary supplier with respect to classes of consumers or types of electric service shall, in and with respect to any area annexed by the municipality after April 20, 1965, be a secondary supplier for all electric service if it is furnishing electric service in the annexed area on the effective date of annexation;

(4) "Premises" means the building, structure, or facility to which electricity is being or is to be furnished; provided, that two or more buildings, structures, or facilities which are located on one tract or contiguous tracts of land and are utilized by one electric consumer for commercial, industrial, institutional, or governmental purposes, shall together constitute one "premises," except that any such building, structure, or facility shall not, together with any other building, structure, or facility, constitute one "premises" if the electric service to it is separately metered and the charges for such service are calculated independently of charges for service to any other building, structure, or facility; and

(5) "Line" means any conductor located inside the municipality for the distribution or transmission of electricity, other than

a. In the case of overhead construction, a conductor from the pole nearest the premises of a consumer to such premises, or a conductor from a line tap to such premises, and

b. In the case of underground construction, a conductor from the transformer (or the junction point, if there be one) nearest the premises of a consumer to such premises. (1965, c. 287, s. 1.)

§ 160-511. Service within existing municipal corporate limits.— In any municipality in which, on April 20, 1965, a secondary supplier is furnishing electric service, the suppliers of electric service inside the corporate limits of such municipality, as such limits exist on April 20, 1965, shall have rights and be subject to restrictions as follows:

(1) The secondary supplier shall have the right to serve all premises being served by it, or to which any of its facilities for service are attached, on April 20, 1965.

(2) The secondary supplier shall have the right, subject to subdivision (3) of this section, to serve all premises initially requiring electric service after April 20, 1965 which are located wholly within 300 feet of its lines and located wholly more than 300 feet from the lines of the primary supplier, as such suppliers' lines exist on April 20, 1965.

(3) Any premises initially requiring electric service after April 20, 1965 which are located wholly within 300 feet of a secondary supplier's lines and wholly within 300 feet of another secondary supplier's lines, but wholly more than 300 feet from the primary supplier's lines, as the lines of all suppliers exist on April 20, 1965, may be served by the secondary supplier which the consumer chooses, and no other supplier shall thereafter furnish electric service to such premises, except upon the written consent of the supplier then serving the premises.

(4) A primary supplier shall not furnish electric service to any premises which a secondary supplier has the right to serve as set forth in sub-

divisions (1), (2), and (3) of this section, except upon the written consent of the secondary supplier.

(5) Any premises initially requiring electric service after April 20, 1965 which are located wholly or partially within 300 feet of the primary supplier's lines and are located wholly or partially within 300 feet of the secondary supplier's lines, as such suppliers' lines exist on April 20, 1965, may be served by either the secondary supplier or the primary supplier, whichever the consumer chooses, and no other supplier shall thereafter furnish service to such premises, except upon the written consent of the supplier then serving the premises.

(6) Any premises initially requiring electric service after April 20, 1965 which are located only partially within 300 feet of the secondary supplier's lines and are located wholly more than 300 feet from the primary supplier's lines, as such suppliers' lines exist on April 20, 1965, may be served by either the secondary supplier or the primary supplier, whichever the consumer chooses, and no other supplier shall thereafter furnish service to such premises, except upon the written consent of the supplier then serving the premises.

(7) Except as provided in subdivisions (1), (2), (3), (5), and (6) of this section, a secondary supplier shall not furnish electric service inside the corporate limits of such municipality as such limits exist on April 20, 1965, unless it first obtains the written consent of the municipality and of the primary supplier. (1965, c. 287, s. 1.)

§ 160-512. Service in annexed areas.—In any area annexed by a municipality after April 20, 1965 in which, on the effective date of the annexation, a secondary supplier is furnishing electric service, the suppliers of electric service within the municipality shall, in and with respect to such annexed area, have rights and be subject to restrictions as follows:

(1) The secondary supplier shall have the right to serve all premises being served by it, or to which any of its facilities for service are attached, on the effective date of the annexation.

(2) The secondary supplier shall have the right, subject to subdivision (3) of this section, to serve all premises initially requiring electric service after the effective date of the annexation which are located wholly within 300 feet of its lines and located wholly more than 300 feet from the lines of the primary supplier, as such suppliers' lines exist on the effective date of the annexation

(3) Any premises initially requiring electric service after the effective date of the annexation which are located wholly within 300 feet of a secondary supplier's lines and wholly within 300 feet of another secondary supplier's lines, but wholly more than 300 feet from the primary supplier's lines, as the lines of all suppliers exist on the effective date of the annexation, may be served by the secondary supplier which the consumer chooses, and no other supplier shall thereafter furnish electric service to such premises, except upon written consent of the supplier then serving the premises.

(4) A primary supplier shall not furnish electric service to any premises which a secondary supplier has the right to serve as set forth in subdivisions (1), (2), and (3) of this section, except upon the written consent of the secondary supplier.

(5) Any premises initially requiring electric service after the effective date of the annexation which are located wholly or partially within 300 feet of the primary supplier's lines and are located wholly or partially within 300 feet of the secondary supplier's lines, as such suppliers' lines exist on the effective date of the annexation, may be served by either the secondary supplier or the primary supplier, whichever the

consumer chooses, and no other supplier shall thereafter furnish service to such premises, except upon the written consent of the supplier then serving the premises.

(6) Any premises initially requiring electric service after the effective date of the annexation which are located only partially within 300 feet of the secondary supplier's lines and are located wholly more than 300 feet from the primary supplier's lines, as such suppliers' lines exist on the effective date of the annexation, may be served by either the secondary supplier or the primary supplier, whichever the consumer chooses, and no other supplier shall thereafter furnish service to such premises, except upon the written consent of the supplier then serving the premises.

(7) Except as provided in subdivisions (1), (2), (3), (5), and (6) of this section, and except as provided in §§ 160-511 and 160-513, a secondary supplier shall not furnish electric service inside the corporate limits of such municipality, unless it first obtains the written consent of the municipality and of the primary supplier. (1965, c. 287, s. 1.)

§ 160-513. Service within newly incorporated municipality. — (a) In any municipality which is newly incorporated after April 20, 1965 in which, on the effective date of the incorporation, there is more than one supplier of electric service, all suppliers of electric service therein shall continue to have the rights and be subject to the restrictions in effect prior to the incorporation of the municipality until there is a primary supplier within such municipality.

(b) When, in any such newly incorporated municipality, a primary supplier comes into being and at such time a secondary supplier is furnishing electric service in said municipality, the suppliers of electric service shall have rights and be subject to restrictions as follows:

(1) The secondary supplier shall have the right to serve all premises being served by it, or to which any of its facilities for service are attached, on the date a primary supplier comes into being.

(2) The secondary supplier shall have the right, subject to subdivision (3) of this subsection, to serve all premises initially requiring electric service after the date a primary supplier comes into being which are located wholly within 300 feet of its lines and located wholly more than 300 feet from the lines of the primary supplier, as such suppliers' lines exist on said date.

(3) Any premises initially requiring electric service after the date a primary supplier comes into being which are located wholly within 300 feet of a secondary supplier's lines and wholly within 300 feet of another secondary supplier's lines, but wholly more than 300 feet from the primary supplier's lines, as the lines of all suppliers exist on said date, may be served by the secondary supplier which the consumer chooses, and no other supplier shall thereafter furnish electric service to such premises, except upon the written consent of the supplier then serving the premises.

(4) A primary supplier shall not furnish electric service to any premises which a secondary supplier has the right to serve as set forth in subdivisions (1), (2), and (3) of this subsection, except upon the written consent of the secondary supplier.

(5) Any premises initially requiring electric service after the date a primary supplier comes into being which are located wholly or partially within 300 feet of the primary supplier's lines and are located wholly or partially within 300 feet of the secondary supplier's lines, as such suppliers' lines exist on said date, may be served by either the secondary supplier or the primary supplier, whichever the consumer chooses, and no other supplier shall thereafter furnish service to such premises,

except upon the written consent of the supplier then serving the premises.

(6) Any premises initially requiring electric service after the date a primary supplier comes into being which are located only partially within 300 feet of the secondary supplier's lines and are located wholly more than 300 feet from the primary supplier's lines, as such suppliers' lines exist on said date, may be served by either the secondary supplier or the primary supplier, whichever the consumer chooses, and no other supplier shall thereafter furnish service to such premises, except upon the written consent of the supplier then serving the premises.

(7) Except as provided in subdivisions (1), (2), (3), (5), and (6) of this subsection, a secondary supplier shall not furnish electric service inside the corporate limits of such municipality as such limits exist on the date a primary supplier comes into being, unless it first obtains the written consent of the municipality and of the primary supplier. (1965, c. 287, s. 1.)

§ **160-514. Temporary electric service.**—No electric supplier shall furnish temporary electric service for the construction of premises which it would not have the right to serve under this article if such premises were already constructed. The construction of lines for, and the furnishing of, temporary service for the construction of premises which any other electric supplier, if chosen by the consumer, would have the right to serve if such premises were already constructed, shall not impair the right of such other electric supplier to furnish service to such premises after the construction thereof, if then chosen by the consumer; nor, unless the consumer chooses to have such premises served by the supplier which furnished the temporary service, shall the furnishing of such temporary service or the construction of a line therefor impair the right of any other electric supplier to furnish service to any other premises which, without regard to the construction of such temporary service line, it has the right to serve. (1965, c. 287, s. 1.)

§ **160-515. Authority and jurisdiction of North Carolina Utilities Commission.**—Notwithstanding the provisions of §§ 160-511, 160-512, 160-513, and 160-514 of this article:

(1) The North Carolina Utilities Commission shall have the authority and jurisdiction, after notice to the affected electric suppliers and after hearing, if a hearing is requested by any affected electric supplier or any other interested party, to order a primary supplier which is subject to the jurisdiction of said Commission to furnish electric service to any consumer who desires service from such primary supplier at any premises being served by a secondary supplier, or at premises which a secondary supplier has the right to serve pursuant to other sections of this article, and to order such secondary supplier to cease and desist from furnishing electric service to such premises, upon the Commission's finding that service being furnished or to be furnished to such consumer by such secondary supplier is or will be inadequate or undependable, or that the rates, conditions of service or service regulations, applied to such consumer, are unreasonably discriminatory; and

(2) The North Carolina Utilities Commission shall have the authority and jurisdiction, after notice to the affected secondary supplier and after hearing, if a hearing is requested by the affected secondary supplier or any other interested party, to order any secondary supplier to cease and desist from furnishing electric service to any premises being served by it, or to any premises which it has the right to serve pursuant to other sections of this article, if the consumer desires service at such premises from a primary supplier which is not subject to the jurisdiction of the Commission and which is willing to furnish service to such

premises, upon the Commission's finding that service being furnished or to be furnished to such consumer by such secondary supplier is or will be inadequate or undependable, or that the rates, conditions of service or service regulations, applied to such consumer, are unreasonably discriminatory. (1965, c. 287, s. 1.)

§ 160-516. Discontinuance of service and transfer of facilities by secondary supplier.—A secondary supplier may voluntarily discontinue its service to any premises and remove any of its electric facilities located inside the limits of a municipality or sell and transfer such facilities to a primary supplier in such municipality, subject to approval by the North Carolina Utilities Commission, upon the Commission's determination that the public interest will not thereby be adversely affected. (1965, c. 287, s. 1.)

§ 160-517. Electric service for municipal facilities.—No provisions of this article shall prevent a municipality which is a primary supplier from furnishing its own electric service for municipal facilities, or prevent any other primary supplier from furnishing electric street lighting service to a municipality inside the municipality. (1965, c. 287, s. 1.)

§ 160-518. Effect of article on right and duties of primary supplier.—Except for the rights granted to and restrictions upon primary suppliers contained in the provisions of this article, nothing in this article shall diminish, enlarge, alter, or affect in any way the rights and duties of a primary supplier to furnish electric service to premises within the limits of a municipality. (1965, c. 287, s. 1.)

§ 160-519. Electric suppliers subject to police power.—No provisions of this article shall restrict the exercise of the police power of a municipality over the erection and maintenance of poles, wires and other facilities of electric suppliers in streets, alleys, and public ways. (1965, c. 287, s. 1.)

SUBCHAPTER XI. ASSESSMENTS AGAINST RAILROADS.

Article 42.

Assessments Against Railroads.

§ 160-520. Definitions.—For the purposes of this subchapter the following definitions shall be applicable:

(1) The term "local improvement" shall include sidewalk improvements and street improvements as those terms are defined in G.S. 160-78 and shall include the laying, installing, improving, enlarging, altering or repairing of any sewer or water line or system.

(2) The term "right of way" shall mean any land or interest in land owned, leased or controlled by a railroad company on which there is located a main line or through railroad track or tracks together with adjoining land owned, leased or controlled by such railroad company within 100 feet of the center line of such track or tracks. (1965, c. 839, s. 2.)

Editor's Note.—Section 4 of the act inserting this subchapter provides that it shall be in full force and effect from and after its ratification and shall apply to any assessment for local improvements which has not become final on the effective date of the act (June 8, 1965).

§ 160-521. Power to assess for local improvements.—No municipality shall assess any railroad company on account of any local improvement made on or abutting railroad right of way unless there is a building on such right of way owned, leased or controlled by the railroad, in which event the front footage to be used as a basis for such assessment against the railroad shall be the actual front

footage occupied by such building plus 25 feet on each side thereof, but not to exceed the amount of land owned, leased or controlled by the railroad. In the event a building is placed on such property by the railroad subsequent to the time a local improvement is made, then the railroad company shall be subject to an assessment without interest on the same basis as if the building had been located on the property at the time the local improvement was made. (1965, c. 839, s. 2.)

Chapter 161.

Register of Deeds.

Article 1.

The Office.

Article 2.

The Duties.

ARTICLE 1.

The Office.

§ 161-4. Bond required.—(a) Every register of deeds shall give bond with sufficient surety, to be approved by the board of county commissioners, in a sum of not less than ten thousand dollars ($10,000.00) nor more than fifty thousand dollars ($50,000.00), 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.

(b) The bond and surety required under subsection (a) shall further be conditioned for the safekeeping of the books and records, and for the faithful discharge of the duties of office of the register of deeds by any incumbent assistant and deputy register of deeds appointed prior to the vacancy pursuant to G.S. 161-6 and holding over after vacancy in the office of register of deeds for the interim, as provided in G.S. 161-5 (b). (1868, c. 35, s. 3; 1876-7, c. 276, s. 5; Code, s. 3648; 1899, c. 54, s. 52; Rev., s. 301; C. S., s. 3545; 1963, c. 204; 1965, c. 900; 1969, c. 636.)

Editor's Note.—

The 1965 amendment, effective July 1, 1965, designated the former provisions of the section as subsection (a) and added subsection (b).

The 1969 amendment, effective Dec. 1, 1969, substituted "not less than ten thousand dollars ($10,000.00) nor more than fifty thousand dollars ($50,000.00)" for "not exceeding ten thousand dollars" in subsection (a).

§ 161-5. Vacancy in office.—(a) 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.

(b) In the interim between such vacancy in the office of register of deeds and the appointment and qualification of a successor register of deeds, under the provisions of subsection (a), any incumbent assistant or deputy register of deeds appointed under G.S. 161-6 prior to the vacancy shall continue to hold office as assistant or deputy registers of deeds until discharged or otherwise lawfully relieved of office

by the lawful successor to the office of register of deeds. (1868, c. 35, s. 4; Code, s. 3649; Rev., s. 2651; C. S., s. 3546; 1965, c. 900.)

Cross Reference.—
As to validation of acts of assistant and deputy registers of deeds performed pending filling of vacancy in office of register of deeds, see § 161-28.

Editor's Note. — The 1965 amendment, effective July 1, 1965, designated the former provisions of the section as subsection (a) and added subsection (b).

§ 161-6. Appointment of assistant and deputy registers of deeds; authority to sign in name of register of deeds; holdover assistants and deputies.—(a) The registers of deeds of the several counties are hereby authorized to appoint one or more assistant registers of deeds and one or more deputy registers of deeds, whose acts as assistants or deputies shall be valid and for which the registers of deeds shall be officially responsible. The certificate of appointment of an assistant or deputy shall be filed by the appointing register of deeds in the office of the clerk of the superior court, who shall record the same.

(b) Each assistant and deputy register of deeds so appointed shall be authorized, in addition to his other powers and duties, to register and sign instruments and documents in the name and under the title of the appointing register of deeds, by himself as assistant or deputy, as appropriate. Such signing shall be substantially as follows:

John Doe, Register of Deeds
by Richard Roe, Assistant (or Deputy, as appropriate).

(c) Such registering and signing, when regular and sufficient in all other respects, shall be valid for all purposes, and of the same force and effect as if the instrument or document had been registered and signed by the register of deeds personally.

(d) Wherever in the General Statutes reference is made to "the register of deeds and (or) his assistant" or "the register of deeds and (or) his deputy" or words substantially to this effect, or reference is made only to "the assistant register of deeds" or "the deputy register of deeds," such reference to either assistant or deputy, unless the contrary intent is specifically stated in the text, shall also include the other, insofar as such reference pertains to the authority, powers, duties, rights, privileges, or qualifications for office of assistant or deputy register of deeds.

(e) Incumbent assistant and deputy registers of deeds holding over after a vacancy in the office of register of deeds, pursuant to the provisions of G.S. 161-5 (b), shall continue to have and exercise all lawful power and authority of office until lawfully relieved of office, including, but not restricted to, all power and authority set forth in subsections (a), (b), (c) and (d), and in chapter 161 generally, and their acts as assistant or deputy registers of deeds shall be official and valid, and the appointing register of deeds, or his estate, and the official bond under G.S. 161-4 shall be responsible for their acts as assistant or deputy registers of deeds, and such assistant or deputy register of deeds shall also be individually, personally and officially responsible for his own acts. (1909, c. 628, s. 1; C. S., s. 3547; 1949, c. 261; 1959, c. 279; 1963, c. 191; 1965, c. 900.)

Cross Reference. — As to validation of acts of assistant and deputy registers of deeds performed pending filling of vacancy in office of register of deeds, see § 161-28.

Editor's Note.—
The 1965 amendment, effective July 1, 1965, designated the former four paragraphs as subsections (a), (b), (c) and (d) and added subsection (e).

§ 161-9. Official seal.—The office of register of deeds for every county shall have and use an official seal or stamp, which shall be provided by the county commissioners. The official seal or stamp shall be round, and the size shall not exceed 1⅝ inches in diameter. Contained thereon shall be the name of the register of deeds, the county and letters "N.C.," and the words "Register of Deeds." The ink used for the official stamp shall be of the reproducible type; provided, that any register of deeds using a nonconforming seal or stamp prior to July 1,

1969 may continue to use such seal or stamp. (1893, c. 119, s. 1; Rev., s. 2649; C. S., s. 3550; 1969, c. 1028.)

Editor's Note. — The 1969 amendment, effective July 1, 1969, rewrote this section.

§ 161-10. Uniform fees of registers of deeds.—(a) In the performance of his duties, the register of deeds shall collect the following fees which shall be uniform throughout the State:

(1) Instruments in General.—For registering or filing any instrument for which no other provision is made by this section, whether written, printed, or typewritten, the fee shall be two dollars ($2.00) for the first page, which page shall not exceed eight and one-half inches by fourteen inches, plus one dollar ($1.00) for each additional page or fraction thereof. A page exceeding eight and one-half inches by fourteen inches shall be considered two pages.

(2) Marriage Licenses.—For issuing a license—five dollars ($5.00); for issuing a delayed certificate with one certified copy—five dollars ($5.00); and for a proceeding for correction of names in application, license or certificate, with one certified copy—five dollars ($5.00).

(3) Plats.—For each original or revised plat recorded—five dollars ($5.00); for furnishing a certified copy of a plat—two dollars ($2.00).

(4) Right-of-Way Plans.—For each original or amended plan and profile sheet recorded—five dollars ($5.00). This fee is to be collected from the State Highway Commission.

(5) Registration of Birth Certificate Four Years or More after Birth.—For preparation of necessary papers when birth to be registered in another county—$2.50; for registration when necessary papers prepared in another county, with one certified copy—$2.50; for preparation of necessary papers and registration in the same county, with one certified copy—five dollars ($5.00).

(6) Amendment of Birth or Death Record.—For preparation of amendment and effecting correction—one dollar ($1.00).

(7) Certified Copies.—For furnishing a certified copy of any instrument for which no other provision is made by this section—one dollar ($1.00) per page or fraction thereof.

(8) Comparing Copy for Certification.—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 thereof—one dollar ($1.00).

(9) Uncertified Copies.—When, as a convenience to the public, the register of deeds supplies uncertified copies of instruments, he may charge fees that in his discretion bear a reasonable relation to the quality of copies supplied and the cost of purchasing and maintaining copying equipment. These fees may be changed from time to time, but the amount of these fees shall at all times be prominently posted in his office.

(10) Acknowledgment.—For taking an acknowledgment, oath, or affirmation or for the performance of any notarial act—fifty cents ($.50). This fee shall not be charged if the act is performed as a part of one of the services for which a fee is provided by this subsection; except that this fee shall be charged in addition to the fees for registering, filing or recording instruments or plats as provided by subdivisions (1) and (3) of this subsection.

(11) Liens for Internal Revenue.—For recording a federal tax lien—two dollars ($2.00); for filing a certificate of discharge—two dollars ($2.00). These fees are to be collected from the United States.

(12) Uniform Commercial Code.—Such fees as are provided for in chapter 25, article 9, part 4, of the General Statutes.
(13) Torrens Registration.—Such fees as are provided in G.S. 43-5.
(14) Master Forms.—Such fees as are provided in G.S. 47-21.
(15) Probate.—For certification of instruments for registration as provided in G.S. 47-14—fifty cents ($.50).
(16) Qualification of Notary Public.—For administering the oaths of office to a notary public and making the appropriate record entries as provided in G.S. 10-2—one dollar ($1.00).

(b) The uniform fees set forth in this section are complete and exclusive and no other fees shall be charged by the register of deeds.

(c) These fees shall be collected in every case prior to filing, registration, recordation, certification or other service rendered by the register of deeds unless by law it is provided that the service shall be rendered without charge. (Code, ss. 710, 3109, 3751; 1887, c. 283; 1891, c. 324; 1897, cc. 27, 68; 1899, c. 17, s. 2; c. 247, s. 3; 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; 1967, c. 639, s. 4; c. 823, s. 33; 1969, c. 80, s. 1; c. 912, s. 3.)

Cross Reference.—See Editor's note to § 53-5.

Editor's Note. — The first 1969 amendment, effective July 1, 1969, rewrote this section as previously amended in 1967.

The second 1969 amendment, effective Sept. 1, 1969, added subdivision (16) of subsection (a).

Section 14 of c. 80, Session Laws 1969, provides that nothing in the act "shall prevent any register of deeds whose compensation is derived from fees from retaining those fees as heretofore provided by law except that the amount of such fees shall be determined as provided herein."

Opinions of Attorney General. — Miss Frances H. Burwell, Stokes County Register of Deeds, 7/8/69.

§§ 161-10.1, 161-10.2: Repealed by Session Laws 1969, c. 80, s. 6, effective July 1, 1969.

Editor's Note.—Former § 161-10.2 was derived from Session Laws 1967, c. 228, s. 3.

§ 161-11. Per diem as clerk to the board of county commissioners. —The register of deeds shall be allowed, while and when acting as clerk to the board of county commissioners, such per diem as the board may allow. (1933, c. 437; 1969, c. 80, s. 2.)

Editor's Note. — The 1969 amendment, effective July 1, 1969, rewrote this section.

Article 2.

The Duties.

§ 161-12. Apply to clerk for instruments for registration.

Local Modification. — Bladen: 1967, c. 307.

§ 161-13. Failure of clerk to deliver papers.

Local Modification. — Bladen: 1967, c. 307.

§ 161-14.2. Indexing procedures for instruments and documents filed in the office of the register of deeds.—The following procedure shall be used in making index entries:

(1) When each word of the signature is legible and it gives the complete name of the party, the signature shall govern.

(2) When the signature is legible but initials or abbreviations are used, any additional information given by the printed or typed name and not in conflict with the signature shall govern.

(3) When none of the words in the signature are legible, the printed or typed name shall govern.

(4) When one or more of the words in the signature are legible, then the words that are legible shall govern; the words that appear in the printed or typed name shall govern over the words of the signature that are not legible.

(5) When the spelling of any word in a legible signature and the spelling of the corresponding word in the typed or printed name is at variance, and the variance would cause the entries to be made at different places in the index, then the instrument shall be indexed under both spellings.

(6) When a reasonable interpretation of an illegible word in a signature is at variance with the corresponding word in a typed or printed name, and the variance would cause the entries to be made at different places in the index, then the instrument shall be indexed in both places. (1969, c. 694, s. 1.)

Editor's Note.—Session Laws 1969, c. 694, s. 3, makes the act effective July 1, 1969.

§ 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. A violation of this section shall constitute a misdemeanor.

Notwithstanding any provision to the contrary in this section or elsewhere in the General Statutes of North Carolina, the register of deeds may index deeds of trust in the name of the grantor and the trustee only. (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; 1967, cc. 443, 1262.)

Local Modification.—Alamance, Duplin, Forsyth, Guilford, Vance, Wake and Wayne: 1963, c. 739; 1965, cc. 17, 150.

Editor's Note.—The first 1967 amendment added the second paragraph.

The second 1967 amendment, effective at midnight June 30, 1967, eliminated the former last proviso in the second sentence, which required the double indexing of instruments containing both real and personal property.

§ 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. (1947, c. 211, ss. 1, 2; 1969, c. 80, s. 5.)

Editor's Note. — The 1969 amendment, effective July 1, 1969, deleted the former second paragraph, providing for a fee.

§ 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. (1917, c. 182; C. S., s. 3565; 1969, c. 80, s. 7.)

Editor's Note. — The 1969 amendment, effective July 1, 1969, deleted the former last sentence, providing a fee for a certified copy.

§ 161-28. Validation of acts of assistant and deputy registers of deeds performed pending filling of vacancy in office of register of deeds.—Any and all acts and duties performed by any and all assistant or deputy registers of deeds appointed and acting under the provisions of G.S. 161-6 or any other provisions of law, general, local, or special, after a vacancy may have occurred from any cause in the office of register of deeds, including, but not restricted to, a vacancy occurring as a result of the death in office of any incumbent register of deeds, and before the board of county commissioners shall have filled such vacancy by the appointment of a successor and his qualification for office as required by law, under and pursuant to the provisions of G.S. 161-5 and any other applicable provisions of law, shall be and the same are hereby validated, ratified and confirmed to all intents and purposes as if performed by an incumbent in the office of register of deeds and to all intents and purposes as if performed under and pursuant to specific provisions of law authorizing and empowering the register of deeds, or any assistant or deputy registers of deeds, to perform all such acts and duties. The provisions of this validating Act shall include, but not be restricted to, all acts and duties of the office of register of deeds, or of the office of assistant or deputy register of deeds, as enumerated and set forth under the specific provisions of this chapter, or under the provisions of any other general laws as set forth in the General Statutes of North Carolina, or in any other provisions of law, private, local or special. (1965, c. 835, s. 1.)

Editor's Note. — Section 3, c. 835, Session Laws 1965, provides: "This act shall be in full force and effect from and after its ratification, and shall validate all acts and duties performed prior to the effective date of this act" (June 8, 1965).

Chapter 162.

Sheriff.

Article 1.

The Office.

§ 162-5. Vacancy filled; duties performed by coroner.

Local Modification.—Jackson, Swain and Transylvania: 1969, c. 405.

Article 3.

Duties of Sheriff.

§ 162-14. Execute process; penalty for false return.

II. NEGLECT OR FAILURE TO MAKE DUE RETURN.

A. In General.

This section imposes no undue hardship upon sheriffs. Brogden Produce Co. v. Stanley, 267 N.C. 608, 148 S.E.2d 689 (1966).

The highest considerations of public policy require that sheriffs shall not be negligent in the service of process committed to them. Ignorance of the officer is no excuse. Whether any damage was done to the plaintiff is immaterial. The amercement is for failure to discharge an official duty. Brogden Produce Co. v. Stanley, 267 N.C. 608, 148 S.E.2d 689 (1966).

The public policy which prompted the enactment of this section is no less valid today—and the need for such a statute is no less real. Brogden Produce Co. v. Stanley, 267 N.C. 608, 148 S.E.2d 689 (1966).

An amercement is a penalty, etc. —

In accord with original. See Brogden Produce Co. v. Stanley, 267 N.C. 608, 148 S.E.2d 689 (1966).

The one hundred dollars is given to the plaintiff in the execution upon the theory that he is aggrieved, but chiefly as a punishment to the officer, and to stimulate him to active obedience. Brogden Produce Co. v. Stanley, 267 N.C. 608, 148 S.E.2d 689 (1966).

The courts have no "dispensing power" to relieve a sheriff from the penalty imposed by this section. Brogden Produce Co. v. Stanley, 267 N.C. 608, 148 S.E.2d 689 (1966).

It is no excuse that the sheriff has no corrupt or bad intentions and that the plaintiff is saved from any resulting injury by the voluntary appearance of the defendant. Brogden Produce Co. v. Stanley, 267 N.C. 608, 148 S.E.2d 689 (1966).

An agreement to suspend the collection of the debt, or to stay the execution, as it is commonly called, even if communicated to the sheriff, gives no authority to the officers not to return the writ. Brogden Produce Co. v. Stanley, 267 N.C. 608, 148 S.E.2d 689 (1966).

B. What Constitutes Failure and Defenses.

2. When Return Is Sufficient.

The term "return" implies that the process is taken back, with such endorsements as the law requires, to the place from which it originated. Brogden Produce Co. v. Stanley, 267 N.C. 608, 148 S.E.2d 689 (1966).

C. Actions Concerning Amercements.

Party Aggrieved Is Entitled to Judgment Nisi as of Course. — Upon motion and proof that a sheriff has failed to return process delivered to him, as directed in the process and required by law, the party aggrieved is entitled, as of course, to judgment nisi against him. Brogden Produce Co. v. Stanley, 267 N.C. 608, 148 S.E.2d 689 (1966).

And Penalty Is Imposed Unless Sheriff Shows Cause at Next Succeeding Term to Vacate Amercement.—The penalty is imposed upon the delinquency of the sheriff for failing to make due return of the execution unless, at the next succeeding term after judgment nisi is entered against him, he shows to the court sufficient cause to vacate the tentative amercement. Brogden Produce Co. v. Stanley, 267 N.C. 608, 148 S.E.2d 689 (1966).

Question for Jury. — If the issue is in dispute, whether the return was made in proper time is a question of fact to be decided by the jury. Brogden Produce Co. v. Stanley, 267 N.C. 608, 148 S.E.2d 689 (1966).

§ 162-15. Sufficient notice in case of amercement.

Cross Reference.—See note to § 162-14.

§ 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; provided that the board of county commissioners of any county by and with the consent of the sheriff shall have the authority to appoint a person other than the sheriff to serve as jailer; the person appointed by a board of county commissioners as jailer shall have the care and custody of the county jail.

No law-enforcement officer or jailer who shall have the care and custody of any jail shall receive any portion of any jail fee or charge paid by or for any person confined in such jail, nor shall the compensation or remuneration of such officer be affected to any extent by the costs of goods or services furnished to any person confined in such jail. (R. C., c. 105, s. 22; Code, s. 2085; Rev., s. 2824; C. S., s. 3944; 1967, c. 581, s. 3; 1969, c. 1090.)

Editor's Note.—The 1967 amendment, effective July 1, 1967, added the provisions relating to appointment of a person other than the sheriff to serve as jailer.

The 1969 amendment, effective Jan. 1, 1970, added the second paragraph.

Cited in Wilkie v. Henderson County, 1 N.C. App. 155, 160 S.E.2d 505 (1968).

Chapter 162A.

Water and Sewer Authorities.

§ 162A-2. Definitions.

(7a) The word "revenues" shall mean all moneys received by an authority from or in connection with any sewer system or water system including, without limitation, any moneys received as interest grants.

(1969, c. 850.)

Editor's Note.—The 1969 amendment added subdivision (7a).

As the rest of the section was not changed by the amendment, only subdivision (7a) is set out.

§ 162A-4. Withdrawal from authority; joinder of new subdivision.—A certified copy of each such resolution signifying the desire of a political subdivision to withdraw from or to join an existing authority, together with proof of publication of the notice of hearing on each such resolution and, in cases where such resolution provides for the political subdivision joining the authority, certified copies of the resolution of the governing bodies creating the authority consenting to such joining shall be filed with the Secretary of State of North Carolina.

Any political subdivision desiring to withdraw from or to join an existing authority shall signify its desire by resolution adopted after a public hearing thereon, notice of which hearing shall be given in the manner and at the time provided in § 162A-3. Such notice shall contain a brief statement of the substance of said resolution and shall state the time and place of the public hearing to be held thereon. In the case of a political subdivision desiring to join the authority, the resolution shall set forth all of the information required under § 162A-3 in connection with the original organization of the authority, including the name and address of the first member of the authority from the joining political subdivision.

A certified copy of each such resolution signifying the desire of a political subdivision to withdraw from or to join an existing authority, together with proof of publication of the notice of hearing on each such resolution and, in cases where such resolution provides for the political subdivision joining the authority, a certified copy of a resolution of the authority consenting to such joining (except in cases where such consent is unnecessary), shall be filed with the Secretary of State of North Carolina. If the Secretary of State finds that the resolutions conform to

the provisions of this chapter and that the notices of hearing were properly published, he shall file such resolutions and proofs of publication in his office and shall issue a certificate of withdrawal, or a certificate of joinder, as the case may be, and shall record the same in an appropriate book of record in his office. The withdrawal or joining shall become effective upon the issuance of such certificate, and such certificate shall be conclusive evidence thereof. (1955, c. 1195, s. 4; 1969, c. 850.)

Editor's Note. — The 1969 amendment rewrote the first paragraph.

§ 162A-5. Members of authority; organization; quorum.—Each authority organized under this chapter shall consist of the number of members as may be agreed upon by the participating political subdivision, such members to be selected by the respective political subdivision. A proportionate number (as nearly as can be) of members of the authority first appointed shall have terms expiring two years, four years and six years respectively from the date on which the creation of the authority becomes effective. Successor members and members appointed by a political subdivision subsequently joining the authority shall each be appointed for a term of six years, but any person appointed to fill the vacancy shall be appointed to serve only for the unexpired term and any member may be reappointed. Appointments of successor members shall, in each instance, be made by the governing body of the political subdivision appointing the member whose successor is to be appointed. Any member of the authority may be removed, with or without cause, by the governing body appointing said member.

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

The authority shall select one of its members as chairman and another as vice-chairman and shall also select a secretary and a treasurer who may but need not be members of the authority. The offices of secretary and treasurer may be combined. The terms of office of the chairman, vice-chairman, secretary and treasurer shall be as provided in the bylaws of the authority.

A majority of the members of the authority shall constitute a quorum and the affirmative vote of a majority of all of the members of the authority shall be necessary for any action taken by the authority. No vacancy in the membership of the authority shall impair the right of a quorum to exercise all the rights and perform all of the duties of the authority. The members of the authority shall serve without compensation but shall be reimbursed for the amount of actual expenses incurred by them in the performance of their duties. (1955, c. 1195, s. 5; 1969, c. 850.)

Editor's Note.—The 1969 amendment rewrote the first paragraph.

§ 162A-6. Powers of authority generally.

(13) To receive and accept from any federal, State or other public agency and any private agency, person or other entity, donations, loans, grants, aid or contributions of any money, property, labor or other things of value for any sewer system or water system, and to agree to apply and use the same in accordance with the terms and conditions under which the same are provided;

(14) To enter into contract with any political subdivision by which the authority shall assume the payment of the principal of and interest on indebtedness of such subdivision; and

(15) To do all acts and things necessary or convenient to carry out the powers granted by this chapter. (1955, c. 1195, s. 6; 1969, c. 850.)

Editor's Note.—The 1969 amendment inserted present subdivision (13) and renumbered former subdivision (13) and (14) as (14) and (15). As the rest of the section was not changed by the amendment, only subdivisions (13), (14) and (15) are set out.

§ **162A-8. Revenue bonds generally.**—Each authority is hereby authorized to issue, at one time or from time to time, revenue bonds of the authority for the purpose of paying all or any part of the cost of acquiring, constructing, reconstructing, improving, extending, enlarging or equipping any water system or sewer system or any part or any combination thereof. The bonds of each issue shall be dated, shall mature at such time or times not exceeding forty years from their date or dates and shall bear interest at such rate or rates not exceeding seven per centum (7%) per annum, as may be determined by the authority, and may be made redeemable before maturity, at the option of the authority, at such price or prices and under such terms and conditions as may be fixed by the authority prior to the issuance of the bonds. The authority shall determine the form and the manner of execution of the bonds, including any interest coupons to be attached thereto, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest, which may be at any bank or trust company within or without the State. In case any officer whose signature or a facsimile of whose signature shall appear on any bonds or coupons shall cease to be such officer before the delivery of such bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. Notwithstanding any of the other provisions of this chapter or any recitals in any bonds issued under the provisions of this chapter, all such bonds shall be deemed to be negotiable instruments under the laws of this State. The bonds may be issued in coupon or registered form or both, as the authority may determine, and provision may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds of any bonds registered as to both principal and interest. Such bonds shall be approved and sold by the Local Government Commission in the same manner as municipal bonds are approved and sold by that Commission, except that the said Commission may sell any bonds issued pursuant to this chapter at private sale and without advertisement, and for such price, with the consent of the authority, as it may determine to be for the best interests of the authority, but no such sale shall be made at a price so low as to require the payment of interest on the money received therefor at more than seven per centum (7%) per annum, computed with relation to the absolute maturity or maturities of the bonds in accordance with standard tables of bond values, excluding, however, from such computation the amount of any premium to be paid on redemption of any bonds prior to maturity. The limitation set forth above on the interest rate or rates which bonds issued hereunder shall bear shall not apply to any issue of bonds with respect to which any federal, State or other public agency shall have agreed to make annual interest grants to an authority, and in calculating the amount of interest required to be paid on the money received for such bonds within the limitation stated in the next preceding sentence the total of such annual interest grants shall be deducted from the total amount of interest on such bonds.

The proceeds of the bonds of each issue shall be used solely for the purpose for which such bonds shall have been authorized and shall be disbursed in such manner and under such restrictions, if any, as the authority may provide in the resolution authorizing the issuance of such bonds or in the trust agreement hereinafter mentioned securing the same. If the proceeds of such bonds, by error of estimates or otherwise, shall be less than such cost, additional bonds may in like manner be issued to provide the amount of such deficit, and, unless otherwise provided in the authorizing resolution or in the trust agreement securing such bonds, shall be deemed to be of the same issue and shall be entitled to payment from the same fund without preference or priority of the bonds first issued for the same purpose.

The resolution providing for the issuance of revenue bonds, and any trust agreement securing such bonds, may also contain such limitations upon the issuance of additional revenue bonds as the authority may deem proper, and such additional bonds shall be issued under such restrictions and limitations as may be prescribed by such resolution or trust agreement.

Prior to the preparation of definitive bonds, the authority may, under like restrictions, issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds shall have been executed and are available for delivery, except that such interim receipts or temporary bonds shall be approved by the Local Government Commission in the same manner as the definitive bonds are approved by said Commission under the provisions of this chapter. Delivery of interim receipts or temporary bonds or of the bonds authorized pursuant to this chapter to the purchaser or order, or delivery of definitive bonds in exchange for interim receipts or temporary bonds, shall be made in the same manner as municipal bonds may be delivered under the provisions of the Local Government Act. The authority may also provide for the replacement of any bonds which shall become mutilated or be destroyed or lost.

Excepting the requirement herein that approval of the Local Government Commission shall be obtained, bonds may be issued under the provisions of this chapter without obtaining the consent of any other commission, board, bureau or agency of the State or of any political subdivision, and without any other proceeding or the happening of other conditions or things than those proceedings, conditions or things which are specifically required by this chapter.

Revenue bonds issued under the provisions of this chapter shall not be deemed to constitute a debt of the State or of any political subdivision or a pledge of the faith and credit of the State or of any political subdivision, but such bonds shall be payable solely from the funds herein provided therefor and a statement to that effect shall be recited on the face of the bonds. (1955, c. 1195, s. 7; 1969, c. 850.)

Editor's Note.—The 1969 amendment substituted "seven per centum (7%)" for "five per centum (5%)" in the second and seventh sentences of the first paragraph and added the last sentence of the first paragraph.

Chapter 163.

Elections and Election Laws.

SUBCHAPTER I. TIME OF PRIMARIES AND ELECTIONS.

Article 1.

Time of Primaries and Elections.

Sec.

Article 2.

Time of Elections to Fill Vacancies.

SUBCHAPTER II. ELECTION OFFICERS.

Article 3.

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Sec.

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Voting Machines.

Sec.

163-160. Voting machines; approval; rules and regulations.

163-161. Adoption of voting machines by county or municipality.

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163-163 to 163-167. [Reserved.]

Article 15.

Counting Ballots, Canvassing Votes, and Certifying Results in Precinct and County.

163-168. Proceedings when polls are closed.

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163-181. Election contest stays certification of nomination or election.

163-182 to 163-186. [Reserved.]

Article 16.

Canvass of Returns for Higher Offices and Preparation of State Abstracts.

163-187. State Board of Elections to canvass returns for higher offices.

163-188. Meeting of State Board of Elections to canvass returns of primary and election.

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163-193. Results of election certified to Secretary of State; certificates of election.

163-194. Governor to issue commissions to certain elected officials.

163-195. Secretary of State to record abstracts.

163-196 to 163-200. [Reserved.]

Article 17.

Members of United States House of Representatives.

163-201. Congressional districts specified.

163-202. Election after reapportionment of members of House of Representatives.

163-203 to 163-207. [Reserved.]

Article 18.

Presidential Electors.

163-208. Conduct of presidential election.

163-209. Names of presidential electors not printed on ballots.

163-210. Governor to proclaim results; casting State's vote for President and Vice-President.

163-211. Compensation of presidential electors.

163-212. Penalty for failure of presidential elector to attend and vote.

163-213 to 163-217. [Reserved.]

Article 19.

Petitions for Elections and Referenda.

163-218. Registration of notice of circulation of petition.

163-219. Petition void after one year from registration.

163-220. Limitation on petitions circulated prior to July 1, 1957.

163-221 to 163-225. [Reserved.]

SUBCHAPTER VII. ABSENTEE VOTING.

Article 20.

Absentee Ballot.

163-226. Who may vote an absentee ballot.

163-227. Application for absentee ballots; forms of application.

Revision of Chapter.—Section 1, c. 775, Session Laws 1967, revised and rewrote c. 163 of the General Statutes, replacing former §§ 163-1 to 163-210 with present §§ 163-1 to 163-278. Where present provisions are similar to prior statutory provisions, the historical citations from the former sections have been added to the new sections, and annotations to cases decided under the chapter prior to its revision have, where it is thought that they are still of value, been placed under appropriate sections of the revised chapter.

Section 2, c. 775, Session Laws 1967, provides: "All laws and clauses of laws, except local and special acts relating to primaries and elections, in conflict with this act are hereby repealed."

SUBCHAPTER I. TIME OF PRIMARIES AND ELECTIONS.

Article 1.

Time of Primaries and Elections.

§ 163-1. Time of regular elections and primaries.—(a) Unless otherwise provided by law, elections for the offices listed in the tabulation contained in this section shall be conducted in all election precincts of the territorial units specified in the column headed "Jurisdiction" on the dates indicated in the column headed "Date of Election." Unless otherwise provided by law, officers shall serve for the terms specified in the column headed "Term of Office."

(b) On the first Saturday in May preceding each general election to be held in November for the offices referred to in subsection (a) of this section, there shall be held in all election precincts within the territory for which the officers are to be elected a primary election for the purpose of nominating candidates for each political party in the State for those offices.

(c) On Tuesday next after the first Monday in November in the year 1968, and every four years thereafter, or on such days as the Congress of the United States shall direct, an election shall be held in all of the election precincts of the State for the election of electors of President and Vice-President of the United States. The number of electors to be chosen shall be equal to the number of Senators and Representatives in Congress to which this State may be entitled. Presidential electors shall not be nominated by primary election; instead, they shall be nominated in a State convention of each political party as defined in § 163-96 unless otherwise provided by the plan of organization of the political party. One presidential elector shall be nominated from each congressional district and two from the State-at-large.

OFFICE	JURISDICTION	DATE OF ELECTION	TERM OF OFFICE
Governor	State	Tuesday next after the first Monday in November 1968 and every four years thereafter	Four years, from first day of January next after election
Lieutenant Governor	State	Tuesday next after the first Monday in November 1968 and every four years thereafter	Four years, from first day of January next after election
Secretary of State	State	Tuesday next after the first Monday in November 1968 and every four years thereafter	Four years, from first day of January next after election
Auditor	State	Tuesday next after the first Monday in November 1968 and every four years thereafter	Four years, from first day of January next after election
Treasurer	State	Tuesday next after the first Monday in November 1968 and every four years thereafter	Four years, from first day of January next after election
Superintendent of Public Instruction	State	Tuesday next after the first Monday in November 1968 and every four years thereafter	Four years, from first day of January next after election
Attorney General	State	Tuesday next after the first Monday in November 1968 and every four years thereafter	Four years, from first day of January next after election
Commissioner of Agriculture	State	Tuesday next after the first Monday in November 1968 and every four years thereafter	Four years, from first day of January next after election
Commissioner of Labor	State	Tuesday next after the first Monday in November 1968 and every four years thereafter	Four years, from first day of January next after election

OFFICE	JURISDICTION	DATE OF ELECTION	TERM OF OFFICE
Commissioner of Insurance	State	Tuesday next after the first Monday in November 1968 and every four years thereafter	Four years, from first day of January next after election
All other State officers whose terms last for four years	State	Tuesday next after the first Monday in November 1968 and every four years thereafter	Four years, from first day of January next after election
All other State officers whose terms are not specified by law	State	Tuesday next after the first Monday in November 1968 and every two years thereafter	Two years, from first day of January next after election
State Senator	Senatorial district	Tuesday next after the first Monday in November 1968 and every two years thereafter	Two years
Member of State House of Representatives	Representative district	Tuesday next after the first Monday in November 1968 and every two years thereafter	Two years
Justices and Judges of the Appellate Division	State	At the regular election for members of the General Assembly immediately preceding the termination of each regular term	Eight years, from first day of January next after election
Judges of the superior courts	State	At the regular election for members of the General Assembly immediately preceding the termination of each regular term	Eight years, from first day of January next after election
Judges of the district courts	District court district	At the regular election for members of the General Assembly immediately preceding the termination of each regular term	Four years from the first Monday in December next after election

Solicitors	Solicitorial district	At the regular election for members of the General Assembly immediately preceding the termination of each regular term	Four years, from first day of January next after election
Members of House of Representatives of the Congress of the United States	Congressional district, except as modified by § 163-104	Tuesday next after the first Monday in November 1968 and every two years thereafter	Two years
United States Senators	State	At the regular election immediately preceding the termination of each regular term	Six years
County commissioners	County	At the regular election for members of the General Assembly immediately preceding the termination of each regular term	Two years, from the first Monday in December next after election
Clerk of superior court	County	At the regular election for members of the General Assembly immediately preceding the termination of each regular term	Four years, from the first Monday in December next after election
Register of deeds	County	At the regular election for members of the General Assembly immediately preceding the termination of each regular term	Four years, from the first Monday in December next after election
Sheriff	County	At the regular election for members of the General Assembly immediately preceding the termination of each regular term	Four years, from the first Monday in December next after election
Coroner	County	At the regular election for members of the General Assembly immediately preceding the termination of a regular term	Four years, from the first Monday in December next after election

OFFICE	JURISDICTION	DATE OF ELECTION	TERM OF OFFICE
County treasurer (in counties in which elected)	County	Tuesday next after the first Monday in November 1968 and every two years thereafter	Two years, from the first Monday in December next after election
All other county officers to be elected by the people	County	Tuesday next after the first Monday in November 1968 and every two years thereafter	Two years, from the first Monday in December next after election
Constable	Township	Tuesday next after the first Monday in November 1968 and every two years thereafter	Two years, from the first Monday in December next after election
Justice of the peace (in counties in which elected)	Township	Tuesday next after the first Monday in November 1968 and every two years thereafter	Two years, from the first Monday in December next after election
All other township officers to be elected by the people	Township	Tuesday next after the first Monday in November 1968 and every two years thereafter	Two years, from the first Monday in December next after election

(Const., art. 4, s. 24; 1901, c. 89, ss. 1, 2, 3, 4, 73, 74, 77; Rev., ss. 4293, 4294, 4296, 4297, 4298, 4299; 1915, c. 101, s. 1; 1917 c. 218; C. S., ss. 5914, 5915, 5917, 5918, 5919, 5920, 6018; 1935, c. 362; 1939, c. 196; 1943, c. 134, s. 4; 1947, c. 505, s. 1; 1951, c. 1009, s. 2; 1953, c. 1191, s. 1; 1967, c. 775, s. 1; cc. 1264, 1271; 1969, c. 44, s. 80.)

Local Modification to Former §§ 163-118 to 163-147.—Session Laws 1945, c. 894, repealed former article 19, relating to primaries, insofar as its provisions apply to the nomination of democratic candidates for the General Assembly and county offices in Mitchell County.

Session Laws 1957, c. 826, as amended by Session Laws 1959, c. 621, s. 2, provided that the former article should not apply to nominations of Democratic candidates for county offices and members of the House of Representatives in Cherokee County, but such candidates should be nominated by convention of the Democratic Party.

Session Laws 1961, c. 484, provided that the former article should not apply to nominations of Republican candidates for county offices and members of the General Assembly in Cherokee County, but such candidates should be nominated by conventions of the Republican Party.

Session Laws 1953, c. 1069, as amended by Session Laws 1959, c. 238, made the former article applicable to Watauga County. Session Laws 1955, c. 439, to the extent provided, made the former article applicable to Yancey County. Session Laws 1955, c. 442, made the former article applicable to the counties of Avery, Madison, Mitchell and Yancey for the purpose of nominating Democratic candidates for the State Senate.

Local Modification to Former § 163-129. —Avery: 1933, c. 327; 1935, c. 141; 1937, c. 263; Stanly: 1945, c. 958.

Cross References. — As to election of executive officers of the State government, see § 147-4. As to municipal elections, see § 160-29 et seq.

Editor's Note. — The first 1967 amendment deleted "for Governor" under the column headed "Date of Election" as it refers to United States Senators in subsection (c).

The second 1967 amendment substituted "first Saturday" for "last Saturday" near the beginning of subsection (b).

The 1969 amendment substituted "Justices and Judges of the Appellate Division" for "Justices of the Supreme Court" in the column headed "Office" in the tabulation in subsection (c).

For case law survey on elections, see 41 N.C.L. Rev. 433 (1963).

Municipal Elections. — The machinery provided by the former chapter for ascertaining and declaring the successful candidate in an election applied to all municipal elections. State v. Proctor, 221 N.C. 161, 19 S.E.2d 234 (1942).

Creation of New Township — Election upon Reasonable Notice. — Under an earlier statute it was held that, where the legislature had created a new township and the time for election had passed, as the public good required the offices to be immediately filled, the commissioners could order an election upon reasonable notice. Grady v. County Comm'rs, 74 N.C. 101 (1876).

§ **163-2. Hours of primaries and elections.**—In all primaries, general elections, special elections, and referenda held in this State, including those held in and for municipalities, the polls shall be opened at 6:30 A.M., and shall be closed at 6:30 P.M.: Provided, however, that at voting places at which voting machines are used the responsible county board of elections may permit the polls to be closed at 7:30 P.M. (1929, c. 164, s. 33; 1937, cc. 258, 457; 1941, c. 222; 1955, c. 1064; 1967, c. 775, s. 1.)

§§ **163-3 to 163-7:** Reserved for future codification purposes.

Article 2.

Time of Elections to Fill Vacancies.

§ **163-8. Filling vacancies in State executive offices.**—If the office of Governor or Lieutenant Governor shall become vacant, the provisions of § 147-11.1 shall apply. If the office of any of the following officers shall be vacated by death, resignation, or otherwise than by expiration of term, it shall be the duty of the Governor to appoint another to serve until his successor is elected and qualified: Secretary of State, Auditor, Treasurer, Superintendent of Public Instruction, Attorney General, Commissioner of Agriculture, Commissioner of Labor, and Commissioner of Insurance. Each such vacancy shall be filled by election at the first election for members of the General Assembly that occurs more than 30 days after the vacancy has taken place, and the person chosen shall hold the office for the remainder of the unexpired four-year term: Provided, that when a vacancy

occurs in any of the offices named in this section and the term expires on the first day of January succeeding the next election for members of the General Assembly, the Governor shall appoint to fill the vacancy for the unexpired term of the office.

Upon the occurrence of a vacancy in the office of any one of these officers for any of the causes stated in the preceding paragraph, the Governor may appoint an acting officer to perform the duties of that office until a person is appointed or elected pursuant to this section and § 13, article III, of the State Constitution, to fill the vacancy and is qualified. (1901, c. 89, ss. 4, 73; Rev., s. 4299; C. S., s. 5920; 1967, c. 775, s. 1.)

§ **163-9. Filling vacancies in State and district judicial offices.** — Vacancies occurring in the offices of Justice of the Supreme Court, judge of the Court of Appeals, and judge of the superior court for causes other than expiration of term shall be filled by appointment of the Governor. An appointee shall hold his place until the next election for members of the General Assembly that is held more than 30 days after the vacancy occurs, at which time an election shall be held to fill the unexpired term of the office: Provided, that when the unexpired term of the office in which the vacancy has occurred expires on the first day of January succeeding the next election for members of the General Assembly, the Governor shall appoint to fill that vacancy for the unexpired term of the office.

Vacancies in the office of district judge which occur before the expiration of a term shall not be filled by election. Instead, such a vacancy shall be filled for the unexpired term by appointment of the Governor from nominations submitted by the bar of the judicial district in which the vacancy occurs. If the district bar fails to submit nominations within two weeks from the date the vacancy occurs, the Governor may appoint to fill the vacancy without waiting for nominations. (1901, c. 89, ss. 4, 73; Rev., s. 4299; C. S., s. 5920; 1967, c. 775, s. 1; 1969, c. 44, s. 81.)

Editor's Note.—The 1969 amendment inserted "judge of the Court of Appeals" in the first sentence.

§ **163-10. Filling vacancy in office of solicitor.**—Any vacancy occurring in the office of solicitor for causes other than expiration of term shall be filled by appointment of the Governor. An appointee shall hold his place until the next election for members of the General Assembly that is held more than 30 days after the vacancy occurs, at which time an election shall be held to fill the unexpired term of the office: Provided, that when the unexpired term of the office in which the vacancy has occurred expires on the first day of January succeeding the next election for members of the General Assembly, the Governor shall appoint to fill that vacancy for the unexpired term of the office. (1901, c. 89, ss. 4, 73; Rev., s. 4299; C. S., s. 5920; 1967, c. 775, s. 1.)

§ **163-11. Filling vacancies in the General Assembly.**—If a vacancy shall occur in the General Assembly by death, resignation, or otherwise than by expiration of term, the Governor shall immediately appoint for the unexpired part of the term the person recommended by the county executive committee of the political party with which the vacating member was affiliated when elected, it being the party executive committee of the county in which he was resident. (1901, c. 89, s. 74; Rev., s. 4298; C. S., s. 5919; 1947, c. 505, s. 1; 1953, c. 1191, s. 1; 1967, c. 775, s. 1.)

§ **163-12. Filling vacancy in United States Senate.**—Whenever there shall be a vacancy in the office of United States Senator from this State, whether caused by death, resignation, or otherwise than by expiration of term, the Governor shall appoint to fill the vacancy until an election shall be held to fill the office. The Governor shall issue his writ for the election of a Senator to be held at the time of the first election for members of the General Assembly that is held more than 30 days after the vacancy occurs. The person elected shall hold the office for the remainder of the unexpired term. The election shall take effect from the date of the

canvassing of the returns. (1913, c. 114, ss. 1, 2; C. S., ss. 6002, 6003; 1929, c. 12, s. 2; 1955, c. 871, s. 6; 1967, c. 775, s. 1.)

§ **163-13. Filling vacancy in United States House of Representatives.**—(a) Special Election.—If at any time after expiration of any Congress and before another election, or if at any time after an election, there shall be a vacancy in this State's representation in the House of Representatives of the United States Congress, the Governor shall issue a writ of election, and by proclamation fix the date on which an election to fill the vacancy shall be held in the appropriate congressional district.

(b) Nominating Procedures.—If a congressional vacancy occurs within eight months preceding the next succeeding general election, candidates for the special election to fill the vacancy shall not be nominated in primaries. Instead, nominations may be made by the political party congressional district executive committees in the district in which the vacancy occurs. The chairman and secretary of each political party congressional district executive committee nominating a candidate shall immediately certify his name and party affiliation to the State Board of Elections so that it may be printed on the special election ballots.

If the congressional vacancy occurs more than eight months prior to the next succeeding general election, the Governor shall call a special primary for the purpose of nominating candidates to be voted on in a special election called by the Governor in accordance with the provisions of subsection (a) of this section. Such a primary election shall be conducted in accordance with the general laws governing primaries, except that the closing date for filing notices of candidacy with the State Board of Elections shall be fixed by the Governor in his call for the special primary. (1901, c. 89, s. 60; Rev., s. 4369; C. S., s. 6007; 1947, c. 505, s. 5; 1967, c. 775, s. 1.)

§§ **163-14 to 163-18:** Reserved for future codification purposes.

SUBCHAPTER II. ELECTION OFFICERS.

Article 3.

State Board of Elections.

§ **163-19. State Board of Elections; appointment; term of office; vacancies; oath of office.**—All of the terms of office of the present members of the State Board of Elections shall expire on May 1, 1969, or when their successors in office are appointed and qualified.

The State Board of Elections shall consist of five registered voters whose terms of office shall begin on May 1, 1969, and shall continue for four years, and until their successors are appointed and qualified. The Governor shall appoint the members of this Board and likewise shall appoint their successors every four years at the expiration of each four-year term. Not more than three members of the Board shall be members of the same political party

Any vacancy occurring in the Board shall be filled by the Governor, and the person so appointed shall fill the unexpired term.

At the first meeting held after new appointments are made, the members of the State Board of Elections shall take the following oath:

"I, ..., do solemnly swear (or affirm) that I will support the Constitution of the United States; that I will be faithful and bear true allegiance to the State of North Carolina, and to the constitutional powers and authorities which are or may be established for the government thereof; that I will endeavor to support, maintain and defend the Constitution of said State, and that I will well and truly execute the duties of the office of member of the State Board of Elections according to the best of my knowledge and ability, according to law; so help me, God."

After taking the prescribed oath, the Board shall organize by electing one of its members chairman and another secretary. (1901, c. 89, ss. 5, 7; Rev., ss. 2760, 4300, 4301; C. S., ss. 5921, 5922; 1933, c. 165, s. 1; 1953, c. 428; 1967, c. 775, s. 1.)

§ **163-20. Meetings of Board; quorum; minutes.**—The State Board of Elections shall meet at the call of the chairman whenever necessary to discharge the duties and functions imposed upon it by this chapter. The Board shall meet at such times and places in the city of Raleigh as the chairman may appoint unless required to meet elsewhere under the provisions of § 163-23.

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. If there be no chairman, or if the chairman does not call a meeting after receiving a written request from two members, any three members of the Board shall have power to call a meeting of the Board, and any duties imposed or powers conferred by this chapter may be performed or exercised at that meeting, although the time for performing or exercising the same prescribed by this chapter may have expired.

A majority of the members shall constitute a quorum for the transaction of Board business. If at any meeting any member of the 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 failing to attend summarily and appoint their successors.

The State Board of Elections shall keep minutes recording all proceedings and findings at each of its meetings. The minutes shall be recorded in a book which shall be kept in the office of the Board in Raleigh. (1901, c. 89, s. 7; Rev., ss 2760, 4301, 4302; C. S., ss. 5922, 5923; 1933, c. 165, s. 1; 1945, c. 982; 1967, c. 775, s. 1.)

§ **163-21. Compensation of Board members.**—The members of the State Board of Elections shall be compensated for the time they are actually engaged in the discharge of their duties and for their traveling and other expenses necessary and incidental to the discharge of their duties in accordance with the provisions of chapter 138 of the General Statutes. (1901, c. 89, s. 7; Rev., ss. 2760, 4301; C. S., s. 5922; 1933, c. 165, s. 1; 1967, c. 775, § 1.)

§ **163-22. Powers and duties of State Board of Elections.**—(a) The State Board of Elections shall have general supervision over the primaries and elections in the State, and it shall have authority to make such reasonable rules and regulations with respect to the conduct of primaries and elections as it may deem advisable so long as they do not conflict with any provisions of this chapter.

(b) From time to time, the Board shall publish and furnish to the county boards of elections and other election officials a sufficient number of indexed copies of all election laws and Board rules and regulations then in force. It shall also publish, issue, and distribute to the electorate such materials, explanatory of primary and election laws and procedures as the Board shall deem necessary.

(c) The State Board of Elections shall appoint, in the manner provided by law, all members of the county boards of elections and advise them as to the proper methods of conducting primaries and elections. The Board shall require such reports from the county boards and election officers as are provided by law, or as are deemed necessary by the Board, and shall compel observance of the requirements of the election laws by county boards of elections and other election officers. In performing these duties, the Board 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 imposing duties upon such a board. The State Board of Elections shall have power to remove from office any member of a county board of elections to comply with any part of the election laws imposing duties upon such a board. The State Board of Elec-

tions shall have power to remove from office any member of a county board of elections for incompetency, neglect or failure to perform duties, fraud, or for any other satisfactory cause. Before exercising this power, the State Board shall notify the county board member affected and give him an opportunity to be heard. When any county board member shall be removed by the State Board of Elections, the vacancy occurring shall be filled by the State Board of Elections.

(d) The State Board of Elections shall investigate when necessary or advisable, the administration of election laws, frauds and irregularities in elections in any county, and shall report violations of the election laws to the Attorney General or solicitor or prosecutor of the district for further investigation and prosecution.

(e) The State Board of Elections shall determine, in the manner provided by law, the form and content of ballots, instruction sheets, poll books, tally sheets, abstract and return forms, certificates of election, and other forms to be used in primaries and elections. The Board shall furnish to the county boards of elections registration and poll books, cards, blank forms, instruction sheets, and forms necessary for the registration of voters and for holding primaries and elections in the counties. In the preparation and distribution of ballots, poll books, abstract and return forms, and all other forms, the State Board of Elections shall call to its aid the Attorney General of the State, and it shall be the duty of the Attorney General to advise and aid in the preparation of these books, ballots, and forms.

(f) The State Board of Elections shall 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. The Board shall instruct the county boards of elections as to the printing of county and local ballots.

(g) The State Board of Elections shall certify to the appropriate county boards of elections the names of candidates for district offices who have filed notice of candidacy with the Board and whose names are required to be printed on county ballots.

(h) It shall be the duty of the State Board of Elections to tabulate the primary and election returns, to declare the results, and to prepare abstracts of the votes cast in each county in the State for offices which, according to law, shall be tabulated by the Board.

(i) The State Board of Elections shall make recommendations to the Governor and legislature relative to the conduct and administration of the primaries and elections in the State as it may deem advisable. (1901, c. 89, ss 7, 11; Rev., ss. 4302, 4305; 1913, c. 138; C. S., ss. 5923, 5926; 1921, c. 181 s. 1; 1923, c. 196; 1933, c. 165, ss. 1, 2; 1945, c. 982; 1953, c. 410, s. 2; 1967, c. 775, s. 1.)

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 Bd. of Elections, 214 N.C. 140, 198 S.E. 592 (1938).

The General Assembly has given the State Board of Elections power to supervise primaries and general elections to the end that, insofar as possible, the results in primary and general elections in this State will not be influenced or tainted with fraud, corruption or other illegal conduct on the part of election officials or others. Ponder v. Joslin, 262 N.C. 496, 138 S.E.2d 143 (1964).

The General Assembly has given broad supervisory powers to the State Board of Elections. Ponder v. Joslin, 262 N.C. 496, 138 S.E.2d 143 (1964).

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 Bd. of Elections, 229 N.C. 179, 49 S.E.2d 379 (1948).

Investigation of Frauds Is Not Limited to Reporting Them for Further Investigation. — The Supreme Court did not construe subdivision (11) of former § 163-10 (subsection (d) of this section) to limit the authority of the State Board of Elections merely to an investigation of alleged "frauds and irregularities in elections in any county," for the sole purpose of making a report of such frauds and irregularities to the Attorney General or solicitor for further investigation and prosecution. Ponder v. Joslin, 262 N.C. 496, 138 S.E.2d 143 (1964).

And State Board May Direct County Board to Amend Returns. — The State Board of Elections is a quasi-judicial agency and may, in a primary or election in a multiple county district, investigate alleged frauds and irregularities in elections in any county upon appeal from a county board or upon a protest filed in apt time with the State Board of Elections, and may take such action as the findings of fact may justify, and may direct a county board of elections to amend its returns in accordance therewith. Ponder v. Joslin, 262 N.C. 496, 138 S.E.2d 143 (1964).

§ 163-23. Powers of chairman in execution of Board duties.—In the performance of the duties enumerated in § 163-22, the chairman of the State Board of Elections shall have power to administer oaths, issue subpoenas, summon witnesses, compel the production of papers, books, records and other evidence. He shall also have power to fix the time and place for hearing any matter relating to the administration and enforcement of the election laws: Provided, however, the place of hearing shall be the county in which 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; 1967, c. 775, s. 1.)

§ 163-24. Power of State Board of Elections to maintain order.—The State Board of Elections shall possess full power and authority to maintain order, and to enforce obedience to its lawful commands during its sessions, and shall be constituted an inferior court for that purpose. If any person shall refuse to obey the lawful commands of the State Board of Elections or its chairman, or by disorderly conduct in its hearing or presence shall interrupt or disturb its proceedings, it may, by an order in writing, signed by its chairman, and attested by its secretary, commit the person so offending to the common jail of the county for a period not exceeding 30 days. 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 the State Board of Elections in writing, and the keeper of the jail shall receive the person so committed and safely keep him for such time as shall be mentioned in the commitment: Provided, that any person committed under the provisions of this section shall have the right to post a two hundred dollar ($200.00) bond with the clerk of the superior court and appear to the superior court for a trial on the merits of his commitment. (1901, c. 89, s. 72; Rev., s. 4376; C. S., s. 5977; 1955, c. 871, s. 4; 1967, c. 775, s. 1.)

§ 163-25. Authority of State Board to assist in litigation.—The State Board of Elections shall possess authority to assist any county board of elections in any matter in which litigation is contemplated or has been initiated, provided, the county board of elections in such county petitions, by majority resolution, for such assistance from the State Board of Elections and, provided further, that the State Board of Elections determines, in its sole discretion by majority vote, to assist in any such matter. It is further stipulated that the State Board of Elections shall not be authorized under this provision to enter into any litigation in assistance to counties, except in those instances where the uniform administration of chapter 163 of the General Statutes of North Carolina has been, or would be threatened.

The Attorney General shall provide the State Board of Elections with legal assistance in execution of its authority under this section or, in his discretion, recommend that private counsel be employed. (1969, c. 408, s. 1.)

Editor's Note.—Section 2, c. 408, Session Laws 1969, provides: "Any and all local acts which might be in conflict with this section shall be exempt from the provisions hereof."

§§ **163-26 to 163-29**: Reserved for future codification purposes.

Article 4.

County Boards of Elections.

§ **163-30. County boards of elections; appointments; term of office; qualifications; vacancies; oath of office.**—In every county of the State there shall be a county board of elections to consist of three persons of good moral character, who are registered voters in the county in which they are to act. Members of county boards of elections shall be appointed by the State Board of Elections on the Friday before the tenth Saturday preceding each primary election, and their terms of office shall continue for two years from the specified date of 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.

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.

The State chairman of each political party shall have the right to recommend to the State Board of Elections three registered voters in each county for appointment to the board of elections for that county. If such recommendations are received by the Board fifteen or more days before the tenth Saturday before the primary is to be held, it shall be the duty of the State Board of Elections to appoint the county boards from the names thus recommended.

Whenever a vacancy occurs in the membership of a county board of elections for any cause other than removal by the State Board of Elections, the State chairman of the political party of the vacating member shall have the right to recommend two registered voters of the affected county for such office, and it shall be the duty of the State Board of Elections to fill the vacancy from the names thus recommended.

At the meeting of the county board of elections required by § 163-31 to be held on the Monday following the ninth Saturday before the primary, the members shall take the following oath of office:

"I, ..., do solemnly swear (or affirm) that I will support the Constitution of the United States; that I will be faithful and bear true allegiance to the State of North Carolina, and to the constitutional powers and authorities which are or may be established for the government thereof; that I will endeavor to support, maintain and defend the Constitution of said State, not inconsistent with the Constitution of the United States; and that I will well and truly execute the duties of the office of member of the ..... county board of elections to the best of my knowledge and ability, according to law; so help me, God." (1901, c. 89, ss. 6, 11; Rev., ss. 4303, 4304, 4305; 1913, c. 138; C. S., ss. 5924, 5925, 5926; 1921, c. 181, s. 1; 1923, c. 111, s. 1; c. 196; 1933, c. 165, s. 2; 1941, c. 305, s. 1; 1945, c. 758, ss. 1, 2; 1949, c. 672, s. 1; 1953, c. 410, ss. 1, 2; c. 1191, s. 2; 1955, c. 871, s. 1; 1957, c. 182, s. 1; 1959, c. 1203, s. 1; 1967, c. 775, s. 1; 1969, c. 208, s. 1.)

Editor's Note. — The 1969 amendment substituted "Monday following the ninth Saturday" for "ninth Saturday" near the beginning of the sixth paragraph.

§ 163-31. Meetings of county boards of elections; quorum; minutes. —In each county of the State the members of the county board of elections shall meet at the courthouse or board office at noon on the Monday following the ninth Saturday before each primary election and, after taking the oath of office provided in § 163-30, they shall organize by electing one member chairman and another member secretary of the county board of elections. On the Monday following the seventh Saturday before each primary election the county board of elections shall meet and appoint precinct registrars and judges of elections. The board may hold other meetings at such times and places as the chairman of the board, or any two members thereof, may direct, for the performance of duties prescribed by law. A majority of the members shall constitute a quorum for the transaction of board business.

The county board of elections shall keep minutes recording all proceedings and findings at each of its meetings. The minutes shall be recorded in a book which shall be kept in the board office if there be one, otherwise, the minute book shall remain in the custody of the secretary of the board. (1901, c. 89, s. 11; Rev., ss. 4304, 4306; C. S., ss. 5925, 5927; 1921, c. 181, s. 2; 1923, c. 111, s. 1; 1927, c. 260, s. 1; 1933, c. 165, s. 2; 1941, c. 305, s. 1; 1945, c. 758, s. 2; 1953, c. 410, s. 1; c. 1191, s. 2; 1957, c. 182, s. 1; 1959, c. 1203, s. 1; 1966, Ex. Sess., c. 5, s. 2; 1967, c. 775, s. 1; 1969, c. 208, s. 2.)

Editor's Note. — The 1969 amendment substituted "Monday following the ninth Saturday" for "ninth Saturday" in the first sentence and "Monday following the seventh Saturday" for "seventh Saturday" in the second sentence of the first paragraph.

§ 163-32. Compensation of members of county boards of elections. —In full compensation for their services, members of the county board of elections (including the chairman) shall be paid by the county fifteen dollars ($15.00) per day for the time they are actually engaged in the discharge of their duties, together with reimbursement for expenditures necessary and incidental to the discharge of their duties. In its discretion, the board of county commissioners of any county may pay the chairman of the county board of elections compensation in addition to the per diem and expense allowance provided in this paragraph.

Counties which adopt full-time and permanent registration shall not be bound by the provisions of the preceding paragraph; in such counties the compensation of members of the county board of elections (including the chairman) shall be determined by the board of county commissioners.

In all counties the board of elections shall pay its clerk, assistant clerks, and other employees such compensation as it shall fix within budget appropriations. Counties which adopt full-time and permanent registration shall have authority to pay executive secretaries and special registration commissioners whatever compensation they may fix within budget appropriations. (1901, c. 89, s. 11; Rev., s. 4304; C. S., s. 5925; 1923, c. 111, s. 1; 1933, c. 165, s. 2; 1941, c. 305, s. 1; 1945, c. 758, s. 2; 1953, c. 410, s. 1; c. 843; c. 1191, s. 2; 1955, c. 800; 1957, c. 182, s. 1; 1959, c. 1203, s. 1; 1963, c. 303, s. 1; 1967, c. 775, s. 1.)

Local Modification to Former § 163-12. — Hyde, Iredell and Nash: 1941, c. 305, s. 2.

§ 163-33. Powers and duties of county boards of elections.—The county boards of elections within their respective jurisdictions shall exercise all powers granted to such boards in this chapter, and they shall perform all the duties imposed upon them by law, which shall include the following:

(1) To make and issue such rules, regulations, and instructions, not inconsistent with law or the rules established by the State Board of Elections, as it may deem necessary for the guidance of election officers and voters.

(2) To appoint all registrars, judges, assistants, and other officers of elections, and designate the precinct in which each shall serve; and, after notice

and hearing, to remove any registrar, judge of elections, assistant, or other officer of election 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.

(3) To investigate irregularities, nonperformance of duties, and violations of laws by election officers and other persons, and to report violations to the prosecuting authorities; in connection with any such investigation, to administer oaths, issue subpoenas, summon witnesses, and compel the production of books, papers, records, and other evidence.

(4) As provided in § 163-128, to establish, define, provide, rearrange, discontinue, and combine election precincts as it may deem expedient, and to fix and provide for places of registration and for holding primaries and elections.

(5) To review, examine, and certify the sufficiency and validity of petitions and nomination papers.

(6) To advertise and contract for the printing of ballots and other supplies used in registration and elections; and to provide for the delivery of ballots, poll books, and other required papers and materials to the voting places.

(7) To provide for the purchase, preservation, and maintenance of voting booths, ballot boxes, registration and poll books, maps, flags, cards of instruction, and other forms, papers, and equipment used in registration, nominations, and elections; and to cause the voting places to be suitably provided with voting booths and other supplies required by law.

(8) To provide for the issuance of all notices, advertisements, and publications concerning elections required by law.

(9) To receive the returns of primaries and elections, canvass the returns, make abstracts thereof, transmit such abstracts to the proper authorities, and to issue certificates of election to county officers and members of the General Assembly except those elected in districts composed of more than one county.

(10) To appoint and remove the board's clerk, assistant clerks, and other employees.

(11) To prepare and submit to the proper appropriating officers a budget estimating the cost of elections for the ensuing fiscal year.

(12) To perform such other duties as may be prescribed by this chapter 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; 1966, Ex. Sess., c. 5, s. 2; 1967, c. 775, s. 1.)

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 Bd. of Elections, 214 N.C. 140, 198 S.E. 592 (1938).

§ 163-34. Power of county board of elections to maintain order.— Each county board of elections shall possess full power to maintain order, and to enforce obedience to its lawful commands during its sessions, and shall be constituted an inferior court for that purpose. If any person shall refuse to obey the lawful commands of any county board of elections, or by disorderly conduct in its hearing or presence shall interrupt or disturb its proceedings, it may, by an order in writing, signed by its chairman, and attested by its secretary, commit the person so offending to the common jail of the county for a period not exceeding 30 days. 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 the county board of elections in writing, and the keeper of the jail shall receive the person so committed and safely keep him for such time as shall be mentioned in the commitment: Provided, that any person committed under the provisions of this section shall have the right to post a two hundred dollar ($200.00) bond with the clerk of the superior court and appeal to the superior court for a trial on the merits of his commitment. (1901, c. 89, s. 72; Rev., s. 4376; C. S., s. 5977; 1955, c. 871, s. 4; 1967, c. 775, s. 1.)

§ 163-35. Executive secretary to county board of elections in county having full-time and permanent registration.—In counties which adopt full-time and permanent registration the county board of elections shall have the power, by majority vote, to appoint an executive secretary to serve at the will of the board. No person shall serve as an executive secretary who holds any elective public office or who is a candidate for any office in a primary or election, or who holds an official position with any political party.

The county board of elections shall have authority, by resolution adopted by majority vote, to delegate to its executive secretary so much of the administrative detail of the election functions, duties, and work of the board, its officers and members, as is now, or may hereafter be, vested in it or them as the county board of elections may see fit: Provided, that the board shall not delegate to an executive secretary any of its quasi-judicial or policy-making duties and authority. Within the limitations imposed upon him by the resolution of the county board of elections, the acts of a properly appointed executive secretary shall be deemed to be the acts of the county board of elections, its officers and members. (1953, c. 843; 1955, c. 800; 1963, c. 303, s. 1; 1967, c. 775, s. 1.)

§§ 163-36 to 163-40: Reserved for future codification purposes.

Article 5.

Precinct Election Officials.

§ 163-41. Precinct registrars and judges of election; special registration commissioners; appointment; terms of office; qualifications; vacancies; oaths of office.—(a) Appointment of Registrar and Judges.—At the meeting required by § 163-31 to be held on the seventh Saturday before each primary election, the county board of elections shall appoint one person to act as registrar and two other persons to act as judges of election for each precinct in the county. Their terms of office shall continue for two years from the specified date of appointment and until their successors are appointed and qualified. It shall be their duty to conduct the primaries and elections within their respective precincts. Persons appointed to these offices must be registered voters and residents of the precinct for which appointed, of good repute, and able to read and write. Not more than one judge in each precinct shall belong to the same political party as the registrar, provided, however, that in a primary election in which only one political party participates all of the precinct officials shall be chosen from that party. For purposes of this section, the second primary provided for in § 163-111 shall be considered part of the first primary and not a separate primary election.

No person holding any office or place of trust or profit under the government of the United States, or of the State of North Carolina, or any political subdivision thereof, shall be eligible to appointment as a precinct election official: Provided, that nothing herein contained shall extend to officers in the militia, notaries public, commissioners of public charities, or commissioners for special purposes.

No person who is a candidate for nomination or election shall be eligible to serve as a registrar or judge of election.

The chairman of each political party in the county shall have the right to

recommend from three to five registered voters in each precinct, who are residents of the precinct, and who have good moral character and are able to read and write, for appointment as registrar and judges of election in that precinct. If such recommendations are received by the county board of elections before the seventh Saturday before the primary is to be held, it may make precinct appointments from the names thus recommended, although it shall not be required to do so.

If, at any time other than on the day of a primary or election, a registrar or judge of election shall be removed from office, or shall die or resign, or if for any other cause there be a vacancy in a precinct election office, the chairman of the county board of elections shall appoint another in his place, promptly notifying him of his appointment. In filling such a vacancy, the chairman shall appoint a person who belongs to the same political party as that to which the vacating member belonged when appointed.

If any person appointed registrar shall fail to be present at the voting place at the hour of opening the polls on primary or election day, or if a vacancy in that office shall occur on primary or election day for any reason whatever, the precinct judges of election shall appoint another to act as registrar until such time as the chairman of the county board of elections shall appoint to fill the vacancy. If a judge of election shall fail to be present at the voting place at the hour of opening the polls on primary or election day, or if a vacancy in that office shall occur on primary or election day for any reason whatever, the registrar shall appoint another to act as judge until such time as the chairman of the county board of elections shall appoint to fill the vacancy. Persons appointed to fill vacancies shall, whenever possible, be chosen from the same political party as the person whose vacancy is being filled, and all such appointees shall be sworn before acting.

Before entering upon his duties each registrar shall take and subscribe the following oath of office to be administered by an officer authorized to administer oaths and file it with the county board of elections:

"I, ..., do solemnly swear (or affirm) that I will support the Constitution of the United States; that I will be faithful and bear true allegiance to the State of North Carolina, and to the constitutional powers and authorities which are or may be established for the government thereof; that I will endeavor to support, maintain and defend the Constitution of said State not inconsistent with the Constitution of the United States; that I will administer the duties of my office as registrar of ..... precinct, ... County, 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 a voting booth, unless I am called upon to testify in a judicial proceeding for a violation of the election laws of this State; so help me, God."

Before the opening of the polls on the morning of the primary or election, the registrar shall administer the oath set out in the preceding paragraph to each judge of election and assistant, substituting for the word "registrar" the words "judge of elections in" or "assistant in," whichever is appropriate.

(b) Appointment of Special Registration Commissioners. — In counties which adopt full-time and permanent registration the county board of elections may, in addition to registrars, select persons of good repute to act as special registration commissioners. Persons appointed as registration commissioners shall serve for two years, but their authority may be terminated by the county board of elections at any time without cause.

In counties which adopt full-time and permanent registration the chairman of each political party shall have the right to recommend registered voters who are residents of the county for appointment as special registration commissioners. If such recommendations are received by the county board of elections before the seventh Saturday before the primary is to be held, that board may make appointments from the names thus recommended, although it shall not be required to do so.

Before entering upon his duties each special registration commissioner shall take and subscribe the following oath of office to be administered by an officer authorized to administer oaths and file it with the county board of elections:

"I, ..., do solemnly swear (or affirm) that I will support the Constitution of the United States; that I will be faithful and bear true allegiance to the State of North Carolina, and to the constitutional powers and authorities which are or may be established for the government thereof; that I will endeavor to support, maintain and defend the Constitution of said State, not inconsistent with the Constitution of the United States; that I will administer the duties of my office as special registration commissioner for ..... County without fear or favor, to the best of my knowledge and ability, according to law; so help me, God."

(c) Publication of Names of Precinct Officials. — Immediately after appointing registrars, judges, and special registration commissioners as herein provided, the county board of elections shall publish the names of the persons appointed in some newspaper having general circulation in the county or, in lieu thereof, at the courthouse door, and shall notify each person appointed of his appointment, either by letter or by having a notice served upon him by the sheriff. (1901, c. 89, ss. 8, 9, 16; Rev., ss. 4307, 4308, 4309; C. S., ss. 5928, 5929, 5930; 1923, c. 111, s. 2; 1929, c. 164, s. 18; 1933, c. 165, s. 3; 1947, c. 505, s. 2; 1953, c. 843; c. 1191, s. 3; 1955, c. 800; 1957, c. 784, s. 1; 1963, c. 303, s. 1; 1967, c. 775, s. 1.)

Local Modification to Former § 163-15. —Durham: 1937, c. 299.

The board of elections had 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).

Appointment of Registrars in Violation of Residence Requirements. — Where neither the regular registrar of a precinct nor the person appointed registrar for one day under former § 163-17 resided in the area in which the special annexation election was held, nevertheless, they were at least de facto registrars during the time they served as such, and in the absence of any evidence that the result of the election was affected thereby, their appointments would be deemed irregularities but insufficient to void the election. McPherson v. City Council, 249 N.C. 569, 107 S.E.2d 147 (1959).

§ 163-42. Assistants at polls; appointment; term of office; qualifications; oath of office.—Within the limits set by this section, the county board of elections shall have authority to appoint an assistant or assistants for each precinct within the county to aid the registrar and judges. Assistants shall, in all cases, be qualified voters of the precinct for which appointed. No other assistants shall be appointed for any precinct. Assistants serve for the primary or election for which appointed and no longer.

No person who is a candidate for nomination or election shall be eligible to serve as an assistant.

In a precinct in which voting machines are not used, the county board of elections may appoint one assistant for each 300 voters registered in that precinct. In a precinct in which voting machines are used, the board may appoint one assistant for each 500 voters registered in that precinct.

Before entering upon the duties of his office, each assistant shall take the oath prescribed in § 163-41 (a) to be administered by the registrar of the precinct for which the assistant is appointed. (1929, c. 164, s. 35; 1933, c. 165, s. 24; 1953, c. 1191, s. 3; 1967, c. 775, s. 1.)

§ 163-43. Ballot counters; appointment; qualifications; oath of office.—The county board of elections of any county may authorize the use of precinct ballot counters to aid the registrars and judges of election in the counting of ballots in any precinct or precincts within the county. The county board of elections shall appoint the ballot counters it authorizes for each precinct or, in its discretion, the board may delegate authority to make such appointments to the precinct registrar, specifying the number of ballot counters to be appointed for each precinct.

Upon acceptance of appointment, each ballot counter shall appear before the precinct registrar at the voting place immediately at the close of the polls on the day of the primary or election and take the following oath to be administered by the registrar:

"I, ..., do solemnly swear (or affirm) that I will support the Constitution of the United States; that I will be faithful and bear true allegiance to the State of North Carolina, and to the constitutional powers and authorities which are or may be established for the government thereof; that I will endeavor to support, maintain and defend the Constitution of said State, not inconsistent with the Constitution of the United States; that I will honestly discharge the duties of ballot counter in ..... precinct, ... County, for the primary (or election) held this day, and that I will fairly and honestly tabulate the votes cast in said primary (or election); so help me, God." The names and addresses of all ballot counters serving in any precinct, whether appointed by the county board of elections or by the registrar, shall be reported by the registrar to the county board of elections at the county canvass following the primary or election. (1953, c. 843; 1955, c. 800; 1963, c. 303, s. 1; 1967, c. 775, s. 1.)

§ **163-44. Markers for general elections; appointment; qualifications; oath of office.**—Before each general election, a sufficient number of markers, whose duty it shall be to assist voters in the preparation of their ballots, shall be appointed for each precinct. The appointments shall be made by the county board of elections in consultation with the precinct registrar. In appointing markers, fair representation shall be given to each political party whose candidates appear upon the ballot. To this end, not more than 10 days before any election, the chairman of each political party in the county shall have the right to recommend not fewer than 10 registered voters in each precinct for appointment as markers to represent the party at the election in the precinct. All markers shall be appointed from the names thus recommended.

Persons appointed as markers must be registered voters and residents of the precinct for which appointed, of good moral character, and able to read and write. Elected officers and candidates for elective office shall be ineligible to serve as markers, but all other governmental employees shall be eligible to serve as markers.

Before the opening of the polls on the morning of the election, the registrar shall administer the following oath to each marker:

"I, ..., do solemnly swear (or affirm) that I will support the Constitution of the United States; that I will be faithful and bear true allegiance to the State of North Carolina, and to the constitutional powers and authorities which are or may be established for the government thereof; that I will endeavor to support, maintain and defend the Constitution of said State, not inconsistent with the Constitution of the United States; that I will administer the duties of my office as marker in ..... precinct, ... County, to the best of my knowledge and ability; 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 booth, and will not disclose the same, unless I am called upon to testify in a judicial proceeding for a violation of the election laws of this State; so help me, God."

The provisions of this section shall not apply to primary elections, nor shall they apply to counties which adopt full time and permanent registration. (1929, c. 164, s. 26; 1933, c. 165, s. 24; 1939, c. 352, s. 1; 1953, c. 843; 1955, c. 800, 1959, c. 61o, s. 1; 1963, c. 303, s. 1; 1967, c. 775, s. 1.)

§ **163-45. Watchers; appointment.**—The chairman of each political party in the county shall have the right to appoint two watchers to attend each voting

place at each primary and election: Provided, that in a primary this right shall not extend to the chairman of a political party unless that party is participating in the primary. In any election in which an independent candidate is named on the ballot, he or his campaign manager shall have the right to appoint two watchers for each voting place. Watchers serve also as challengers. Persons appointed as watchers must be registered voters of the precinct for which appointed and must have good moral character. Watchers shall take no oath of office.

Individuals authorized to appoint watchers must submit in writing to the registrar of each precinct a signed list of the watchers appointed for that precinct. The registrar and judges of election for the precinct may for good cause reject any appointee and require that another be appointed.

A watcher shall do no electioneering at the voting place, and he shall in no manner impede the voting process or interfere or communicate with or observe any voter in casting his ballot, but, subject to these restrictions, the registrar and judges of elections shall permit him to make sure observation and take such notes as he may desire. (1929, c. 164, s. 36; 1953, c. 843; 1955, c. 800; c. 871, s. 7; 1959, c. 616, s. 2; 1963, c. 303, s. 1; 1967, c. 775, s. 1.)

§ 163-46. Compensation of precinct officials and assistants. — The precinct registrar shall be paid the sum of twenty dollars ($20.00) per day for his services on the day of a primary or election and for each Saturday during the period of registration that he attends the voting place for the purpose of registering voters. Judges of election and assistants shall each be paid for their services on the day of a primary or election the sum of fifteen dollars ($15.00). Registrars and judges of election shall be paid at the per diem rate specified above for attending any meeting called by the chairman of the county board of elections relating to their duties in any primary or election. A person appointed to serve as registrar or judge of election when a previously appointed registrar or judge fails to appear at the voting place or leaves his post on the day of an election or primary, shall be paid the same compensation as a registrar or judge appointed prior to that date. In its discretion, the board of commissioners of any county may provide funds with which the county board of elections may pay registrars, judges, and assistants compensation in addition to the per diem provided in this section. Ballot counters, markers, and watchers shall be paid no compensation for their services.

Counties which adopt full-time and permanent registration shall not be bound by the provisions of the preceding paragraph; in such counties the compensation of precinct registrars, judges of election, assistants, and ballot counters shall be determined by the county board of elections within budget appropriations. (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; 1953, c. 843; 1955, c. 800; 1957, c. 182, s. 2; 1963, c. 303, s. 1; 1967, c. 775, s. 1; 1969, c. 24.)

Local Modification.—Richmond: 1969, c. 507.

Local Modification to Former § 163-20.—Beaufort, Chowan, Person: 1941, c. 304, s. 2; Bladen, Wake: 1935, c. 421; Hyde: 1935, c. 421; 1941, c. 304, s. 2; Lincoln: 1963, c. 874; Mecklenburg: 1937, c. 382; Watauga: 1939, c. 264.

Editor's Note.—

The 1969 amendment substituted "twenty dollars ($20.00)" for "fifteen dollars ($15.00)" near the beginning of the first sentence and substituted "fifteen dollars ($15.00)" for ten dollars ($10.00)" at the end of the second sentence.

§ 163-47. Powers and duties of registrars and judges of election.—(a) The registrars and judges of election shall conduct the primaries and elections within their respective precincts fairly and impartially, and they shall enforce peace and good order in and about the place of registration and voting.

(b) The registrar shall have in his charge the actual registration of voters within his precinct and shall not delegate this responsibility. On the days required by law,

he shall attend the voting place for the registration or 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 law. On the day of an election or primary, the registrar shall have charge of the registration book for the purpose of passing on the registration of persons who presents themselves at the polls to vote.

(c) The registrars and judges shall hear challenges of the right of registered voters to vote as provided by law.

(d) The registrars and judges shall count the votes cast in their precincts and make such returns of the same as is provided by law.

(e) The registrars and judges shall make such an accounting to the chairman of the county board of elections for ballots and for election supplies as is required by law.

(f) The registrar and judges of election shall act by a majority vote on all matters not assigned specifically by law to the registrar or to a judge. (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; 1967, c. 775, s. 1.)

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).

§ 163-48. Maintenance of order at place of registration and voting.—The registrar and judges of election shall enforce peace and good order in and about the place of registration and voting. They shall especially keep open and unobstructed the place at which voters or persons seeking to registrar or vote have access to the place of registration and voting. They shall prevent and stop improper practices and attempts to obstruct, intimidate, or interfere with any person in registering or voting. They shall protect challengers and witnesses against molestation and violence in the performance of their duties, and they may eject from the place of registration or voting any challenger or witness for violation of any provisions of the election laws. They shall prevent riots, violence, tumult, or disorder.

In the discharge of the duties prescribed in the preceding paragraph of this section, the registrar and judges may call upon the sheriff, the 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 laws, but such arrest shall not prevent the person arrested from registering or voting if he is entitled to do so. The sheriff, 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 the place of registration or voting. (1901, c. 89, s. 72; Rev., s. 4376; C. S., s. 5977; 1955, c. 871, s. 4; 1967, c. 755, s. 1.)

§§ 163-49 to 163-53: Reserved for future codification purposes.

SUBCHAPTER III. QUALIFYING TO VOTE.

Article 6.

Qualifications of Voters.

§ 163-54. Registration a prerequisite to voting.—Only such persons as are legally registered shall be entitled to vote in any primary or election held

under this chapter. (1901, c. 89, s. 12; Rev., s. 4317; C. S., s. 5938; 1967, c. 775, s. 1.)

Registration Is Necessary and Evidence of Right to Vote.—When duly made registration is prima facie evidence of the right to vote. State ex rel. DeBerry v. Nicholson, 102 N.C. 465, 9 S.E. 545 (1889); State ex rel. Hampton v. Waldrop, 104 N.C. 453, 10 S.E. 694 (1889). The statute requiring registration must be complied with in order to constitute one a qualified voter. Smith v. City of Wilmington, 98 N.C. 343, 4 S.E. 489 (1887); Pace v. Raleigh, 140 N.C. 65, 52 S.E. 277 (1905).

§ 163-55. Qualifications to vote; exclusion from electoral franchise.—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 in which he offers to register and vote for 30 days next preceding the ensuing election shall, if otherwise qualified as prescribed in this chapter, be qualified to register and vote in the precinct in which he resides: Provided, that removal from one precinct to another in this State shall not operate to deprive any person of the right to vote in the precinct from which he has removed until 30 days after his removal.

The following classes of persons shall not be allowed to register or vote in this State:

(1) Persons under 21 years of age.

(2) Idiots and lunatics.

(3) Persons who have been convicted, or who have confessed their guilt in open court, upon indictment, of any crime the punishment for which is now or may hereafter be imprisonment in the State's prison, unless he shall have had his rights of citizenship restored in the manner prescribed by law. (19th amendt. U. S. Const.; amendt. State Const., 1920; 1901, c. 89, ss. 14, 15; Rev., ss. 4315, 4316; C. S., ss 5936, 5937; Ex. Sess. 1920, c. 18, s. 1, 1933, c. 165, s 4; 1945, c. 758, s. 7; 1955, c. 871, s. 2; 1967, c. 775, s. 1.)

Cross Reference. — As to restoration of citizenship, see chapter 13.

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, 21 Am. Rep. 465 (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 ex rel. Echerd v. Viele, 164 N.C. 122, 80 S.E. 408 (1913); Gower v. Carter, 194 N.C. 293, 139 S.E. 604 (1927).

Conviction of Infamous Crime.—See In re Reid, 119 N.C. 641, 26 S.E. 337 (1896).

Person Imprisoned for Misdemeanor.—See People ex rel. Boyer v. Teague, 106 N.C. 576, 11 S.E. 665 (1890).

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 ex rel. Gower v. Carter, 195 N.C. 697, 143 S.E. 513 (1928).

§ 163-56. State residence requirement shortened for presidential elections.—A person who has been a resident of this State for not less than 60 days immediately prior to the date of a presidential election shall be entitled to register and vote for presidential and vice-presidential electors in such election but for no other offices, provided he is then qualified to register and vote in this State except for the fact that he has not resided in this State for one year prior to the election. The procedure by which new resident voters shall register under the provisions of this section is prescribed in § 163-73. (1965, c. 871; 1967, c. 775, s. 1.)

§ 163-57. Residence defined for registration and voting.—All registrars and judges, 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:

(1) 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.

(2) 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.

(3) 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.

(4) If a person removes 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.

(5) If a person removes 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 the county from which he has removed, notwithstanding he may entertain an intention to return at some future time.

(6) If a person goes into another state or county, or into the District of Columbia, 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.

(7) School teachers who remove to a county for the purpose of teaching in the schools of that county temporarily and with the intention or expectation of returning during vacation periods to live in the county in which their parents or other relatives reside, and who do not have the intention of becoming residents of the county to which they have moved to teach, for purposes of registration and voting shall be considered residents of the county in which their parents or other relatives reside.

(8) If a person removes 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 unless he votes there, and the place at which he resided at the time of his removal shall be considered and held to be his place of residence.

(9) If a person removes to a county to engage in the service of the State government, he shall not be considered to have lost his residence in the county from which he removed, unless he demonstrates a contrary intention. (19th amendt. U. S. Const.; amendt. State Const., 1920; 1901, c. 89, s. 15; Rev., s. 4316; C. S., s. 5937; Ex. Sess. 1920, c. 18, s. 1; 1933, c. 165, s. 4; 1945, c. 758, s. 7; 1955, c. 871, s. 2; 1967, c. 775, s. 1.)

"Residence" Is Synonymous with Domicile.—Residence as a prerequisite to the right to vote in this State, within the purview of N.C. Const., Art. VI, § 2, is synonymous with domicile, which denotes a permanent dwelling place to which a person, when absent, intends to return. State ex rel. Owens v. Chaplin, 228 N.C. 705, 47 S.E.2d 12 (1948). See State ex rel. Hannon 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 N.C. Const., Art. VI, § 2, 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 ex rel. Owens v. Chaplin, 228 N.C. 705, 47 S.E.2d 12 (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 ex rel. Gower v. Carter, 195 N.C. 697, 143 S.E. 513 (1928).

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 ex rel. Owens v. Chaplin, 229 N.C. 797, 48 S.E.2d 37 (1948).

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 ex rel. Owens v. Chaplin, 228 N.C. 705, 47 S.E.2d 12 (1948).

Length of Residence and Domicile — Evidence Thereof. — See People ex rel. Boyer v. Teague, 106 N.C. 576, 11 S.E. 665 (1890).

§ **163-58. Literacy.**—Only such persons as are able to read and write any section of the Constitution of North Carolina in the English language shall be entitled to register and vote in any primary or election held under this chapter. (1901, c. 89, s. 12; Rev., s. 4318; C. S., s. 5939; 1927, c. 260, s. 3, 1957, c. 287, s. 1; 1967, c. 775, s. 1.)

Constitutionality. — The provisions of former § 163-28, similar to this section, were 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).

The provision of former § 163-28 requiring all persons applying for registration to be able to read and write any section of the Constitution as an educational qualification to the right to vote was authorized, and, since it applied alike to all persons who presented themselves for registration to vote, it made no discrimination based on race, creed or color, and therefore did not conflict with the 14th, 15th or 17th Amendments to the Constitution of the United States. Lassiter v. Northampton County Bd. of Elections, 248 N.C. 102, 102 S.E.2d 853 (1958), aff'd, 360 U.S. 45, 79 Sup. Ct. 985, 3 L. Ed. 2d 1072 (1959).

Requirement That Voter Be Able to Read and Write Any Section of Constitution Is Fair.—The requirement, applicable to members of all races, that the prospective voter "be able to read and write any section of the Constitution of North Carolina in the English language" is one fair way of determining whether a person is literate, not a calculated scheme to lay springes for the citizen. It cannot be condemned on its face as a device unrelated to the desire of North Carolina to raise the standards for people of all races who cast the ballot. Lassiter v. Northampton County Bd. of Elections, 360 U.S. 45, 79 Sup. Ct. 985, 3 L. Ed. 2d 1072 (1959).

Meaning of "Read and Write". — The General Assembly intended the words "read and write" as used in former § 163-28 to have those meanings commonly attributed to them in ordinary usage. In construing that section, the words should be given their ordinary, natural and general meaning. Bazemore v. Bertie County Bd. of Elections, 254 N.C. 398, 119 S.E.2d 637 (1961).

Utmost Proficiency Is Not Contemplated.—The utmost proficiency in reading and writing sections of the Constitution is not contemplated. Perfection is not the measure of qualification. The standard is reasonable proficiency in reading and writing any section of the Constitution in the English language. The occasional misspelling and mispronouncing of more difficult words should not necessarily disqualify. Bazemore v. Bertie County Bd. of Elections, 254 N.C. 398, 119 S.E.2d 637 (1961).

Requiring Writing from Dictation of Another Is Unreasonable. — Under the provisions of former § 163-28 a test of literacy that required an applicant for registration to write a section or sections of the Constitution from the reading and dictation of another, however fairly and clearly the same might be read and dictated, was unreasonable and beyond the clear intent of the statute. Bazemore v. Bertie County Bd. of Elections, 254 N.C. 398, 119 S.E.2d 637 (1961).

Administration of Former Section by Registrar. — The provision of former § 163-28 placing the duty upon the registrar to administer the section was logical and reasonable, and did not constitute class

legislation, since its provisions applied to all classes, and there was 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).

Challenging Statute in Federal Court.—The question of whether former § 163-28 should be declared void and its enforcement enjoined by a federal court on the ground that it was violative of rights under the federal Constitution would not be considered until plaintiff's administrative remedies had been exhausted and the North Carolina Supreme Court had interpreted the provisions of the section in the light of the North Carolina Constitution. Lassiter v. Taylor, 152 F. Supp. 295 (E.D.N.C. 1957).

§ **163-59. Right to participate or vote in party primary.**—No person shall be entitled to vote or otherwise participate in the primary election of any political party unless he

(1) Is a registered voter, and

(2) Has declared and has had recorded on the registration book or record the fact that he affiliates with the political party in whose primary he proposes to vote or participate, and

(3) Is in good faith a member of that party.

Any person who will become qualified by age or residence to register and vote in the general election for which the primary is held, even though not so qualified by the date of the primary election, shall be entitled to register while the registration books are open during the regular registration period prior to the primary and then to vote in the primary after being registered. In counties which adopt full-time and permanent registration, such an individual may register not earlier than 60 days nor later than 21 days prior to the primary. (1915, c. 101, s. 5; 1917, c. 218; C. S., s. 6027; 1959, c. 1203, s. 6; 1967, c. 775, s. 1.)

Cross Reference.—As to effect of voting in primary on future conduct of voter, see notes to §§ 163-74, 163-87, 163-96.

§§ **163-60 to 163-64:** Reserved for future codification purposes.

Article 7.

Registration of Voters.

§ **163-65. Registration books and records.**—(a) Precinct Records.—The county board of elections shall furnish each precinct registrar with a proper book or books in which to record registrations. This book shall be prepared to contain all of the information pertaining to a registered voter required by § 163-72, including the registrant's political party affiliation, if any. On each page of the book shall be printed a column index giving the first two letters of the surnames and the pages on which persons bearing those names are registered.

In lieu of a bound book, the county boards of elections shall install a loose-leaf registration book system in all of the precincts of the county prior to January 1, 1970; provided that nothing herein shall alter the power of the county board of elections, with the approval of the county board of commissioners, to establish by resolution a full-time system of registration as provided in G.S. 163-67 (b). The necessary binders for the loose-leaf registration book system shall be purchased by each county. The State Board of Elections shall have authority to approve types, sizes and kinds of binders to be used for the loose-leaf registration book system. Uniform registration sheets of paper approved by the State Board of Elections which are necessary for the binders shall be furnished by the State Board of Elections from funds provided by the State from the contingency and emergency fund. One or more duplicate sets of registration sheets shall be maintained by the chairman of the county board of elections at all times in a safe place.

(b) Special Register for Chairman of Board of Elections.—The State Board

of Elections shall furnish the chairman of the county board of elections with a book in which he shall register qualified persons prior to the regular registration period under the provisions of § 163-68. This book shall be prepared to contain all the information pertaining to a registered voter required by § 163-72, including the registrant's political party affiliation and also a record of the precinct in which he resides.

(c) Registration Record in County With Full-Time and Permanent Registration or Loose-Leaf Registration Book System.—In counties which adopt full-time and permanent registration or loose-leaf registration book system, the applicant's application to register, when approved by the county board of elections, as provided in § 163-67, shall become an official registration certificate. All original registration certificates shall be kept by the county board of elections in a safe place to be provided by the board of county commissioners. The county board of elections shall place an exact duplicate or copy of each original registration certificate in the proper precinct registration book, and certify each such book as containing the registration certificates of all persons entitled to vote in that precinct. Duplicate registration certificates filed in the precinct registration books, when properly certified by the county board of elections, shall be used in the precincts for purposes of all primaries and elections; provided, however, that the original registration certificates shall at all times be the official and final evidence of registration, and the county board of elections shall have power to correct the duplicates in the precinct registration books to conform to the original registration certificates at any time, including the day of any primary or election. (1939, c. 263, s. 1; 1949, c. 916, s. 1; 1953, c. 843; 1955, c. 800; 1961, c. 381; 1963, c. 303, s. 1; 1967, c. 761, ss. 1, 2; c. 775, s. 1.)

Local Modification.—Ashe: 1969, c. 298; city of Rocky Mount: 1969, c. 1051; town of Arlington: 1969, c. 824.

Local Modification to Former §§ 163-43 and 163-43.1. — Town of Whitakers: 1965, c. 996, s. 1.

Editor's Note. — Session Laws 1967, c. 761, rewrote the last paragraph of subsection (a) and inserted "or loose-leaf registration book system" in the catchline and first sentence of subsection (c).

See Session Laws 1969, c. 171, as to new registration of voters required to be conducted during the period from April 1, 1969, to September 30, 1969, in the following counties: Alleghany, Ashe, Avery, Camden, Carteret, Caswell, Chatham, Cherokee, Clay, Columbus, Dare, Haywood, Macon, Polk, Rutherford, Sampson, Stokes, Watauga, Yancey.

§ 163-66. Custody of registration records and poll books; access; obtaining copies.—When not in use for a primary or election, all registration 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. If possible, he shall keep them in a fireproof vault. While the registration and poll books are in the custody of the chairman of the county board of elections, he may, in his discretion, permit them to be inspected or copied, but only under his supervision.

The precinct registrar shall be responsible for the safekeeping of the registration and poll books while in his custody. While these books are in the hands of the precinct registrar prior to a primary or election, it shall be his duty, on application of any candidate or the county chairman of any political party, to permit the registration and poll books to be copied at the registrar's residence or at the voting place. The registrar shall not release the registration and poll books from his custody for this purpose. In lieu of permitting these books to be copied, the registrar may furnish an accurate list of all names appearing therein, for which service he shall be paid by the candidate or party chairman to whom the list is furnished, at a rate not to exceed two cents (2¢) for each name listed.

In counties which adopt full-time and permanent registration, the registration books, registration certificates, indexes, and other records of registration shall

be and remain in the possession of the county board of elections. The board may exercise supervision and control of these records through its properly designated officers and employees. In such counties, it shall be the duty of the county board of elections, on application of any candidate, or the county chairman of any political party, or any other person, to furnish a list of the persons registered to vote in the county or in any precinct or precincts therein. In such a county no registrar shall furnish lists of registered voters or permit the registration records of his precinct to be copied. The county board of elections may furnish such lists upon sheets, cards, postal cards, or envelopes, and, upon request, it shall furnish selective lists according to party affiliation, sex, race, date of registration, or any other reasonable category. In all instances, however, the county board of elections shall require persons to whom such lists are furnished to make full reimbursement for the expense incurred in preparing them.

Any person wilfully 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 more than fifty dollars ($50.00) or imprisoned not more than 30 days. (1901, c. 89, s. 83; Rev., s. 4382; C. S., s. 6016; 1931, c. 80; 1939, c. 263, s. 3½; 1949, c. 916, ss. 6, 7; 1953, c. 843; 1955, c. 800; 1959, c. 883; 1963, c. 303, s. 1; 1967, c. 775, s. 1.)

Local Modification. — City of Rocky Mount: 1969, c. 1051.

§ **163-67. Full-time registration; application to register.** — (a) The county boards of elections shall establish, prior to January 1, 1971, a full-time system of registration, as prescribed by the State Board of Elections, under which the registration books, process, and records shall be open continuously for the acceptance of registration applications and for the registration of voters at all reasonable hours and time consistent with the daily function of all other county offices. In such counties no registration shall entitle a registrant to vote in any primary, general or special election unless the registrant shall have made application not less than 21 days, excluding Saturdays and Sundays, immediately preceding such primary, general or special election, provided that nothing shall prohibit registrants from registering to vote in future elections during such period.

When full-time registration has been established in a county, the official record of registration shall be made and kept in the form of an application to register which, as prescribed by the State Board of Elections, shall contain all information necessary to show the applicant's qualifications to register. In such a county, no person shall be registered to vote without first making a written, sworn, and signed application to register upon the form prescribed by the State Board of Elections. If the applicant cannot write because of physical disability, his name shall be written on the application for him by the election official to whom he makes application, but the specific reason for the applicant's failure to sign shall be clearly stated upon the face of the application.

Registrars and special registration commissioners appointed under the provisions of G.S. 163-41 may take registration applications from and administer registration oaths to qualified applicants without regard to the precinct residence of the registrar, special registration commissioner, or applicant: Provided, however, the county board of elections shall have power to limit the areas in which registrars and special registration commissioners may exercise the authority conferred in this paragraph.

Applications to register which have been completed by persons who have taken the required oath shall be forwarded promptly to the county board of elections. An application to register shall constitute a valid registration unless the county board of elections shall notify the applicant of its rejection within 30 days after its completion; provided that where the application is completed during the last 51 days prior to the election but at least 21 days prior to the election, the notification of rejection shall be made no less than 21 days prior to the election or the applica-

tion shall constitute a valid registration. The loose-leaf binders containing the precinct records and the duplicate registration record, required by G.S. 163-65 (a), shall be kept at all times in a safe place.

For the purpose of receiving registration applications, registrars shall attend the voting places in their precincts only on such days and at such hours as may be fixed by the county board of elections: Provided, the county board of elections shall not require registrars to be present at the voting places for this purpose on any day less than 21 days, excluding Saturdays and Sundays, prior to a primary or election. In its discretion, the county board of elections may require no attendance by registrars at the voting places for the purpose of receiving registration applications.

The county board of elections is authorized to make reasonable rules and regulations, not inconsistent with law and State Board regulations, to insure full-time registration as provided in this section.

(b) In counties which have less than 14,001 registered voters the State Board of Elections shall prescribe reasonable regulations permitting such counties to operate a modified full-time office to the extent that the operation of such full-time office will not necessarily be required to be open such as is required in counties with total registered voters in excess of 14,000; provided, that nothing herein shall preclude such counties from maintaining office hours for registration consistent with the hours observed by all other offices within said county. In counties which operate under a modified full-time system as authorized by this section, registration commissioners shall not be allowed.

(c) No Registration on Day of Primary or Election; Exception. — No person shall be permitted to register on the day of an election or primary, unless he shall have become qualified to register and vote between the date the registration period expired and the date of the succeeding primary or election. No one shall be permitted to register on the day of a second primary unless he shall have become qualified to register and vote between the date of the first primary and the date of the succeeding second primary.

(d) The cost of maintaining the registration and election processes required by this section and § 163-67.1 shall be allocated by the respective boards of county commissioners upon approval of budget requirements submitted by the respective county board of elections. The respective boards of county commissioners shall appropriate reasonable and adequate funds necessary for the legal functions of the county boards of elections, including reasonable and just compensation of the executive secretary. (1901, c. 89, ss. 18, 21; Rev., ss. 4322, 4323; C. S., ss. 5946, 5947; 1923, c. 111, s. 3; 1933, c. 165, s. 5; 1947, c. 475; 1953, c. 843; 1955, c. 800; 1957, c. 784, ss. 3, 4; 1961, c. 382; 1963, c. 303, ss. 1, 2; 1967, c. 761, s. 3; c. 775, s. 1; 1969, c. 750, ss. 1, 2.)

Local Modification. — City of Rocky Mount: 1969, c. 1051.

Local Modification to Former § 163-31. —Randolph: 1965, c. 1123; town of Whitakers: 1965, c. 996, s. 1.

Local Modification to Former § 163-43.1. — Town of Whitakers: 1965, c. 996, s. 1.

Editor's Note. — The 1969 amendment rewrote subsection (a), rewrote subsection (b) as previously amended in 1967, and added subsection (d).

See Session Laws 1969, c. 171, as to new registration of voters required to be conducted during the period from April 1, 1969, to September 30, 1969, in the following counties: Alleghany, Ashe, Avery, Camden, Carteret, Caswell, Chatham, Cherokee, Clay, Columbus, Dare, Haywood, Macon, Polk, Rutherford, Sampson, Stokes, Watauga, Yancey.

Time for Books to Remain Open. — Where the charter of a city or town provided that for the issuance of bonds an election shall be held "under the rules and regulations presented by law for regular elections," it referred to former § 163-31, requiring that the books of registration should be kept open for twenty days (now two weeks); and construing that section in connection with § 160-37, it was held that the former was for the purpose of a new and original registration, and the latter, in providing for only seven days, was for the purpose of revising the registration books so that electors might be regis-

tered whose names were not on the former books. Hardee v. City of 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 former § 163-31, did not of itself render invalid the issuance of the bonds accordingly approved when it appeared 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).

Registration on Day 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 ex rel. Quinn v. Lattimore, 120 N.C. 426, 26 S.E. 638 (1897).

§ 163-67.1. Executive secretary, appointment by county board of elections.—The county boards of elections, whether operating under the provisions of G.S. 163-67 (a) or (b) shall have authority to employ an executive secretary who shall be paid such compensation as recommended by the county board of elections and approved by the respective boards of county commissioners. The executive secretary may be empowered by the county board of elections to perform such administrative duties as might be assigned by the chairman. In addition to any administration duties the executive secretary shall be authorized to receive applications for registration and in pursuit of such authority shall be given the oath required of all registrars. In addition, the executive secretary may be authorized by the chairman to execute the responsibilities devolving upon the chairman from G.S. 163-73 provided such authorization by any chairman shall in no way transfer the responsibility for compliance with the law. The chairman shall remain liable for proper execution of all matters specifically assigned to him by law. (1969, c. 750, s. 1.)

§ 163-68. Registration of persons 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 precinct in which he resides during the period for registration established by § 163-67, may be registered as provided in this section.

It shall be the duty of the chairman of the county board of elections to register any person possessing the qualifications to vote who presents himself for registration at any time other than the usual registration period, and who expects to be absent from the precinct in which he resides during all of the usual registration period. The chairman shall follow the registration procedure set out in § 163-72 for the registration of voters before the precinct registrar, except that he shall record each such registration in the book furnished him for that purpose by the State Board of Elections under the provisions of § 163-65.

Immediately after registrars are appointed for any primary or election to be held in the county, or in any political subdivision of the county, the chairman of the county board of elections shall certify to the registrar of each precinct the name, age, race, residence, and place of birth of each person he has registered who is entitled to vote in the particular precinct. It shall then be the duty of the registrar to enter upon the regular registration record of his precinct all

names and accompanying information certified to him by the chairman of the county board of elections, writing opposite each name entered the words "Registered before chairman of county board of elections."

Persons registered in accordance with the provisions of this section shall be entitled to vote in primaries and elections held in the precinct in which registered in the same manner as if they had been registered by the precinct registrar. (1917, c. 23, s. 2; C. S., s. 5961; 1967, c. 775, s. 1.)

Local Modification to Former § 163-53.
—Graham: 1959, c. 780, s. 1.

§ **163-69. Permanent registration.**—In counties which adopt full-time registration as authorized by § 163-67, the registration certificates shall be a permanent public record of registration and qualification to vote, and they shall not thereafter be cancelled. In such a county no new registration shall be ordered, either by precinct or county-wide, unless the permanent registration certificates have been lost or destroyed by theft, fire, or other hazard.

In the event of any division of precincts or change in precinct boundaries, the board of elections in such a county shall not cancel the existing registration or order a new registration, but it shall immediately correct the existing precinct registration certificates to conform to the division or change.

To the end that the permanent registration records shall be purged of the names of registrants who have died or who have become disqualified to vote since registration, the register of deeds of the county shall furnish to the county board of elections a certification of all death certificates as soon as they are recorded in his office. Upon receipt of such a certification from the register of deeds, the county board of elections shall cause to be removed from the permanent registration records of the county the name of any person appearing on the register of deeds' death certificate certification. In addition, the county board of elections is authorized to remove from the permanent registration records the names of all persons who have failed to vote, according to the poll or other record of voting, for a period of four years. Prior to removing any person's name from the registration records for failure to vote for four consecutive years, as authorized in this section, the county board of elections shall cause to be mailed to the person affected, at the address shown on the permanent registration records, a notice to show cause why his registration should not be voided. If such a person shall appear and show that his qualifications to register and vote remain as they were when he was first registered, his name shall not be removed from the permanent registration record. Any person whose name has been removed from the permanent registration record for failure to vote for four consecutive years shall be permitted to reregister at any time he can demonstrate that he is qualified to register and vote.

Nothing in this section shall prohibit the county board of elections from restoring to the permanent registration records the name of any person upon proof that he is not dead or that he has voted in the county within the four-year period. (1953, c. 843; 1955, c. 800; 1963, c. 303, s. 1; 1965, c. 1116, s. 1; 1967, c. 775, s. 1.)

Local Modification. — Orange County: "The board of elections of Orange County is authorized and empowered to transfer the names of all persons registering during the registration period prior to the May, 1969, general municipal election of the town of Chapel Hill, and the election for terms on the Chapel Hill city board of education, to the permanent registration books of Orange County. The registrars appointed by said board of elections for the election precincts lying within the corporate limits of the town of Chapel Hill and the boundaries of the Chapel Hill city administrative school district, are directed to place the names of all persons who presented themselves for registration during such registration period, and who were duly registered on the supplementary registration books of said precinct on the permanent registration books of Orange County." 1969, c. 823.

Local Modification to Former § 163-31.2. — Alamance, Columbus, Forsyth,

Franklin, Gaston, Harnett, Hertford, Johnston, Martin, Northampton, Randolph, Robeson, Rowan, Scotland and Washington: 1965, c. 1116, s. 1½, as amended by 1969, cc. 576, 927; Wayne: 1965, c. 1070; city of Rocky Mount: 1969, c. 1051; town of Whitakers: 1965, c. 996, s. 1.

§ **163-70. Registrar to certify number registered in precinct.**—At the close of the registration period, each registrar shall promptly certify to the county board of elections the number of voters registered in his precinct.

The requirement of this section shall not apply in counties which adopt full-time and permanent registration. (1967, c. 775, s. 1.)

§ **163-71. Municipal corporations authorized to use county registration records.**—Upon such terms as may be mutually agreed to by the governing body of any city, town, or other municipality and the boards of commissioners and elections of the county in which the municipality is situated, the municipality is authorized to use the registration books, process, or records of the county as the official record of registration of persons qualified to vote in municipal elections. If such an agreement is reached, the provisions of law applicable to the registration of voters in the county shall also apply to the city, town, or other municipal corporation for the purpose of its primary, general, regular, and special elections.

All elections heretofore held or ordered to be held by any city, town, or other municipal corporation in which the registration books, process, or records of the county in which the municipal corporation is located were used or ordered to be used are hereby in all respects ratified, validated, and confirmed. (1955, c. 763; 1967, c. 775, s. 1.)

Local Modification. — City of Rocky Mount: 1969, c. 1051.

§ **163-72. Registration procedure; oath.**—Before questioning any applicant for registration as to his qualifications, the registrar shall administer the following oath to him:

"You swear (or affirm) that the statements and information you shall give me with respect to your identity and qualifications to register to vote shall be the truth, the whole truth, and nothing but the truth, so help you, God."

After being sworn, the applicant shall state as accurately as possible his name, age, place of birth, place of residence, political party affiliation, if any, under the provisions of § 163-74, and any other information which may be material to a determination of his identity and qualification to be admitted to registration. The registrar, if in doubt as to the right of the applicant to register, may require other evidence satisfactory to him as to the applicant's qualifications.

If the registrar finds the applicant duly qualified and entitled to be registered, he shall administer the following registration oath to him:

"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 or will have been a resident of the State of North Carolina for one year, and of this precinct for 30 days by the date of the next general election; that I am at least 21 years of age or will be by the date of the next general election; and that I have not registered to vote in any other precinct. So help me, God."

If the registrar finds the applicant qualified and entitled to be registered, and if the applicant has taken the oath prescribed in the preceding paragraph, the registrar shall register him by recording his name, age, race, residence, place of birth, and the precinct, county, or state from whence he has removed in the event of a removal, in appropriate columns of the registration book or other registration record.

The registration book or other record containing the information required by

the preceding paragraph shall be evidence against the applicant in any court of law in a proceeding for false or fraudulent registration.

If an applicant for registration has removed from another precinct in the same county since his last registration, he shall, before being registered fill out and sign a transfer certificate in the form prescribed in the following paragraph.

Prior to the opening of each registration period, the chairman of the county board of elections shall furnish each precinct registrar with an adequate supply of registration transfer certificates printed in substantially the following form:

"To the Registrar of ..... precinct ..... County, N.C.

I hereby certify that I have removed my residence from ..... voting precinct, where I was a registered voter, to ..... voting precinct within the same county, and I have this day applied for registration before the undersigned registrar of this precinct in which I now reside, and I hereby request and authorize you to remove my name from the registration book of your precinct as I am no longer qualified to vote in your precinct.

Signed this ..... day of ....., 19.....

.....
(Signature of applicant)

Witness:

..... Registrar
..... Precinct
..... Address"

When an applicant has completed and signed a transfer certificate the registrar shall sign the certificate as a witness to the applicant's signature. Immediately after the close of the registration period the registrar shall mail all completed transfer certificates to the chairman of the county board of elections, who shall immediately mail them to the registrars of precincts from which the applicants have removed. Upon receipt of such certificates, the registrars shall cancel the registration of applicants who have requested and authorized that action on the registration records of their precincts.

In counties which adopt full-time and permanent registration, no registered voter shall be required to reregister upon moving from one precinct to another in the same county. In lieu thereof, in accordance with regulations prescribed by the county board of elections, not less than 21 days before any primary or election in which the removing elector desires to vote, he shall file with the county board of elections, or with a registrar or special registration commissioner, an affidavit setting forth his former residence, his new residence, the date of his removal to the new residence, and a statement that all his other qualifications to register and vote remain as they were at the time he was registered. If the county board of elections finds the facts asserted in the affidavit to be true, it shall immediately transfer the voter's registration to the precinct of his new residence. Thereafter the voter shall be considered registered and qualified to vote in his new precinct of residence. (1901, c. 89, s. 12; Rev., s. 4319; C. S. s. 5940; Ex. Sess. 1920, c. 93; 1933, c. 165, s. 5; 1951, c. 984, s. 1; 1953, c. 843; 1955, c. 800; c. 871, s. 2; 1957, c. 784, s. 2; 1963, c. 303, s. 1; 1967, c. 775, s. 1.)

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 ex rel. DeBerry 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 ex rel. DeBerry 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 ex rel. DeBerry 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 of Comm'rs, 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 (now thirty days) 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 four months (now thirty days) 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 & So. 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, 21 Am. Rep. 465 (1875).

§ 163-73. Registration and voting of new residents in presidential elections.—A person qualifying under § 163-56 and desiring to vote for presidential and vice-presidential electors shall appear in person to register before the chairman of the board of elections of the county in which he is then residing not more than 20 days before the day set for holding the presidential election and not later than 5:00 P.M. on Friday preceding the day set for holding that election. For the registration of such persons, the chairman of the county board of elections shall maintain a separate registration book which shall conform in all respects to the registration books used in the precincts of the county.

In registering an applicant under this section, the chairman of the county board of elections shall adhere to the procedure prescribed for registrars in § 163-72 except that the applicant shall not be required to take the registration oath prescribed in that section. In lieu thereof, in the presence of the chairman of the county board of elections, the applicant shall make application for a persidential ballot by completing, signing, and swearing to an application form substantially as follows. The chairman of the county board of election shall administer the oath thereto:

"Application and Affidavit of New Residents for Voting for Presidential and Vice-Presidential Electors

State of North Carolina
County of .....

I, ..., do solemnly swear (or affirm) that I am a citizen of the United States; that I am at least 21 years of age or will become 21 by the date of the next Presidential Election; that I have been a legal resident of the State of North Carolina since ....., 19....; that I now reside at ..... (Street or other address) in the City (or Town) of .....

in ..... precinct, of the County of ....., North Carolina; that I will have been a resident thereof at least 60 days prior to the date of the next Presidential Election; that I will be qualified to vote in said precinct for electors for President and Vice-President of the United States; that I have not voted, nor will I vote in the state of my former residence, or elsewhere in North Carolina; and I do now hereby make application for an official presidential ballot for my use in voting in said election in the State of North Carolina.

Signed .....
Address .....

Subscribed and sworn to before me this ..... day of ....., 19.....

Signed .....
Chairman, County Board of
Elections of .....
County, N.C."

If the chairman of the county board of elections is satisfied that the application provided for above is in proper order and that the applicant is qualified to vote under the provisions of § 163-56 for electors for President and Vice-President, he shall then give to the applicant one of the official presidential and vice-presidential ballots furnished by the State Board of Elections. Upon receiving the ballot, the applicant shall mark it in the presence of the chairman, but in such manner as not to disclose to the chairman how he has marked it. The applicant shall then fold the ballot, concealing the marking thereon, and deliver it to the chairman, who shall write his initials and a consecutive number on the top margin of the ballot and then place the ballot in a container envelope similarly numbered and seal it. On the face of the envelope there shall be printed or typed the following:

"This envelope contains the presidential ballot of ....., a new resident of this county and State, presently residing in ..... precinct in ..... County, North Carolina, and being voted pursuant to the provisions of Article 18 of Chapter 163 of the General Statutes of North Carolina."

The chairman of the county board of elections shall safely keep the sealed envelope containing the marked ballot of the new resident voter until the morning of the day of the election in which the ballot is to be voted. Before noon on that day the chairman shall deliver the ballot or cause it to be delivered to the registrar of the precinct in which the applicant is then residing, together with a list of all new resident voters voting in the presidential election and residing in that precinct. (1965, c. 871; 1967, c. 775, s. 1.)

§ 163-74. Record of political party affiliation; changing recorded affiliation; correcting erroneous record.—(a) Record of Party Affiliation.—When any person applies for registration during a regular registration period prior to any primary or election, it shall be the duty of the registrar to request the applicant to state his political party affiliation and to record the affiliation in the registration book or appropriate record. Such recorded party affiliation shall thereafter be permanent unless, or until, the registrant changes it under the provisions of subsection (b) of this section.

If the applicant refuses to declare his party affiliation upon request, the registrar shall register his name, if he is otherwise qualified, without indicating any party affiliation opposite the name. The registrar shall then advise the applicant that, although registered, he cannot vote in any party primary but only in general elections held thereafter.

If the applicant states to the registrar that he is an independent indicating affiliation with no political party, the registrar shall register his name, if he is other-

wise qualified, entering the designation "Independent" in the proper place on the registration record. The registrar shall then advise the applicant that, although registered, he cannot vote in any party primary but only in general elections held thereafter.

In all cases in which no party affiliation has been recorded in the registration book opposite the name of any registered elector, but not including those registered as independents, the registrant may, on primary election day, appear before the registrar of his precinct and have his political party affiliation recorded by taking the following oath to be administered by the registrar:

"I, ..., do solemnly swear (or affirm) that I desire in good faith to have my affiliation with the ..... party recorded in the registration book of this precinct, so help me, God."

When the registrant has taken the prescribed oath, the registrar shall record his declared party affiliation opposite the registant's name in the registration book and permit him to vote in the primary of the party with which he is affiliated.

(b) Change of Party Affiliation.—No registered elector shall be permitted to change the record of his party affiliation for a primary or second primary after the close of the registration period immediately prior to the primary. Any registrant who desires to have the record of his party affiliation changed on the registration book shall, during a regular registration period only, go to the registrar of his precinct and request that the change be made. Before being permitted to have the change made, the registrar shall require the registrant to take the following oath, and it shall be the duty of the registrar to administer it:

"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 registration records in the manner provided by law, so help me, God."

In counties which adopt full-time and permanent registration, any registered voter who desires to have his party affiliation changed on the registration records of the county shall, not less than 21 days prior to any primary election, file an affidavit in the form of the oath set out in the preceding paragraph with the county board of elections, a registrar, or a special registration commissioner, in accordance with regulations to be adopted by the county board of elections. Upon receipt of the required oath, the county board of elections shall immediately change the record of the registrant's party affiliation to conform to that stated in the oath. Thereafter the voter shall be considered registered and qualified to vote in the primary elections of the political party which he designated in the oath.

(c) Correction of Erroneous Record of Party Affiliation.—If at any time the chairman of the county 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 registration book of his precinct then, and in all such events, the chairman of the county board of elections or the registrar, having custody of the registration book, may make the necessary correction after first administering to the voter the following oath:

"I, ..., do solemnly swear (or affirm) that I desire in good faith to have the erroneous entry of my affiliation with the ..... party in the registration book of this precinct corrected in the manner provided by law to show that I affiliate with the ..... party, so help me, God." (1939, c. 263, s. 6; 1949, c. 916, ss. 4, 8; 1953, c. 843; 1955, c. 800; c. 871, s. 3; 1957, c. 784, s. 5; 1963, c. 303, s. 1; 1967, c. 775, s. 1.)

Good Faith of Party Change Is Subject to Challenge. — When a member of either party desires to change his party affiliation, the good faith of the change is a proper subject of inquiry and challenge. Clark v. Meyland, 261 N.C. 140, 134 S.E.2d 168 (1964).

But Participation in Primary Cannot Be Denied by Unconstitutional Oath.—Membership in a party and a right to participate in its primary may not be denied an elector because he refuses to take an oath to vote in a manner which violates the constitutional provision that elections

shall be free. Clark v. Meyland, 261 N.C. 140, 134 S.E.2d 168 (1964).

Any elector who offers sufficient proof of his intent, in good faith, to change his party affiliation cannot be required to bind himself by an oath, the violation of which, if not sufficient to brand him as a felon, would certainly be sufficient to operate as a deterrent to his exercising a free choice among available candidates at the election —even by casting a write-in ballot. Clark v. Meyland, 261 N.C. 140, 134 S.E.2d 168 (1964).

An oath to support future candidates violates the principle of freedom of conscience. Clark v. Meyland, 261 N.C. 140, 134 S.E.2d 168 (1964).

The legislature is without power to shackle a voter's conscience by requiring an oath requiring an elector to vote for future candidates, as a price to pay for his right to participate in his party's primary. Clark v. Meyland, 261 N.C. 140, 134 S.E.2d 168 (1964).

And Denies Free Ballot. — An oath to support future candidates denies a free ballot—one that is cast according to the dictates of the voter's judgment. Clark v. Meyland, 261 N.C. 140, 134 S.E.2d 168 (1964).

§ **163-75. Appeal from denial of registration.**—Any person who is denied registration for any reason may appeal the decision of the precinct registrar to the board of elections of the county in which the precinct is located. The person appealing shall file notice of his appeal with the county board of elections and with the registrar who refused to register him by 5:00 P.M. on the day following the day of denial. The notice of appeal shall be in writing, signed by the appealing party, and shall set forth the name, age, and address of the appealing party; it shall also state the reasons for the appeal. (1957, c. 287, s. 2; 1967, c. 775, s. 1.)

§ **163-76. Hearing on appeal before county board of elections.** — Any registrar receiving a notice of appeal from denial of registration shall file the notice with the county board of elections by 5:00 P.M. on the day following the day on which he receives it. Every person appealing to the county board of elections from denial of registration shall be entitled to a prompt and fair hearing on the question of his right and qualifications to register as a voter. All cases on appeal to a county board of elections shall be heard de novo.

Two members of the county board of elections shall constitute a quorum for the purpose of hearing appeals on questions of registration. The decision of a majority of the members of the board shall be the decision of the board. The board is authorized to subpoena witnesses and to compel their attendance and testimony under oath, and it is further authorized to subpoena papers and documents relevant to any matters pending before the board.

If at the hearing the board shall find that the person appealing from the decision of the registrar is able to read and write any section of the Constitution of North Carolina in the English language, and if the board further finds that the appellant meets all other requirements of law for registration as a voter in the precinct in which application was made, the board shall enter an order to the precinct registrar directing that the appellant be registered as a voter in the precinct from which the appeal was taken. The county board of elections shall not order the applicant registered in any precinct other than that from which the appeal was taken. Not later than five days after an appeal is heard before the county board of elections, the board shall give notice of its decision to the appealing party. (1957, c. 287, s. 3; 1967, c. 775, s. 1.)

§ **163-77. Appeal from county board of elections to superior court.** —Any person aggrieved by a final decision of a county board of elections denying registration may at any time within 10 days from the date on which he receives notice of the decision appeal therefrom to the superior court of the county in which the board is located. Upon such an appeal, the appealing party shall be the plaintiff and the county board of elections shall be the defendant, and the matter shall be heard de novo in the superior court in the manner in which other civil actions are tried and disposed of therein.

If the decision of the court be that the order of the county board of elections

shall be set aside, then the court shall enter its order so providing and adjudging that the plaintiff is entitled to be registered as a qualified voter in the precinct in which he originally made application to register, and in such case the plaintiff's name shall be entered in the registration book of that precinct. The court shall not order the registration of any person in a precinct in which he did not apply to register prior to the proceeding in court.

From the judgment of the superior court an appeal may be taken to the appellate division in the same manner as other appeals are taken from judgments of that court in civil actions. (1957, c. 287, s. 4; 1967, c. 775, s. 1; 1969, c. 44, s. 82.)

Editor's Note.—The 1969 amendment substituted "appellate division" for "Supreme Court" in the last paragraph.

§ 163-78. New registrations; registration when books mutilated or destroyed; revisions of registration books.—(a) New Registration.—The county board of elections shall have power from time to time to order a new registration of all qualified persons for any or all precincts in the county to be conducted in the period prescribed by § 163-67 (a). Upon adoption of a resolution ordering a new registration, the county board of elections shall give 20 days' notice thereof prior to the opening of the registration period by advertising in a newspaper having general circulation in the county, or in lieu thereof, at the courthouse door and at three other public places in the county. When a new registration is ordered, however, the names of persons who have been registered since the last preceding primary or general election by the chairman of the county board of elections under § 163-68 shall remain upon the registration books unless those so registered have died or otherwise become disqualified.

(b) Registration When Books Mutilated or Destroyed.—In the event the registration books for any precinct shall, prior to 30 days preceding any primary, general, or special election, be destroyed by fire or other cause or shall become mutilated to the extent they can no longer be used, the county board of elections shall provide the precinct registrar with a new registration book, and shall order a new registration of qualified persons in the precinct at the times and places and in the manner prescribed in § 163-67 (a). The county board of elections shall give notice of the new registration at least 10 days before the date on which the books will be opened by advertisement in a newspaper having general circulation in the county, or in lieu thereof, at the courthouse door and at three public places in the precinct affected. The notice shall state the opening and closing dates for registration, the location of the voting place, and the name of the precinct registrar. If time does not permit challenge day to be held on a separate Saturday, the county board of elections may combine it with the last Saturday for registration, so specifying in the notice of the new registration.

Should the destruction or mutilation of the precinct registration book occur less than 30 days before any primary, general, or special election, the county board of elections shall, insofar as time will permit, adhere to the provisions of the first paragraph of this section. If the time available makes it impossible to conduct a new registration in the affected precinct, each person presenting himself to vote in the precinct on the day of the ensuing general or special election shall be allowed to cast his ballot after signing and delivering to the registrar an affidavit in the following form:

"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 this precinct for 30 days; that I am at least 21 years of age; and that I have not registered to vote in any other precinct. So help me, God."

If the ensuing election is a primary rather than a general or special election, the following affidavit shall be used:

"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 or will have been a resident of the State of North Carolina for one year, and of this precinct for 30 days by the date of the next general election; that I am at least 21 years of age or will be by the date of the next general election; and that I have not registered to vote in any other precinct. So help me, God."

Persons permitted to vote under this procedure may be challenged in accordance with the provisions of § 163-87 and § 163-88. The registrar shall deliver all affidavits deposited with him to the county board of elections on canvass day. The affidavits shall not be deemed to constitute a new record of registration for the precinct for subsequent primaries and elections.

(c) Revision of Registration Books.—The county board of elections shall have power from time to time to order a revision of the registration books of any or all precincts in the county by requiring that they be purged of illegal or disqualified voters, after notice to such registrants as herein directed.

When the county board of elections makes an order of revision it shall be directed to the registrar and judges of election of the precinct to which it relates, directing them to meet at the precinct voting place on the first Saturday of the registration period before any primary or election, and to prepare from the registration books a list of those registrants, with their names and addresses as they appear on the registration books, who are, in the opinion of the precinct officials, dead or disqualified to vote by removal from the precinct. When the list is prepared the precinct officials shall, within 48 hours, deliver it to the chairman of the county board of elections.

Upon receipt of the list described in the preceding paragraph, the chairman of the county board of elections shall cause to be mailed to each listed person, at the address shown on the list, a notice requiring him to appear at the precinct voting place on the Saturday prescribed for challenge day, and show that he is legally entitled to vote in that precinct. In lieu of a personal appearance on challenge day, the registrant may furnish evidence by mail or otherwise that he is qualified to vote in the precinct.

Upon failure of such a person to make a personal appearance on challenge day, or upon failure of such a person to offer satisfactory evidence that he is qualified to vote in the precinct in the approaching primary or election, the precinct officials shall strike his name from the registration book.

However, in the event that any person whose name has been removed from the registration book of a precinct under the provisions of this section should appear at the voting place on primary or election day and give satisfactory evidence to the registrar and judges that he has never received any notice by mail or otherwise that his name has been placed on the list of disqualified voters in that precinct, and can satisfy the precinct officials that he is qualified to vote in that precinct, then his name shall be reentered on the registration book, and he shall be allowed to vote in that precinct as before. (1901, c. 89, s. 18; 1905, c. 510; Rev., ss. 4314, 4323; 1909, c. 894; C. S., ss. 5935, 5947; 1921, c. 181, s. 3; 1923, c. 111, s. 3; 1933, c. 165, ss. 3, 5; 1947, c. 475; 1953, c. 843; 1955, c. 800; 1957, c. 784, s. 3; 1961, c. 382; 1963, c. 303, s. 2; 1967, c. 775, s. 1.)

Local Modification to Former § 163-23.
—Graham: 1957, c. 119.

§§ **163-79 to 163-83**: Reserved for future codification purposes.

Article 8.

Challenges.

§ 163-84. Right to challenge; to whom challenge made.—The right of any person to register, to remain registered, or to vote in a precinct may be challenged by any registered voter of that precinct, including the precinct registrar and judges of election: Provided, however, that in counties which adopt full-time and permanent registration, any person registered to vote in the county may challenge the right of any other person to register, to remain registered, or to vote in that county. In all counties challenges shall be made to the appropriate precinct registrar, except that in counties which adopt full-time and permanent registration challenges made on days other than the day of a primary or election shall be made to the county board of elections. Challenges shall be made, heard, and decided as provided in this article. (1901, c. 89, s. 19; Rev., s. 4339; C. S., s. 5972; 1929, c. 164, s. 36; 1953, c. 843; 1955, c. 800; c. 871, s. 7; 1959, c. 616, s. 2; 1963, c. 303, s. 1; 1967, c. 775, s. 1.)

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).

§ 163-85. Special times for challenge; challenge procedure; notice of hearing.—It shall be the duty of the registrar to bring the registration books of his precinct to the precinct voting place on the Saturday immediately preceding each primary and election, and keep them open there from 9:00 A. M. until 3:00 P. M. for inspection by the registered voters of the precinct. During those hours any registered voter of the precinct shall be allowed to challenge the registration and voting rights of any person whose name appears on the books. When an objection is entered, the registrar shall write the word "challenged" in pencil upon the registration book opposite the name of the person objected to, then he shall appoint a time and place at which he, together with the precinct judges of election, shall hear and decide the challenge. The hearing shall in all events be held before the date of the immediately succeeding primary or election. The registrar shall prepare a written notice of each challenge, stating succinctly the grounds asserted and the time and place at which the challenge will be heard, and serve or have it served on the challenged registrant. If personal service is not possible, a copy of the notice shall be left at the residence of the challenged registrant. The registrar shall also furnish the challenger with a copy of the notice of hearing.

In counties which adopt full-time and permanent registration there shall be no single challenge day. In such counties the registration records shall be open to inspection by any registered voter of the county at reasonable hours on one or more days each week to be set by regulation of the county board of elections, at which time the registration of any elector of the county shall be subject to objection and challenge. Written notice of each challenge and hearing shall be prepared and served by the county board of elections in the manner in which registrars prepare and serve such notices in counties without full-time and permanent registration. (1901, c. 89, s. 19; Rev., s. 4339; C. S., s. 5972; 1953, c. 843; 1955, c. 800; 1963, c. 303, s. 1; 1967, c. 775, s. 1.)

§ 163-86. Hearing on challenge made prior to primary or election day.—A challenge entered on a day other than the day of a primary or election shall be heard and decided before the date of the next ensuing primary or election. Challenges shall be heard and decided by the registrar and judges of election of the precinct in which the challenged registrant is registered, except in

counties which adopt full-time and permanent registration where challenges entered on a day other than the day of a primary or election shall be heard and decided by the county board of elections.

At the time and place set for the hearing on a challenge entered prior to the date of a primary or election, the election officials conducting the hearing shall explain to the challenged registrant the qualifications for registration and voting in this State. The officials conducting the hearing shall then administer the following oath to the challenged registrant:

"You swear (or affirm) that the statements and information you shall give in this hearing with respect to your identity and qualifications to be registered and to vote shall be the truth, the whole truth, and nothing but the truth; so help you, God."

After being sworn, the officials conducting the hearing shall examine the challenged registrant as to his qualifications to be registered and to vote. If the challenged registrant insists that he is qualified, the officials conducting the hearing 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 at least 21 years of age or will become 21 by the date of the next general election; that you have or will have resided in this State for one year, and in the precinct for which registered for 30 days by the date of the next general election; that you are not disqualified from voting by the Constitution and laws of this State; that your name is ....., and that in such name you were duly registered as a voter of ..... precinct; and that you are the person you represent yourself to be. So help you, God."

If the challenged registrant refuses to take the tendered oath, the challenge shall be sustained, and the officials conducting the hearing shall delete his name from the registration records. If the challenged registrant takes the tendered oath, the officials conducting the hearing may, nevertheless, sustain the challenge unless they are satisfied that the challenged registrant is a legal voter. If they are satisfied that he is a legal voter, they shall overrule the challenge and erase the word "challenged" which appears by the voter's name in the registration book.

Election officials conducting hearings on challenges shall have authority to administer the necessary oaths or affirmations to all witnesses brought before them to testify to the qualifications of the person challenged. (1901, c. 89, s. 22; Rev., s. 4340; C. S. s. 5973; 1955, c. 871, s. 2; 1967, c. 775, s. 1.)

§ 163-87. Challenges allowed on day of primary or election.—On the day of a primary or election, at the time a registered voter offers to vote, any other registered voter of the precinct may exercise the right of challenge, and when he does so may enter the voting enclosure to make the challenge, but he shall retire therefrom as soon as the challenge is heard.

On the day of a party primary, any voter of the precinct who is registered as a member of the political party conducting the primary may, at the time any registrant proposes to vote, challenge his right to vote upon the ground that he does not affiliate with the party conducting the primary or does not in good faith intend to support the candidates nominated in that party's primary, and it shall be the duty of the registrar and judges of election to determine whether or not the challenged registrant has a right to vote in that primary according to the procedures prescribed in § 163-88. (1915, c. 101, s. 11; 1917, c. 218; C. S., s. 6031; 1921, c. 181, s. 6; 1923, c. 111, s. 14; 1929, c. 164, s. 36; 1953, c. 843; 1955, c. 800; c. 871, s. 7; 1959, c. 616, s. 2; c. 1203, s. 7; 1963, c. 303, s. 1; 1967, c. 775, s. 1.)

Voter Need Not Support Candidates of Party in Whose Primary He Voted.—The right of a qualified elector to vote in party primaries is confined to the primary of the existing political party with which he affiliates at the time of the holding of

the primary. But the voter is not deprived 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 Bd. of Elections, 229 N.C. 179, 49 S.E.2d 379 (1948).

§ 163-88. Hearing on challenge made on day of primary or election.—A challenge entered on the day of a primary or election shall be heard and decided by the registrar and judges of election of the precinct in which the challenged registrant is registered before the polls are closed on the day the challenge is made. When the challenge is heard the precinct officials conducting the hearing shall explain to the challenged registrant the qualifications for registration and voting in this State, and shall examine him as to his qualifications to be registered and to vote. If the challenged registrant insists that he is qualified, and if, by the sworn testimony of at least one registered voter of the precinct, he shall prove his identity with the person in whose name he offers to vote and his continued residence in the precinct since he was registered, one of the judges of election or the registrar shall tender to him the following oath or affirmation, omitting the portions in brackets if the challenge is heard on the day of an election other than a primary:

"You do solemnly swear (or affirm) that you are a citizen of the United States; that you are at least 21 years of age [or will become 21 by the date of the next general election]; that you have [or will have] resided in this State for one year, and in this precinct for 30 days [by the date of the next general election]; that you are not disqualified from voting by the Constitution and laws of this State; that your name is ....., and that in such name you were duly registered as a voter of this precinct; that you are the person you represent yourself to be; [that you are affiliated with the .... party]; and that you have not voted in this [primary] election at this or any other voting place. So help you, God."

If the challenged registrant refuses to take the tendered oath, the challenge shall be sustained, and the precinct officials conducting the hearing shall mark the registration records to reflect their decision, and they shall erase the challenged registrant's name from the poll book if it has been entered therein. If the challenged registrant takes the tendered oath, the precinct officials conducting the hearing may, nevertheless, sustain the challenge unless they are satisfied that the challenged registrant is a legal voter. If they are satisfied that he is a legal voter, they shall overrule the challenge and permit him to vote. Whenever any person's vote is received after having taken the oath prescribed in this section, the registrar or one of the judges of election shall write on the registration record and on the poll book opposite the registrant's name the word "sworn."

Precinct election officials conducting hearings on challenges on the day of a primary or election shall have authority to administer the necessary oaths or affirmations to all witnesses brought before them to testify to the qualifications of the person challenged. (1901, c. 89, s. 22; Rev., s. 4340; C. S. 5973; 1955, c. 871, s. 2; 1967, c. 775, s. 1.)

§ 163-89. Procedure for challenging absentee ballot and presidential ballot of new resident voter; right to appeal.—On election day any person registered to vote in a precinct may challenge an absentee voter's ballot or the presidential ballot of a new resident voter in his precinct. Each such ballot challenged shall be challenged separately. The challenge shall be addressed to the registrar, shall be written, and shall set out the specific reasons for the challenge, specifying why the ballot fails to comply with the law or why the absentee or new resident voter is not entitled to vote in the election.

When a challenge has been filed in accordance with the preceding paragraph, the registrar and judges shall proceed to hear the challenger's reasons for the challenge and make their decision without opening or removing the ballot

from the container envelope. The burden of proof shall be upon the challenger in each case. The precinct officials conducting the hearing shall have authority to administer the necessary oaths or affirmations to all witnesses brought before them to testify to the qualifications of the voter challenged or to the validity or invalidity of the ballot.

If the challenge is sustained, the absentee or new resident voter's ballot shall not be counted; the container envelope shall not be opened but shall be marked "Challenge sustained." All envelopes so marked shall be filed with the county board of elections at the time of the county canvass when the precinct returns are filed. They 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 absentee or new resident's ballot delivered to him.

If the challenge is not sustained, the absentee ballot or new resident's ballot shall be removed from the container envelope, deposited in the appropriate ballot box, counted, and tallied as provided in § 163-234.

Any voter whose ballot has been challenged under the provisions of this section may, if the challenge is sustained, either personally or through a duly authorized representative, appeal to the county board of elections on the day of the county canvass to sustain the validity of the voter's ballot, and if its validity is sustained, his ballot shall be counted and added by the board to the returns from the proper precinct.

In primary elections the provisions of this section shall apply to the ballots of servicemen seeking to avail themselves of the right to vote by absentee ballot under this chapter. (1939, c. 159, ss. 8, 9; 1945, c. 758, s. 8; 1953, c. 1114; 1963, c. 547, s. 8; 1965, c. 871; 1967, c. 775, s. 1.)

§ **163-90. Challenge as felon; answer not to be used on prosecution.**—If any registered voter is challenged as having been convicted of any crime which excludes him from the right of suffrage, he shall be required to answer any question in relation to the alleged conviction, but his answers 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; 1967, c. 775, s. 1.)

§§ **163-91 to 163-95**: Reserved for future codification purposes.

SUBCHAPTER IV. POLITICAL PARTIES.

Article 9.

Political Party Definition.

§ **163-96. Political party defined; creation of new party.**—(a) Definition.—A political party within the meaning of the election laws of this State shall be either:

(1) Any group of voters which, at the last preceding general State election, polled for its candidate for governor, or for presidential electors, at least ten percent (10%) of the entire vote cast in the State for governor or for presidential electors; or

(2) Any group of voters which shall have filed with the State Board of Elections petitions for the formation of a new political party which are signed by 10,000 persons who, at the time they sign, are registered and qualified voters in this State, and which comply with the conditions prescribed in subsection (b) of this section. To be effective, the petitioners must file their petitions with the State Board of Elections before 12:00 noon on the first day of July preceding the day on which is to be held the first general State election in which the new political party desires to participate. The State Board of Elections shall forthwith determine the sufficiency of petitions filed with it and shall im-

mediately communicate its determination to the State chairman of the proposed new political party.

(b) Petitions for New Political Party.—Petitions for the formation of a new political party must declare that the signers intend to organize a new political party on a State-wide basis, that they intend to participate as a political party in the next succeeding general election, and that they intend to affiliate with the new party by voting for its nominees.

The petitions must specify the name selected for the proposed political party. The State Board of Elections shall reject petitions for the formation of a new party if the name chosen contains any word that appears in the name of any existing political party recognized in this State or if, in the Board's opinion, the name is so similar to that of an existing political party recognized in this State as to confuse or mislead the voters at an election.

The petitions must state the name and address of the State chairman of the proposed new political party.

The validity of the signatures on the petitions shall be proved in accordance with one of the following alternative procedures:

(1) The signers may acknowledge their signatures before an officer authorized to take acknowledgments, after which that officer shall certify the validity of the signatures by appropriate notation attached to the petition, or

(2) A person in whose presence a petition was signed may go before an officer authorized to take acknowledgments and, after being sworn, testify to the genuineness of the signatures on the petition, after which the officer before whom he has testified shall certify his testimony by appropriate notation attached to the petition.

Each petition shall be presented to the chairman of the board of elections of the county in which the signatures were obtained, and it shall be the chairman's duty:

(1) To examine the signatures on the petition and place a check mark on the petition by the name of each signer who is qualified and registered to vote in his county.

(2) To attach to the petition his signed certificate

a. Stating that the signatures on the petition have been checked against the registration records and

b. Indicating the number found qualified and registered to vote in his county.

(3) To return each petition, together with the certificate required by the preceding subdivision, to the person who presented it to him for checking.

The group of petitioners shall pay to the chairman of the county board of elections a fee of five cents (5¢) for each signature he is required to examine and verify under the provisions of this subsection. (1901, c. 89, s. 85; Rev., s. 4292; 1915, c. 101, s. 31; 1917, c. 218; C. S., ss. 5913, 6052; 1933, c. 165, ss. 1, 17; 1949, c. 671, ss. 1, 2; 1967, c. 775, s. 1.)

Editor's Note.—See 11 N.C.L. Rev. 226, for review and comment on former § 163-1, relating to the formation of new political parties. For note on definition of political parties, see 11 N.C.L. Rev. 148 et seq.

As to the 1949 amendment, which rewrote former § 163-1, see 27 N.C. Law Rev. 455.

The primary laws have no application to new political parties created by petition. States' Rights Democratic Party v. State Bd. of Elections, 229 N.C. 179, 49 S.E.2d 379 (1948).

Any qualified voter has 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 pe-

tition 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 Bd. of Elections, 229 N.C. 179, 49 S.E.2d 379 (1948).

Duty of State Board of Elections.— Upon the filing of a petition 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 Bd. 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 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 Bd. of Elections, 229 N.C. 179, 49 S.E.2d 379 (1948).

§ **163-97. Termination of status as political party.**—When any political party fails to poll for its candidate for governor, or for presidential electors, at least ten percent (10%) of the entire vote cast in the State for governor or for presidential electors at a general election, it shall cease to be a political party within the meaning of the primary and general election laws and all other provisions of this chapter. (1901, c. 89, s. 85; Rev., s. 4292; C. S., s. 5913; 1933, c. 165, s. 1; 1949, c. 671, s. 1; 1967, c. 775, s. 1.)

§ **163-98. General election participation by new political party.**—In the first general election following the date on which a new political party qualifies under the provisions of § 163-96, it shall be entitled to have the names of its candidates for State, congressional, and national offices printed on the official ballots, but it shall not be entitled to have the names of candidates for other offices printed on State, district, or county ballots at that election.

For the first general election following the date on which it qualifies under § 163-96, a new political party shall select its candidates by party convention. Following adjournment of the nominating convention, but not later than the first day of August prior to the general election, the president of the convention shall certify to the State Board of Elections the names of persons chosen in the convention as the new party's candidates for State, congressional, and national offices in the ensuing general election. The State Board of Elections shall print names thus certified on the appropriate ballots as the nominees of the new party. (1901, c. 89, s. 85; Rev., s. 4292; C. S., s. 5913; 1933, c. 165, s. 1; 1949, c. 671, s. 1; 1967, c. 775, s. 1.)

§§ **163-99 to 163-103**: Reserved for future codification purposes.

SUBCHAPTER V. NOMINATION OF CANDIDATES.

Article 10.

Primary Elections.

§ **163-104. Primaries governed by general election laws; authority of State Board of Elections to modify time schedule.**—Unless otherwise provided in this chapter, primary elections shall be conducted as far as practicable in accordance with the general election laws of this State. All provisions of this chapter and of other laws governing elections, not inconsistent with this article and other provisions of law dealing specifically with primaries, shall apply as fully to primary elections and to the acts and things done thereunder as to general elections. Nevertheless, for purposes of primary elections the State Board of Elections may, by general rule, modify the general election law time schedule with regard to ascertaining, declaring, and reporting results.

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 under the provisions of this chapter. (1915, c. 101, s. 3; 1917, c. 218; C. S., s. 6020; 1967, c. 775, s. 1.)

Local Modification to Former §§ 163-117 to 163-147.—Session Laws 1945, c. 894, repealed former article 19, relating to primaries, insofar as its provisions apply to the nomination of Democratic candidates for the General Assembly and county offices in Mitchell County.

Session Laws 1957, c. 826, as amended by Session Laws 1959, c. 621, s. 2, provided that the former article should not apply to nominations of Democratic candidates for county offices and members of the House of Representatives in Cherokee County, but such candidates should be nominated by convention of the Democratic Party.

Session Laws 1961, c. 484, provided that the former article should not apply to nominations of Republican candidates for county offices and members of the General Assembly in Cherokee County, but such candidates should be nominated by conventions of the Republican Party.

Session Laws 1953, c. 1069, as amended by Session Laws 1959, c. 238, made the former article applicable to Watauga County. Session Laws 1955, c. 439, to the extent provided, made the former article applicable to Yancey County. Session Laws 1955, c. 442, made the former article applicable to the counties of Avery, Madison, Mitchell and Yancey for the purpose of nominating Democratic candidates for the State Senate.

Former Article Held Constitutional. — See McLean v. Durham County Bd. of Elections, 222 N.C. 6, 21 S.E.2d 842 (1942).

Construction of Former Article. — See Phillips v. Slaughter, 209 N.C. 543, 183 S.E. 897 (1936); McLean v. Durham County Bd. of Elections, 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 holding of such primary. States' Rights Democratic Party v. State Bd. of Elections, 229 N.C. 179, 49 S.E.2d 379 (1948).

There is a well-defined distinction between a primary election and a regular election. A primary election is a means provided by law whereby members of a political party select by ballot candidates or nominees for office; whereas a regular election is a means whereby officers are elected and public offices are filled according to established rules of law. In short, a primary election is merely a mode of choosing candidates of political parties, whereas a regular election is the final choice of the entire electorate. Rider v. Lenoir County, 236 N.C. 620, 73 S.E.2d 913 (1952); Ponder v. Joslin, 262 N.C. 496, 138 S.E.2d 143 (1964).

The primary laws have no application to new political parties created by petition. States' Rights Democratic Party v. State Bd. of Elections, 229 N.C. 179, 49 S.E.2d 379 (1948).

§ 163-105. Payment of expense of conducting primary elections.— The expense of printing and distributing the poll and registration books, blanks, and ballots for those offices required by § 163-108 (b) to be furnished by the State, and the per diem and expenses of the State Board of Elections while engaged in the discharge of primary election duties imposed by law upon that Board, shall be paid by the State.

The expenses of printing and distributing the ballots for those offices required by § 163-108 (c) to be furnished by counties, and the per diem (or salary) and expenses of the county board of elections and the registrars and judges of election, while engaged in the discharge of primary election duties imposed by law upon them, shall be paid by the counties. (1915, c. 101, s. 7; 1917, c. 218; C. S., s. 6026; 1927, c. 260, s. 21; 1933, c. 165, s. 14; 1967, c. 775, s. 1.)

§ 163-106. Notices of candidacy; pledge; with whom filed; date for filing; withdrawal.—(a) Notice and Pledge.—No one shall be voted for in a primary election unless he shall have filed a notice of candidacy with the appropriate board of elections, State or county, as required by this section. To this end every candidate for selection as the nominee of a political party shall file with and place

in the possession of the board of elections specified in subsection (c) of this section, a notice and pledge in the following form:

"Date .....

I hereby file notice as a candidate for nomination as ..... in the ..... party primary election to be held on ....., 19..... I affiliate with the ..... party. [and I certify that I am now registered on the registration records of the precinct in which I reside as an affiliate of the ..... party.] I pledge to abide by the results of the primary and to support in the next general election all candidates nominated by the ..... party.

I further pledge that if I am defeated in the primary I will not run for any office as a write-in candidate in the next general election.

Signed .....
Name of candidate

Witness:
.....
.....
(Title of witness)"

Each candidate shall sign his notice of candidacy in the presence of the chairman or secretary of the board of elections, State or county, with which he files. In the alternative, a candidate may have his signature on the notice of candidacy acknowledged and certified to by an officer authorized to take acknowledgments and administer oaths, in which case the candidate may mail his notice of candidacy to the appropriate board of elections.

In signing his notice of candidacy the candidate shall use only his legal name and, in his discretion, any nickname by which he is commonly known.

A notice of candidacy signed by an agent or any person other than the candidate himself shall be invalid.

Prior to the seventh Saturday before the primary, at State expense the State Board of Elections shall print and furnish to each county board of elections a sufficient number of the notice of candidacy forms prescribed by this subsection for use by candidates required to file with county boards of elections.

(b) Eligibility to File.—No person shall be permitted to file as a candidate in a primary if, at the time he offers to file notice of candidacy, he is registered on the appropriate registration book or record as an affiliate of a political party other than that in whose primary he is attempting to file.

A person registered as an independent shall be ineligible to file as a candidate in a primary election.

A person registered with no record of party affiliation shall be ineligible to file as a candidate in a primary election.

An unregistered person who desires to become a candidate in a party primary may do so if, at the time he files notice of candidacy, he signs and deposits with the election official with whom he files, a written pledge that he will, during the registration period prior to the next primary, register as an affiliate of the political party in whose primary he intends to run as a candidate. This may be accomplished by inserting in lieu of the bracketed phrase in the notice form set out in subsection (a) of this section, the following: "And I certify that I will register on the registration book or record of the precinct in which I reside as an affiliate of the ..... party prior to the date of the primary in which I seek nomination."

(c) Time for Filing Notice of Candidacy. — Candidates seeking party primary nomination for the following offices may file their notices of candidacy with the State Board of Elections at any time but shall do so not later than 12:00 noon, on the Friday preceding the tenth Saturday before the primary election in which they seek to run:

Governor,
Lieutenant Governor,
All State executive officers,
Justices of the Supreme Court,
Judges of the Court of Appeals,
Judges of the superior courts,
Judges of the district courts,
United States Senators,
Members of the House of Representatives of the United States,
Solicitors.

A candidate seeking party primary nomination for one of the following offices may file his notice of candidacy with the board of elections of the county in which he resides at any time but shall do so not later than 12:00 noon, on the Friday preceding the sixth Saturday before the primary election in which he seeks to run:

State Senators,
Members of the State House of Representatives,
All township offices.

(d) Notice of Candidacy for Certain Offices to Indicate Vacancy.—In any primary in which there are two or more vacancies for Chief Justice and associate justices of the Supreme Court, two or more vacancies for judge of the Court of Appeals, or two vacancies for United States Senator from North Carolina, or two or more vacancies for the office of superior court judge or two or more vacancies for the office of district court judge to be filled by nominations, each candidate shall, at the time of filing notice of candidacy, file with the State Board of Elections a written statement designating the vacancy to which he seeks nomination. Votes cast for a candidate shall be effective only for his nomination to the vacancy for which he has given notice of candidacy as provided in this subsection.

A person seeking party nomination for a specialized district judgeship established under § 7A-147 shall, at the time of filing notice of candidacy, file with the State Board of Elections a written statement designating the specialized judgeship to which he seeks nomination.

In any primary in any senatorial or representative district entitled to elect more than one State Senator or member of the State House of Representatives, the positions being numbered as provided in G.S. 163-117, each candidate for nomination to the Senate or House of Representatives shall file with the appropriate county board of elections, at the time of filing notice of candidacy, a notice designating by number the seat to which he seeks nomination. Each seat shall be considered a separate office within the terms of G.S. 163-110, 163-114, and 163-115, and all other provisions of law governing nomination and election. No candidate shall be entitled to file for more than one seat. Votes cast for any candidate shall be effective only for the seat for which he has filed.

(e) Withdrawal of Notice of Candidacy.—Any person who has filed notice of candidacy for an office shall have the right to withdraw it at any time prior to the date on which the right to file for that office expires under the terms of subsection (c) of this section. (1915, c. 101, ss. 6, 15; 1917, c. 218; C. S., ss. 6022, 6035; 1921, c. 217; 1923, c. 111, s. 13; C. S., s. 6055(a); 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; c. 932; 1951, c. 1009, s. 3; 1955, c. 755; c. 871, s. 1; 1959, c. 1203, s. 4; 1965, c. 262; 1967, c. 775, s. 1; c. 1063, s. 2; 1969, c. 44, s. 83; c. 1190 s. 56.)

Editor's Note. — The 1967 amendment added the last paragraph of subsection (d).

The first 1969 amendment inserted "Judges of the Court of Appeals" in subsection (c) and inserted "two or more vacancies for judge of the Court of Appeals" in the first sentence of subsection (d).

The second 1969 amendment, effective July 1, 1969, inserted "or two or more vacancies for the office of district court judge" in the first sentence of the first paragraph of subsection (d).

Sections 4 and 5, c. 1063, Session Laws 1967, provide:

"Sec. 4. The provisions of this act shall not apply to the following House of Rep-

resentatives Districts: 5, 13, 17, 19, 20, 23, 24, 25, 26, 27, 31, 33, 34, 35, 36, 38, 39, 40, 41, 42, and 47.

"Sec. 5. The provisions of this act shall not apply to the following Senate Districts: 4, 8, 11, 12, 14, 18, 22, 23, 24, 26, 29, 31."

Session Laws 1969, c. 544, amended Session Laws 1967, c. 1063, s. 4, by deleting "25" from the list of House of Representatives Districts.

Session Laws 1969, c. 559, amended Session Laws 1967, c. 1063, s. 5, by deleting "4" from the list of Senatorial Districts.

Session Laws 1969, c. 985, amended Session Laws 1967, c. 1063, s. 5, by deleting "24" and "29" from the list of Senatorial Districts.

Session Laws 1969, c. 985, amended Session Laws 1967, c. 1063, s. 4, by deleting "33" from the list of House of Representatives Districts.

Session Laws 1969, c. 1054, amended Session Laws 1967, c. 1063, s. 4, by deleting "5" from the list of House of Representatives Districts.

Obligation Imposed upon Candidate. — Former § 163-119 attempted to place upon a candidate seeking 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 Bd. of Elections, 229 N.C. 179, 49 S.E.2d 379 (1948).

Requirement That Notice of Candidacy for Certain Offices Indicate Vacancy Is Constitutional. — Former § 163-147, similar to the first paragraph of subsection (d) of this section, did 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 Bd. 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 Bd. of Elections, 226 N.C. 454, 38 S.E.2d 566 (1946).

§ 163-107. Filing fees required of candidates in primary; refunds. —(a) Fee Schedule.—At the time of filing a notice of candidacy, each candidate shall pay to the board of elections with which he files under the provisions of § 163-106 a filing fee for the office he seeks in the amount specified in the following tabulation:

Office Sought	Amount of Filing Fee
Governor	One percent (1%) of the annual salary of the office sought
Lieutenant Governor	One percent (1%) of the annual salary of the office sought
All State executive offices	One percent (1%) of the annual salary of the office sought
All Justices, Judges, and Solicitors of the General Court of Justice	One percent (1%) of the annual salary of the office sought
United States Senator	One percent (1%) of the annual salary of the office sought
Members of the United States House of Representatives	One percent (1%) of the annual salary of the office sought
State Senator	One percent (1%) of the annual salary of the office sought
Member of the State House of Representatives	One percent (1%) of the annual salary of the office sought
All county offices not compensated by fees	One percent (1%) of the annual salary of the office sought
All township offices not compensated by fees	One percent (1%) of the annual salary of the office sought
County commissioners, if compensated entirely by fees	Ten dollars ($10.00)
Members of county board of education, if compensated entirely by fees	Five dollars ($5.00)

Office Sought	Amount of Filing Fee
Sheriff, if compensated entirely by fees	Forty dollars ($40.00), plus one percent (1%) of the income of the office above four thousand dollars ($4,000.00)
Clerk of superior court, if compensated entirely by fees	Forty dollars ($40.00), plus one percent (1%) of the income of the office above four thousand dollars ($4,000.00)
Register of deeds, if compensated entirely by fees	Forty dollars ($40.00), plus one percent (1%) of the income of the office above four thousand dollars ($4,000.00)
Any other county office, if compensated entirely by fees	Twenty dollars ($20.00), plus one percent (1%) of the income of the office above two thousand dollars ($2,000.00)
Constable, if compensated entirely by fees	Ten dollars ($10.00), plus one percent (1%) of the income of the office above one thousand dollars ($1,000.00)
Justice of the peace, if compensated entirely by fees	Ten dollars ($10.00), plus one percent (1%) of the income of the office above one thousand dollars ($1,000.00)
All county and township offices compensated partly by salary and partly by fees	One percent (1%) of the first annual salary to be received (exclusive of fees)

(b) Refund of Fees.—If any person who has filed a notice of candidacy and paid the filing fee prescribed in subsection (a) of this section, withdraws his notice of candidacy within the period prescribed in § 163-106 (e), he shall be entitled to have the fee he paid refunded. If the fee was paid to the State Board of Elections, the chairman of that Board shall certify to the Auditor that the refund should be made, and the Auditor shall give his warrant upon the Treasurer of the State who shall make the refund payment. If the fee was paid to a county board of elections, the chairman of the board shall certify to the county accountant that the refund should be made, and the county accountant shall make the refund in accordance with the provisions of the County Fiscal Control Act.

If any person files a notice of candidacy and pays a filing fee to a board of elections other than that with which he is required to file under the provisions of § 163-106 (c), he shall be entitled to have the fee refunded in the manner prescribed in this subsection for refund upon withdrawal of candidacy if he requests the refund before 12:00 noon, on Friday preceding the sixth Saturday before the primary. (1915, c. 101, s. 4; 1917, c. 218; 1919, cc. 50, 139; C. S., ss. 6023, 6024; 1927, c. 260, s. 20; 1933, c 165, s. 12; 1939, c. 264, s. 2; 1959, c. 1203, s. 5; 1967, c. 775, s. 1; 1969, c. 44, s. 84.)

Local Modification to Former § 163-120. —Mecklenburg: 1937, c. 382; Sampson: 1941, c. 111.

Editor's Note. — The 1969 amendment substituted "All Justices, Judges, and Solicitors of the General Court of Justice" for "Justices of the Supreme Court," "Judges of the superior courts," "Judges of the district courts" and "Solicitors" in the first column of the table in subsection (a).

For comment on the deductibility of campaign expenses, see 43 N.C.L. Rev. 1004 (1965).

Filing Fee Is Not a Tax.—The filing fee is in no sense a tax within the meaning of Art. II, § 14, or a local law as condemned by Art. II, § 29, of the Constitution of North Carolina. McLean v. Durham County Bd. of Elections, 222 N.C. 6, 21 S.E.2d 842 (1942).

§ **163-108. Certification of notices of candidacy.**—(a) Within three days after the time for filing notices of candidacy with the State Board of Elections under the provisions of § 163-106 (c) has expired, the chairman or secretary of that Board shall certify to the Secretary of State the name, address, and party affiliation of each person who has filed with the State Board of Elections, indicating in each instance the office sought.

(b) Prior to the fourth Saturday before the primary election, the chairman of the State Board of Elections shall certify to the chairman of the county board of elections in each county in the appropriate district the names of candidates for nomination to the following offices who have filed the required notice and pledge and paid the required filing fee to the State Board of Elections, so that their names may be printed on the official county ballots: Superior court judge, district court judge, and solicitor.

(c) In representative districts composed of more than one county and in multi-county senatorial districts in which there is no rotation agreement as provided in § 163-116, the chairman or secretary of the county board of elections in each county shall, within three days after the time for filing notices of candidacy under the provisions of § 163-106 (c) has expired, certify to the State Board of Elections (i) the names of all candidates who have filed notice of candidacy in his county for member of the State Senate, or, if such is the fact, that no candidates have filed in his county for that office, and (ii) the names of all candidates who have filed notice of candidacy in his county for the office of member of the State House of Representatives, or, if such is the fact, that no candidates have filed in his county for that office. The chairman of the county board of elections shall forward a copy of this report to the chairman of the board of elections of each of the other counties in the representative or senatorial district. Within 10 days after the time for filing notices of candidacy for those offices has expired, the chairman or secretary of the State Board of Elections shall certify to the chairman of the county board of elections in each county of each multi-county representative or senatorial district the names of all candidates for the House of Representatives and Senate which must be printed on the county ballots.

(d) Within two days after he receives each of the letters of certification from the chairman of the State Board of Elections required by subsections (b) and (c) of this section, each county elections board chairman shall acknowledge receipt by letter addressed to the chairman of the State Board of Elections. (1915, c. 101, s. 8; 1917, c. 218; C. S., s. 6028; 1927, c. 260, s. 22; 1966, Ex. Sess., c. 5, s. 8; 1967, c. 775, s. 1.)

§ **163-108.1. Nomination of members of House of Representatives.**—Chapter 826, Session Laws of 1957; chapter 484, Session Laws of 1961; chapter 621, Session Laws of 1959; chapter 894, Session Laws of 1945; chapter 442, Session Laws of 1955; chapter 103, Public-Local Laws of 1941; chapter 439, Session Laws of 1955; chapter 238, Session Laws of 1959; and all other special and local acts providing for the nomination of candidates for the State House of Representatives by convention in any county, are modified and amended as follows: In the several representative districts of the State containing two or more counties, each political party shall nominate candidates for membership in the State House of Representatives according to the provisions of the state-wide primary law, article 19, chapter 163 of the General Statutes of North Carolina, or by district convention of the party when so provided by law. In a county assigned to a multi-county representative district, no political party shall nominate candidates for the State House of Representatives by party convention for the single county. (1966, Ex. Sess., c. 5, s. 16.)

Editor's Note.—This section, which derives from Session Laws 1966, Ex. Sess., c. 5, s. 16, was codified for the first time in the 1969 Cumulative Supplement to the General Statutes.

§ 163-109. Primary ballots; printing and distribution.—(a) General.—In primary elections there shall be as many kinds of official State, district, county and township ballots as there are legally recognized political parties, members of which have filed notice of their candidacy for nomination. The ballots for each political party shall be printed to conform to the requirements of § 163-140 (c) and to show the party's name, the name of each party member who has filed notice of candidacy, and the office for which each aspirant is a candidate.

Only those who have filed the required notice of candidacy and pledge with the proper board of elections, and who have paid the required filing fee, shall have their names printed on the official ballots of the political party with which affiliated.

(b) Ballots to Be Furnished by State Board of Elections.—It shall be the duty of the State Board of Elections to print official ballots for each political party having candidates for the following offices to be voted for in the primary:

United States Senator,
Member of the House of Representatives of the United States Congress,
Governor, and

All other State offices, except superior court judge, district court judge, and solicitor.

In its discretion, the State Board of Elections may print separate primary ballots for each of these offices, or it may combine some or all of them on a single ballot.

At least 30 days before the date of the primary, the State Board of Elections shall deliver a sufficient number of these ballots to each county board of elections. The chairman of the county board of elections shall furnish the chairman of the State Board of Elections with a written receipt for the ballots delivered to him within two days after their receipt.

(c) Ballots to Be Furnished by County Board of Elections.—It shall be the duty of the county board of elections to print official ballots for each political party having candidates for the following offices to be voted for in the primary:

Superior court judge,
District court judge,
Solicitor,
State Senator,
Member of the House of Representatives of the General Assembly,
All county offices, and
All township offices.

In printing primary ballots, the county board of elections shall be governed by instructions of the State Board of Elections with regard to width, color, kind of paper, form, and size of type.

In its discretion, the county board of elections may print separate primary ballots for the district, county, and township offices listed in this subsection, or it may combine some or all of them on a single ballot. In a primary election, if there shall be 10 or more candidates for nomination to any one office, the county board of elections in its discretion may prepare a separate ballot for said office.

County boards of elections in senatorial and representative districts entitled to more than one seat in the State Senate or State House of Representatives shall have ballots for membership in those bodies printed to designate by number the Senate or House seat to which each candidate seeks nomination.

Three days before the primary election, the chairman of the county board of elections shall distribute official State, district, county, and township ballots to the registrar of each precinct in his county, and the registrar shall give him a receipt for the ballots received. On the day of the primary it shall be the registrar's duty to have all the ballots delivered to him available for use at the

precinct voting place. (1915, c. 101, ss. 8, 17; 1917, c. 218; C. S., ss. 6028, 6037; 1927, c. 260, s. 22; 1933, c. 165, s. 16; 1966, Ex. Sess., c. 5, ss. 8, 10; 1967, c. 775, s. 1; c. 1063, s. 3.)

Editor's Note. — The 1967 amendment added the third paragraph of subsection (c).

Sections 4 and 5, c. 1063, Session Laws 1967, provide:

"Sec. 4. The provisions of this act shall not apply to the following House of Representatives Districts: 5, 13, 17, 19, 20, 23, 24, 25, 26, 27, 31, 33, 34, 35, 36, 38, 39, 40, 41, 42, and 47.

"Sec. 5. The provisions of this act shall not apply to the following Senate Districts: 4, 8, 11, 12, 14, 18, 22, 23, 24, 26, 29, 31."

Session Laws 1969, c. 544, amended Session Laws 1967, c. 1063, s. 4, by deleting "25" from the list of House of Representatives Districts.

Session Laws 1969, c. 559, amended Session Laws 1967, c. 1063, s. 5, by deleting "4" from the list of Senatorial Districts.

Session Laws 1969, c. 985, amended Session Laws 1967, c. 1063, s. 5, by deleting "24" and "29" from the list of Senatorial Districts.

Session Laws 1969, c. 985, amended Session Laws 1967, c. 1063, s. 4, by deleting "33" from the list of House of Representatives Districts.

Session Laws 1969, c. 1054, amended Session Laws 1967, c. 1063, s. 4, by deleting "5" from the list of House of Representatives Districts.

Possession of Ballots.—It is 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).

§ 163-110. Sole candidate declared nominee.—If only one aspirant files notice of candidacy for nomination for a given office by the party with which he affiliates, the appropriate board of elections shall, upon the expiration of the time fixed by § 163-106 for filing notice of candidacy for that office, declare him the nominee of his party. For the following offices, this declaration shall be made by the county board of elections with which the aspirant filed notice of candidacy: All county offices, all township offices, State Senators in single-county senatorial districts, and members of the State House of Representatives in single-county representative districts. For all other offices, this declaration shall be made by the State Board of Elections. When the sole aspirant has been declared his party's nominee for an office as provided in this section, his name shall not be printed on the primary ballot, but it shall be printed on the ballot to be voted at the general election as his party's candidate for that office. (1915, c. 101, ss. 13, 19; 1917, c. 218; C. S., ss. 6033, 6039; 1966, Ex. Sess., c. 5, ss. 9, 11; 1967, c. 775, s. 1.)

§ 163-111. Determination of primary results; second primaries.—(a) Nomination Determined by Majority; Definition of Majority.—Except as otherwise provided in this section, nominations in primary elections shall be determined by a majority of the votes cast. A majority within the meaning of this section shall be determined as follows:

(1) If a nominee for a single office is to be selected, and there is more than one person seeking nomination, the majority shall be ascertained by dividing the total vote cast for all aspirants by two. Any excess of the sum so ascertained shall be a majority, and the aspirant who obtains a majority shall be declared the nominee.

(2) If nominees for two or more offices (constituting a group) are to be selected, and there are more persons seeking nomination than there are offices, the majority shall be ascertained by dividing the total vote cast for all aspirants by the number of positions to be filled, and by dividing the result by two. Any excess of the sum so ascertained shall be a majority, and the aspirants who obtain a majority shall be declared the nominees. If more candidates obtain a majority than there are positions to be filled, those having the highest vote

(equal to the number of positions to be filled) shall be declared the nominees.

(b) Right to Demand Second Primary.—If an insufficient number of aspirants receive a majority of the votes cast for a given office or group of offices in a primary, a second primary, subject to the conditions specified in this section, shall be held:

(1) If a nominee for a single office is to be selected and no aspirant receives a majority of the votes cast, the aspirant receiving the highest number of votes shall be declared nominated by the appropriate board of elections unless the aspirant receiving the second highest number of votes shall request a second primary in accordance with the provisions of subsection (c) of this section. In the second primary only the two aspirants who received the highest and next highest number of votes shall be voted for.

(2) If nominees for two or more offices (constituting a group) are to be selected and aspirants for some or all of the positions within the group do not receive a majority of the votes, those candidates equal in number to the positions remaining to be filled and having the highest number of votes shall be declared the nominees unless some one or all of the aspirants equal in number to the positions remaining to be filled and having the second highest number of votes shall request a second primary in accordance with the provisions of subsection (c) of this section. In the second primary to select nominees for the positions in the group remaining to be filled, the names of all those candidates receiving the highest number of votes and all those receiving the second highest number of votes and demanding a second primary shall be printed on the ballot.

(c) Procedure for Requesting Second Primary.—

(1) An aspirant entitled to demand a second primary for one of the offices listed below, and desiring to do so, shall file a request for a second primary in writing or by telegram with the State Board of Elections by 12:00 noon, on the third day after the result of the first primary has been officially declared:

Governor,
Lieutenant Governor,
All State executive officers,
Justices, Judges, or Solicitors of the General Court of Justice,
United States Senators,
Members of the United States House of Representatives,
State Senators in multi-county senatorial districts not having rotation agreements,
Members of the State House of Representatives in multi-county representative districts.

(2) An aspirant entitled to demand a second primary for one of the offices listed below, and desiring to do so, shall file a written request for a second primary with the board of elections in the county in which he filed notice of candidacy by 12:00 noon, on the fifth day after the result of the first primary has been officially declared:

State Senators in single-county senatorial districts,
State Senators in multi-county senatorial districts having rotation agreements,
Members of the State House of Representatives in single-county representative districts,
All county officers,
All township officers.

(d) Tie Votes; How Determined.—

(1) In the event of a tie for the highest number of votes in a first primary between two candidates for party nomination for a single county, township, or single-county legislative district office (or for the State Senate in a multi-county district having a rotation agreement), the board of elections of the county in which the two candidates were voted for shall conduct a recount and declare the results. If the recount shows a tie vote, a second primary shall be held on the date prescribed in subsection (e) of this section between the two candidates having an equal vote, unless one of the aspirants, within three days after the result of the recount has been officially declared, files a written notice of withdrawal with the board of elections with which he filed notice of candidacy. Should that be done, the remaining aspirant shall be declared the nominee. In the event of a tie for the highest number of votes in a first primary among more than two candidates for party nomination for one of the offices mentioned in this subdivision, no recount shall be held, but all of the tied candidates shall be entered in a second primary.

(2) In the event of a tie for the highest number of votes in a first primary between two candidates for a State office, for United States Senator, or for any district office (including State Senator in a multi-county senatorial district having no rotation agreement and member of the State House of Representatives in a multi-county representative district), no recount shall be held by reason of the tie, but the two candidates having an equal vote shall be entered in a second primary to be held on the date prescribed in subsection (e) of this section, unless one of the two candidates files a written notice of withdrawal with the State Board of Elections within three days after the result of the first primary has been officially declared and published. Should that be done, the remaining aspirant shall be declared the nominee. In the event of a tie for the highest number of votes in a first primary among more than two candidates for party nomination for one of the offices mentioned in this subdivision, no recount shall be held, but all of the tied candidates shall be entered in a second primary.

(3) In the event one candidate receives the highest number of votes cast in a first primary, but short of a majority, and two or more of the other candidates receive the second highest number of votes cast in an equal number, the proper board of elections shall declare the candidate having the highest vote to be the party nominee, unless all but one of the tied candidates give written notice of withdrawal to the proper board of elections within three days after the result of the first primary has been officially declared. If all but one of the tied candidates withdraw within the prescribed three-day period, and the remaining candidate demands a second primary in accordance with the provisions of subsection (c) of this section, a second primary shall be held between the candidate who received the highest vote and the remaining candidate who received the second highest vote.

(e) Date of Second Primary; Procedures.—If a second primary is required under the provisions of this section, the appropriate board of elections, State or county, shall order that it be held four weeks after the first primary.

There shall be no registration of voters between the dates of the first and second primaries. Persons whose qualifications to register and vote mature after the day of the first primary and before the day of the second primary may register on the day of the second primary and, when thus registered, shall be entitled to vote in the second primary. Subject to this provision for registration, the second

primary shall be held under the laws, rules, and regulations provided for the first primary.

(f) No Third Primary Permitted.—In no case shall there be a third primary. The candidates receiving the highest number of votes in the second primary shall be nominated. If in a second primary there is a tie for the highest number of votes between two candidates, the proper party executive committee shall select the party nominee for the office in accordance with the provisions of § 163-114. (1915, c. 101, s. 24; 1917, c. 179, s. 2; c. 218; C. S., § 6045; 1927, c. 260; s. 23; 1931, c. 254, s. 17; 1959, c. 1055; 1961, c. 383; 1966, Ex. Sess., c. 5, s. 13; 1967, c. 775, s. 1; 1969, c. 44, s. 85.)

Editor's Note.—The 1969 amendment inserted "Justices, Judges, or Solicitors of the General Court of Justice" in the list in subdivision (1) of subsection (c) and deleted therefrom "Justices of the Supreme Court," "Judges of the superior courts," "Judges of the district courts" and "Solicitors."

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 of Elections, 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 give 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 of Elections, 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 of Elections, 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 of Elections, 192 N.C. 139, 134 S.E. 409 (1926).

When Time Begins to Run.—When the provisions of former § 163-137 had been complied with and the result posted at the courthouse door of the county, the result of the election was sufficiently declared, and the contestant receiving the next highest vote, less than a majority, was required to file his written request for a second primary within five days thereafter, in accordance with former § 163-140 (now § 163-111). Johnston v. Board of Elections, 172 N.C. 162, 90 S.E. 143 (1916).

§ 163-112. Death of candidate before primary; filling vacancy.— If at the time the filing period closes only two persons have filed notice of candidacy for nomination by a given political party for a given office and thereafter, before the primary, one of the aspirants dies before the primary ballots are printed, the proper board of elections shall, upon notification of the death, immediately reopen the filing period for an additional five days during which additional candidates shall be permitted to file for the same party's nomination

for the same office. If the primary ballots have been printed at the time the board of elections receives notice of the aspirant's death, it shall determine whether there will be sufficient time in which to reprint ballots before the primary in the event the filing period is reopened for five days. If the board determines there will be sufficient time in which to reprint the ballots, it shall immediately reopen the filing period for an additional five days in which additional candidates shall be permitted to file for the same party's nomination for the same office. Should one or more persons file notice of candidacy during the extended filing period their names shall be printed on the primary ballots together with that of the aspirant who filed during the original filing period and shall be voted for in the primary.

If the primary ballots have been printed at the time the board of elections receives notice of the candidate's death, and if the board determines there will not be sufficient time in which to reprint the ballots before the primary if the filing period is reopened for five days, then, regardless of whether one or more aspirants filed for nomination by the deceased candidate's party for the same office, the primary ballots shall not be reprinted, and the name of the deceased candidate shall not be deleted, stricken, or obliterated from the ballots. In such a case, should the deceased candidate poll the highest number of votes in the primary for party nomination to the office be sought, even though short of a majority, the proper party executive committee shall appoint the party nominee under the provisions of § 163-114. Should no candidate for the party nomination receive a majority of the votes cast in the primary and the second highest vote be cast for the deceased candidate, no second primary shall be held, and the proper board of elections shall declare the candidate receiving the highest vote the party's nominee for the office. (1959, c. 1054; 1967, c. 775, s. 1.)

§ **163-113. Nominee's right to withdraw as candidate.**—A person who has been declared the nominee of a political party for a specified office under the provisions of § 163-175, § 163-192, or § 163-110, shall not be permitted to resign as a candidate unless, at least 30 days before the general election, he submits to the board of elections which certified his nomination a written request that he be permitted to withdraw. (1929, c. 164, s. 8; 1967, c. 775, s. 1.)

§ **163-114. Filling vacancies among party nominees occurring after nomination and before election.** — If any person nominated as a candidate of a political party for one of the offices listed below (either in a primary or convention or by virtue of having no opposition in a primary) dies, resigns, or for any reason becomes ineligible or disqualified before the date of the ensuing general election, the vacancy shall be filled by appointment according to the following instructions:

Position	Vacancy is to be filled by appointment of
Any elective State office United States Senator	State executive committee of political party in which vacancy occurs
A district office, including: Member of the United States House of Representatives Judge of superior court Judge of district court Solicitor State Senator in a multi-county senatorial district not having a rotation agreement Member of State House of Representatives in a multi-county representative district	Appropriate district executive committee of political party in which vacancy occurs
State Senator in a single-county senatorial district State Senator in a multi-county senatorial district having a rotation agreement Member of State House of Representatives in a single-county representative district Any elective county office Any elective township office	County executive committee of political party in which vacancy occurs, but if the vacancy arises from a cause other than death, the vacancy shall not be filled unless the board of elections in the county in which the vacancy occurs issues an order to that effect

The party executive committee making a nomination in accordance with the provisions of this section shall certify the name of its nominee to the chairman of the board of elections, State or county, charged with the duty of printing the ballots on which the name is to appear. If at the time a nomination is made under this section the general election ballots have already been printed, the provisions of § 163-139 shall apply. (1929, c. 164, s. 19; 1967, c. 775, s. 1.)

§ 163-115. Special provisions for obtaining nominations when vacancies occur in certain offices.—In the event a vacancy occurs in the office of clerk of superior court less than 30 days before a general election, the county executive committee of each political party may make a nomination as provided in § 163-114.

In the event a special election is called to fill a vacancy in the State's delegation in the United States House of Representatives, the provisions of § 163-13 shall apply.

If a vacancy occurs in an elective State or district office (other than member of the United States House of Representatives) during the period opening 10 days before the filing period for the office ends and closing 30 days before the ensuing general election, a nomination shall be made by the proper executive committee of each political party as provided in § 163-114, and the names of the nominees shall be printed on the general election ballots, unless the ballots have already been printed when the nominations are made, in which case the provisions of § 163-139 shall apply. (1915, c. 101, s. 33; 1917, c. 179, s. 3; c. 218; C. S., s. 6053; 1923, c. 111, s. 16; 1955, c. 574; 1957, c. 1242; 1966, Ex. Sess., c. 5, s. 14; 1967, c. 775, s. 1.)

§ 163-116. 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 § 163-96) 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; 1967, c. 775, s. 1.)

§ 163-117. Seats in State Senate and House of Representatives to be numbered within senatorial and representative districts; each seat a separate office.—In each senatorial and representative district entitled to elect more than one State Senator or member of the State House of Representatives the positions shall bear identifying numbers, as follows: "Senate Seat 1," "Senate Seat 2," etc., or "House Seat 1," "House Seat 2," etc. Each seat shall be considered a separate office within the terms of G.S. 163-113, 163-122, 163-137, 163-140, 163-151, 163-169, 163-170, 163-175, 163-176, 163-177, 163-179, 163-180, 163-181, and all other provisions of law governing nomination and election. Votes cast for any candidate in a general election shall be effective only for the seat for which he has been nominated by a political party or for which he has filed his independent candidacy under G.S. 163-122. (1967, c. 1063, s. 1.)

Editor's Note.—Sections 4 and 5, c. 1063, Session Laws 1967, provide:

"Sec. 4. The provisions of this act shall not apply to the following House of Representatives Districts: 5, 13, 17, 19, 20, 23, 24, 25, 26, 27, 31, 33, 34, 35, 36, 38, 39, 40, 41, 42, and 47.

"Sec. 5. The provisions of this act shall not apply to the following Senate Districts: 4, 8, 11, 12, 14, 18, 22, 23, 24, 26, 29, 31."

Session Laws 1969, c. 189, amended Session Laws 1967, c. 1063, s. 4, by deleting "41" from the list of House of Representatives Districts.

Sections 4 and 5, c. 1063, Session Laws 1967, as amended by Session Laws 1969, c. 302, provide:

"Sec. 4. The provisions of this act shall not apply to the following House of Representatives Districts: 5, 13, 17, 19, 20, 23, 24, 25, 26, 27, 30, 31, 33, 34, 35, 36, 38, 39, 40, 41, 42, and 47.

"Sec. 5. The provisions of this act shall not apply to the following Senate Districts: 4, 8, 11, 12, 14, 18, 22, 23, 24, 26, 29, 31."

Session Laws 1969, c. 544, amended Session Laws 1967, c. 1063, s. 4, by deleting "25" from the list of House of Representatives Districts.

Session Laws 1969, c. 559, amended Session Laws 1967, c. 1063, s. 5, by deleting "4" from the list of Senatorial Districts.

Session Laws 1969, c. 985, amended Session Laws 1967, c. 1063, s. 5, by deleting "24" and "29" from the list of Senatorial Districts.

Session Laws 1969, c. 985, amended Session Laws 1967, c. 1063, s. 4, by deleting "33" from the list of House of Representatives Districts.

Session Laws 1969, c. 1054, amended Session Laws 1967, c. 1063, s. 4, by deleting "5" from the list of House of Representatives Districts.

§ 163-118. Numbers assigned to Senate and House seats to be designated by State Board of Elections.—The authority for designating the numbers to be assigned in each Senate and House district covered under § 163-117, subsection (d) of § 163-106 and subsection (c) of § 163-109 shall be vested in the State Board of Elections. (1967, c. 1270.)

§§ **163-119 to 163-121**: Reserved for future codification purposes.

Article 11.

Nomination by Petition.

§ **163-122. Independent candidates nominated by petition.** — Any qualified voter who seeks to have his name printed on the general election ballot as an independent or nonpartisan candidate shall:

(1) On or before the last Saturday in May preceding the general election, file with the appropriate board of elections, State or county, written petitions requesting him to be a candidate for a specified office, signed by qualified voters of the political division in which the office will be voted for equal in number to twenty-five percent (25%) of those who, in the last gubernatorial election in the same political division, voted for Governor.

(2) At the time of filing the petitions referred to in subdivision (1) of this section, file with the chairman or secretary of the appropriate board of elections his affidavit that he seeks to become an independent or nonpartisan candidate for the office specified and that he does not affiliate with any political party.

When the provisions of this section have been complied with, the board of elections with which the petitions and affidavit have been filed shall cause the independent candidate's name to be printed on the general election ballots in accordance with the provisions of § 163-140. (1929, c. 164, s. 6; 1931, c. 223, 1935, c. 236; 1967, c. 775, s. 1.)

§§ **163-123 to 163-127**: Reserved for future codification purposes.

SUBCHAPTER VI. CONDUCT OF PRIMARIES AND ELECTIONS.

Article 12.

Precincts and Voting Places.

§ **163-128. Election precincts and voting places established or altered.**—Each county shall be divided into a convenient number of precincts for purpose of registration and voting, and there shall be at least one precinct encompassed within the territory of each township: Provided, however, that upon a resolution adopted by the county board of elections a precinct may encompass territory from more than one township. When such a resolution has been adopted by the county board of elections to assign voters from more than one township to the same precinct, then the county board of elections shall maintain separate registration and voting records, consistent with the procedure prescribed by the State Board of Elections, so as to properly identify the township in which such voters reside.

The county board of elections may adopt the present election precincts and voting places, or by resolution it may establish new ones, but the precincts and voting places fixed in each county shall remain as they now are until altered.

The county board of elections shall have power from time to time, by resolution, to establish, alter, discontinue, or create such new election precincts and voting places as it may deem expedient. Upon adoption of a resolution establishing, altering, or discontinuing a precinct or voting place the county board of elections shall give twenty (20) days' notice thereof prior to the beginning of the registration period at which it is to take effect, by advertising in some newspaper having general circulation in the county or, in lieu thereof, at the courthouse door and at three other public places in the county. (Rev., s. 4313; 1913, c. 53; C. S., s. 5934; 1921, c. 180; 1933, c. 165, s. 3; 1967, c. 775, s. 1; 1969, c. 570.)

Local Modification. — City of Rocky Mount: 1969, c. 1051.

Editor's Note.—The 1969 amendment rewrote the first paragraph.

§ 163-129. Structure at voting place; marking off limits of voting place.—At the voting place in each precinct established under the provisions of § 163-128, the county board of elections shall provide or procure by lease or otherwise a suitable structure or part of a structure in which registration and voting may be conducted. To this end, the county board of elections shall be entitled to demand and use any school or other State, county, or municipal building, or a part thereof, for the purpose of conducting registration and voting for any primary or election, and it may require that the requisitioned premises, or a part thereof, be vacated for these purposes.

The county board of elections shall inspect each precinct voting place to ascertain how it should be arranged for voting purposes. In its discretion, the county board of elections may direct the registrar and judges of any precinct to define the voting place by roping off the area or otherwise enclosing it to insure that at no point the limits lie more than 100 feet from the ballot boxes or voting machines. The space roped off or enclosed for the voting place may contain area both inside and outside the structure in which registration and voting are to take place. (1929, c. 164, s. 17; 1967, c. 775, s. 1.)

§§ **163-130 to 163-134**: Reserved for future codification purposes.

Article 13.

General Instructions.

§ 163-135. Applicability of article. — (a) In General.—The provisions of this article shall apply to all elections in all counties, cities, towns, townships, and school districts in the State of North Carolina.

(b) Primary Elections.—The provisions of this article shall apply to all primary elections held in this State, or in any county, as fully as it applies to general elections.

(c) Special Elections.—Every election held in pursuance of a writ from the Governor shall be conducted in accordance with the provisions of this article, so far as the particular case can be governed by general rules.

(d) Referenda.—This article shall apply to and control all elections for the issuance of bonds and to all other elections in which any constitutional amendment, question, or issue is submitted to a vote of the people.

(e) 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." (1901, c. 89, s. 75; Rev., s. 4341; C. S., s. 5975; 1929, c. 164, ss. 2, 4, 34, 42; 1967, c. 775, s. 1.)

Local Modification to Former § 163-148.—Ashe: 1933, c. 557; 1935, c. 259; 1937, c. 170.

Former Article 10 Construed in Pari Materia with Primary Election Law.—See Phillips v. Slaughter, 209 N.C. 543, 183 S.E. 897 (1936); McLean v. Durham County Bd. of Elections, 222 N.C. 6, 21 S.E.2d 842 (1942).

Former § 163-150 was to be construed in pari materia with § 153-96. Both sections related to the same subject matter, and as there was no material conflict between them, they were both in full force and effect. Parker v. County of Anson, 237 N.C. 78, 74 S.E.2d 338 (1953).

Ballot for School Bond Election Held Sufficient.—See note under § 153-96.

§ 163-136. Preparation, distribution and financing of ballots. — (a) Ballots a Public Expense.—All ballots cast in the elections, primaries, and referenda listed below shall be printed and distributed at public expense:

(1) General and special elections for national, State, district, county, and municipal offices in the counties, districts, cities, towns, and other political subdivisions of the State.

(2) Primaries for nomination of candidates for the offices listed in the preceding subdivision.

(3) Elections or referenda for the issuance of bonds.

(4) Elections or referenda in which any constitutional amendment, question or issue is submitted to a vote of the people.

(b) Printing and Distribution.—The printing and distribution of ballots shall be arranged, handled, and paid for as follows:

(1) For municipal elections, primaries, and referenda, by the municipal authorities conducting the election, primary, or referendum, at the expense of the municipality.

(2) For county, township, single-county district, and legislative district elections, primaries, and referenda, by the responsible county board of elections, at the expense of the county.

(3) For all elections, primaries, and referenda not specified in the two preceding subdivisions, by the State Board of Elections, at the expense of the State.

(c) Paper Ballots for General Elections and County Bond Elections where Voting Machines Are Used.—In counties in which voting machines are used at some or all voting places, paper ballots shall be printed for purposes of absentee voting in state-wide general elections and in county bond elections under the provisions of articles 20 and 21. (1929, c. 164, s. 3; 1963, c. 457, s. 9; 1967, c. 775, s. 1; c. 952, s. 2.)

Editor's Note. — The 1967 amendment, effective for any election arising on or after Sept. 1, 1967, made subsection (c) applicable to bond elections.

§ 163-137. General and special election ballots; names and questions to be printed thereon; distribution.—(a) The ballots printed for use in general and special elections under the provisions of this article shall contain:

(1) The names of all candidates who have been put in nomination in accordance with the provisions of this chapter by any political party recognized in this State.

(2) The names of all persons who have qualified as independent candidates under the provisions of § 163-122.

(3) All questions, issues, and propositions to be voted on by the people.

(b) The ballots prepared for use in general and special elections under the provisions of this article by the State Board of Elections shall be printed and delivered to the county boards of elections at least 45 days prior to the date of any election in which absentee voting is permitted and at least 30 days prior to the date of any election in which absentee voting is not permitted. (1929, c. 164, s. 5; 1945, c. 972; 1957, c. 1264; 1963, c. 934; 1967, c. 775, s. 1.)

The right of a candidate to have his name printed on the official ballot is dependent upon his becoming a nominee in the required manner. McLean v. Durham County Bd. of Elections, 222 N.C. 6, 21 S.E.2d 842 (1942).

§ 163-138. Instructions for printing names on primary and election ballots.—In preparing primary, general, and special election ballots, the legal name of a candidate (together with his nickname in the situation outlined below) shall be printed precisely as it appears on the notice of candidacy form filed in accordance with § 163-106 or in petition forms filed in accordance with § 163-122. If the candidate has inserted a nickname on the notice of candidacy or in the petition, it shall be printed on the ballot immediately before the candidate's surname and shall be enclosed by parenthesis. No title, appendage, or appellation indicating rank, status, or position, shall be printed before or following or as a nickname or in connection with the name of any candidate on any ballot. Nevertheless, a candidate who is a married woman may use the prefix "Mrs." and a candidate who is a single woman may use the prefix "Miss" before her name if she so

elects. (1929, c. 164, s. 5; 1945, c. 972; 1957, c. 1264; 1963, c. 934; 1967, c. 775, s. 1.)

§ 163-139. Reprinting ballots when substitute candidate is named. —(a) Before General or Special Election.—After the official ballots for a general or special election have been printed by the proper elections board, the death, resignation, or disqualification of a candidate whose name appears on the official ballots shall not require that the ballots be reprinted, although the responsible board of elections may have the ballots reprinted if it desires to do so.

If a candidate dies, resigns, or otherwise becomes disqualified after his name has been printed on an official general or special election ballot, and if a nomination has been made to fill the vacancy as authorized by § 163-114, the name of the substituted nominee shall not appear on the official ballots unless the responsible board of elections decides that it is feasible and advisable to reprint the ballots to show the name of the substituted nominee. If the ballots are not reprinted, a vote cast for the candidate whose name is printed on the ballot shall be counted as a vote for the substituted candidate whose name has been certified to the appropriate board of elections under the provisions of § 163-114.

(b) Before Primary Election.—The provisions of § 163-112 shall apply in the event a candidate for party nomination dies before the primary. (1929, c. 164, s. 7; 1931, c. 254, s. 1; 1947, c. 505, s. 8; 1967, c. 775, s. 1.)

§ 163-140. Kinds of ballots; what they shall contain; arrangement.—(a) Kinds of General Election Ballots; Right to Combine.—For purposes of general elections, there shall be seven kinds of official ballots, entitled:

(1) Ballot for presidential electors
(2) Ballot for United States Senator
(3) Ballot for member of the United States House of Representatives
(4) State ballot
(5) County ballot
(6) Township ballot
(7) Ballot for constitutional amendments and other propositions submitted to the people.

Use of official ballots shall be limited to the purposes indicated by their titles. The printing on all ballots shall be plain and legible but, unless large type is specified by this section, type larger than 10-point shall not be used in printing ballots. All general election ballots shall be prepared in such a way as to leave sufficient blank space beneath each name printed thereon in which a voter may conveniently write the name of any person for whom he may desire to vote.

Unless prohibited by this section, the board of elections, State or county, charged by law with printing ballots may, in its discretion, combine any two or more official ballots. Whenever two or more ballots are combined, the voting instructions for the State ballot set out in subsection (b) (4) of this section shall be used.

(b) General Election Ballots.—

(1) Ballot for Presidential Electors: On the ballot for presidential electors there shall be printed, under the titles of the offices, the names of the candidates for President and Vice-President of the United States nominated by each political party qualified under the provisions of § 163-96. A separate column shall be assigned to each political party with candidates on the ballot, and the party columns shall be separated by distinct black lines. At the head of each column the party name shall be printed in large type and below it a circle, one-half inch in diameter, and below the circle the names of the party's candidates for President and Vice-President in that order. On the face of the

ballot, above the party column division, the following instructions shall be printed in heavy black type:

"a. To vote this ballot, make a cross (X) mark in the circle below the name of the potitical party for whose candidates you wish to vote.

b. A vote for the names of a political party's 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.

c. If you tear or deface or wrongly mark this ballot, return it and get another."

On the bottom of the ballot shall be printed an identified facsimile of the signature of the chairman of the State Board of Elections.

The official ballot for presidential electors shall not be combined with any other official ballots.

(2) Ballot for United States Senator: Beneath the title and general instructions set out in this subsection, the ballot for United States Senator shall be divided into parallel columns separated by distinct black lines. The State Board of Elections shall assign a separate column to each political party having a candidate for the office and one to independent candidates, if any. At the head of each party column the party's name shall be printed in large type, and at the head of the column for independent candidates shall be printed in large type the words "Independent Candidates." The name of each political party's candidate for United States Senator shall be printed in the appropriate party column, and the names of independent candidates for the office shall be printed in the column headed "Independent Candidates." At the left of each name shall be printed a voting square, and in each column all voting squares shall be arranged in a perpendicular line. On the face of the ballot, above the party and independent column division, the following instructions shall be printed in heavy black type:

"a. Vote for only one candidate.

b. If you tear or deface or wrongly mark this ballot, return it and get another."

On the bottom of the ballot shall be printed an identified facsimile of the signature of the chairman of the State Board of Elections.

When the ballot for United States Senator is combined with a ballot for another office, below the party name in each column shall be printed a circle, one-half inch in diameter, around which shall be plainly printed the following instruction: "For a straight ticket, mark within this circle." The following instructions, in lieu of those specified in the preceding paragraph, shall be printed in heavy black type on the face of the combined ballot to the top above the party and independent column division:

"a. To vote for all candidates of one party (a straight ticket), make a cross (X) mark in the circle of the party for whose candidates you wish to vote.

b. To vote for candidates of more than one party (a split ticket), do not mark in any party circle, but make a cross (X) mark in the square opposite the name of each candidate for whom you wish to vote.

c. If you tear or deface or wrongly mark this ballot, return it and get another."

(3) Ballot for Member of the United States House of Representatives: Beneath the title and general instructions set out in this subsection, the congressional district ballot for member of the United States House of

Representatives shall be divided into parallel columns separated by distinct black lines. The State Board of Elections shall assign a separate column to each political party having a candidate for the office and one to independent candidates, if any. At the head of each party column the party's name shall be printed in large type, and at the head of the column for independent candidates shall be printed in large type the words "Independent Candidates." The name of each political party's candidate for member of the United States House of Representatives from the congressional district shall be printed in the appropriate party column, and the names of independent candidates for the office shall be printed in the column headed "Independent Candidates." At the left of each name shall be printed a voting square, and in each column all voting squares shall be arranged in a perpendicular line. On the face of the ballot, above the party and independent column division, the following instructions shall be printed in heavy black type:

"a. Vote for only one candidate.

b. If you tear or deface or wrongly mark this ballot, return it and get another."

On the bottom of the ballot shall be printed an identified facsimile of the signature of the chairman of the State Board of Elections.

When the ballot for member of the United States House of Representatives is combined with a ballot for another office, below the party name in each column shall be printed a circle, one-half inch in diameter, around which shall be plainly printed the following instruction: "For a straight ticket, mark within this circle." The following instructions, in lieu of those specified in the preceding paragraph, shall be printed in heavy black type on the face of the combined ballot at the top above the party and independent column division:

"a. To vote for all candidates of one party (a straight ticket), make a cross (X) mark in the circle of the party for whose candidates you wish to vote.

b. To vote for candidates of more than one party (a split ticket), do not mark in any party circle, but make a cross (X) mark in the square opposite the name of each candidate for whom you wish to vote.

c. If you tear or deface or wrongly mark this ballot, return it and get another."

(4) State Ballot: Beneath the title and general instructions set out in this subsection, the ballot for State officers (including judges of the superior court) shall be divided into parallel columns separated by distinct black lines. The State Board of Elections shall assign a separate column to each political party having candidates for State offices and one to independent candidates, if any. At the head of each party column the party's name shall be printed in large type, and at the head of the column for independent candidates shall be printed in large type the words "Independent Candidates." Below the party name in each column shall be printed a circle, one-half inch in diameter, around which shall be plainly printed the following instructions: "For a straight ticket, mark within this circle." With distinct black lines, the State Board of Elections shall divide the columns into horizontal sections and, in the customary order of office, assign a separate section to each office or group of offices to be filled. On a single line at the top of each section shall be printed the title of the office, and directly below the title shall be printed a direction as to the number of candidates for whom a vote may be cast. If candidates are to be chosen for dif-

ferent terms to the same office, the term in each instance shall be printed as part of the title of the office.

The name or names of each political party's candidate or candidates for each office listed on the ballot shall be printed in the appropriate office section of the proper party column, and the names of independent candidates shall be printed in the appropriate office section of the column headed "Independent Candidates." At the left of each name shall be printed a voting square, and in each column all voting squares shall be arranged in a perpendicular line.

On the face of the ballot, above the party and independent column division, the following instructions shall be printed in heavy black type:

"a. To vote for all candidates of one party (a straight ticket), make a cross (X) mark in the circle of the party for whose candidates you wish to vote.

b. To vote for candidates of more than one party (a split ticket), do not mark in any party circle, but make a cross (X) mark in the square opposite the name of each candidate for whom you wish to vote.

c. If you should insert a cross (X) mark in one of the party circles at the top of the ballot and also mark in the voting square opposite the name of any candidate of any party, your ballot will be counted as a straight ticket vote for all of the candidates of the party whose circle you marked.

d. If you tear or deface or wrongly mark this ballot, return it and get another."

On the bottom of the ballot shall be printed an identified facsimile of the signature of the chairman of the State Board of Elections.

(5) County Ballot: Beneath the title and general instructions set out in this subsection, the ballot for county officers (including solicitor for the solicitorial district in which the county is situated, district judge for the district court district in which the county is situated, and members of the General Assembly in the senatorial and representative districts in which the county is situated) shall be divided into parallel columns separated by distinct black lines. The county board of elections shall assign a separate column to each political party having candidates for the offices on the ballot and one to independent candidates, if any. At the head of each party column the party's name shall be printed in large type, and at the head of the column for independent candidates shall be printed in large type the words "Independent Candidates." Below the party name in each column shall be printed a circle, one-half inch in diameter, around which shall be plainly printed the following instruction: "For a straight ticket, mark within this circle." With distinct black lines, the county board of elections shall divide the columns into horizontal sections and, in the customary order of office, assign a separate section to each office or group of offices to be filled. On a single line at the top of each section shall be printed the title of the office, and directly below the title shall be printed a direction as to the number of candidates for whom a vote may be cast. If candidates are to be chosen for different terms to the same office, the term in each instance shall be printed as part of the title of the office.

The name or names of each political party's candidate or candidates for each office listed on the ballot shall be printed in the appropriate office section of the proper party column, and the names of independent candidates shall be printed in the appropriate office section of the column headed "Independent Candidates." At the left of each name shall

be printed a voting square, and in each column all voting squares shall be arranged in a perpendicular line.

On the face of the ballot, above the party and independent column division, the following instructions shall be printed in heavy black type:

"a. To vote for all candidates of one party (a straight ticket), make a cross (X) mark in the circle of the party for whose candidates you wish to vote.

b. To vote for candidates of more than one party (a split ticket), do not mark in any party circle, but make a cross (X) mark in the square opposite the name of each candidate for whom you wish to vote.

c. If you should insert a cross (X) mark in one of the party circles at the top of the ballot and also mark in the voting square opposite the name of any candidate of any party, your ballot will be counted as a straight ticket vote for all of the candidates of the party whose circle you marked.

d. If you tear or deface or wrongly mark this ballot, return it and get another."

On the bottom of the ballot shall be printed an identified facsimile of the signature of the chairman of the county board of elections.

(6) Township Ballot: The township ballot shall contain the names of candidates for constable and justices of the peace, and shall be prepared by the county board of elections in conformity with the instructions prescribed in this section for the county ballot.

(7) Ballot for Constitutional Amendments and Other Propositions Submitted to the People: The form of ballot used in submitting a constitutional amendment or other proposition or issue to the voters of the entire State shall be prepared by the State Board of Elections and approved by the Attorney General. The form of ballot used in submitting propositions and issues to the voters of a single county or subdivision shall be prepared by the county board of elections. In a referendum the issue presented to the voters with respect to each constitutional amendment, question, or proposition, shall be printed in the form laid down by the General Assembly or other body submitting it. If more than one amendment, question, or proposition is submitted on a single ballot, each shall be printed in a separate section, and the sections shall be numbered consecutively. On the face of the ballot, above the issue or issues being submitted, shall be printed instructions for marking the voter's choice, in addition to the following instruction: "If you tear or deface or wrongly mark this ballot, return it and get another." On the bottom of the ballot shall be printed an identified facsimile of the signature of the chairman of the responsible board of elections, State or county.

(c) Primary Election Ballots.—

(1) Kinds of Primary Ballots; Right to Combine: For the purposes of primary elections, there shall be five kinds of official ballots, entitled:

a. Primary ballot for United States Senator

b. Primary ballot for member of the United States House of Representatives

c. State primary ballot

d. County primary ballot

e. Township primary ballot

Use of official primary ballots shall be limited to the purposes indicated by their titles. The printing on all primary ballots shall be plain and legible but, unless large type is specified by this chapter, type larger than 10-point shall not be used in printing primary ballots.

Primary ballots shall be prepared in accordance with the provisions of § 163-109 and the provisions of this section as modified by the provisions of this subsection.

(2) Separate Ballots for Each Political Party: For each political party conducting a primary election separate ballots shall be printed, and the paper used for each party's ballots shall be different in color from that used for the ballots of other parties. Primary ballots shall not provide for voting a straight party ticket, but a voting square shall be printed to the left of the name of each candidate appearing on the ballot.

(3) Rotation of Positions on Ballots Among Candidates: The board of elections, State or county, responsible for printing and distributing primary election ballots shall have them printed so that the names of opposing candidates for any office shall, as far as practicable, occupy alternate positions 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 ballots shall be distributed among the precinct voting places impartially and without discrimination.

(4) Facsimile Signatures: On the bottom of each primary ballot shall be printed an identified facsimile of the signature of the chairman of the board of elections, State or county, responsible for its preparation.

(d) Municipal Primary and Election Ballots.—In all city and town primaries and elections there shall be an official ballot on which shall be printed the names of all candidates for offices in the city or town. The municipal ballot shall conform as nearly as possible to the provisions of subsections (a) through (c) of this section, but on the bottom of the municipal ballot shall be printed an identified facsimile of the signature of the city or town 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; 1955, c. 812, s. 1; 1967, c. 775, s. 1.)

§ 163-141. Sample ballots.—Sample ballots of each kind to be voted in each primary and election shall be printed by the board of elections responsible for printing the official ballots. Sample ballots shall be printed on paper of a color different from that used for the official ballots, and each sample ballot shall have the words "Sample Ballot" printed conspicuously on its face. Sample ballots shall be used for instructional purposes and shall not be used as official ballots.

The State Board of Elections shall distribute the sample ballots for which it is responsible to the county boards of elections at the time it distributes the official ballots; and the county board of elections, at the time it is required to distribute official ballots, shall furnish each precinct registrar with an adequate supply of the sample ballots prepared by the State Board of Elections as well as of those the County board is required to prepare. (1929, c. 164, s. 13; 1931, c. 254, s. 12; 1967, c. 775, s. 1.)

§ 163-142. Number of ballots to be furnished each voting place; packaging; date of delivery; receipt for ballots; accounting for ballots.—The county board of elections shall furnish each precinct voting place with each kind of ballot to be voted in the primary or election in a number equal to one hundred five percent (105%) of the number of persons registered to vote in the primary or election in the precinct.

Each kind of ballot shall be wrapped in a separate package or packages for each precinct voting place. The number of ballots to be placed in each package shall be determined by the chairman of the county board of elections, and the outside of each package shall be marked or stamped to show the kind of ballot and the number contained.

Three days before the primary or election, the county board of elections shall deliver to each precinct registrar the required number of ballots of each kind to be

voted in his precinct, and the registrar shall immediately give a receipt for the ballots delivered to him in accordance with the information marked or stamped on the ballot packages.

Within three days after the primary or election, the registrar shall deliver to the county board of elections all ballots spoiled in his precinct. At the same time he shall also deliver to the county board of elections all unused ballots from his precinct. Thereupon, the county board of elections shall make a check to ascertain whether the total of spoiled ballots and unused ballots, when added to the number of ballots cast in the precinct, equal the number of ballots furnished to and receipted for by the registrar prior to the primary or election.

The provisions of this section shall not apply to voting places at which voting machines are used. (1929, c. 164, ss. 10, 11, 14, 25; 1933, c. 165, s. 22; 1951, c. 849, ss. 1, 2; 1967, c. 775, s. 1.)

§ 163-143. Ballot boxes to be furnished each voting place; date of delivery; receipt for boxes.—The county board of elections shall furnish each precinct voting place with a ballot box for each kind of ballot to be voted in the primary or election, together with one additional box in which spoiled ballots are to be deposited. Each box shall be plainly marked to indicate the ballots to be deposited therein, and the extra box to be delivered to each precinct shall be marked "For Spoiled Ballots."

Each ballot box shall be designed so that it may be locked and sealed and shall be constructed with an opening in the top large enough to allow a single ballot to be easily passed through, but no larger. At the time ballot boxes are delivered to the precinct, the chairman of the county board of elections shall furnish each registrar with a lock and proper seals for each box to be used in his precinct, with instructions as to how each box is to be securely locked and sealed in compliance with § 163-171.

Three days before the primary or election, the county board of elections shall deliver to each precinct registrar the number of ballot boxes required for his precinct, and the registrar shall immediately give a receipt for them.

The provisions of this section shall not apply to voting places at which voting machines are used. (1929, c. 164, ss. 12, 14; 1931, c. 254, s. 11; 1967, c. 775, s. 1.)

§ 163-144. Lost, destroyed, damaged, and stolen ballots; replacement; report.—Should official ballots furnished to any precinct in accordance with the provisions of this chapter be lost, destroyed, damaged, or stolen, the county board of elections, upon ascertaining that a shortage of ballots exists in the precinct, shall furnish the needed replacement ballots.

Within three days after the primary or election, the registrar of the precinct in which the loss occurred shall make a written report, under oath, to the county board of elections describing in detail the circumstances of the loss, destruction, damage, or theft of the ballots. (1929, c. 164, s. 15; 1967, c. 775, s. 1.)

§ 163-145. Voting booths; description; provision.—The county board of elections shall furnish each voting place with at least one voting booth for each 100 persons qualified to vote in the precinct. Each voting booth shall be at least three feet square and six feet high; it shall have three sides and a door or curtain in front. The bottom of the door or curtain shall hang two feet above the floor. Each voting booth shall be equipped with a table or shelf on which voters may conveniently mark their ballots.

The provisions of this section shall not apply to voting places at which voting machines are used. (1929, c. 164, s. 17; 1967, c. 775, s. 1.)

§ 163-146. Voting enclosure at voting place; furnishings; arrangement.—At each precinct voting place as described in § 163-129, there shall be a room or area set apart as the voting enclosure. The limits of the voting enclosure shall be defined by walls or guardrails which at no point stand nearer than 10 feet

nor further than 20 feet from the ballot boxes or voting machines. This enclosure shall be arranged so that a single door or opening (not more than three feet wide) can be used as both the entrance and exit for persons seeking to vote.

Within the voting enclosure and in plain view of the qualified voters present at the voting place shall be placed:

(1) A table or desk on which the registrar shall place and use the precinct registration books and records.

(2) A table or desk on which the responsible judge shall place and superintend the ballots for distribution and the box for spoiled ballots.

(3) A table or desk on which the responsible judge shall place and maintain the pollbook.

(4) The ballot boxes.

(5) The voting booths.

All voting booths and ballot boxes shall be placed in plain view of the registrar and judges as well as of the qualified voters present at the voting place.

The registrar's table shall be placed near the entrance to the voting enclosure.

Each voting booth shall be located and arranged so that it is impossible for a voter in one booth to see a voter in another booth in the act of marking his ballots. Each voting booth shall be kept properly lighted and provided with pencils or pens for marking ballots.

In precincts in which voting machines are used, ballot boxes and voting booths shall not be used. Within the voting enclosure at the voting place in such a precinct, each machine shall be placed so that the exterior from all its sides is visible and so that whenever it is not in use by a voter the ballot labels on its face may be plainly seen by the precinct officials and assistants, and by watchers appointed under the provisions of § 163-45. Precinct election officials and assistants shall not place themselves, nor shall they permit any other person to place himself, in any position that will permit one to see or ascertain how a voter votes on a voting machine except when the voter obtains assistance as provided in this chapter.

No political banner, poster, or placard shall be allowed in or upon the voting place during the day of a primary or election. (1929, c. 164, s. 19; 1967, c. 775, s. 1.)

§ 163-147. No loitering or electioneering allowed within 50 feet of voting place.—No person shall, while the polls are open at the voting place on the day of a primary or election, loiter about or do any electioneering within the voting place or within 50 feet thereof. (1929, c. 164, s. 19; 1967, c. 775, s. 1.)

Local Modification.—Cumberland, Durham, Franklin, Guilford, Vance and Warren: 1969, c. 1039.

§ 163-148. Procedures at voting place before polls are opened.—At least one half hour before the time set for opening the polls for each primary and election, the judges of elections, assistants, and, if allowed, official markers, shall meet the registrar at the precinct voting place, at which time the registrar shall administer to them the appropriate oaths set out in § 163-41(a), § 163-42, and § 163-44.

The registrar and judges shall arrange the voting enclosure according to the requirements of § 163-146 and the instructions of the county board of elections. They shall then unlock the official ballot boxes, see that they are empty, allow authorized watchers and other voters present to examine the boxes, and then they shall relock them while still empty. They shall open the sealed packages of ballots, and one of the judges, at the registrar's request, shall announce that the polls are open and state the hour at which they will be closed.

If voting machines are used in the precinct, immediately before the polls are opened the registrar and judges shall open each voting machine, examine the ballot labels, and check the counters to see that they are set to indicate that no

votes have been cast or recorded; at the same time, the precinct officials shall allow authorized watchers and other voters present to examine the machines. If found to be in order and the ballot labels in proper form, the precinct officials shall lock and seal each machine, and it shall remain locked until after the polls are closed. (1929, c. 164, s. 18; 1967, c. 775, s. 1.)

§ 163-149. Protection of ballots, ballot boxes, pollbook, and registration records on day of primary or election.—When the empty official ballot boxes have been relocked after the inspection required by § 163-148 before the polls are opened on the day of each primary and election, they shall not be unlocked or opened until the polls are closed.

Only official ballots shall be allowed to be deposited in the ballot boxes, and no other articles or matter shall be placed in them.

No person shall purposely deface or tear an official ballot in any manner, and no person shall purposely erase any name or mark written on a ballot by a voter.

From the time the polls are opened until the precinct count has been completed, the returns signed, and the results declared, no person shall take or remove from the voting enclosure the official ballot boxes, the box for spoiled ballots, the pollbook, the registration book or records, or any official ballots. (1929, c. 164, ss. 18, 22, 23, 25; 1931, c. 254, s. 14; 1939, c. 263, s. 3½; 1953, c. 1040; 1967, c. 775, s. 1.)

§ 163-150. Voting procedures.—(a) Checking Registration.—A person seeking to vote shall enter the voting enclosure at the voting place through the appropriate entrance and shall at once state his name and place of residence to one of the judges of election. In a primary election, the voter shall also state the political party with which he affiliates and in whose primary he desires to vote. The judge to whom the voter gives this information shall announce the name and residence of the voter in a distinct tone of voice. After examining the precinct registration records, the registrar shall state whether the person seeking to vote is duly registered.

(b) Distribution of Ballots; Information.—If the voter is found to be registered and is not challenged, or, if challenged and the challenge is overruled as provided in § 163-88, the responsible judge of election shall hand him an official ballot of each kind he is entitled to vote. In a primary election the voter shall be furnished ballots of the political party with which he affiliates and no others. It shall be the duty of the registrar and judges holding the primary or election to give any voter any information he desires in regard to the kinds of ballots he is entitled to vote and the names of the candidates on the ballots. In response to questions asked by the voter, the registrar and judges shall communicate to him any information necessary to enable him to mark his ballot as he desires.

(c) Act of Voting.—When a person is given official ballots by the judge, he shall be deemed to have begun the act of voting, and he shall not leave the voting enclosure until he has deposited his ballots in the ballot boxes or returned them to the precinct officials. When he leaves the voting enclosure, whether or not he has deposited his ballots in the ballot boxes, he shall not be entitled to enter the voting enclosure again for the purpose of voting. On receiving his ballots, the voter shall immediately retire alone to one of the voting booths unless he is entitled to assistance under the provisions of § 163-152, and without undue delay he shall mark his ballots in accordance with the provisions of § 163-151. No voter shall be allowed to occupy a booth already occupied by another, and no voter shall be allowed to occupy a booth more than five minutes if all the booths are in use and other voters are waiting to obtain booths.

(d) Spoiled and Damaged Ballots.—If a voter spoils or damages a ballot, he may obtain another upon returning the spoiled or damaged ballot to the registrar. A voter shall not be given a replacement ballot until he has returned the spoiled or damaged ballot, and he shall not be given more than three replacement ballots in all. The registrar shall deposit each spoiled or damaged ballot in the box provided for that purpose.

(e) Depositing Ballots and Leaving Enclosure.—When the voter has marked his ballots he shall leave the voting booth and deposit them in the appropriate boxes or hand them to the registrar or a judge who shall deposit them for him. If he does not mark a ballot he shall return it to one of the precinct officials before leaving the voting enclosure. If the voter has been challenged and the challenge has been overruled, before depositing his ballots in the boxes he shall write his name on each of his ballots so they may be identified in the event his right to vote is again questioned. After depositing his ballots in the ballot boxes, the voter shall immediately leave the voting enclosure unless he is one of the persons authorized by law to remain within the enclosure for purposes other than voting.

(f) Maintenance of Pollbook or Other Record of Voting.—At each primary and election, one of the judges designated by the registrar shall keep the pollbook in which he shall enter the name of every person who shall vote. In a primary election each voter's party affiliation shall be entered in the proper column of the book opposite his name. The judge shall make each entry at the time ballots are handed to the voter As soon as the polls are closed and the names of absentee voters have been entered as required by § 163-234, the registrar and judges of election shall sign the pollbook immediately beneath the last voter's name entered therein. The registrar or the judge appointed to attend the county canvass shall deliver the pollbook to the chairman of the county board of elections at the time of the county canvass, and the chairman shall remain responsible for its safekeeping.

In counties which adopt full-time and permanent registration, no pollbook shall be required; in lieu thereof, a permanent poll record shall be kept upon the registration certificates in a form approved by the county board of elections. (1915, c. 101, s. 11; 1917, c. 218; C. S., s. 6031; 1921, c. 181, s. 6; 1923, c. 111, s. 14; 1929, c. 164, ss. 20, 22, 23, 25; 1931, c. 254, ss. 13, 14; 1939, c. 263, s. 3½; 1953, c. 1040; 1955, c. 767; 1959, c. 1203, s. 7; 1967, c. 775, s. 1.)

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 ex rel. DeBerry v. Nicholson, 102 N.C. 465, 9 S.E. 545 (1889).

Inquiry as to Voter's Qualifications Rests with Election Officials. — The law does not contemplate that a watcher or any other person may take charge when he challenges a voter at the polls and conduct a hearing with respect to the voter's right to vote. The inquiry with respect to the voter's qualifications to vote rests with the election officials. Overton v. Mayor & City Comm'rs, 253 N.C. 306, 116 S.E.2d 808 (1906).

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 Bd. of Elections, 180 N.C. 169, 104 S.E. 346 (1920).

§ **163-151. Method of marking ballots in primary and election.**—The voter shall adhere to the following rules in marking his ballots:

(1) In Both Primaries and Elections.—

a. A voter may designate his choice of candidate by making a cross (X) mark, a check mark, or some other clear indicative mark in the appropriate voting square or circle.

b. A voter should not mark more names for any office than there are positions to be filled by election.

c. A voter should not affix a sticker to a ballot, mark a ballot with a rubber stamp, attach anything to a ballot, wrap or fold anything in a ballot, or do anything to a ballot other than mark it properly with pencil or pen.

d. A voter should follow the instructions printed on the ballot.

(2) In An Election But Not in a Primary.—

a. If a voter desires to vote for all candidates of one political party (a straight ticket) he shall either:

1. Make a cross (X) mark in the circle printed below the name of the party at the top of the ballot; or
2. Make a cross (X) mark in the voting square at the left of the name of every candidate of the party printed on the ballot.

b. If a voter desires to vote for candidates of more than one political party (a split ticket), he shall not mark in the circle printed below the name of any party on the ballot; instead, he shall make a cross (X) mark in the voting square at the left of the name of each candidate for whom he desires to vote without regard to the party column in which the names are printed.

c. If a voter desires to vote for a person whose name is not printed on the ballot, he shall write the name of the person for whom he wishes to vote in the space immediately beneath the name of a candidate printed in the section of the ballot assigned to the particular office. In such a situation, the voter shall write the name himself unless he is receiving assistance to which he is entitled under the provisions of § 163-152, in which case the person rendering assistance may write the name for the voter under his direction.

d. In elections for county offices in Bertie County, in elections for municipal offices in the towns of Clayton in Johnston County, Elm City in Wilson County, Enfield in Halifax County, Fremont in Wayne County, Gaston in Northampton County, Roseboro in Sampson County, Snow Hill in Greene County, Tarboro in Edgecombe County, and Weldon in Halifax County, and in elections for municipal offices in all the municipalities in Bertie and Franklin counties, if there are multiple positions to be filled in a single office, the voter shall cast his vote for as many candidates as there are positions to be filled in that office.

(3) In a Primary.—

a. A voter should not write the name of any person on the official ballot.

b. In primary elections for county offices in the counties of

Bertie	Greene	Pender
Bladen	Halifax	Perquimans
Catawba	Jones	Robeson
Chowan	Lenoir	Sampson
Columbus	Martin	Surry, and
Cumberland	Northampton	Wayne,
Franklin	Onslow	

in primary elections for municipal offices in the municipalities in those counties, and in primary elections for municipal offices in the towns of Elm City in Wilson County, and Robersonville and Williamston in Martin County, if there are multiple positions to be filled in a single office, the voter shall cast his vote for as many candidates as there are positions to be filled in that office. (1929, c. 164, ss. 21, 28; 1931, c. 254, s. 15; 1933, c. 165, s. 23; 1939, c. 116, s. 2; 1947, c. 505, s. 10; 1955, c. 812, s. 2; c. 1104, ss. 1-2½; 1957, cc. 344, 440, 589, 647, 737, 1383; 1959, cc. 105, 604, 610, 888; c. 1203, ss. 8, 9; 1961, c. 451; 1963, cc. 154, 167, 376, 389, 390, 567, 774; 1965, cc. 119, 154, 547,

727; c. 1117, s. 3; 1967, c. 775, s. 1; c. 1016; 1969, cc. 190, 917, 1253.)

Local Modification to Former § 163-175. —City of Washington: 1959, c. 847.

Editor's Note. — The 1967 amendment inserted "Martin" in the table of counties in paragraph b of subdivision (3).

The first 1969 amendment deleted "Hoke" and "Scotland" from the list of counties in paragraph b of subdivision (3).

The second 1969 amendment deleted "Duplin" from the table of counties in paragraph b of subdivision (3).

The third 1969 amendment inserted "Enfield in Halifax County" in paragraph d of subdivision (2).

Former § 163-175, subdivision (6), as it appeared prior to the revision of this chapter by Session Laws 1967, c. 775, provided as follows:

"Where there are group candidates for the same office printed on the ballot on any county or municipal primary held in this State, and the names of several candidates therefor appear on the ballot grouped under the office for which they are all running, the elector shall cast his or her vote for as many candidates as there are offices to be filled, and where an elector votes for any number of such group candidates less than the number of offices to be filled, such ballot shall not be counted for any of the group candidates for said offices. There shall be printed under the title of the offices for group candidates the number of candidates to be voted for."

The subdivision applied only to certain named counties and municipalities.

By Session Laws 1967, c. 276, the above-quoted subdivision was made applicable to all elections in the town of Hamilton in Martin County; by Session Laws 1967, c. 688, it was made applicable to general municipal elections in the town of Eureka in Wayne County; and by Session Laws 1967, c. 811, it was made applicable to primary and general municipal elections in the city of Clinton in Sampson County.

§ 163-152. Assistance to voters in primaries and elections.—(a) In Primaries.—

(1) Who Is Entitled to Assistance: In a primary election, a registered voter qualified to vote in the primary shall be entitled to assistance in getting to and from the voting booth and in preparing his ballots in accordance with the following rules:

a. Any voter shall be entitled to assistance from a near relative of his choice.

b. If no near relative of the voter's choice is present at the voting place, a voter in any of the following three categories shall be entitled to assistance from any voter of the precinct who has not given aid to another voter at the same primary; or, if no such person be present at the voting place, from the registrar or one of the judges of election:

1. One who, on account of physical disability, is unable to enter the voting booth without assistance.
2. One who, on account of physical disability, is unable to mark his ballots without assistance.
3. One who, on account of illiteracy, is unable to mark his ballots without assistance.

(2) Procedure for Obtaining Assistance: A person seeking assistance in a primary shall, upon arriving at the voting place, first request the registrar to permit him to have assistance, stating his reasons. If the registrar determines that the voter is entitled to assistance, he shall ask the voter to point out and identify the near relative or other voter of the precinct he desires to help him and to whose assistance he is entitled under this section. The registrar shall thereupon direct the near relative or other voter indicated to render the requested aid. If no near relative or other voter of the voter's choice is present, the voter entitled to assistance may request and obtain aid from the registrar or one of the judges.

(b) In Elections.—

(1) In a County Which Has Not Adopted Full-Time and Permanent Registration:

a. Who is entitled to assistance: In any election other than primary, a registered voter shall be entitled to assistance in getting to and from the voting booth and in preparing his ballots in accordance with the following rules:

1. Any voter shall be entitled to assistance from a near relative of his choice.
2. A voter in any of the following four categories shall be entitled to assistance from a marker:
   I. One who, on account of physical disability, is unable to enter the voting booth without assistance.
   II. One who, on account of physical disability, is unable to mark his ballots without assistance.
   III. One who, on account of illiteracy is unable to mark his ballots without assistance.
   IV. One who, for any good reason stated to the registrar, desires help in marking his ballots.

b. Procedures for obtaining assistance: A person seeking assistance in an election other than a primary shall, upon arriving at the voting place, first request the registrar to permit him to have assistance, stating his reasons. If the registrar determines that the voter is entitled to assistance, he shall ask the voter to point out and identify the near relative or marker he desires to help him and to whose assistance he is entitled under this section. The registrar shall thereupon direct the near relative or marker indicated to render the requested aid. Should a voter seeking assistance from a marker fail to indicate the marker he desires to help him, the registrar shall appoint one from the markers present at the voting place to render the requested aid.

(2) In a County Which Has Adopted Full-Time and Permanent Registration:

a. Who is entitled to assistance: In any election other than a primary, a registered voter shall be entitled to assistance in getting to and from the voting booth and in preparing his ballots in accordance with the following rules:

1. Any voter shall be entitled to assistance from a near relative of his choice.
2. If no near relative of the voter's choice is present at the voting place, a voter in any of the following three categories shall be entitled to assistance from any voter of the precinct who has not given aid to another voter at the same election; or if no such person be present at the voting place, from the registrar or one of the judges of election:
   I. One who, on account of physical disability, is unable to enter the voting booth without assistance.
   II. One who, on account of physical disability, is unable to mark his ballots without assistance.
   III. One who, on account of illiteracy, is unable to mark his ballots without assistance.

b. Procedure for obtaining assistance: A person seeking assistance in an election other than a primary shall, upon arriving at the voting place, first request the registrar to permit him to have assistance, stating his reasons. If the registrar determines that

the voter is entitled to assistance, he shall ask the voter to point out and identify the near relative or other voter of the precinct he desires to help him and to whose assistance he is entitled under this section. The registrar shall thereupon direct the near relative or other voter indicated to render the requested aid. If no near relative or other voter of the voter's choice is present, the voter entitled to assistance may request and obtain aid from the registrar or one of the judges.

(c) Conduct of Persons Rendering Assistance.—Anyone rendering assistance to a voter in a primary or election under the provisions of this section shall be admitted to the voting booth with the person being assisted and shall be governed by the following rules:

(1) He shall not in any manner seek to persuade or induce any voter to cast his vote in any particular way.

(2) Except when going to or returning from a voting booth with a voter as authorized by this section, he shall remain within the voting place but shall not come within 10 feet of the voting enclosure.

(3) Immediately after rendering assistance, he shall vacate the voting booth and withdraw to his place in the voting place outside the voting enclosure.

(4) He shall not accompany the voter from the voting booth to the ballot box unless the voter requires and requests assistance on account of physical disability; if assistance is rendered in this way, he shall not converse with the voter prior to the time he deposits his ballots in the ballot boxes.

(5) He shall not make or keep any memorandum of anything which occurs within the voting booth.

(6) He shall not, directly or indirectly, reveal to any person how, in any particular, the assisted voter marked his ballots, unless he or they are called upon to testify in a judicial proceeding for a violation of the election laws.

(d) Meaning of "Near Relative".—As used in this section, the words "near relative" shall include the voter's husband, wife, brother, sister, parent, child, grandparent, and grandchild, but no other relative.

(e) Violation of Section.—It shall be unlawful for any person to give, receive, or permit assistance in the voting booth during any primary or election to any voter otherwise than as is allowed by this section. (1929, c. 164, ss. 26, 27; 1933, c. 165, s. 24; 1939, c. 352, ss. 1, 2; 1953, c. 843; 1955, c. 800; 1957, c. 784, s. 6; 1959, c. 616, s. 1; 1963, c. 303, s. 1; 1967, c. 775, s. 1.)

Local Modification to Former §§ 163-172 and 163-173.—Brunswick: 1933, c. 164; 1935, c. 221; Cherokee: 1935, c. 461; 1937, c. 391; 1965, c. 737; 1967, c. 1000; Cumberland: 1937, c. 426; Sampson: 1941, c. 166.

Local Modification to Former § 163-174.—Cumberland, Wilson: 1939, c. 402.

Violations. — It was a violation of former § 163-172 for a judge of elections to mark the ballots for voters without any request for assistance by the voters, or, in the event of a request for assistance, to fail to return the marked ballot to the voter in order that the voter might see how it was marked before putting it in the ballot box. Overton v. Mayor & City Comm'rs, 253 N.C. 306, 116 S.E.2d 808 (1960).

§ 163-152.1. Assistance to blind voters in primaries and elections. —Any blind voter shall be permitted to select assistance of his own choosing in any primary or election without regard to residency within the voting precinct provided, such voter has recorded at the time of registration or prior to the date of the election, a certificate issued by the North Carolina State Commission for the Blind, by an optometrist or by a physician, stating that the named individual should be entitled to assistance as a blind voter. Upon receipt of such certification the registrar or special registration commissioner shall enter on the voter's regis-

tration record the words "blind voter" so as to establish such fact and so as to entitle such voter to the same assistance in subsequent primaries and elections whether such voter resides in a county with full-time registration or regular registration. The certification presented to the precinct registrar or special registrar shall be forwarded to the chairman of the county board of elections to be filed as a permanent record with the voter's duplicate registration record as required by G.S. 163-65. (1969, c. 175.)

§ 163-153. Access to voting enclosure.—Admission to the voting enclosure while the polls are open shall be governed by the following rules:

(1) In counties which have not adopted full-time and permanent registration, only the following persons shall be allowed within the voting enclosure while the polls are open for voting:
   a. Officers of election, that is, members of the State Board of Elections, members of the county board of elections, and the precinct registrar, precinct judges of election, and assistants appointed for the precinct under the provisions of § 163-42.
   b. Voters in the act of voting.
   c. A near relative of a voter, but only while assisting the voter as authorized in § 163-152.
   d. Watchers appointed under the provisions of § 163-45.
   e. Municipal policemen assigned by the municipal authorities to keep the peace at a voting place located within the municipality, but only when requested to come within the voting enclosure by the registrar and judges for the purpose of preventing disorder; at the request of the registrar and judges, they shall withdraw from the voting enclosure and remain at least 10 feet from its entrance.
   f. In elections other than primaries, markers appointed under the provisions of § 163-44, but only while assisting a voter as authorized in § 163-152.
   g. In a primary election, any voter of the precinct called upon to assist another voter, but only while rendering the assistance authorized in § 163-152.
   h. Any voter of the precinct while entering and explaining a challenge.

(2) In counties which adopt full-time and permanent registration, only the following persons shall be allowed within the voting enclosure while the polls are open for voting:
   a. Officers of election, that is, members of the State Board of Elections, members of the county board of elections, and the precinct registrar, precinct judges of election, and assistants appointed for the precinct under the provisions of § 163-42.
   b. Voters in the act of voting.
   c. A near relative of a voter, but only while assisting the voter as authorized in § 163-152.
   d. Any voter of the precinct called upon to assist another voter, but only while assisting him as authorized in § 163-152.
   e. Municipal policemen assigned by the municipal authorities to keep the peace at a voting place located within the municipality, but only when requested to come within the voting enclosure by the registrar and judges for the purpose of preventing disorder; at the request of the registrar and judges, they shall withdraw from the voting enclosure and remain at least 10 feet from its entrance.
   f. Any voter of the precinct while entering and explaining a challenge.

g. Watchers appointed under the provisions of G.S. 163-45. (1929, c. 164, s. 24; 1955, c. 871, s. 7; 1967, c. 775, s. 1; 1969, c. 1280, s. 1.)

Local Modification to Former § 163-170.—Cumberland: 1937, c. 426.

Editor's Note. — The 1969 amendment added paragraph g of subdivision (2). Section 3 of the amendatory act provides that the act shall not apply to Alamance, Beaufort, Cumberland, Dare, Gaston, Guilford, Hyde, Lenoir, Martin, Mecklenburg, Onslow, Randolph, Stanly, Tyrrell and Wayne counties.

§ 163-154. Posting lists of civilian and military absentee voters and new resident presidential election voters.—(a) In General Elections.—When delivered to the registrar at the voting place on the day of a general election as required by § 163-233, § 163-251, or § 163-73, the registrar shall immediately post in a conspicuous location at the voting place:

(1) The list (and any supplemental lists) of absentee ballots to be voted in the precinct which have been received by the chairman of the county board of elections.

(2) The list (and any supplemental lists) entitled "List of Applicants for Military Absentee Ballots to Whom Ballots Have Been Issued" prepared in compliance with the provisions of § 163-251.

(3) The list of new resident voters of the precinct entitled to cast ballots for presidential electors but for no other offices prepared by the chairman of the county board of elections in compliance with the provisions of § 163-73.

(b) In Primary Elections.—When delivered to the registrar at the voting place on the day of a primary election, the registrar shall immediately post in a conspicuous place at the voting place the list (and any supplemental lists) entitled "List of Applicants for Military Absentee Ballots to Whom Ballots Have Been Issued" prepared by the chairman of the county board of elections in compliance with the provisions of § 163-251. (1939, c. 159, s. 7; 1943, c. 503, s. 4; c. 751, s. 4; 1963, c. 457, s. 7; 1965, c. 871; 1967, c. 775, s. 1.)

§§ 163-155 to 163-159: Reserved for future codification purposes.

Article 14.

Voting Machines.

§ 163-160. Voting machines; approval; rules and regulations.—The State Board of Elections shall have authority to approve types and kinds of voting machines for use in primaries and elections held in this State. The use of voting machines which have been approved by the State Board of Elections in any primary or election held in any county or municipality shall be as valid as the use of paper ballots by the voters.

The State Board of Elections shall prescribe rules and regulations for the adoption, handling, operation, and honest use of voting machines, including, but not limited to, rules and regulations governing:

(1) Types of voting machines approved for use in this State;
(2) Form of ballot labels to be used on voting machines;
(3) Operation of and manner of voting on voting machines;
(4) Instruction of precinct election officials in the use of voting machines;
(5) Instruction of voters in the use of voting machines;
(6) Assistance to voters using voting machines;
(7) Duties of custodians of voting machines; and
(8) Examination of voting machines before use in a primary election. (1949, c. 301; 1953, c. 1001; 1955, c. 1066, s. 1; 1967, c. 775, s. 1.)

Local Modification to Former § 163-187.4.—Forsyth: 1965, c. 732, s. 1.

§ 163-161. Adoption of voting machines by county or municipality. —(a) Discretionary Authority.—In whatever manner and upon whatever terms the board of county commissioners deems to be in the best interest of the county, it may adopt and purchase or lease voting machines of a type approved by the State Board of Elections for use in some or all voting places in the county at some or all primaries and elections. Specifically, the board may purchase voting machines upon an installment basis or otherwise, or it may lease voting machines with or without an option to purchase.

The governing body of any municipality shall have the same authority with respect to the acquisition and use of voting machines for municipal primaries and elections.

In addition, the governing body of any municipality and the board of commissioners of the county in which the municipality is situated shall have authority, jointly, upon such terms as they may agree to, to adopt and purchase or lease voting machines for use in some or all voting places of the county and municipality at some or all primaries and elections held in the two units of government.

Before adopting or acquiring voting machines under the authority of this subsection, the commissioners of the county, or the governing body of the municipality, or both jointly, may, at their discretion, submit to the voters of the county, or the municipality, or of both units, the question of whether voting machines should be adopted for use in primaries and elections in the unit or units. The question may be submitted at any general election or special election ordered to be held for some purpose other than the submission of this issue. The results of the referendum authorized under this subsection shall be advisory only and shall not bind the governing body submitting the question.

(b) Referendum Discretionary Upon Petition.—Upon receipt of a written petition signed by at least 500 registered voters of the county or municipality, the board of county commissioners or municipal governing body may submit to the voters of the county or municipality the question of adopting voting machines for use in all voting places of the county or municipality at all primaries and elections held in the unit. In such a case, each person signing the petition shall write the name or number of his precinct after his name.

The question may be submitted at any general election or special election ordered or held for some purpose other than the submission of this issue. If a majority of the voters casting ballots in the referendum approve the adoption of voting machines, the board of county commissioners or the governing body of the municipality, may adopt for use in primaries and elections in the unit voting machines of a type or kind approved by the State Board of Elections.

(c) Care and Custody of Voting Machines.—When the unit governing body has decided to adopt and purchase voting machines under the provisions of subsection (a) of this section, or when the adoption of voting machines has been approved in a referendum conducted under the provisions of subsection (b) of this section, the board of county commissioners or municipal governing body shall, as soon as practical, provide for each voting place in the unit one or more approved voting machines in complete working order. If it is impractical to furnish each voting place with voting machines, those obtained may be placed in voting places chosen, in the case of a county, by the county board of elections, and in the case of a municipality, by the governing body.

The county board of elections or the municipal governing body shall appoint as many voting machine custodians as may be necessary for the proper preparation of the machines for each primary and election and for their maintenance, storage, and care. (1949, c. 301; 1953, c. 1001; 1955, c. 1066, s. 1; 1967, c. 775, s. 1.)

§ 163-162. Use of paper ballots where voting machines used. — In counties in which voting machines are used in some or all precincts the county board of elections shall have authority to furnish paper ballots of each kind to pre-

cincts using voting machines for use by persons required to sign their ballots under the provisions of G.S. 163-150 (e). (1967, c. 775, s. 1.)

§§ **163-163 to 163-167**: Reserved for future codification purposes.

Article 15.

Counting Ballots, Canvassing Votes, and Certifying Results in Precinct and County.

§ **163-168. Proceedings when polls are closed.**—At 6:30 P. M., on the day of an election or primary, the precinct registrar shall announce that the polls are closed, but any qualified voters who are then in the process of voting or who are in line within the voting enclosure waiting to vote, shall be allowed to mark and cast their ballots. (1933, c. 165, s. 8; 1955, c. 891; 1961, c. 487; 1967, c. 775, s. 1.)

§ **163-169. Counting ballots at precincts; unofficial report of precinct vote to county board of elections.**—(a) Instructions.—Before each primary and election, the chairman of the county board of elections shall furnish each registrar written instructions on how ballots shall be marked and counted. Before starting the counting of ballots in his precinct, the registrar shall instruct all of the judges, assistants, and ballot counters in how differently marked ballots shall be counted and tallied.

(b) General Rule.—Only official ballots shall be counted. No ballot shall be counted which is marked contrary to law, but no ballot shall be rejected for a technical error unless it is impossible to determine the voter's choice.

(c) Right to Witness Precinct Count.—The counting of the ballots in each box shall be made in the presence of the precinct election officials and witnesses and watchers who are present and desire to observe the count. Observers shall not interfere with the orderly counting of the ballots.

(d) Counting to Be Continuous; Precinct Officials Not to Separate.—As soon as the polls are closed the registrar and judges shall, without adjournment or postponement, open the ballot boxes and count the ballots. The counting of ballots at the precinct shall be continuous until completed. More than one box may be counted at the same time by the precinct officials, assistants, and ballot counters, but the registrar and judges shall supervise the counting of all boxes and shall be responsible for them. From the time the first ballot box is opened and the count of votes begun until the votes are counted and the statement of returns made out, signed, certified as required by § 163-173, and delivered to the registrar or judge chosen to deliver them to the county board of elections, the precinct registrar and judges shall not separate, nor shall any one of them leave the voting place except for unavoidable necessity.

(e) Counting Primary Ballots.—In a primary election only one ballot shall be removed from the ballot box at a time, and it shall be opened in full view of the precinct election officals and witnesses present. The name of each candidate voted for shall be read aloud distinctly, and the vote received by each candidate shall be tallied on the tally sheet. This procedure shall be followed for all ballot boxes being counted at the same time.

(f) Counting General Election Ballots.—In a general election the contents of a ballot box may be emptied upon a table and the ballots divided into two piles:

(1) All those ballots marked in the circle of one political party to indicate a vote for all of the candidates of that party, that is, "straight tickets," which shall be so counted and tallied.

(2) All those ballots marked for candidates of more than one political party, that is, "split tickets," which shall be called and tallied in the manner prescribed for counting primary ballots in subsection (e) of this section.

(g) Questioned Ballots.—All questions arising with respect to how a ballot shall be counted or tallied shall be referred to the registrar and judges of election for determination before the completion of the counting of the ballots in the box from which the questioned ballot was taken.

(h) Unofficial Report of Precinct Returns.—On the night of the primary or election, as soon as the votes have been counted and the precinct returns certified, the registrar, or one of the judges selected by the registrar, shall report the total precinct vote for each candidate, constitutional amendment, and proposition by telephone or otherwise to the county board of elections. This report shall be unofficial and shall have no binding effect upon the official county canvass to follow. As soon as the precinct reports are received, the chairman, secretary, or clerk to the county board of elections shall publish the reports to the press, radio, and television. The costs incurred in executing the provisions of this subsection shall be charged to the operating expense of the county board of elections.

(i) Absentee Ballots.—Absentee ballots shall be deposited and voted in accordance with the provisions of § 163-234; they shall be counted and tabulated as provided in this section and § 163-170.

(j) Presidential Ballots of New Resident Voters.—The ballots of all new resident voters cast for presidential electors under the provisions of § 163-56 and § 163-73 which are not challenged, or, if the challenge is not sustained, shall be counted and tallied in the manner provided in subsection (i) of this section for counting and tallying absentee ballots, and shall be made a part of the official precinct returns for presidential electors. (1933, c. 165, s. 8; 1953, c. 843; 1955, cc. 800, 891; 1961, c. 487; 1963, c. 303, s. 1; 1965, c. 871; 1967, c. 775, s. 1.)

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).

§ 163-170. Rules for counting ballots.—No ballot shall be counted which is marked contrary to law, but no ballot shall be rejected for a technical error unless it is impossible to determine the voter's choice. In applying this general principle, all election officials shall be governed by the following rules:

(1) Only official ballots shall be counted.

(2) If for any reason it is impossible to determine a voter's choice for an office to be filled, the ballot shall not be counted for that office but shall be counted for all other offices.

(3) If a ballot is marked for more names than there are persons to be elected to an office, it shall not be counted for that office but shall be counted for all other offices.

(4) If a ballot has been defaced or torn by a voter it shall not be counted.

(5) If a voter has affixed a sticker to a ballot, marked a ballot with a rubber stamp, attached anything to a ballot, wrapped or folded anything in a ballot, or done anything to a ballot other than mark it properly with pencil or pen, it shall not be counted.

(6) If a name has been written in on an official general election ballot as provided in § 163-151 (2), it shall be counted in accordance with the following instructions:

a. If the name was written in by an election official or by any person other than the voter himself or a person assisting him pursuant to the provisions of § 163-152, the name written in shall not be counted.

b. If the name has been written in the space immediately beneath the name of a candidate for a particular office, it shall be counted as a vote for the person whose name has been written

in for that office whether or not the voter has made any mark to the left of the name inserted. Striking out, marking through, or crossing out the name printed above the write-in shall not affect the validity of the write-in, nor shall it serve to invalidate the ballot or the vote for the particular office.

c. If the voter has marked the party circle above the column in which he has entered the write-in, the following instructions apply:

1. If the voter has made no mark to the left of the name written in, his ballot shall be counted as a vote for the person whose name has been inserted and for all other nominees of the party in whose circle he has marked except the one beneath whose printed name the voter has made the write-in: Provided, however, if the person whose name has been written in appears on the ballot as the nominee of a different political party for any office, the write-in shall be ignored, and the ballot shall be counted as a vote for all the nominees of the party in whose circle the voter has marked.
2. If the voter has made a mark to the left of a name written in, his write-in shall be ignored, and his ballot shall be counted as a vote for all the nominees of the party in whose circle the voter has marked.

d. If the voter has marked the party circle at the top of one column on the ballot and has made a write-in under a name printed in in a different column, the write-in shall be ignored, and his ballot shall be counted as a vote for all the nominees of the party in whose circle he has marked.

(7) In an election other than a primary, if a voter in one of the counties or municipalities listed in paragraph d of § 163-151 (2) fails to adhere to the instructions set out in that paragraph, his ballot shall not be counted for any of the candidates for any of the multiple positions to be filled in the single office.

(8) In a primary election, if a voter in one of the counties or municipalities listed in paragraph b or § 163-151 (3) fails to adhere to the instructions set out in that paragraph, his ballot shall not be counted for any of the candidates for any of the multiple positions to be filled in the single office. (1929, c. 164, s. 28; 1931, c. 254, s. 15; 1933, c. 165, ss. 8, 23; 1939, c. 116, s. 2; 1947, c. 505, s. 10; 1955, c. 812, s. 2; c. 891; c. 1104, ss. 1-2½; 1957, cc. 344, 440, 589, 647, 737, 1383; 1959, cc. 105, 604, 610, 888; c. 1203, s. 9; 1961, cc. 451, 487; 1963, cc. 154, 167, 376, 389, 390, 567, 774; 1965, cc. 119, 154, 547, 727; c. 1117, s. 3; 1967, c. 775, s. 1.)

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).

§ 163-171. Preservation of ballots; locking and sealing ballot boxes; signing certificates.—When the precinct count is completed after a primary or election, all ballots shall be put back in the ballot boxes from which they were taken, and the registrar and judges shall promptly lock and place a seal around the top of each ballot box, so that no ballot may be taken from or put in it. The registrar and judges shall then sign the seal on each ballot box.

Ballot boxes in which ballots have been placed and which have been locked and sealed as required by the preceding paragraph shall remain in the safe custody of the registrar, subject to the orders of the chairman of the county board of elections as to their disposition. No ballot box shall be opened except upon the written order of the county board of elections or upon a proper order of court.

Ballots cast in a primary or general election shall be preserved for at least two months after the primary or general election in which voted.

On each precinct return form there shall be printed a statement to be signed by the registrar and judges certifying that, after the precinct count was completed, each ballot box was properly locked, sealed, and the seals signed, as prescribed in this section, before the precinct officials left the voting place on the night of the primary or election.

Wilful failure to securely lock, seal, and sign the seal on each ballot box on the night of any primary or election, and wilful failure to sign the certificate on the duplicate return forms certifying that this was done, shall constitute a misdemeanor. (1915, c. 101, s. 21; 1917, c. 179, s. 1; c. 218; C. S., s. 6041; 1923, c. 111, s. 15; 1959, c. 1203, s. 2; 1967, c. 775, s. 1.)

§ 163-172. State Board of Elections to prepare and distribute abstract forms.—The State Board of Elections shall prepare and print appropriate abstract of returns forms and, at least 30 days before the time for holding any primary or election, send copies of them to the chairman of the county board of elections and clerk of superior court of each county. At the same time, the State Board of Elections shall furnish directions for completing, certifying, signing, and transmitting abstracts of returns to the State Board of Elections and Secretary of State as required by this chapter after each primary and election. (1967, c. 775, s. 1.)

§ 163-173. How precinct returns are to be made.—In each precinct, when the results of the counting of the ballots have been ascertained they shall be recorded in original and duplicate statements to be prepared, signed, and certified to by the registrar and judges on forms provided by the county board of elections.

One of the statements of the voting in the precincts shall be placed in a sealed envelope and delivered to the registrar or a judge selected by the precinct officials for the purpose of delivery to the county board of elections at its meeting on the second day after the primary or election. The other copy of the statement shall be mailed immediately to the chairman of the county board of elections by one of the other two precinct election officials.

Any registrar or judge appointed to deliver the certified precinct returns who shall fail to deliver them to the county board of elections by 12:00 noon, on the day the board meets to canvass the returns shall be guilty of a misdemeanor, unless the failure resulted from illness or other good cause. (1933, c. 165, s. 8; 1967, c. 775, s. 1.)

Returns Admissible as Substantive Evidence.—See State v. Ponder, 234 N.C. 294, 67 S.E.2d 292 (1951).

§ 163-174. Registration and poll books to be returned to chairman of county board of elections.—On the day of the county canvass following each primary and election, the registrar (or judge appointed to bring in the precinct returns) shall deliver the precinct registration book or records and the poll book to the chairman of the county board of elections. (1933, c. 165, s. 8; 1967, c. 775, s. 1.)

§ 163-175. County board of elections to canvass returns and declare results.—On the second day (Sunday excepted) next after every primary and election, the county board of elections shall meet at 11:00 A. M., at the county courthouse, for the purpose of canvassing the votes cast in the county and preparing the county abstracts. If the returns from any precinct have not been received by the county board by 12:00 noon, on that day, or if the returns of any precinct are incomplete or defective, the board shall have authority to dispatch a peace officer to the residences of the election officials of the delinquent precinct for the purpose of securing proper returns for that precinct.

In the presence of such persons as choose to attend, the members of the county board of elections shall open the precinct returns, canvass and judicially determine the results of the voting in the county, and prepare and sign duplicate abstracts showing:

(1) In a primary, the total number of votes cast in each precinct and in the county for each candidate of each political party for each office.

(2) In an election, the number of legal votes cast in each precinct for each candidate, the name of each person voted for, the political party with which he is affiliated, and the total number of votes cast in the county for each person for each different office.

In complying with the provisions of this section, the county board of elections shall have power and authority to judicially pass upon all facts relative to the primary or election, to make or order such recounts as it deems necessary, and to judicially determine the result of the primary or election. The board shall also have power to send for papers and persons and to examine them, and to pass upon the legality of any disputed ballots transmitted to it by any precinct election official.

When, on account of errors in tabulating returns and filling out abstracts, the result of a primary or election in any one or more precincts cannot be accurately known, the county board of elections shall be allowed access to the ballot boxes in such precincts to make or order a recount and to declare the result.

When the county board of elections has judicially determined the result of the primary or election, the chairman of the board shall proclaim the result at the courthouse door, stating the number of votes cast in the county for each candidate for each office. (1915, c. 101, s. 27; 1917, c. 218; C. S., s. 6048; 1933, c. 165, s. 8; 1957, c. 1263; 1966, Ex. Sess., c. 5, s. 4; 1967, c. 775, s. 1.)

Local Modification to Former § 163-143.—Brunswick: 1951, c. 462; Halifax: 1951, c. 462.

County Board of Elections Canvasses Primary Returns for County Offices.—A county board of elections is the proper agency to canvass the returns in a primary for the selection of party nominees for county offices as well as in a general election to fill such offices. Ponder v. Joslin, 262 N.C. 496, 138 S.E.2d 143 (1964).

Judicial Powers of County Board.—The county board of canvassers (now the county board of elections) 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 of Canvassers, 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 de-

clared by the board of canvassers (now the board of elections) as an essential part of the election machinery. State v. Proctor, 221 N.C. 161, 19 S.E.2d 234 (1942).

Correction of Tabulations by Registrar and Judges of Election.—In a primary for county officers the registrar and judges of election may correct their tabulation of the results 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 Bd. of Elections, 188 N.C. 311, 124 S.E. 311 (1924).

Supplementary Returns after Adjournments of Registrar and Judges. — Additional or supplemental returns made up by the county board of canvassers (now the county board of elections) after the registrar and poll holders (now the registrar and judges) 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 of Canvassers, 172 N.C. 797, 90 S.E. 1005 (1916).

Access to Ballot Boxes.—Former § 163-143, similar to the next-to-last paragraph of this section, applied only "when, on account of errors in tabulating returns or filling out blanks," the result of the election could not be accurately known, and conferred no authority on the courts to investigate and pass upon the methods or manner in which the primary might have been conducted. Brown v. Costen, 176 N.C. 63, 96 S.E. 659 (1918).

Result as Declared by Board 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 (now the county board of elections), must be taken as prima facie correct. State ex rel. Robertson v. Jackson, 183 N.C. 695, 110 S.E. 593 (1922).

The finding by the board of canvassers (now the county board of elections) as to the number of votes received by a contestant in an election is prima facie correct. State ex rel. Jones 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).

Same—Subject to Collateral Attack. — The decisions or judgments of the county board of canvassers (now the county board of elections) are not of such conclusiveness or finality as to exclude collateral attack, and the use of the word "judicially" in the statute does not affect the construction. State ex rel. Barnett 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 (now the county board of elections), 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 ex rel. Barnett 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 (now the county board of elections) in declaring the result of an election to public office 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.—As to whether a board of canvassers (now county board of elections) can be compelled by mandamus to reconvene after its final adjournment, quaere, 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 of Canvassers, 172 N.C. 797, 90 S.E. 1005 (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 of Elections, 184 N.C. 78, 113 S.E. 629 (1922).

Recounts.—Where a candidate in a primary election, prior to the time fixed for the county board of elections to canvass the returns, suggests errors in tabulating

ballots in certain precincts because persons not legally qualified acted as counters and tabulators, but makes no assertion that any person voted who was not entitled to vote or that any qualified elector was prevented from voting, and files a written request for recount, the county board has authority, in the exercise of its judgment and discretion in good faith, to order and conduct a recount of the ballots cast and to certify the candidate having the majority of the votes as ascertained by such recount as the nominee of the party, notwithstanding that the returns of the precinct officials are regular upon their face. Strickland v. Hill, 253 N.C. 198, 116 S.E.2d 463 (1960).

§ 163-176. Preparation of original abstracts; where filed.—When the county canvass has been completed, the county board of elections shall record the results determined in accordance with § 163-175 on duplicate abstract forms furnished by the State Board of Elections.

Each abstract shall be prepared to show the total number of votes cast for each constitutional amendment and proposition and for each candidate of each political party for each office in each precinct and in the entire county.

When the original and two duplicate abstracts have been prepared, the members of the county board of elections shall sign an affidavit on each, stating that it is true and correct.

Each of the original abstracts, together with the original precinct returns, shall be filed by the county board of elections with the clerk of superior court to be recorded in the permanent file in his office. (1933, c. 165, s. 8; 1967, c. 775, s. 1; 1969, c. 971, s. 1.)

Editor's Note. — The 1969 amendment inserted "two" near the beginning of the third paragraph.

Abstract Admissible as Substantive Evidence.—See State v. Ponder, 234 N.C. 294, 67 S.E.2d 292 (1951).

§ 163-177. Disposition of duplicate abstracts.—Within five days after a primary or election is held, the chairman of the county board of elections shall mail to the chairman of the State Board of Elections the duplicate abstracts prepared in accordance with § 163-176 for all offices and referenda for which the State Board of Elections is required to canvass the votes and declare the results, including:

President and Vice-President of the United States
Governor, Lieutenant Governor, and all other State executive officers
United States Senators
Members of the House of Representatives of the United States Congress
Justices, Judges, and Solicitors of the General Court of Justice
State Senators in multi-county senatorial districts
Members of the State House of Representatives in multi-county representative districts
Constitutional amendments and other propositions submitted to the voters of the State.

One duplicate abstract prepared in accordance with § 163-176 for all offices and referenda for which the county board of elections is required to canvass the votes and declare the results (and which are listed below) shall be retained by the county board, which shall forthwith publish and declare the results; the second duplicate abstract shall be mailed to the chairman of the State Board of Elections, to the end that there be one set of all primary and election returns available at the seat of government.

All county offices
All township offices
State Senators in single-county senatorial districts
Members of the State House of Representatives in single-county representative districts
Propositions submitted to the voters of one county

If the chairman of the county board of elections fails or neglects to transmit duplicate abstracts to the chairman of the State Board of Elections within the time prescribed in this section, he shall be guilty of a misdemeanor and subject to a fine of one thousand dollars ($1,000.00): Provided, that the penalty shall not apply if the chairman was prevented from performing the prescribed duty because of sickness or other unavoidable delay, but the burden of proof shall be on the chairman to show that his failure to perform was due to sickness or unavoidable delay. (1933, c. 165, s. 8; 1966, Ex. Sess., c. 5, s. 3; 1967, c. 775, s. 1; 1969, c. 44, s. 86; 971, s. 2.)

Editor's Note.—The first 1969 amendment inserted "Justices, Judges, and Solicitors of the General Court of Justice" in the list following the first colon in the section and deleted therefrom "Justices of the Supreme Court," "Judges of the superior courts," "Judges of the district courts" and "Solicitors."

The second 1969 amendment rewrote the provisions as to disposition of the duplicate abstracts prepared in accordance with § 163-176 so as to provide for retention of one duplicate abstract by the county board and mailing of the second to the State Board of Elections.

§ **163-178. Clerk of superior court to send statement of votes to Secretary of State.**—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 forms furnished him by the State Board of Elections for that purpose, a statement of the votes cast in his county for all national, State, and district offices, and for and against constitutional amendments and propositions submitted to the people. At the same time, the clerk of superior court shall also certify under his official seal to the Secretary of State a list of all the persons voted for in his county as members of the State Senate and House of Representatives and all county offices, together with the votes cast for each and their post-office addresses.

If the clerk of superior court fails or neglects to transmit these returns to the Secretary of State within the time specified in this section, he shall be guilty of a misdemeanor and subject to a fine of five hundred dollars ($500.00): Provided, that the penalty shall not apply when the clerk was prevented from performing his duties because of sickness or other unavoidable delay, but the burden of proof shall be on the clerk to show that his failure to perform his duties was due to sickness or unavoidable delay.

The provisions of this section, unless changed by general rules promulgated by the State Board of Elections, shall also apply to primary elections. (1933, c. 165, s. 8; 1967, c. 775, s. 1.)

§ **163-179. Who declared elected by county board.**—In a general election, the person having the greatest number of legal votes for a county or township office, or for membership in one of the houses of the General Assembly in a representative or senatorial district composed of only one county, shall be declared elected by the county board of election: Provided, however, that as a prerequisite to election, a write-in candidate for any office must receive as many as five percent (5%) of the votes cast for candidates for the United States House of Representatives in the township or county or other jurisdiction in which he is running.

If two or more candidates in the categories listed in this section, having the greatest number of votes, shall have an equal number, the county board of elections shall determine by lot which shall be elected. (1933, c. 165, s. 8; 1957, c. 1263; 1966, Ex. Sess., c. 5, s. 4; 1967, c. 775, s. 1.)

§ **163-180. Chairman of county board of elections to furnish certificate of election.**—Not earlier than five days nor later than 10 days after the results of an election have been officially determined and published in accordance

with § 163-175 and § 163-179, the chairman of the county board of elections shall furnish to each of the following persons appropriate certificates of election under his hand and seal: County officers, township officers, and persons elected to membership in the General Assembly in representative and senatorial districts composed of only one county. He shall also immediately notify all persons elected to county offices to meet at the courthouse on the first Monday in the ensuing December to be qualified.

In issuing certificates of election under this section, the chairman of the county board of elections shall be restricted by the provisions of § 163-181. (1933, c. 165, s. 8; 1947, c. 505, s. 4; 1955, c. 871, s. 5; 1959, c. 1203, s. 3; 1966, Ex. Sess., c. 5, s. 5; 1967, c. 775, s. 1.)

Conclusiveness of Adjudication of Board and Certificate of Election.—The adjudication of the board and the resultant certificate of election constitute conclusive evidence of the certificate holder's right to the office in every proceeding except a direct proceeding under § 1-514 et seq. to try the title to the office. State v. Ponder, 234 N.C. 294, 67 S.E.2d 292 (1951).

§ 163-181. Election contest stays certification of nomination or election.—If an election contest is properly pending before a county board of elections or on appeal from a county board to the State Board of Elections, after either a primary or election, the chairman of the county board of elections shall not, in the case of an election, issue a certificate of election, or in the case of a primary, certify the nominee, for the office in controversy until the contest has been finally decided by the county or State Board of Elections (1933, c. 165, s. 8; 1947, c. 505, s. 4; 1955, c. 871, s. 5; 1959, c. 1203, s. 3; 1966, Ex. Sess., c. 5, s. 5; 1967, c. 775, s. 1.)

§§ **163-182 to 163-186:** Reserved for future codification purposes.

Article 16.

Canvass of Returns for Higher Offices and Preparation of State Abstracts.

§ 163-187. State Board of Elections to canvass returns for higher offices.—In addition to the other powers and duties assigned it by this chapter, the State Board of Elections shall constitute the State's legal canvassing board in both primaries and elections for all national, State, and district offices (including the offices of State Senator and member of the State House of Representatives in those senatorial and representative 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; 1966, Ex. Sess., c. 5, s. 6; 1967, c. 775, s. 1.)

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 election laws by county boards of elections, and the duty of the State Board to canvass 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 Bd. of Elections, 214 N.C. 140, 198 S.E. 592 (1938).

The fact that, after the returns are in, the State Board of Elections is to canvass the returns and determine whom they ascertain and declare by the count to be nominated or elected is not to be construed as a denial or negation of its supervisory powers, which perforce are to be exercised prior to the final acceptance of the several returns. Ponder v. Joslin, 262 N.C. 496, 138 S.E.2d 143 (1964).

State, Not County, Board Canvasses Primary Returns in Multi-County Senatorial District.—The State Board of Elections is the appropriate agency to canvass and judicially declare the results of a primary for the nomination of a candidate in a senatorial district composed of more than one county. Ponder v. Joslin, 262 N.C. 496, 138 S.E.2d 143 (1964).

A county board of elections in a multiple county senatorial district has no power to canvass the primary election returns and determine judicially the nominee in such district; that power is vested exclusively in the State Board of Elections. Ponder v. Joslin, 262 N.C. 496, 138 S.E.2d 143 (1964).

Control of Powers by Courts. — The courts will not undertake to control the State Board in the exercise of its duty of general supervision so long as such supervision conforms to the rudiments of fair play and the statutes on the subject. Ponder v. Joslin, 262 N.C. 496, 138 S.E.2d 143 (1964).

When the State Board of Elections obtains jurisdiction of an election protest upon an appeal from a single county in a multiple county senatorial district, or by the filing in apt time of a protest directly with the State Board of Elections, its decision can only be reviewed in the manner prescribed by § 143-306 et seq. Ponder v. Joslin, 262 N.C. 496, 138 S.E.2d 143 (1964).

§ 163-188. Meeting of State Board of Elections to canvass returns of primary and election.—Following each primary and election held in this State under the provisions of this chapter, the State Board of Elections shall meet in the Hall of the House of Representatives in the city of Raleigh to canvass the votes cast in all the counties of the State for all national, State, and district offices, to determine by the count who is nominated or elected to the respective offices, and to declare the results and prepare abstracts as required by § 163-192. The time and date of the general election canvass shall be 11:00 A.M., on the Tuesday following the third Monday after the general election. The time and date of the primary canvass shall be fixed by the State Board of Elections.

At the meeting required by the preceding paragraph, if the abstracts of returns have not been received from all of the counties, the Board may adjourn for not more than 10 days for the purpose of securing the missing abstracts. In obtaining them, the Board is authorized to secure the originals or copies from the appropriate clerks of superior court or county boards of elections, at the expense of the counties. The State Board of Elections is authorized to enforce the penalties provided in § 163-177 and § 163-178 for failure of a county elections board chairman or clerk of superior court to comply with the provisions of this chapter in making returns of a primary or election.

At the meeting required by the first paragraph of this section (or at any adjourned session thereof), the State Board of Elections shall examine the county abstracts when they have all been received and shall proceed with the canvass publicly. (1933, c. 165, s. 9; 1967, c. 775, s. 1.)

§ 163-189. Meeting of State Board of Elections to canvass returns of a special election for United States Senator or Representative.—If a special election is ordered by the Governor to fill a vacancy in the State's representation in the United States Senate or House of Representatives as provided for in § 163-12 or § 163-13, the State Board of Elections may meet for the purposes prescribed in § 163-188 as soon as its chairman shall have received abstracts of returns from all of the counties entitled to vote in the special election. The chairman of the State Board shall fix the day of the meeting not later than 10 days after the special election, and county boards of elections shall transmit their abstracts of returns to the State Board in sufficient time to be available for the State canvass. (1933, c. 165, s. 9; 1967, c. 775, s. 1.)

§ 163-190. State Board of Elections may refer to ballot boxes to resolve doubts.—When, on account of errors in tabulating returns and filling out abstracts, the result of a primary or election in any precinct, county, district, or the State cannot be accurately known, the State Board of Elections shall be allowed access to the ballot boxes to make or order a recount and to declare the results. (1915, c. 101, s. 27; 1917, c. 218; C. S., s. 6048; 1967, c. 775, s. 1.)

§ 163-191. Contested primaries and elections; how tie broken.—In a primary for party nomination for one or more of the offices to be canvassed by the

State Board of Elections under the provisions of § 163-187, the results shall be determined in accordance with the provisions of § 163-111.

In a general election for one or more of the offices to be canvassed by the State Board of Elections under the provisions of § 163-187, the person having the highest number of votes for each office, respectively, shall be declared duly elected to that office by the State Board of Elections. But if two or more be equal and highest in votes for the office, then one of them shall be chosen by joint ballot of both houses of the General Assembly.

In a contested election for one of the offices referred to in the preceding paragraph, the State Board of Elections shall certify to the Speaker of the House of Representatives a statement of whatever facts the Board has relative thereto, and the contest shall be determined by joint vote of both houses of the General Assembly in the manner and under the rules applicable 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; 1967, c. 775, s. 1.)

§ 163-192. State Board of Elections to prepare abstracts and declare results of primaries and elections.—(a) After Primary.—At the conclusion of its canvass of the primary election, the State Board of Elections shall prepare separate abstracts of the votes cast:

(1) For Governor and all State officers, justices of the Supreme Court, judges of the Court of Appeals, judges of the superior court, and United States Senators.
(2) For members of the United States House of Representatives for the several congressional districts in the State.
(3) For district court judges for the several judicial districts in the State.
(4) For solicitor in the several solicitorial districts in the State.
(5) For State Senators in the several senatorial districts in the State composed of more than one county.
(6) For members of the State House of Representatives in the several representative districts in the State composed of more than one county.

Abstracts prepared by the State Board of Elections under this subsection shall state the total number of votes cast for each candidate of each political party for each of the various offices canvassed by the State Board of Elections. They shall also state the name or names of the person or persons whom the State Board of Elections shall ascertain and judicially determine by the count to be nominated for each office.

Abstracts prepared under this subsection shall be signed by the members of the State Board of Elections in their official capacity and shall have the great seal of the State affixed thereto.

(b) After General Election.—At the conclusion of its canvass of the general election, the State Board of Elections shall prepare abstracts of the votes cast:

(1) For President and Vice-President of the United States, when an election is held for those offices.
(2) For Governor and all State officers, justices of the Supreme Court, judges of the Court of Appeals, judges of the superior court, and United States Senators.
(3) For members of the United States House of Representatives for the several congressional districts in the State.
(4) For district court judges for the several judicial districts in the State.
(5) For solicitor in the several solicitorial districts in the State.
(6) For State Senators in the several senatorial districts in the State composed of more than one county.
(7) For members of the State House of Representatives in the several representative districts in the State composed of more than one county.

(8) For and against any constitutional amendments or propositions submitted to the people.

Abstracts prepared by the State Board of Elections under this subsection shall state the names of all persons voted for, the office for which each received votes, and the number of legal ballots cast for each candidate for each office canvassed by the State Board of Elections. They shall also state the name or names of the person or persons whom the State Board of Elections shall ascertain and judicially determine by the count to be elected to each office.

Abstracts prepared under this subsection shall be signed by the members of the State Board of Elections in their official capacity and shall have the great seal of the State affixed thereto.

(c) Disposition of Abstracts of Returns.—The State Board of Elections shall file with the Secretary of State the original abstracts of returns prepared by it under the provisions of subsections (a) and (b) of this section, and also the duplicate county abstracts transmitted to the State Board of Elections under the provisions of § 163-177. (1933, c. 165, s. 9; 1966, Ex. Sess., c. 5, s. 7; 1967, c. 775, s. 1; 1969, c. 44, s. 87.)

Editor's Note.—The 1969 amendment inserted "judges of the Court of Appeals" in subdivision (1) of subsection (a) and in subdivision (2) of subsection (b).

§ 163-193. Results of election certified to Secretary of State; certificates of election.—After ascertaining and declaring the result of an election as provided in § 163-192 (b), the State Board of Elections shall certify the result to the Secretary of State. The Secretary of State shall then prepare and sign a certificate of election for each person elected and deliver it to him upon demand. (1933, c. 165, s. 9; 1967, c. 775, s. 1.)

§ 163-194. Governor to issue commissions to certain elected officials.—Every person duly elected to one of the offices listed below, upon obtaining a certificate of his election from the Secretary of State under the provisions of § 163-193, shall procure from the Governor a commission attesting his election to the specified office, which the Governor shall issue upon production of the Secretary of State's certificate:

Members of the United States House of Representatives,

Justices, Judges, and Solicitors of the General Court of Justice. (1901, c. 89, ss. 61, 69; Rev., ss. 4370, 4377; C. S., ss. 6008, 6015; 1967, c. 775, s. 1; 1969, c. 44, s. 88.)

Editor's Note.—The 1969 amendment added "Justices, Judges, and Solicitors of the General Court of Justice" in the list and deleted therefrom "Justice of the Supreme Court," "Judge of the superior court," "Judge of the district court" and "Solicitor."

§ 163-195. Secretary of State to record abstracts.—The Secretary of State shall record the State, district, and county abstracts filed with him by the State Board of Elections in a book to be kept by him for that purpose. (1933, c. 165, s. 9; 1967, c. 775, s. 1.)

§§ 163-196 to 163-200: Reserved for future codification purposes.

Article 17.

Members of United States House of Representatives.

§ 163-201. Congressional districts specified.—For the purpose of nominating and electing members of the House of Representatives of the United States Congress in 1968, and every two years thereafter, there are established 11 congressional districts, from each of which one representative shall be elected, composed of the following counties:

District 1: Beaufort, Bertie, Camden, Chowan, Craven, Currituck, Dare, Gates,

Hertford, Hyde, Jones, Lenoir, Martin, Pamlico, Pasquotank, Perquimans, Pitt, Tyrrell, Washington.

District 2: Edgecombe, Franklin, Granville, Greene, Halifax, Nash, Northampton, Person, Vance, Warren, Wilson.

District 3: Carteret, Duplin, Harnett, Johnston, Onslow, Pender, Sampson, Wayne.

District 4: Chatham, Durham, Orange, Randolph, Wake.

District 5: Alleghany, Ashe, Davidson, Davie, Forsyth, Stokes, Surry, Yadkin.

District 6: Alamance, Caswell, Guilford, Rockingham.

District 7: Bladen, Brunswick, Columbus, Cumberland, Hoke, New Hanover, Robeson.

District 8: Anson, Cabarrus, Lee, Montgomery, Moore, Richmond, Rowan, Scotland, Stanly, Union.

District 9: Iredell, Lincoln, Mecklenburg, Wilkes.

District 10: Alexander, Avery, Burke, Caldwell, Catawba, Cleveland, Gaston, Watauga.

District 11: Buncombe, Cherokee, Clay, Graham, Haywood, Henderson, Jackson, McDowell, Macon, Madison, Mitchell, Polk, Rutherford, Swain, Transylvania, Yancey. (Rev., s. 4366; 1911, c. 97; C. S., s. 6004; 1931, c. 216; 1941, c. 3; 1961, c. 864; 1966, Ex. Sess., c. 7, s. 1; 1967, c. 775, s. 1; c. 1109.)

Editor's Note. — Session Laws 1967, c. 1109, rewrote this section.

Constitutionality. — The act of the 1967 session of the legislature reapportioning congressional districts meets the minimum federal constitutional standards. Drum v. Seawell, 271 F. Supp. 193 (M.D.N.C. 1967).

Practical and Rational Equality Required. — While rigid mathematical standards are not the sine qua non of constitutional validity, practical and rational equality is required. Such equality recognizes only minor deviations which may occur in the recognition of rational and legitimate factors, free from the taint of arbitrariness, irrationality and discrimination. Drum v. Seawell, 250 F. Supp. 922 (M.D.N.C. 1966).

Stricter adherence to equality of population between districts may more logically be required in congressional than in state legislative representation. Drum v Seawell, 250 F. Supp. 922 (M.D.N.C. 1966).

Former Apportionment Unconstitutional.—See Drum v. Seawell, 249 F. Supp. 877 (M.D.N.C. 1965), aff'd, 383 U.S. 831, 86 Sup. Ct. 1237, 16 L. Ed. 2d 298 (1966).

§ **163-202. Election after reapportionment of members of House of Representatives.**—Whenever, by a new apportionment of members of the United States House of Representatives, the number of Representatives from North Carolina shall be changed, and neither the Congress nor the General Assembly shall provide for electing them, the following procedures shall apply:

(1) If the number of Representatives is increased, the Representative from each of the existing congressional districts shall be elected by the qualified voters of his district, and the additional Representatives apportioned to North Carolina shall be elected on a single ballot by the qualified voters of the whole State.

(2) If the number of Representatives is decreased, existing congressional district lines shall be ignored, and all Representatives apportioned to North Carolina shall be elected on a single ballot by the qualified voters of the whole State. (1901, c. 89, s. 58; Rev., s. 4368; C. S., s. 6006; 1967, c. 775, s. 1.)

§§ **163-203 to 163-207**: Reserved for future codification purposes.

Article 18.

Presidential Electors.

§ **163-208. Conduct of presidential election.** — Unless otherwise provided, the election of presidential electors shall be conducted and the returns made

in the manner prescribed by this chapter for the election of State officers. (1901, c. 89, s. 79; Rev., s. 4371; C. S., s. 6009; 1933, c. 165, s. 11; 1967, c. 775, s. 1.)

§ 163-209. Names of presidential electors not printed on ballots.— The names of candidates for electors of President and Vice-President nominated by any political party recognized in this State under § 163-96 shall be filed with the Secretary of State but shall not be printed on the ballot. In place of their names, in accordance with the provisions of § 163-140 there shall be printed on on the ballot the names of the candidates for President and Vice-President of each political party recognized in this State. A vote for the candidates named on the ballot shall be a vote for the electors of the party by which those candidates were nominated 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; 1967, c. 775, s. 1.)

§ 163-210. Governor to proclaim results; casting State's vote for President and Vice-President.—Upon receipt of the abstracts prepared by the State Board of Elections and delivered to him in accordance with § 163-192, the Secretary of State, under his hand and the seal of his office, shall certify to the Governor the names of the persons elected to the office of elector for President and Vice-President of the United States as stated in the abstracts of the State Board of Elections. Thereupon, the Governor shall immediately issue a proclamation setting forth the names of the electors and instructing them to be present in the Hall of the House of Representatives in the city of Raleigh at noon on the first Monday after the second Wednesday in December next after their election, at which time the electors shall meet and vote on behalf of the State for President and Vice-President of the United States. The Governor shall cause this proclamation to be published in the daily newspapers published in the city of Raleigh.

On or before the date fixed for the meeting of the electors, the Governor shall send by registered mail to the Administrator of General Services, a certificate under the great seal of the State setting forth the names of the persons chosen as presidential electors for this State and the number of votes cast for each. At the same time he shall deliver to the electors six duplicate-originals of the same certificate, each bearing the great seal of the State. At any time prior to receipt of the certificate of the Governor or within forty-eight hours thereafter, any person elected to the office of elector may resign by submitting his resignation, written and duly verified, to the Governor. Failure to so resign shall signify consent to serve and to cast his vote for the candidate of the political party which nominated such elector.

In case of the absence, ineligibility or resignation of any elector chosen, or if the proper number of electors shall for any cause be deficient, those present at the required meeting shall forthwith elect from the citizens of the State a sufficient number of persons to fill the deficiency, and the persons chosen shall be deemed qualified electors to vote for President and Vice-President of the United States. (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; 1967, c. 775, s. 1; 1969, c. 949, ss. 1, 2.)

Editor's Note. — The 1969 amendment added the third and fourth sentences of the second paragraph and substituted "ineligibility or resignation" for "or ineligibility" near the beginning of the third paragraph.

§ 163-211. Compensation of presidential electors.—Presidential electors shall be paid, for attending the meeting held in the city of Raleigh on the first Monday after the second Wednesday in December next after their election, the sum of ten dollars ($10.00) per day and traveling expenses at the rate of five cents (5¢) per mile in going to and returning home from the required meeting. (1901, c. 89, s. 84; Rev., s. 2761; C. S., s. 3878; 1933, c. 5; 1967, c. 775, s. 1.)

§ **163-212. Penalty for failure of presidential elector to attend and vote.**—Any presidential elector having previously signified his consent to serve as such, who fails to attend and vote for the candidate of the political party which nominated such elector, for President and Vice-President of the United States at the time and place directed in G.S. 163-210 (except in case of sickness or other unavoidable accident) shall forfeit and pay to the State five hundred dollars ($500.00), to be recovered by the Attorney General in the Superior Court of Wake County. In addition to such forfeiture, refusal or failure to vote for the candidates of the political party which nominated such elector shall constitute a resignation from the office of elector, his vote shall not be recorded, and the remaining electors shall forthwith fill such vacancy as hereinbefore provided. (1901, c. 89, s. 83; Rev., s. 4375; C. S., s. 6013; 1933, c. 165, s. 11; 1967, c. 775, s. 1; 1969, c. 949, s. 3.)

Editor's Note. — The 1969 amendment inserted "for the candidate of the political party which nominated such elector" in the first sentence and added the second sentence.

§§ **163-213 to 163-217**: Reserved for future codification purposes.

Article 19.

Petitions for Elections and Referenda.

§ **163-218. Registration of notice of circulation of petition.**—From and after July 1, 1957, notice of circulation of a petition calling for any election or referendum shall be registered with the county board of elections with which the petition is to be filed, and the date of registration of the notice shall be the date of issuance and commencement of circulation of the petition. (1957, c. 1239, s. 1; 1967, c. 775, s. 1.)

§ **163-219. Petition void after one year from registration.**—Petitions calling for elections and referenda shall be and become void and of no further effect one year after the date the notice of circulation is registered with the county board of elections with which it is required to be filed; and notwithstanding any public, special, local, or private act to the contrary, no election or referendum shall thereafter be called or held pursuant to or based upon any such void petition. (1957, c. 1239, s. 2; 1967, c. 775, s. 1.)

§ **163-220. Limitation on petitions circulated prior to July 1, 1957.**—Petitions calling for elections or referenda which were circulated prior to July 1, 1957, shall be and become void and of no further force and effect one year after the date of issuance of such petitions for circulation; and notwithstanding any public, special, local, or private act to the contrary, no election or referendum shall be called or held pursuant to or based upon any such void petition from and after July 1, 1957. (1957, c. 1239, s. 3; 1967, c. 775, s. 1.)

§§ **163-221 to 163-225**: Reserved for future codification purposes.

SUBCHAPTER VII. ABSENTEE VOTING.

Article 20.

Absentee Ballot.

§ **163-226. Who may vote an absentee ballot.**—(a) Any qualified voter of the State, whether or not in the armed forces of the United States, may vote by absentee ballot in a state-wide general election in the manner provided in this article if:

(1) He expects to be absent from the county in which he is registered dur-

ing the entire period that the polls are open on the day of the state-wide general election in which he desires to vote; or

(2) He is unable to be present at the voting place to vote in person on the day of the state-wide general election in which he desires to vote because of his sickness or other physical disability.

(b) Any qualified voter of a county who is quaified to vote by absentee ballot under this section in a state-wide general election is authorized to vote an absentee ballot in any county bond election in accordance with the provisions of this article. (1939, c. 159, s. 1; 1963, c. 457, s. 1; 1967, c. 775, s. 1; c. 952, s. 1.)

Local Modification to Former §§ 163-54 to 163-69.1. — Graham: 1959, c. 780, s. 1; Sampson: 1941, c. 167; 1963, c. 882.

Local Modification to Former § 163-54. —Jackson: 1939, c. 309.

Editor's Note. — The 1967 amendment, effective for any election arising on or after Sept. 1, 1967, designated the former provisions of this section as subsection (a) and added subsection (b).

As to abuses under prior law and respects in which this enactment seeks to remedy those evils, see 17 N.C.L. Rev. 355.

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 ex rel. Owens v. Chaplin, 228 N.C. 705, 47 S.E.2d 12 (1948).

Under Former Law.—For cases decided under the former law, see Jenkins v. State Bd. of Elections, 180 N.C. 169, 104 S.E. 346 (1920), holding law valid; Davis v. County Bd. of Educ., 186 N.C. 227, 119 S.E. 372 (1923), holding provision requiring certificate or affidavit to be mandatory; State ex rel. Robertson v. Jackson, 183 N.C. 695, 110 S.E. 593 (1922), holding that persons within county were not entitled to vote as absentees; Boulding 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 Bd. of Educ., 186 N.C. 227, 119 S.E. 372 (1923).

§ 163-227. Application for absentee ballots; forms of application.— A voter falling in either of the categories defined in § 163-226 may apply for absentee ballots not earlier than forty-five days prior to the state-wide general election or county bond election in which he seeks to vote and not later than 6:00 P. M. on Wednesday before that election. Except as provided in the following paragraph, the voter shall apply for absentee ballots under the provisions of subdivision (1) or subdivision (2) of this section.

If a voter unexpectedly becomes ill or physically disabled to the extent defined in § 163-226 after 6:00 P.M., on Wednesday and before 10:00 A.M., on Monday before the election, he may apply for absentee ballots under the provisions of subdivision (3) of this section.

(1) Expected Absence from County on Election Day.—A voter expecting to be absent from the county in which registered during the entire period that the polls will be open on election day, shall make written application for absentee ballots to the chairman of the board of elections of the county in which he is registered not earlier than 45 days nor later than 6:00 P.M., on Wednesday before the election. The application shall be submitted in the form set out at the end of this subdivision upon a copy which shall be furnished the voter by the chairman of the county board of elections.

The applicant shall sign his application personally, and he shall swear to it before an officer with a seal who is authorized to administer oaths.

The officer administering the oath shall sign the certificate below the applicant's signature and shall affix his official seal in the place indicated on the form.

The application form, when properly filled out, signed, sworn and certified to, shall be transmitted by mail or delivered in person by the applicant to the chairman of the board of elections of the county in which he is registered.

The form for use in applying for absentee ballots under this subdivision shall be as follows:

"Affidavit and Application for Ballots by Voter Who Expects to Be Absent from County in Which Registered on Election Day

(Anyone who falsifies this statement is subject to a fine or imprisonment, or both.)

Application No. ..... issued to ..... (This line shall be filled out before application is issued.)

State of .....
County of .....

I, ..., do solemnly swear that I am a registered voter residing in ..... precinct, ... township, in the County of ....., North Carolina, and that I am lawfully entitled to vote in that precinct at the general or bond election to be held therein on the ..... day of ....., 19..; that I expect to be absent from the county of my residence during the entire period that the polls will be open on the day of the general or bond election, and that I will have no opportunity to vote in person on that day.

I hereby make application for an official ballot or ballots on which I may vote at the general or bond election specified. I will return the ballot or ballots by mail or will deliver them in person to the chairman of the board of elections of the county of my residence prior to 12:00 noon, on Saturday preceding the election in which they shall be cast.

.....
(Signature of applicant)

.....
(Post-office address to which ballots are to be mailed)

Subscribed and sworn to by ..... before me, this ..... day of ....., 19.....

.....
(Signature of officer administering oath)

(SEAL)

.....
(Post-office address of officer)"

(2) Absence for Sickness or Physical Disability Occurring before 6:00 P.M., on Wednesday Prior to Election.—A voter expecting to be unable to go to the voting place to vote in person on election day because of his sickness or other physical disability, shall make written application for absentee ballots to the chairman of the board of elections of the county in which he is registered not earlier than 45 days nor later than 6:00 P.M., on Wednesday before the election. The application shall be submitted in the form set out at the end of this subdivision

upon a copy which shall be furnished the voter by the chairman of the county board of elections.

The application shall be signed by the voter personally.

The voter shall swear to his signature before an officer with a seal who is authorized to administer oaths, and the officer administering the oath shall sign the certificate below the applicant's signature on the form and shall affix his official seal in the place indicated thereon.

The application form, when properly filled out, signed, sworn and certified to, shall be transmitted by mail or delivered in person by the applicant to the chairman of the board of elections of the county in which he is registered.

The form for use in applying for absentee ballots under this subdivision shall be as follows:

"Affidavit and Application for Ballots by Voter Who Expects to Be Unable to Go to Voting Place on Election Day Because of Sickness or Physical Disability Occurring Prior to 6:00 P.M., on Wednesday Before the Election

(Anyone who falsifies this statement is subject to a fine or imprisonment, or both.)

Application No. ..... issued to ..... (This line shall be filled out before application is issued.)

State of North Carolina
County of .....

I, ..., do solemnly swear that I am a registered voter residing in ..... precinct, ... township, in the County of ....., North Carolina, and that I am lawfully entitled to vote in that precinct at the general or bond election to be held therein on the ..... day of ....., 19....; that by reason of sickness or physical disability, to wit: .....
(Insert here statement of nature of illness or disability)
I will be unable to travel from my home or place of confinement to the voting place in my precinct on election day.

I hereby make application for an official ballot or ballots on which I may vote at the general or bond election specified. I will return the ballot or ballots by mail or will deliver them in person to the chairman of the board of elections of the county of my residence prior to 12:00 noon, on Saturday preceding the election in which they shall be cast.

.....
(Signature of applicant)

.....
(Post-office address to which ballots are to be mailed)

Subscribed and sworn to by ..... before me this ..... day of ....., 19.....

.....
(Signature of officer administering oath)

(SEAL)

.....
(Post-office address of officer)"

(3) Absence for Sickness or Physical Disability Occurring after 6:00 P.M., on Wednesday Prior to Election.—A voter expecting to be unable to go to the voting place to vote in person on election day because of

sickness or other disability occurring after 6:00 P.M., on Wednesday before the election, shall make written application for absentee ballots to the chairman of the board of elections of the county in which he is registered not later than 10:00 A.M., on Monday preceding the election. The application shall be submitted in the form set out at the end of this subdivision upon a copy which shall be furnished the voter by the chairman of the county board of elections.

The chairman of the county board of elections shall not issue or accept an application under the provisions of this subdivision later than 10:00 A.M., on Monday preceding the election in which the applicant seeks to vote.

The application shall be signed by the voter personally, or it may be signed for him by the voter's husband, wife, brother, sister, parent, or child. The application shall be signed in the presence of a witness who shall sign his name in the place provided on the form.

The certificate printed on the application form below the signatures of the applicant and his subscribing witness shall be filled in and signed in the presence of a witness by a licensed physician who is attending the applicant. The witness to the physician's certificate shall sign his name in the place provided on the form.

The application form, when properly filled out, signed by or for the applicant in the presence of a subscribing witness as provided in this subdivision, and certified and signed by the attending physician in the presence of a subscribing witness, may be transmitted by mail to the chairman of the board of elections of the county in which the applicant is registered, or it may be delivered to the chairman in person by the applicant or by his wife, husband, brother, sister, parent, or child.

The form for use in applying for absentee ballots under this subdivision shall be as follows:

"Application for Ballots by Voter Who Expects to Be Unable to Go to Voting Place on Election Day Because of Sickness or Physical Disability Occurring After 6:00 P.M., on Wednesday Before the Election and Certificate of Attending Physician

(Anyone who falsifies this statement is subject to a fine or imprisonment, or both.)

Application No. ..... issued to ..... (This line shall be filled out before application is issued.)

State of North Carolina
County of .....

I, ..., do hereby certify that I am a registered voter residing in ..... precinct, ... township, in the County of ....., North Carolina, and that I am lawfully entitled to vote in that precinct at the general or bond election to be held therein on the ..... day of ....., 19....; that by reason of sickness or physical disability occurring since 6:00 P.M., last Wedneday, I will be unable to travel from my home or place of confinement to the voting place in my precinct on election day.

I hereby make application for an official ballot or ballots on which I may vote at the general or bond election specified. I will transmit the ballot or ballots to the chairman of the board of elections of the county of my residence prior to 3:00 P.M., on election day.

This ..... day of ....., 19.....

.....
(Signature of applicant or person completing form for applicant)

.....
(Address to which ballots are to be delivered)

.....
(Relationship of person completing form for applicant if not completed by applicant in person)

Witness:.....
(Signature of person witnessing signing of application)

.....
(Address of witness)

"Physician's Certificate

State of .....
County of .....

I, ..., do hereby certify that I am a physician, duly licensed to practice medicine in the State of .....; that I have examined ..... (insert applicant's name) on ..... (insert date) for an illness or physical disability occurring since 6:00 P.M., last Wednesday, and that I believe that he (or she) will be physically incapable of being at the voting place at the election to be held on the ..... day of ....., 19.., for the following reasons:
..... (insert reasons in space provided).

This ..... day of ....., 19...

.....
(Signature of physician)

.....
(Address of physician)

Witness:.....
(Signature of person witnessing signing of certificate)

.....
(Address of witness)"

(4) Application Forms Issued by Chairman of County Board of Elections.—The chairman of the county board of elections shall be sole custodian of all absentee ballot application forms. In accordance with one of the following two procedures, he shall issue and deliver a single application form, upon request, to a person authorized to sign such an application under the provisions of this section:

a. He may deliver the form to a voter personally at the office of the county board of elections for the voter's own use; or

b. He may mail the form to a voter for his own use upon receipt of a written request from the voter.

The chairman shall not entrust any other person to deliver an application form to a voter, nor shall he mail an application form to a voter who has not made written request for one, except as provided in subdivision (5) of this section.

At the time he issues an application form, the chairman of the county board of elections shall number it and write the applicant's name in the space provided therefor at the top of the form. At the same time the chairman shall insert the applicant's name and the number assigned his application in the register of absentee ballot applications and ballots issued provided for in § 163-228.

The chairman shall issue only one application form to a voter unless a form previously issued is returned to the chairman and marked "Void" by him. In such a situation, the chairman may issue another application form to an authorized person, but he shall retain the voided application form in his records.

(5) Applications for Absentee Ballots Transmitted by Mail or in Person.—An application for absentee ballots shall be made and signed only by the voter desiring to use them and shall be valid only when transmitted to the chairman of the county board of elections in person or by the United States mail: Provided, that a voter who becomes sick or physically disabled after 6:00 P.M., on Wednesday before the election may have an application prepared, signed, and transmitted to the chairman of the county board of elections in accordance with the provisions of subdivision (3) of this section. (1939, c. 159, s. 2; 1943; c. 751, s. 1; 1963, c. 457, s. 2; 1967, c. 775, s. 1; c 952, s. 3.)

Editor's Note. — The 1967 amendment, effective for any election arising on or after Sept. 1, 1967, made this section applicable to bond elections.

§ 163-228. Register of absentee ballot applications and ballots issued; a public record.—The State Board of Elections shall furnish the chairman of the board of elections in each county of the State with a book to be called the register of absentee ballot applications and ballots issued in which shall be recorded whatever information and official action may be required by this article.

The register of absentee ballot applications and ballots issued shall constitute a public record and shall be opened to the inspection of any registered voter of the county at any time within 30 days before and 30 days after a state-wide general election, a county bond election, or at any other time when good and sufficient reason may be assigned for its inspection. (1939, c. 159, ss. 3, 9; 1945, c. 758, s. 8; 1953, c. 1114; 1963, c. 457, s. 3; 1965, c. 1208; 1967, c. 775, s. 1; c. 952, s. 4.)

Editor's Note. — The 1967 amendment, effective for any election arising on or after Sept. 1, 1967, inserted "a county bond election" in the second paragraph.

§ 163-229. Absentee ballots, container-return envelopes, and instruction sheets.—(a) Absentee Ballot Form.—In accordance with the provisions of § 163-230 (3), persons entitled to vote by absentee ballot shall be furnished with regular official ballots; separate or distinctly marked absentee ballots shall not be used.

(b) Container-Return Envelope.—In time for use not later than forty-five days before a state-wide general election or county bond election, the county board of elections shall print a sufficient number of envelopes in which persons casting absentee ballots may transmit their marked ballots to the chairman of the county board of elections. Each container-return envelope shall be printed in accordance with the following instructions:

(1) On one side shall be printed and identified space in which shall be inserted the application number of the voter and the following statement which shall be certified by one member of the county board of elections:

Certification of Election Official

The undersigned election official does by his hand and seal certify that .... is a registered and qualified voter of .....

County Precinct # ..... and has made proper application to vote under the Absentee Ballot Law of North Carolina.

..... (SEAL)
Chairman-Member

(2) On the other side shall be printed the return address of the chairman of the county board of elections and the following affidavit:

"Affidavit of Absentee or Sick Voter

State of .....
County of .....

I, ..., do solemnly swear that I am a resident and registered voter in ..... precinct, ... County, North Carolina; that on the day of the general or bond election, ..., 19...., [check whichever of the following statements is correct]

[ ] I will be absent from the county in which I reside.
[ ] Due to sickness or physical disability, I will be unable to travel to the voting place in the precinct in which I reside.

I further swear that I made application for absentee ballots, and that I marked the ballots enclosed herein, or that they 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 .....

.....
(Signature of officer administering oath)

(SEAL)

.....
(Title of officer)

Note: The acknowledgement of a member of the armed forces of the United States may be taken before any commissioned officer or noncommissioned officer of the rank of sergeant in the army, petty officer in the navy, or equivalent rank in other branches of the armed forces.

(c) Instruction Sheets.—In time for use not later than forty-five days before a state-wide general election or county bond election, the county board of elections shall prepare and print a sufficient number of sheets of instructions on how voters are to prepare absentee ballots and return them to the chairman of the county board of elections. (1929, c. 164, s. 39; 1939, c. 159, ss. 3, 4; 1943, c. 751, s. 2; 1963, c. 457, ss. 3, 4; 1965, c. 1208; 1967, c. 775, s. 1; c. 851, s. 1; c. 952, s. 5.)

Editor's Note. — The first 1967 amendment rewrote subdivision (1) of subsection (b).

The second 1967 amendment, effective for any election arising on or after Sept. 1, 1967, inserted "or county bond election" in the first sentence of subsection (b), substituted, in the affidavit form in subdivision (2) of subsection (b), "general or bond election" for "general election, November" and inserted "or county bond election" in subsection (c).

§ 163-230. Consideration and approval of applications and issuance of absentee ballots.—The procedure to be followed in receiving applications for absentee ballots, passing upon their validity, and issuing absentee ballots shall be governed by the provisions of this section.

(1) Record of Applications Received and Ballots Issued.—Upon receipt of a voter's written application for absentee ballots the chairman of the county board of elections shall promptly enter in the register of absentee ballot applications and ballots issued so much of the following informa-

tion as he has not already entered thereunder the provisions of § 163-227 (4):

a. Name of voter applying for absentee ballots.
b. Number of assigned voter's application when issued.
c. Precinct in which applicant is registered.
d. Address to which ballots are to be mailed.
e. Reason assigned for requesting absentee ballots.
f. Date application for ballots is received by chairman.

(2) Determination of Validity of Applications for Absentee Ballots.—The county board of elections shall constitute the proper official body to pass upon the validity of all applications for absentee ballots received in the county; this function shall not be performed by the chairman or any other member of the board individually.

a. Required meetings of county board of elections. — During the period opening forty-five days before a state-wide general election or county bond election and closing at 6:00 P.M. on Wednesday before the election, the county board of elections shall hold public meetings on Monday and Friday of each week at 10:00 A.M. and it shall also hold public meetings at 10:00 A.M. on both Thursday and Monday immediately preceding election day. These meetings shall be held at the county courthouse or at the elections board's office at the hour fixed by law. At these meetings the county board of elections shall pass upon applications for absentee ballots.

Upon a majority vote, the county board of elections may hold the required public meetings at an hour other than 10:00 A.M., and it may hold more than one session on each Monday and Friday it is required to meet and may set the hours of any additional sessions. If the board desires to exercise either or both of the options granted by the preceding sentence, it shall do so prior to the date on which it is required to hold its first public meeting under the provisions of this subdivision and in time to give the notice required by the fourth paragraph of this lettered portion of this subdivision; thereafter, no change shall be made in the hours fixed for the board's public meetings on absentee ballot applications.

It shall not be necessary for the chairman of the county board of elections to give notice to other board members of weekly meetings of the board which are fixed as to time and place by this section.

If the county board of elections changes the time of holding its Monday and Friday meetings or provides for additional meetings on Mondays and Fridays in accordance with the terms of this subdivision, notice of the change in hour and notice of the schedule of additional meetings, if any, shall be published in a newspaper circulated in the county, and a notice thereof shall be posted at the courthouse door of the county, at least one week prior to the time fixed for holding the first meeting under this subdivision.

The county board of elections shall not be required to hold any of the meetings prescribed by this subdivision unless, since its last preceding meeting, it actually has received one or more applications for absentee ballots which it has not passed upon. When no meeting is to be held for this reason, the chairman shall notify each of the other members of the county board of elections that the scheduled public meeting will not be held and state the reasons for its cancellation.

b. Procedure at required meeting; making determination.—At each public meeting of the county board of elections the chairman shall present for consideration, and the board shall pass upon, the validity of all applications for absentee ballots received since its last preceding public meeting held for that purpose. In connection with each application received by mail the chairman shall also present the container envelope in which the application was received. At each such meeting any registered voter of the county shall be heard and allowed to present evidence in opposition to, or in favor of, the issuance of absentee ballots to any voter making application for them.

The county board of elections may consider the registration book evidence of the voter's signature if available and any other evidence that may be necessary to pass upon such an application.

If the board finds that the applicant is a qualified voter of the county, that he is registered in the precinct stated in his application, that the assertions in his application are true, and that his application is in proper form, it shall approve his application for absentee ballots.

c. Record of board's determination; decision final.—At the time the county board of elections makes its decision on an application for absentee ballots, the chairman shall enter in the appropriate column in the register of absentee ballot applications and ballots issued opposite the name of the applicant a notation of whether his application was "Approved" or "Disapproved." The decision of the board on the validity of an application for absentee ballots shall be final, subject only to such review as may be necessary in the event of an election contest.

(3) Delivery of Absentee Ballots and Container-Return Envelope to Applicant.—When the county board of elections approves an application for absentee ballots, the chairman shall promptly issue and transmit them to the applicant in accordance with the following instructions:

a. On the top margin of each ballot the applicant is entitled to vote, the chairman shall write or type the words "Absentee Ballot No. ....." and insert in the blank space the number assigned the applicant's application in the register of applications for absentee ballots and ballots issued. He shall not write, type, or print any other matter upon the ballots transmitted to the absentee voter.

b. The chairman shall fold and place the ballots (identified in accordance with the preceding instruction) in a container-return envelope and write or type in the appropriate blanks thereon, in accordance with the terms of § 163-229 (b), the absentee voter's name, his application number, and the designation of the precinct in which his ballots are to be voted. The chairman shall leave the container-return envelope holding the ballots unsealed.

c. The chairman shall then place the unsealed container-return envelope holding the ballots, together with printed instructions for voting and returning the ballots, in an envelope addressed to the applicant at the post-office address stated in his application, seal the envelope, and mail it at the expense of the county board of elections, or deliver it to the applicant in person: Provided, that in case of approval of an application received after 6:00 P.M. on Wednesday before the election under the provisions of § 163-227 (3), in lieu of transmitting the ballots to the applicant in person or by mail, the chairman may deliver the sealed enve-

lope containing the instruction sheet and the container-return envelope holding the ballots to the applicant's husband, wife, brother, sister, parent, or child. (1939, c. 159, s. 3; 1963, c. 457, s. 3; 1965, c. 1208; 1967, c. 775, s. 1; c. 952, s. 6.)

Editor's Note. — The 1967 amendment, effective for elections arising on or after Sept. 1, 1967, inserted "or county bond election" near the beginning of paragraph a of subdivision (2).

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 ex rel. Owens v. Chaplin, 228 N.C. 705, 47 S.E.2d 12 (1948).

§ 163-231. Voting absentee ballots and transmitting them to chairman of county board of elections.—(a) Procedure for Voting Absentee Ballots.—In the presence of an officer authorized to administer oaths, having an official seal, the voter shall:

(1) Mark his ballots, or cause them to be marked in his presence according to his instructions.

(2) Fold each ballot separately, or cause each of them to be folded in his presence.

(3) Place the folded ballots in the container-return envelope and securely seal it, or have this done in his presence.

(4) Make and subscribe the affidavit printed on the container-return envelope according to the provisions of § 163-229 (b).

The officer administering the oath shall then complete the form on the container-return envelope and affix his seal in the place indicated. When thus executed, the sealed container-return envelope, with the ballots enclosed, shall be transmitted in accordance with the provisions of subsection (b) of this section to the chairman of the county board of elections who issued the ballots.

In the case of voters who are members of the armed forces of the United States, as defined in § 163-245, the signature of any commissioned officer or noncommissioned officer of the rank of sergeant in the army, petty officer in the navy, or equivalent rank in other branches of the armed forces, 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 absentee ballots.

(b) Transmitting Executed Absentee Ballots to Chairman of County Board of Elections.—The sealed container-return envelope in which executed absentee ballots have been placed shall be transmitted to the chairman of the county board of elections who issued them as follows:

(1) If the ballots were issued under the provisions of either subdivision (1) or subdivision (2) of § 163-227, the sealed envelope shall be transmitted by the voter in person or by mail (at the voter's expense) in sufficient time for the executed ballots to reach the chairman of the county board of elections by 12:00 noon, on the Saturday immediately preceding the state-wide general election. If such ballots are received later than that hour they shall not be accepted for voting.

(2) If the ballots were issued under the provisions of subdivision (3) of § 163-227, the sealed envelope may be transmitted by the voter in person, or by mail (at the voter's expense), or it may be delivered to the chairman by the voter's husband, wife, brother, sister, parent, or child, in sufficient time for the executed ballots to reach the chairman of the county board of elections by 3:00 P.M., on the day of the state-wide general election. If such ballots are received later than that hour they shall not be accepted for voting. (1939, c. 159, ss. 2, 5; 1941, c. 248;

1943, c. 736; c. 751, s. 1; 1945, c. 758, s. 5; 1963, c. 457, ss. 2, 5; 1967, c. 775, s. 1.)

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 ex rel. Owens 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 ex rel. Owens v. Chaplin, 228 N.C. 705, 47 S.E.2d 12 (1948).

The interest of the clerk of the superior court in his own reelection, standing alone, does not disqualify him from administering oaths to absentee voters, administering the oaths being ministerial and not judicial. State ex rel. Owens v. Chaplin, 228 N.C. 705, 47 S.E.2d 12 (1948).

§ 163-232. Certified list of approved applications to be transmitted to State Board of Elections and posted; original applications to accompany list.—The chairman of the county board of elections shall prepare a list, in triplicate, of all applications for absentee ballots received by him which have been approved by the county board of elections. At the end of the list he shall execute the following certificate under oath:

"State of North Carolina
County of .....

I, ..., chairman of the ..... county board of elections, do hereby certify that the foregoing is a list of all applications filed with me for absentee ballots to be voted in the election on the ..... day of ....., 19....., which have been approved by the county board of elections. I further certify that I have issued ballots to no other persons than those listed herein, whose original applications are enclosed to be filed with the State Board of Elections; and I further certify that I have not delivered ballots for absentee voting to any person other than the voter himself, by mail or in person, except as provided by law in the case of approved applications received after 6:00 P.M., on Wednesday before the election.

This the ..... day of ....., 19.....

.....
(Signature of chairman of county board of elections)

Sworn to and subscribed before me this ..... day of ....., 19..... Witness my hand and official seal.

.....
(Signature of officer administering oath)

.....
(Title of officer)"

Before noon on the day before a state-wide general election, the chairman of the county board of elections shall send one copy of the list required by this section, together with the original of all applications for absentee ballots received by him, by registered mail to the chairman of the State Board of Elections, at Raleigh, North Carolina. He shall post one copy of the list at a conspicuous place at the county courthouse door, and he shall retain the third copy for himself. (1939, c. 159, s. 6; 1943, c. 751, s. 3; 1963, c. 457, s. 6; 1967, c. 775, s. 1.)

§ 163-233. Lists of absentee ballots received; distribution; delivering executed absentee ballots to appropriate registrars.—Before noon on the day of a state-wide general election, the chairman of the county board of elections shall prepare for each precinct a list, in quadruplicate, of all executed absentee ballots which he has received from absentee voters of the particular precinct prior to noon on the Saturday immediately preceding the election, and, in the case of

absentee ballots issued under the provisions of § 163-227 (3), executed ballots which he has received at any time prior to making the list. The chairman shall cause two copies of the appropriate precinct list, together with the unopened container-return envelopes enclosing absentee ballots to be voted in the precinct, to be delivered to the registrar before noon on the day of the election.

If, after preparing and delivering the lists and unopened container-return envelopes as prescribed in the preceding paragraph, the chairman should, before 3:00 P.M., on election day, receive additional executed absentee ballots issued under the provisions of § 163-227 (3), he shall prepare, in quadruplicate, a supplemental list for each affected precinct. The chairman shall have two copies of the appropriate supplemental precinct list, together with the unopened container-return envelopes enclosing the ballots recorded on the supplemental list, delivered to the precinct registrar before the polls are closed on election day.

The registrar shall post one copy of the list and one copy of the supplemental list, if any, as required by § 163-154. He shall retain the other copy or copies until all challenges of absentee ballots have been heard and decided.

On election day the chairman of the county board of elections shall mail to the chairman of the State Board of Elections, at Raleigh, North Carolina, one copy of each of the lists prepared under the provisions of this section. He shall retain the remaining copy or copies for his own use. (1939, c. 159, s. 7; 1943, c. 751, s. 4; 1963, c. 457, s. 7; 1967, c. 775, s. 1.)

§ 163-234. Absentee ballots deemed voted upon delivery to registrar; opening container-return envelope and depositing ballots; rejected ballots.—An absentee ballot shall be deemed to be voted when delivered to the precinct registrar on the day of the election, but it shall not be deposited in a ballot box and shall not be counted except in accordance with the procedures outlined in this section.

As soon as the polls are closed, and before they sign the pollbook, the precinct officials shall examine the container-return envelopes, record in the pollbook the names of absentee voters whose ballots are voted, and deposit their ballots in the proper ballot boxes as follows:

(1) The precinct officials shall examine each unopened container-return envelope. If they find that the affidavit and jurat are not executed in due form, or that the voter did not sign his name to the affidavit printed on the envelope, or that the officer before whom the voter executed the affidavit did not affix his seal or the certification of a member of the county board of elections is not complete or is not in compliance with the provisions of G.S. 163-229 (b) (1), the envelope shall be left unopened, and it shall be marked "Rejected."

(2) If the examination required by subdivision (1) reveals that the container-return envelope is in order, one of the judges of election shall call the name of the voter as it appears in the affidavit on the envelope. After examining the registration records, the registrar shall state whether the person bearing that name is duly registered and qualified to vote in the precinct. If the registrar finds him not to be registered, the envelope shall be left unopened, and it shall be marked "Rejected —Not Registered." If the registrar finds him to be registered and qualified, and if his registration or right to vote by absentee ballot is not challenged, the responsible judge shall enter his name in the pollbook with the notation "Absentee Voter." If a challenge is entered, the precinct officials shall proceed as provided in § 163-89.

(3) When the voter's name has been entered in the pollbook under the provisions of subdivision (2), one of the judges of election shall open the container-return envelope by slitting it with a sharp instrument so as not to destroy, tear, or obliterate any part of the affidavit thereon.

He shall then remove the ballots from the envelope and, without unfolding them and without examining how they are marked, he shall deposit each in the appropriate ballot box.

(4) All container-return envelopes shall be filed with the county board of elections at the time of the county canvass when the precinct returns are filed. This requirement shall include those container-return envelopes from which ballots have been removed and deposited in ballot boxes, as well as those left unopened and marked "Rejected" or "Rejected—Not Registered" under the provisions of this section and those left unopened and marked "Challenge Sustained" under the provisions of § 163-89. They 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 absentee ballot delivered to him. (1939, c. 159, ss 8, 9; 1945, c. 758, s. 8; 1953, c. 1114; 1963, c. 547, s. 8; 1967, c. 775, s. 1; c. 851, s. 2.)

Editor's Note. — The 1967 amendment inserted, in subdivision (1), "or the certification of a member of the county board of elections is not complete or is not in compliance with the provisions of G.S. 163-229 (b) (1)."

§ 163-235. Absentee voting where voting machines used.—Persons entitled to vote by absentee ballot in precincts in which voting machines are used shall vote on paper ballots furnished them in accordance with the provisions of this article. At voting places at which voting machines are used, container-return envelopes and absentee ballots shall be received, handled, counted, and filed with the county board of elections in accordance with the provisions of this article for voting places at which voting machines are not used. The total absentee ballot vote for each candidate and proposition shall be added to the totals shown on the voting machines, and the combined totals shall be entered on the official returns for the precinct. (1963, c. 457, s. 9; 1967, c. 775, s. 1.)

§ 163-236. Violations by chairman of county board of elections. — The chairman of the county board of elections shall be sole custodian of blank applications for absentee ballots, official ballots, and container-return envelopes for absentee ballots. He shall issue and deliver blank applications for absentee ballots in strict accordance with the provisions of § 163-227 (4). The issuance of ballots to persons whose applications for absentee ballots have been approved by the county board of elections under the provisions of § 163-230 (3) is the responsibility and duty of the chairman of the county board of elections.

It shall be the duty of the chairman of the county board of elections to keep current all records required of him by this article and to make promptly all reports required of him by 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 60 days, or both, in the discretion of the court. (1939, c. 159, s. 14; 1963, c. 457, s. 10; 1967, c. 775, s. 1.)

§ 163-237. Certain violations of absentee ballot law made criminal offenses.—(a) 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, he 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 60 days, or both, in the discretion of the court.

(b) False Statements Not under Oath Made Misdemeanor.—If any person, for the purpose of obtaining or voting any official ballot under the provisions of this article, 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, he 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 60 days, or both, in the discretion of the court.

(c) 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.

(d) Violations Not Otherwise Provided for Made Misdemeanors.—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, he 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. (1929, c. 164, s. 40; 1939, c. 159, ss. 12, 13, 15, 1967, c. 775, s. 1.)

§ 163-238. Reports of violations to Attorney General and solicitors.—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 solicitorial district, any violation of this article, or the failure of any person charged with a duty under its provisions to comply with and perform that duty, and it shall be the duty of the solicitor to cause such a person to be prosecuted therefor. (1939, c. 159, s. 16; 1967, c. 775, s. 1.)

§ 163-239. Article 21 relating to absentee voting by servicemen and certain civilians not applicable.—Except as otherwise provided therein, article 21 of this chapter, relating to absentee registration and voting by servicemen and certain civilians, shall not apply to or modify the provisions of this article. (1963, c. 457, s 11; 1967, c. 775, s. 1.)

§§ 163-240 to 163-244: Reserved for future codification purposes.

Article 21.

Military Absentee Registration and Voting in Primary and General Elections.

§ 163-245. Persons in armed forces, their wives, certain veterans, civilians working with armed forces, and members of Peace Corps may register and vote by mail.—(a) Any individual who is eligible to register and who is qualified to vote in any statewide primary or election held under the laws of this State, and who is absent from the county of his residence in any of the capacities specified in subsection (b) of this section, shall be entitled to register by mail and to vote by military absentee ballot in the manner provided in this article.

(b) The provisions of this article shall apply to the following persons:

(1) Persons serving in the armed forces of the United States, including (but not limited to) the army, the navy, the air force, the marine corps, the coast guard, the Army Nurse Corps, the Navy Nurse Corps, the Women's Navy Reserve, the Marine Corps Women's Reserve, the Women's Army Corps, the Merchant Marine, and members of the national guard and military reserve who on the day of a primary or general election are absent on active duty.

(2) Wives of men serving in the armed forces of the United States residing outside the counties of their husbands' voting residence.

(3) Disabled war veterans in United States government hospitals.
(4) Civilians attached to and serving outside the United States with the armed forces of the United States.
(5) Members of the Peace Corps. (1941, c. 346, ss. 1, 1a; 1943, c. 503, s. 1; 1945, c. 758, s. 4; 1953, c. 908; 1963, c. 457, s. 16; 1967, c. 775, s. 1.)

Editor's Note.—For comment on former §§ 163-70 to 163-77, relating to absentee voting in primaries by voters in military and naval service, see 19 N.C.L. Rev. 480.

§ 163-246. Provisions of article 20 applicable except as otherwise provided; State Board of Elections to adopt regulations. — Except as otherwise provided in this article, registration by mail and absentee voting by individual to whom this article is applicable shall be governed by the provisions of article 20 of this chapter. By way of illustration rather than limitation, the provisions of this paragraph shall apply to the form of absentee ballots, certificates, and container-return envelopes; the manner of depositing and voting military absentee ballots; the counting and certifying of results; the hearing of challenges; and the preservation of container-return envelopes in which executed military absentee ballots are transmitted.

The State Board of Elections is authorized to adopt and promulgate whatever rules and regulations (not in conflict with other provisions of this chapter) it may deem necessary to carry out the true intent and purpose of this article. (1941, c. 346, ss. 7-10; 1943, c. 503, ss. 7, 8; 1963, c. 457, s. 15; 1967, c. 775, s. 1.)

§ 163-247. Methods of applying for absentee ballots.—An individual entitled to exercise the rights conferred by this article and who is absent from the county of his residence may apply for absentee ballots in either of the ways provided in this section.

(1) Federal Post Card Application Form.—At any time prior to the state-wide primary or general election in which he seeks to vote the applicant may make and sign a written application to the Secretary of State for absentee ballots on the post card form prescribed in Public Law 712 of the 77th Congress. Upon receiving such an application, the Secretary of State shall record the applicant's name and residence address on a record maintained for that purpose and immediately transmit the application to the State Board of Elections. Upon receiving such an application from the Secretary of State, the State Board of Elections shall transmit it to the chairman of the board of elections of the county in which the applicant has his residence, together with instructions for handling the application under the provisions of this article.
(2) Application to Chairman of County Board of Elections.—In lieu of applying on the federal post card as provided in the preceding subdivision, at any time prior to the state-wide primary or general election in which he seeks to vote the applicant may make and sign a written application to the chairman of the board of elections of the county of his residence upon a form prepared and furnished him upon request by the county board of elections. This form shall require the applicant's signature and shall elicit from him:
    a. A request for absentee ballots to be voted in a specified state-wide primary or general election.
    b. A statement of his political party affiliation if he seeks to vote by absentee ballot in a primary election.
    c. A statement of his membership in the armed forces of the United States, or his membership in one of the other categories to which this article is made applicable in § 163-245.
    d. A statement of the precinct in which he is registered to vote, or, if the applicant is not registered, a statement of his address

before entering military or other qualifying service and the period of time he resided at that address.

e. A statement of the address to which the absentee ballots should be mailed.

In lieu of using a form prepared and furnished by the county board of elections, the voter may apply in an informal writing. If the written application is signed by the voter and if it contains all the information required by this subdivision, it shall be regarded as sufficient to permit the chairman of the county board of elections to act upon it. (1941, c. 346, ss. 2, 3; 1943, c. 503, s. 2; 1963, c. 457, s. 12; 1967, c. 775, s. 1.)

§ 163-248. Register, ballots, container-return envelopes, and instruction sheets.—(a) Register of Military Absentee Ballot Applications and Ballots Issued.—The State Board of Elections shall furnish the chairman of the board of elections in each county of the State with a book to be called the register of military absentee ballot applications and ballots issued in which shall be recorded whatever information and official action may be required by this article. In lieu of furnishing this register, the State Board of Elections may provide for a separate military section in the register furnished under the provisions of § 163-228 which shall be used for the same purpose.

The register of military absentee ballot applications and ballots issued, whether contained in a separate book or maintained as a separate part of the register furnished under the provisions of § 163-228, shall constitute a public record and shall be opened to the inspection of any registered voter of the county at any time.

(b) Absentee Ballot Form.—Persons entitled to vote by absentee ballot under the terms of this article shall be furnished with regular official ballots; separate or distinctly marked absentee ballots shall not be used. The State Board of Elections and the county boards of elections shall have all necessary ballots printed and in the hands of the proper election officials not later than, in the case of a primary election, 10 days after the time has expired for the filing of candidacy for county office, and in the case of a general election, the first day of September immediately prior thereto.

(c) Container-Return Envelope.—The county board of elections shall print a sufficient number of envelopes in which persons casting military absentee ballots may transmit their marked ballots to the chairman of the county board of elections. In the case of a primary election, the container-return envelopes shall be printed and available for use not later than 10 days after the time has expired for the filing of candidacy for county office, and in the case of a general election, not later than the first day of September immediately prior thereto. Each container-return envelope shall be printed in accordance with the following instructions:

(1) On one side shall be arranged identified spaces in which the chairman of the county board of elections may insert the name of the applicant, the number assigned his application, and the designation of the precinct in which his ballots are to be voted.

(2) On the other side shall be printed the return address of the chairman of the county board of elections and the following certificate:

"Certificate of Absentee Voter

I, ..., do hereby certify that I am a resident and qualified voter in ..... precinct, ... County, North Carolina, and that I am [check whichever of the following statements is correct]

[ ] Serving in the armed forces of the United States

[ ] The wife of a member of the armed forces of the United States residing outside the county of my husband's residence

[ ] A disabled war veteran in a United States government hospital

[ ] A civilian attached to and serving outside the United States with the armed forces of the United States

[ ] A member of the Peace Corps

I further certify that I am affiliated with the ..... party. [To be completed only if applicant seeks to vote in the primary of the political party to which he belongs.]

I further certify that the following is my official address: .....
[Unit (Co., Sq., Trp., Bn., etc.), governmental agency, ...
..... or office]

.....
[Military base, station, camp, fort, ship, airfield, etc.]

.....
[Street number, APO, or FPO number]

.....
[City, postal zone, State, and zip code]

I further certify that I made application for absentee ballots and that I marked the ballots enclosed herein, or that they were marked for me in my presence and according to my instruction.

Witness my hand in the presence of ..... [Insert name and rank of witnessing officer] this ..... day of ....., 19.....

.....
(Signature of voter)

Witness: .....
(Signature of witnessing officer)

Rank or title of witnessing officer: .....
Unit to which witnessing officer is assigned: .....
Note: This certificate may be witnessed by any commissioned officer or any noncommissioned officer of the rank of sergeant in the army, petty officer in the navy, or equivalent rank in other branches of the armed forces of the United States."

(d) Instruction Sheets.—The county board of elections shall prepare and print a sufficient number of sheets of instructions on how voters covered by the provisions of this article are to prepare absentee ballots and return them to the chairman of the county board of elections. In the case of a primary, the instruction sheets shall be printed and available for use not later than 10 days after the time has expired for the filing of candidacy for county office, and in the case of a general election, not later than the first day of September immediately prior thereto. (1929, c. 164, s. 39; 1941, c. 346, ss. 2, 3, 4, 5, 6; 1943, c. 503, s. 3; 1963, c. 457, ss. 12, 13, 14; 1967, c. 775, s. 1.)

§ 163-249. Consideration and approval of applications and issuance of absentee ballots.—The procedure to be followed in receiving applications for absentee ballots under this article, passing upon their validity, and issuing absentee ballots shall be governed by the provisions of this section.

(1) Record of Applications Received and Ballots Issued.—Upon receipt of a voter's written application for absentee ballots in either of the forms permitted by § 163-247, the chairman of the county board of elections shall promptly enter in the register of military absentee ballot applications and ballots issued:

a. Name of voter applying for absentee ballots.

b. Applicant's political party affiliation as stated in an application for ballots in a primary.

c. Number assigned voter's application. (Numbers assigned applications received under the provisions of this article shall be chosen so as not to be identical with numbers assigned applications received under the provisions of article 20.)

d. Precinct in which applicant is registered if he is already registered, or precinct in which applicant is registered by the chairman of the county board of elections under the provisions of subdivisions (2) and (3) of this section.

e. Address to which ballots are to be mailed.

f. Statement of basis on which applicant asserts his qualifications for obtaining absentee ballots under the provisions of this article.

g. Date application for ballots is received by chairman.

(2) Determination of Validity of Applications for Absentee Ballots; Handling Applications for Persons Not Registered.—This chairman of of the county board of elections shall pass upon the validity of all applications for absentee ballots received under the provisions of this article, and he shall not delegate this responsibility.

If the chairman finds that the applicant is a qualified voter of the county, that he is registered in the precinct stated in his application, that the assertions in his application are true, that they demonstrate that he is entitled to vote by absentee ballot under the terms of this article, and that his application is in proper form, the chairman shall approve the application for absentee ballots.

If the chairman finds that the applicant is not registered to vote in the precinct in which he declares he is a resident, the chairman shall make a reasonable investigation as to the applicant's residence. If the chairman determines that the applicant is a resident of the precinct asserted, that he is eligible to register and vote under the Constitution and statutes of this State, and that his application is otherwise in order, the chairman shall register him according to the procedure specified in subdivision (3) of this section and approve his application for absentee ballots.

(3) Record of Chairman's Decisions; Registration by Chairman.—At the time the chairman of the county board of elections makes his decision on an application for absentee ballots, he shall enter in the appropriate column in the register of military absentee ballot applications and ballots issued opposite the name of the applicant a notation of whether his application was "Approved" or "Disapproved." In cases in which the chairman determines that an unregistered applicant is entitled to register, he shall also note in the appropriate column of the register the designation of the precinct in which the applicant is entitled to vote. This entry shall constitute registration and shall entitle an otherwise qualified applicant to receive absentee ballots.

(4) Delivery of Absentee Ballots and Container-Return Envelope to Applicant.—When the chairman of the county board of elections approves an application for military absentee ballots he shall promptly issue and transmit them in accordance with the following instructions:

a. On the top margin of each ballot the applicant is entitled to vote, the chairman shall write or type the words "Absentee Ballot No. ...." and insert in the blank space the number assigned the applicant's application in the register of military absentee ballot applications and ballots issued. He shall not

write, type, or print any other matter upon the ballots transmitted to the absentee voter.

b. The chairman shall fold and place the ballots (identified in accordance with the preceding instruction) in a container-return envelope and write or type in the appropriate blanks thereon, the absentee voter's name, his application number, and the designation of the precinct in which his ballots are to be voted. The chairman shall leave the container-return envelope holding the ballots unsealed.

c. The chairman shall then place the unsealed container-return envelope holding the ballots, together with printed instructions for voting and returning the ballots, in an envelope addressed to the applicant at the address stated in his application, seal the envelope, and mail it at the expense of the county board of elections. (1941, c. 346, ss. 2, 3, 4, 5; 1943, c. 503, s. 3; 1963, c. 457, ss. 12, 13; 1967, c. 775, s. 1.)

§ 163-250. Voting absentee ballots and transmitting them to chairman of county board of elections.—(a) Procedure for Voting Absentee Ballots.—In the presence of any commissioned officer or noncommissioned officer of the rank of sergeant in the army, petty officer in the navy, or equivalent rank in other branches of the armed forces of the United States, the voter shall:

(1) Mark his ballots, or cause them to be marked in his presence according to his instructions.

(2) Fold each ballot separately, or cause each of them to be folded in his presence.

(3) Place the folded ballots in the container-return envelope and securely seal it, or have this done in his presence.

(4) Make and subscribe the certificate printed on the container-return envelope according to the provisions of § 163-248 (c).

The officer witnessing the voter's signature shall then complete the form on the container-return envelope by signing his name in the appropriate place and entering his rank or title and the designation of the unit to which he is assigned.

(b) Transmitting Executed Absentee Ballots to Chairman of County Board of Elections.—When executed and witnessed in accordance with the provisions of subsection (a) of this section, the sealed container-return envelope in which executed absentee ballots have been placed shall be mailed by the voter to the chairman of the county board of elections who issued them. (1941, c. 346, ss. 7-10; 1963, c. 457, s. 15; 1967, c. 775, s. 1.)

§ 163-251. Certified list of approved military absentee ballot applications; record of ballots received; disposition of list; list constitutes registration.—(a) Preparation of List.—Before noon on the day of a statewide primary or general election, the chairman of the county board of elections shall prepare for each precinct a list, in quadruplicate, of all applications for military absentee ballots which he has received, entered in the register of military absentee ballot applications and ballots issued, and approved. This list shall be entitled "List of Applicants for Military Absentee Ballots to Whom Ballots Have Been Issued." By the name of each applicant whose executed military absentee ballots have been returned to him the chairman shall enter the notation "Ballots Returned." At the end of the list the chairman shall execute the following certificate under oath:

"State of North Carolina
County of .....

I, ..., chairman of the ..... county board of elections, do hereby certify that the foregoing is a list of all applications filed with me for

absentee ballots under the provisions of the Military Absentee Ballot Law to be voted in the ..... [insert either 'primary' or 'general,' whichever is appropriate] election on the ..... day of ....., 19..... I further certify:

1. That I have issued military absentee ballots to no other persons than those listed therein, whose original applications are herewith filed with the State Board of Elections;

2. That I have not delivered military absentee ballots to any person other than the voter himself, by mail or in person;

3. That I have received executed ballots from those absentee voters whose names are marked on this list with the notation 'Ballots Returned,' whose unopened container-return envelopes have been delivered to the appropriate precinct registrars for voting;

4. That this list constitutes the only precinct registration of military absentee voters whose names have not heretofore been entered on the regular registration of the appropriate precinct.

This the ..... day of ....., 19.....

.....
(Signature of chairman of county board of elections)

Sworn to and subscribed before me this ..... day of ....., 19...
Witness my hand and official seal.

.....
(Signature of officer administering oath)

(SEAL)

.....
(Title of officer)"

(b) Distribution of List.—Before noon on the day of the primary or general election in which the military absentee ballots are to be cast, the chairman of the county board of elections shall send one copy of the list required by this section together with the original of all applications for military absentee ballots received by him, by registered mail to the chairman of the State Board of Elections at Raleigh, North Carolina. Also before noon he shall see that two copies of the appropriate precinct list, together with the unopened container-return envelopes enclosing military absentee ballots to be voted in the precinct, are delivered to the registrar at the voting place. The chairman shall retain one copy for himself.

If, after preparing and delivering the lists, original applications, and unopened container-return envelopes as prescribed in the preceding paragraph, the chairman should, before 3:00 P. M. on primary or election day, receive additional executed military absentee ballots, he shall prepare, in quadruplicate, a supplemental list for each affected precinct. The chairman shall immediately send one copy of the supplemental list required by this section, together with the original of all applications for military absentee ballots entered thereon, by registered mail to the chairman of the State Board of Elections, at Raleigh, North Carolina. He shall see that two copies of the appropriate supplemental precinct list, together with the unopened container-return envelopes enclosing the ballots recorded on the supplemental list, are delivered to the precinct registrar before the polls are closed on primary or election day. He shall retain one copy of each supplemental list for himself.

The registrar shall post one copy of the list and one copy of the supplemental list, if any, as required by § 163-154. He shall retain the other copy or copies until all challenges of military absentee ballots have been heard and decided. The precinct posting of this list shall be sufficient to validate the ballots of absentee voters listed thereon when their ballots are in all other respects regular.

(c) List Constitutes Registration.—The "List of Applicants for Military Absentee Ballots to Whom Ballots Have Been Issued" prescribed by this

section, when delivered to the registrars of the various precincts, shall constitute the only precinct registration of the military absentee voters listed thereon whose names are not already entered in the registration records of the appropriate precinct. Registrars shall not add the names of persons listed on the military absentee list to the regular registration books of their precincts. (1941, c. 346, ss. 7-10, 12, 13; 1943, c. 503, ss. 4, 5; 1963, c. 457, s. 15; 1967, c. 775, s. 1.)

§ 163-252. Unlawful absentee voting in primary made misdemeanor.—Any person not covered by the provisions of § 163-245 who shall vote or attempt to vote by absentee ballot in any primary shall be guilty of a misdemeanor and punished by a 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; 1967, c. 775, s. 1.)

§ 163-253. Article inapplicable to persons after change of status; reregistration required.—Upon discharge from the armed forces of the United States or termination of any other status qualifying him to register and vote by absentee ballot under the provisions of this article, the voter shall not be entitled to vote by military absentee ballot, and if he was registered under the provisions of this article his registration shall become void and he shall be required to register under the provisions of article 7 before being entitled to vote in any primary or election. (1943, c. 503, s. 12; 1967, c. 775, s. 1.)

§§ **163-254 to 163-258**: Reserved for future codification purposes.

SUBCHAPTER VIII. CRIMINAL OFFENSES.

Article 22.

Corrupt Practices and Other Offenses against the Elective Franchise.

§ 163-259. Definitions. — When used in this article:

(1) 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;

(2) The term "candidate" means an individual whose name is presented for any office to be voted upon any ballot at any primary, general or special election;

(3) 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;

(4) 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;

(5) The term "person" includes an individual, partnership, committee, association, corporation or any other organization or group of persons. (1931, c. 348, s. 2; 1967, c. 775, s. 1.)

§ 163-260. 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; 1967, c. 775, s. 1.)

§ 163-261. 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; 1967, c. 775, s. 1.)

§ 163-262. 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; 1967, c. 775, s. 1.)

§ 163-263. Statements under oath of preprimary 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 § 163-116, to file, under oath, 10 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 20 days after such primary, with the Secretary of State, an itemized statement of all expenditures made by him or which he knows to have been made by anyone else for him, and also of all contributions made to him, directly or indirectly, by any person, with detailed account of such contributions and expenditures as set out in § 163-264. 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 offices as set out in the preceding sentence: Provided, however, that candidates for the House of Representatives in multi-county representative districts shall file copies of the said statement with the clerk of superior court of each county in the representative district.

It shall be the duty of the chairman of the county board of elections to send a written notice to each candidate in a primary election who filed a notice of candidacy with said chairman, and who had one or more candidates to run against the candidate in the primary, of this requirement to file his or her primary campaign statement of expenses with the clerk of the superior court both before and after the primary. Such notice shall not be required where an unopposed candidate did not have to run in the primary and was nominated without party opposition. (1931, c. 348, s. 6; 1959, c. 1203, s. 10; 1966, Ex. Sess., c. 5, s. 15; 1967, c. 775, s. 1.)

§ 163-264. Contents of such statements.—The statement of contributions and expenditures as required by the preceding sections of this article 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; 1967, c. 775, s. 1.)

§ 163-265. Statements required of campaign committees covering more than one county; verification of statements required.—A like statement as that required in the preceding section [§ 163-264] shall be filed by any and all campaign committees as hereinbefore defined with the Secretary of State not more than 15 days nor less than 10 days before any primary, general or special election, and not more than 20 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; 1967, c. 775, s. 1.)

§ 163-266. Failure to report contributions or expenditures made misdemeanor.—(a) It shall be unlawful 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. Any person violating this section shall be guilty of a misdemeanor and upon conviction shall be fined or imprisoned, or both, in the discretion of the court.

(b) It shall be unlawful 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 §§ 163-263 to 163-265, 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. Any person violating this section shall be guilty of a misdemeanor and upon conviction shall be fined or imprisoned, or both, in the discretion of the court. (1931, c. 348, s. 9; 1951, c. 983, s. 1; 1967, c. 775, s. 1.)

§ 163-267. Secretary of State to report failure to file reports.—It shall be the duty of the Secretary of State after the time has expired for the filing of statements of campaign contributions and expenditures with the Secretary of State by candidates in a primary election as is provided in §§ 163-263 to 163-265, to immediately therefter 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 said sections Upon receipt of said report from the Secretary of State, it shall be the duty of the Attorney General, in accordance with the provisions of § 163-268, to notify the proper prosecuting officer who shall prosecute any person violating the provisions of the preceding sections of this article. (1931, c. 348, s. 9; 1951, c. 983, s. 1; 1967, c. 775, s. 1.)

§ 163-268. Secretary of State and superior court clerks to request reports; Attorney General and solicitors to prosecute. — 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 by §§ 163-263 to 163-265. 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 solicitorial 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 solicitorial district in which such county is a part, and said solicitor shall institute a prosecution for violation of said sections. (1931, c. 348, s. 13; 1967, c. 775, s. 1.)

§ 163-269. Violations by corporations. — It shall be unlawful 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 section shall, in addition to being guilty of a misdemeanor as hereinafter 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. Any person violating this section shall be guilty of a misdemeanor and upon conviction shall be fined or imprisoned, or both, in the discretion of the court. (1931, c. 348, s. 9; 1951, c. 983, s. 1; 1967, c. 775, s. 1.)

§ 163-270. 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. An officer, director, stockholder, attorney or agent for 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 ($1,000.00).

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 Commissioner of Insurance 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; 1967, c. 775, s. 1.)

Editor's Note. — By virtue of Session Laws 1943, c. 170, "Commissioner of Insurance" has been substituted for "Insurance Commissioner" in the second paragraph.

§ 163-271. 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 or imprisonment, or both, in the discretion of the court. (1933, c. 165, s. 25; 1967, c. 775, s. 1.)

§ 163-272. Disposing of liquor at or near voting 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 voting place, at any time within 12 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 dollars ($100.00) nor more than one thousand dollars ($1,000.00). (1901, c. 89, s. 76; c. 531; Rev., s. 3389; C. S., s. 4188; 1967, c. 775, s. 1.)

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, s. 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, for medical purposes, which is allowed by the statute. State v. Stamey, 71 N.C. 202 (1874).

§ 163-273. Offenses of voters; interference with voters; penalty.—(a) 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 a voter, except as otherwise provided in this chapter, to allow his ballot to be seen by any person.

(2) For a voter to take or remove, or attempt to take or remove, any ballot from the voting enclosure.

(3) For any person to interfere with, or attempt to interfere with, any voter when inside the voting enclosure.

(4) For any person to interfere with, or attempt to interfere with, any voter when marking his ballots.

(5) For any voter to remain longer than the specified time allowed by this chapter in a voting booth, after being notified that his time has expired.

(6) For any person to endeavor to induce any voter, while within the voting enclosure, before depositing his ballots, to show how he marks or has marked his ballots.

(7) For any person to aid, or attempt to aid, any voter by means of any mechanical device, or any other means whatever, while within the voting enclosure, in marking his ballots.

(b) Election officers shall cause any person committing any of the offenses set forth in subsection (a) of this section 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; 1967, c. 775, s. 1.)

§ 163-274. 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, ballots, 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, ballot, 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 board or any registrar or judge of election 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 oppose 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 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;

(8) 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;

(9) For any person to give or promise, in return for political support or influence, any political appointment or support for political office;

(10) 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;

(11) For any 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 to a primary or election, the returns of which are by law deposited in his office, upon the tender of the fees therefor;

(12) 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; 1967, c. 775, s. 1.)

Indictment for Disturbing Registrar by Boisterous Conduct. — An indictment charging that defendant unlawfully and willfully by his own boisterous and violent conduct disturbed a named registrar while in the performance of her duties in examining a named applicant for registration was insufficient, although charging the offense in the words of the statute, since such words did not in themselves inform the accused of the specific offense of which he was accused so as to enable him to prepare his defense or plead his conviction or acquittal as a bar to further prosecution for the same offense. State v. Walker, 249 N.C. 35, 105 S.E.2d 101 (1958).

§ 163-275. 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 ($1,000.00), 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 an 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 ballot, or to do any fraudulent act or knowingly and fraudulently omit to do any act or 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 precinct 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, alteration, or conceal or destroy any election ballot, book, record, return or process 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 his duties in the registration of voters or in conducting any primary or election;

(12) For any registrar, judge of election, 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 a voter, 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; 1965, c. 899; 1967, c. 775, s. 1.)

§ 163-276. Convicted officials; removal from office.—Any public official who shall be convicted of violating any provision of article 13 or 22 of this chapter, in addition to the punishment provided by law, shall be removed from office by the judge presiding, and, if the conviction is for a felony, shall be disqualified from voting until his citizenship is restored as provided by law, and if the conviction is for a misdemeanor, he shall be disqualified from voting for a period of two years. (1949, c. 504; 1967, c. 775, s. 1.)

§ 163-277. 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 this article, upon the ground or for the reason that the testi-

mony 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 this article; 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; 1967, c. 775, s. 1.)

Editor's Note.—For a general discussion of the limits to self-incrimination, see 15 N.C.L. Rev. 229.

§ 163-278. Duty of Attorney General and solicitors to prosecute violations of article.—It shall be the duty of the Attorney General, the solicitors of the several solicitorial 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; 1967, c. 775, s. 1.)

Chapter 164.

Concerning the General Statutes of North Carolina.

Article 1.

The General Statutes.

ARTICLE 1.

The General Statutes.

§ 164-11.7. Adoption of Replacement Volumes 2B, 2C and 2D and 3B, 3C and 3D of the General Statutes.—(a) The chapters, subchapters, articles and sections now comprising Volumes 2B and 2C of the General Statutes of North Carolina, and Cumulative Supplements thereto, consisting of §§ 53-1 to 105-462, now in force, as amended, are hereby re-enacted and designated as 1965 Replacement Volumes 2B, 2C and 2D of the General Statutes of North Carolina.

(b) The chapters, subchapters, articles and sections now comprising Volumes 3B and 3C of the General Statutes of North Carolina, and Cumulative Supplements thereto, consisting of §§ 117-1 to 167-3, now in force, as amended, are hereby re-enacted and designated as 1964 Replacement Volumes 3B, 3C and 3D of the General Statutes of North Carolina.

(c) This enactment of 1965 Replacement Volumes 2B, 2C and 2D and 1964 Replacement Volumes 3B, 3C and 3D shall not be construed to invalidate or repeal any acts which have been passed during the 1965 Session of the General Assembly, prior to May 14, 1965, nor shall this enactment include any appended annotations, editorial notes, comments and cross references, legislative or historical references, or other material connected or supplemental to the said chapters,

subchapters, articles and sections, but not contained in the body hereof. (1965, c. 544.)

§ 164-11.8. Adoption of Replacement Volumes 1C, 1D, 2A and 3A of the General Statutes.—(a) The chapters, subchapters, articles and sections now comprising Volume 1C of the General Statutes of North Carolina, and Cumulative Supplements thereto, consisting of §§ 15-1 to 27-59, now in force, as amended, are hereby reenacted and designated as 1965 Replacement Volumes 1C and 1D of the General Statutes of North Carolina.

(b) The chapters, subchapters, articles and sections now comprising 1950 Recompiled Volume 2A of the General Statutes of North Carolina, and Cumulative Supplements thereto, consisting of §§ 28-1 to 52A-20, now in force, as amended, is hereby reenacted and designated as 1966 Replacement Volume 2A of the General Statutes of North Carolina.

(c) The chapters, subchapters, articles and sections now comprising 1960 Replacement Volume 3A of the General Statutes of North Carolina, and Cumulative Supplements thereto, consisting of §§ 106-1 to 116-211, now in force, as amended is hereby reenacted and designated as 1966 Replacement Volume 3A of the General Statutes of North Carolina.

(d) This enactment of 1965 Replacement Volumes 1C and 1D and 1966 Replacement Volumes 2A and 3A shall not be construed to invalidate or repeal any acts which have been passed during the 1967 Session of the General Assembly, prior to the date of ratification, nor shall this enactment include any appended annotations, editorial notes, comments and cross references, legislative or historical references, or other material connected or supplemental to said chapters, subchapters, articles and sections, but not contained in the body hereof. (1967, c. 1266.)

Article 2.

The General Statutes Commission.

§ 164-12. Creation; name.

Editor's Note.—For article on the North Carolina General Statutes Commission, see 46 N.C.L. Rev. 469 (1968).

§ 164-13. Duties; use of funds.—(a) It shall be the duty of the Commission:

(1) To advise and cooperate with the Division of Legislative Drafting and Codification of Statutes of the Department of Justice in the work of continuous statute research and correction for which the Division is made responsible by § 114-9 (c).

(2) To advise and cooperate 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 (2).

(3) To make a continuing study of all matters involved in the preparation and publication of modern codes of law.

(4) To recommend to the General Assembly the enactment of such substantive changes in the law as the Commission may deem advisable.

(1969, c. 541, s. 3.)

Editor's Note.—The 1969 amendment substituted "§ 114-9 (2)" for "§ 114-9 (b)" at the end of subdivision (2) of subsection (a). As subsection (b) was not changed by the amendment, it is not set out.

§ 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 General Statutes Commission;
(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 University;
(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.

(c) After the appointment of the original members of the Commission, appointments by the president of the North Carolina State Bar, the General Statutes Commission, and the deans of the schools of law of Duke University, the University of North Carolina, and Wake Forest University 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.

(f) Notwithstanding the expiration of the term of the appointment, the terms of members of the General Statutes Commission shall continue until the appointment of a successor has been made and reported to the secretary of the Commission. (1945, cc. 157, 635; 1947, c. 114, s. 3; 1967, cc. 17, 1230; 1969, c. 541, s. 4.)

Editor's Note.—

The first 1967 amendment added subsection (f).

The second 1967 amendment substituted "by the General Statutes Commission" for "by the president of the North Carolina Bar Association" in subdivision (2) of subsection (a) and substituted "the General Statutes Commission" for "the president of the North Carolina Bar Association" near the beginning of subsection (c).

The 1969 amendment substituted "Wake Forest University" for "Wake Forest College" in subdivision (5) of subsection (a) and in subsection (c).

As the other subsections were not affected by the amendments, they are not set out.

§ **164-19. Compensation.**—Members of the Commission shall be paid the amount of per diem provided by G.S. 138-5 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; 1969, c. 445, s. 3.)

Editor's Note. — The 1969 amendment substituted "the amount of per diem provided by G.S. 138-5" for "ten dollars a day."

Chapter 165.

Veterans.

Article 1.

North Carolina Department of Veterans Affairs.

§ 165-1. North Carolina Veterans Commission renamed.—The North Carolina Veterans Commission is hereby renamed the North Carolina Department of Veterans Affairs. The Department shall assume all duties, responsibilities and powers formerly exercised by the Veterans Commission, and shall further exercise those powers and duties prescribed in this article and elsewhere in the General Statutes. (1967, c. 1060, s. 1.)

Revision of Article.—Session Laws 1967, c. 1060, s. 1, effective July 1, 1967, rewrote the former article, which also consisted of eleven sections and derived from Session Laws 1945, c. 723, s. 1; c. 1087; 1949, c. 430, ss. 1, 2; c. 1292; 1951, c. 1048, ss. 1, 2; 1957, c. 541, s. 19. The 1967 act so changed the provisions of the former article that no detailed explanation of the changes has been attempted, but where present sections are similar to prior provisions, the historical citations have been added.

§ 165-2. References changed. — Wherever in the General Statutes the words "North Carolina Veterans Commission" appear, the same shall be stricken out and the words "North Carolina Department of Veterans Affairs" inserted in lieu thereof. (1967, c. 1060, s. 1.)

§ 165-3. Definitions.—Wherever used in this article, unless the context otherwise requires, the terms defined in this section shall have the following meaning:

(1) "Board" means the State Board of Veterans Affairs.
(2) "Department" means the North Carolina Department of Veterans Affairs, an agency of the government of the State of North Carolina.
(3) "Director" means the State Director of Veterans Affairs.
(4) "Veteran" means
   a. For qualifying as a voting member of the State Board of Veterans Affairs and as the State Director of Veterans Affairs, a person who served honorably during a period of war as defined in Title 38, United States Code.
   b. For entitlement to the services of the Department of Veterans

Affairs, any person who may be entitled to any benefits or rights under the laws of the United States by reason of service in the armed forces of the United States.

(5) "Veterans organization" means any organization of veterans which has been chartered by an act of the United States Congress and is legally constituted and operating in this State pursuant to said charter. (1945, c. 723, s. 1; 1949, c. 430, s. 1; 1967, c. 1060, s. 1.)

§ **165-4. Purpose.**—The purpose of this article is to provide assistance to veterans, their families and their dependents, in obtaining or maintaining privileges, rights and benefits to which they are entitled under federal, State or local laws. (1945, c. 723, s. 1; 1967, c. 1060, s. 1.)

§ **165-5. State Board of Veterans Affairs.**—(a) The Department shall be governed by a State Board of Veterans Affairs.

(b) Membership on the Board shall consist of five voting members and representatives of major veterans organizations, as hereinafter provided:

(1) There shall be five voting members who shall be veterans, and each shall be appointed by the Governor for a five-year term. These terms shall commence in successive years beginning May 17 of each year as previously provided for the Veterans Commission. Initially, the five voting members shall be the same five persons who are serving as voting members of the Veterans Commission at the time of ratification of this article, and appointments to the Board of Veterans Affairs shall be made as the Veterans Commission terms expire.

(2) Both major political parties in the State shall be represented on the voting membership of the Board.

(3) Each voting member shall continue to serve after the expiration of his term until his successor is appointed and qualifies.

(4) Any vacancy occurring prior to the expiration of a voting member's term shall be filled by appointment by the Governor for the unexpired term.

(5) Failure of a voting member to attend any meetings of the Board within a one-year period shall constitute grounds for disqualification of said member and the Governor may, in his discretion, declare the position vacant and appoint a new member to serve out the unexpired term of the disqualified member.

(6) The department commander or official head of each veterans organization shall be, ex officio, a member of the Board, but shall have no vote on matters coming before the Board.

(c) The Board shall select one of its voting members to serve as chairman.

(d) The Board shall meet four times every calendar year and may be convoked at such other times as the Governor or chairman may deem necessary.

(e) All members of the Board shall receive a per diem allowance while attending meetings of the Board and shall be allowed travel and subsistence expenses incurred in the discharge of official business. The per diem, travel and subsistence expenses shall be at such rate and in such amount as prescribed by the Director of the Budget pursuant to applicable provisions of law. (1945, c. 723, s. 1; c. 1087; 1949, c. 430, s. 2; 1951, c. 1048, ss. 1, 2; 1967, c. 1060, s. 1.)

Cross Reference.—See note to § 165-1.

§ **165-6. Powers and duties of the Department.**—In furtherance of the stated purpose of this article, the Department is hereby authorized and empowered to do the following:

(1) 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.

(2) To aid persons in active military service and their dependents with problems arising out of said service which come reasonably within the purview of the Department's program of assistance.

(3) To collect data and information as to the facilities and services available to veterans, their families, and dependents and to cooperate with agencies furnishing information or services throughout the State in order to inform such agencies regarding the availability of (i) education, training and retraining facilities, (ii) health, medical, rehabilitation, and housing services and facilities, (iii) employment and reemployment services, (iv) 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.

(4) To establish such field offices, facilities and services throughout the State as may be necessary to carry out the purposes of this article.

(5) To cooperate, as the Department deems appropriate, with governmental, private and civic agencies and instrumentalities in securing services or benefits for veterans, their families, dependents and beneficiaries.

(6) 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.

(7) 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.

(8) It shall be the duty of the Department to train, supervise and assist the employees of any county, city or town who are engaged in veterans service. Authority is hereby granted the governing body of any county, city or town to appropriate such amounts as it may deem necessary to provide a veterans service program and the expenditure of such funds is hereby declared to be for a public purpose; such program shall be operated in affiliation with this Department and under its supervision as set forth above.

(9) The Department may, in its discretion, contribute to each county an amount not to exceed one thousand dollars ($1,000.00) on a matching basis for any fiscal year for the maintenance and operation of a county veterans service program. Participating counties shall furnish the Department such reports, accountings and other information at such times and in such form as the Department may require.

(10) The Department 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; 1949, c. 1292; 1967, c. 1060, s. 1.)

Local Modification. — By virtue of Session Laws 1969, c. 480, s. 1, Mitchell should be stricken from the replacement volume.

§ **165-7. Director and employees.**—(a) The full-time management of the Department shall be under the direction of a State Director of Veterans Affairs. The Board shall elect, with the approval of the Governor, the Director who shall be a veteran of competency and ability. He shall serve for such time as his services are satisfactory to the Board and his salary shall be fixed by the Governor, subject to the approval of the Advisory Budget Commission.

(b) The Director may, with the approval of the Board, employ an Assistant State Director of Veterans Affairs and such other personnel as may be necessary effectively to administer the provisions of this article. In employing such persons, preference shall be given to veterans as defined in § 165-3 (4) a of this article. (1945, c. 723, s. 1; 1957, c. 541, s. 19; 1967, c. 1060, s. 1.)

§ **165-8. Quarters.**—The Department of Administration shall provide, in the city of Raleigh, adequate quarters for the central office of the Department of Veterans Affairs. The Department of Veterans Affairs shall procure suitable space for its field offices and other activities pursuant to applicable provisions of law and in accordance with rules adopted by the Governor with the approval of the Council of State. (1945, c. 723, s. 1; 1967, c. 1060, s. 1.)

§ **165-9. Appropriation.**—Appropriations for the Department shall be made from the general fund of the State, and 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; 1967, c. 1060, s. 1.)

§ **165-10. Transfer of veterans activities.**—The Governor may transfer to the Department such funds, 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; provided, that the provisions 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; 1967, c. 1060, s. 1.)

§ **165-11. Copies of records to be furnished to the North Carolina Department of Veterans Affairs.**—(a) Whenever copies of any State and local public records are requested by a representative of the North Carolina Department of Veterans Affairs in assisting persons in obtaining any federal, State, local or privately provided benefits relating to veterans and their beneficiaries, the official charged with the custody of any such records shall without charge furnish said representative with the requested number of certified copies of such records; provided, that this section shall not apply to the disclosure of information in certain privileged and confidential records referred to elsewhere in the General Statutes of North Carolina, which information shall continue to be disclosed in the manner prescribed by the statute relating thereto.

(b) 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 section. (1967, c. 1060, s. 1.)

ARTICLE 2.

Minor Veterans.

§ **165-13. Definition.**—As used in this article, "veteran" means any person who may be entitled to any benefits or rights under the laws of the United States, by reason of service in the armed forces of the United States. (1945, c. 770; 1967, c. 1060, s. 2.)

Editor's Note. — The 1967 amendment, effective July 1, 1967, rewrote this section.

§ **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 laws of the United States relating to veterans benefits. (1945, c. 770; 1967, c. 1060, s. 3.)

Editor's Note. — The 1967 amendment, effective July 1, 1967, substituted "laws of the United States relating to veterans benefits" for "Servicemen's Readjustment Act."

§ **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 laws of the United States relating to veterans

benefits, 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; 1967, c. 1060, s. 4.)

Editor's Note. — The 1967 amendment, effective July 1, 1967, substituted "laws of the United States relating to veterans benefits" for "Servicemen's Readjustment Act."

§ **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 laws of the United States relating to veterans benefits, and 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 subdivision (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 laws of the United States relating to veterans benefits.

(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 laws of the United States relating to veterans benefits, 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 subdivision (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 subdivision (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 laws of the United States relating to veterans benefits. (1945, c. 770; 1967, c. 1060, s. 5.)

Editor's Note.—The 1967 amendment, effective July 1, 1967, substituted "laws of the United States relating to veterans benefits" for "Servicemen's Readjustment Act" throughout this section.

ARTICLE 3.

Minor Spouses of Veterans.

§ **165-17. Definition.**—As used in this article, "veteran" means any person who may be entitled to any benefits or rights under the laws of the United States, by reason of service in the armed forces of the United States. (1945, c. 771; 1967, c. 1060, s. 6.)

Editor's Note. — The 1967 amendment, effective July 1, 1967, rewrote this section.

§ **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 laws of the United States relating to veterans benefits, in as full and ample manner as if such minor husband or wife of such veteran had attained the age of twenty-one years.

(1967, c. 1060, s. 7.)

Editor's Note. — The 1967 amendment, effective July 1, 1967, substituted "laws of the United States relating to veterans benefits" for "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 subsection (a).

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

Authority to suspend accrued statutory rights may not be reasonably implied from the general terms of this section. Harrill v. Teachers' & State Employees' Retirement Sys., 271 N.C. 357, 156 S.E.2d 702 (1967).

ARTICLE 4.

Scholarships for Children of War Veterans.

§ **165-19. Purpose.**—In appreciation for the service and sacrifices of North Carolina's war veterans and as evidence of this State's concern for their children, there is hereby continued a revised program of scholarships for said children as set forth in this article. (1967, c. 1060, s. 8.)

Revision of Article.—Session Laws 1967, c. 1060, s. 8, effective July 1, 1967, rewrote the former article, which related to copies of records concerning veterans. The former article consisted of four sections and derived from Session Laws 1945, c. 1064.

§ **165-20. Definitions.**—As used in this article the terms defined in this section shall have the following meaning:

(1) "Active federal service" means full-time duty in the armed forces other than active duty for training; however, if disability or death occurs while on active duty for training (i) as a direct result of armed conflict or (ii) while engaged in extra-hazardous service, including such service under conditions simulating war, such active duty for training shall be considered as active federal service.

(2) "Armed forces" means the army, navy, marine corps, air force and coast guard, including their reserve components.

(3) "Child" means a person who has completed high school or its equivalent prior to receipt of a scholarship as may be awarded under this article and who further meets one of the following requirements:

a. A person whose veteran parent was a legal resident of North Carolina at the time of said veteran's entrance into the armed forces.

b. A veteran's child who was born in North Carolina and has lived in North Carolina continuously since birth. Provided, that the requirement in the preceding sentence as to birth in North Carolina may be waived by the North Carolina Department of Veteran's Affairs if it is shown to the satisfaction of the Department that the child's mother was a native-born resident of North Carolina and was such resident at the time of her marriage to the veteran and was outside the State temporarily at the time of the child's birth, following which the child was returned to North Carolina within a reasonable period of time where said child has since lived continuously.

c. A person meeting either of the requirements set forth in subdivision (3) a or b above, and who was legally adopted by the veteran prior to said person's reaching the age of six years and within 10 years of the veteran's entry on active duty for the period of war under which said person's entitlement to a scholarship is being considered.

(4) "Period of war" and "wartime" shall mean any of the periods or circumstances as defined below:

a. World War I, meaning (i) the period beginning on April 6, 1917 and ending on November 11, 1918, and (ii) in the case of a veteran who served with the United States armed forces in Russia, the period beginning on April 6, 1917 and ending on April 1, 1920.

b. World War II, meaning the period beginning on December 7, 1941 and ending on December 31, 1946.

c. Korean Conflict, meaning the period beginning on June 27, 1950 and ending on January 31, 1955.

d. Vietnam era, meaning the period beginning on August 5, 1964, and ending on such date as shall be prescribed by Presidential proclamation or concurrent resolution of the Congress.

e. Any period of service in the armed forces during which the veteran parent of an applicant for a scholarship under this article suffered death or disability (i) as a direct result of armed conflict or (ii) while engaged in extra-hazardous service, including such service under conditions simulating war.

(5) "Private educational institution" means any junior college, senior college or university which is operated and governed by private interests not under the control of the federal, State or any local government, which is located within the State of North Carolina, which does not operate for profit, whose curriculum is primarily directed toward the awarding of associate, baccalaureate or graduate degrees, which agrees to the applicable administration and funding provisions of § 165-22.1 of this article, and which is otherwise approved by the State Board of Veterans Affairs.

(6) "State educational institution" means any educational institution of higher learning which is owned and operated by the State of North Carolina, or any community college operated under the provisions of chapter 115A and article 3 of chapter 116 of the General Statutes of

North Carolina, or the college program of the North Carolina School of the Arts.

(7) "Veteran" means a person who served as a member of the armed forces of the United States in active federal service during a period of war and who was separated from the armed forces under conditions other than dishonorable. A person who was separated from the armed forces under conditions other than dishonorable and whose death or disability was incurred (i) as a direct result of armed conflict or (ii) while engaged in extra-hazardous service, including such service under conditions simulating war, shall also be deemed a "veteran" and such death or disability shall be considered wartime service-connected. (1967, c. 1060, s. 8; 1969, c. 720, s. 3; c. 741, ss. 1, 2.)

Editor's Note.—The first 1969 amendment, effective July 1, 1969, added present paragraph d of subdivision (4) and redesignated former paragraph d of that subdivision as e.

The second 1969 amendment, effective July 1, 1969, added present subdivision (5), inserted "chapter 115A and" and "the college program of" in present subdivision (6) and redesignated former subdivisions (5) and (6) as present subdivisions (6) and (7).

§ 165-21. Scholarship. — A scholarship granted pursuant to this article shall consist of the following benefits in either a State or private educational institution:

(1) With respect to State educational institutions, unless expressly limited elsewhere in this article, a scholarship shall consist of:
   a. Tuition,
   b. A reasonable board allowance,
   c. A reasonable room allowance,
   d. Such other items and institutional service as are embraced within the so-called institutional matriculation fees and other special fees and charges required to be paid as a condition to remaining in said institution and pursuing the course of study selected.

(2) With respect to private educational institutions, a scholarship shall consist of a monetary allowance as prescribed in § 165-22.1 (d).

(3) Only one scholarship may be granted pursuant to this article with respect to each child and it shall not extend for a longer period than four academic years, which years, however, need not be consecutive. (1967, c. 1060, s. 8; 1969, c. 741, s. 3.)

Editor's Note. — Session Laws 1967, c. 1060, s. 9, effective July 1, 1967, provides: "Those persons who have been granted a scholarship under the proviso of G.S. 116-150, as the same appears in 1966 Replacement Volume 3A of the General Statutes, and who attend a State educational institution on or after July 1, 1967, shall be entitled for the remainder of their period of scholarship eligibility to those benefits now provided for in Class I-B, as that class is defined in G.S. 165-22 (a) (2). All other persons who have been granted a scholarship under G.S. 116-150, as the same appears in the 1966 Replacement Volume 3A of the General Statutes, excluding those covered by the proviso referred to in the preceding sentence, and who attend a State educational institution on or after July 1, 1967, shall be entitled for the remainder of their period of scholarship eligibility to those benefits now provided for in G.S. 165-21."

The 1969 amendment, effective July 1, 1969, rewrote this section.

§ 165-22. Classes or categories of eligibility under which scholarships may be awarded. — A child, as defined in this article, who falls within the provisions of any eligibility class described below shall, upon proper application be considered for a scholarship, subject to the provisions and limitations set forth for the class under which he is considered:

(1) Class I-A: Under this class a scholarship shall be awarded to any child whose veteran parent
   a. Was killed in action or died from wounds or other causes not due

to his own wilful misconduct while a member of the armed forces during a period of war, or

b. Has died of service-connected injuries, wounds, illness or other causes incurred or aggravated during wartime service in the armed forces, as rated by the United States Veterans Administration.

(2) Class I-B. Under this class a limited scholarship providing only those benefits set forth in § 165-21 (a) (1) and (4), and § 165-21 (b) of this article, shall be awarded to any child whose veteran parent, at the time the benefits pursuant to this article are sought to be availed of, is or was at the time of his death receiving compensation for a wartime service-connected disability of one hundred percent (100%) as rated by the United States Veterans Administration. Provided, that if the veteran parent of a recipient under this class should die of his wartime service-connected condition before the recipient shall have utilized all of his scholarship eligibility time, then the North Carolina Department of Veterans Affairs shall amend the recipient's award from Class I-B to Class I-A for the remainder of the recipient's eligibility time. The effective date of such an amended award shall be determined by the North Carolina Department of Veterans Affairs, but, in no event, shall it predate the date of the veteran parent's death.

(3) Class II: Under this class a scholarship may be awarded to not more than one hundred children yearly, each of whose veteran parent, at the time the benefits pursuant to this article are sought to be availed of,

a. Is or was at the time of his death receiving compensation for a wartime service-connected disability of thirty percent (30%) or more, but less than one hundred percent (100%), as rated by the United States Veterans Administration, or

b. Is or was at the time of his death receiving wartime compensation for a statutory award for arrested pulmonary tuberculosis, as rated by the United States Veterans Administration, or

c. Was a prisoner of war for a period of at least six months and who was wounded in combat against an enemy of the United States of America during the time of war and is or was at the time of his death receiving compensation for a wartime service-connected disability of twenty percent (20%) or more, as rated by the United States Veterans Administration.

(4) Class III: Under this class a scholarship may be awarded to not more than one hundred children yearly, each of whose veteran parent, at the time the benefits pursuant to this article are sought to be availed of, is or was at the time of his death drawing pension for permanent and total disability, nonservice-connected, as rated by the United States Veterans Administration. (1967, c. 1060, s. 8.)

Editor's Note. — Session Laws 1967, c. 1060, s. 9, effective July 1, 1967, provides: "Those persons who have been granted a scholarship under the proviso of G.S. 116-150, as the same appears in 1966 Replacement Volume 3A of the General Statutes, and who attend a State educational institution on or after July 1, 1967, shall be entitled for the remainder of their period of scholarship eligibility to those benefits now provided for in Class I-B, as that class is defined in G.S. 165-22 (a) (2). All other persons who have been granted a scholarship under G.S. 116-150, as the same appears in the 1966 Replacement Volume 3A of the General Statutes, excluding those covered by the proviso referred to in the preceding sentence, and who attend a State educational institution on or after July 1, 1967, shall be entitled for the remainder of their period of scholarship eligibility to those benefits now provided for in G.S. 165-21."

§ **165-22.1. Administration and funding.**—(a) The administration of the scholarship program shall be vested in the North Carolina Department of Veterans Affairs, and the disbursing and accounting activities required shall be a responsibility of the Department of Administration. The Department of Veterans Affairs shall determine the eligibility of applicants, select the scholarship recipients, establish the effective date of scholarships, and may suspend or revoke scholarships if the said Department of Veterans Affairs finds that the recipient does not maintain an adequate academic status, or if the recipient engages in riots, unlawful demonstrations, the seizure of educational buildings, or otherwise engages in disorderly conduct, breaches of the peace or unlawful assemblies. The Department of Veterans Affairs shall maintain the primary and necessary records, and promulgate such rules and regulations not inconsistent with the other provisions of this article as it deems necessary for the orderly administration of the program. It may require of State or private educational institutions, as defined in this article, such reports and other information as it may need to carry out the provisions of this article. The Department of Administration shall disburse scholarship payments for recipients certified eligible by the Department of Veterans Affairs upon certification of enrollment by the enrolling institution.

(b) Funds for the support of this program shall be appropriated to the Department of Administration as a reserve for payment of the allocable costs for room, board, tuition, and other charges, and shall be placed in a separate budget code from which disbursements shall be made. In the event the said appropriation for any year is insufficient to pay the full amounts allocable under the provisions of this article, such supplemental sums as may be necessary shall be allocated from the Contingency and Emergency Fund. The method of disbursing and accounting for funds allocated for payments under the provisions of this section shall be in accordance with those standards and procedures prescribed by the Director of the Budget, pursuant to the Executive Budget Act.

(c) Allowances for room and board in State educational institutions shall be at such rate as the Director of the Budget may determine to be reasonable.

(d) Scholarship recipients electing to attend a private educational institution shall be granted a monetary allowance for each term or other academic period attended under their respective scholarship awards. All recipients under Class I-B scholarship shall receive an allowance at one rate, irrespective of course or institution; all recipients under Classes I-A, II and III shall receive an uniform allowance at a rate higher than for Class I-B, irrespective of course or institution. The amount of said allowances shall be determined by the Director of the Budget and made known prior to the beginning of each fall quarter or semester; provided that the Director of the Budget may change the allowances at intermediate periods when in his judgment such changes are necessary. Disbursements by the State shall be to the private institution concerned, for credit to the account of each recipient attending said institution. The manner of payment to any private institution shall be as prescribed by the Department of Administration. The participation by any private institution in the program shall be subject to the applicable provisions of this article and to examination by State auditors of the accounts of scholarship recipients attending or having attended private institutions. The Department of Veterans Affairs may defer making an award or may suspend an award in any private institution which does not comply with the provisions of this article relating to said institutions. (1967, c. 1060, s. 8; 1969, c. 720, ss. 4, 5; c. 741, s. 4.)

Editor's Note.—The first 1969 amendment, effective July 1, 1969, rewrote the former first paragraph of the section and designated it as subsection (a). The second 1969 amendment, effective July 1, 1969, rewrote the section.

Article 5.

Veterans' Recreation Authorities.

§ 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 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; 1965, c. 367.)

Editor's Note. — The 1965 amendment deleted "shall provide separate recreational centers for persons of the colored and white races, and they" following "The commissioners" in the second paragraph.

§ 165-36. Conveyance, lease or transfer of property by a city or county to an authority.

Local Modification.—Mecklenburg and city of Charlotte: 1965, c. 715, s. 1.

Article 7.

Miscellaneous Provisions.

§ 165-44. Korean and Vietnam veterans; benefits and privileges.—(a) All benefits and privileges now granted by the laws of this State to veterans of World War I and World War II and their dependents and next of kin are hereby extended and granted to veterans of the Korean Conflict and their dependents and next of kin.

For the purposes of this section, the term "veterans of the Korean Conflict" means those persons serving in the armed forces of the United States during the period beginning on June 27, 1950, and ending on January 31, 1955.

(b) All benefits and privileges now granted by the laws of this State to veterans of World War I, World War II, the Korean Conflict, and their dependents and next of kin are hereby extended and granted to veterans of the Vietnam era and their dependents and next of kin.

For purposes of this section, the term "veterans of the Vietnam era" means those persons serving in the armed forces of the United States during the period beginning August 5, 1964, and ending on such date as shall be prescribed by Presidential proclamation or concurrent resolution of the Congress. (1953, c. 215; 1969, c. 720, ss. 1, 2.)

Editor's Note.—The 1969 amendment, effective July 1, 1969, designated the former provisions of this section as subsection (a), substituted, at the end of the second paragraph of subsection (a), "January 31, 1955" for "such date as shall be determined by Presidential proclamation or concurrent resolution of the Congress," and added present subsection (b).

Opinions of Attorney General. — Mr. John R. Parker, Sampson County Attorney, 9/11/69.

STATE OF NORTH CAROLINA

Department of Justice

Raleigh, North Carolina

October 24, 1969

I, Robert Morgan, Attorney General of North Carolina, do hereby certify that the foregoing 1969 Cumulative Supplement to the General Statutes of North Carolina was prepared and published by The Michie Company under the supervision of the Division of Legislative Drafting and Codification of Statutes of the Department of Justice of the State of North Carolina.

Robert Morgan
Attorney General of North Carolina