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"NECESSARY EXPENSES"
WITHIN THE MEANING OF ARTICLE VII, SECTION 7,
OF THE NORTH CAROLINA CONSTITUTION

ALBERT COATES* AND WILLIAM S. MITCHELL**

“No county, city, town, or other municipal corporation,” says Article VII, Section 7, of the North Carolina Constitution, “shall contract any debt, pledge its faith or loan its credit, nor shall any tax be levied or collected by any officers of the same except for the necessary expenses thereof, unless by a vote of the majority of the qualified voters therein.”

In 1876, eight years after this provision was adopted, the city of Charlotte undertook to issue bonds for admittedly necessary expenses, without a vote of the people. In the case of Wilson v. Charlotte,¹ it was argued that this could not be done because Article VII, Section 7, consisted of two separate restrictions, one on the power to incur debt, and the other on the power to levy taxes; that the limitation at the end applied to both restrictions; and that, while taxes for necessary expenses might be levied without a vote of the people, no debt of any sort could be incurred without a vote of the people. “The benefits to be derived and the evils to be avoided by a cash administration of government are too obvious for further comment.”² Not so, said the majority opinion. "The effect of such reading would be to prohibit every municipal corporation from contracting any debt, absolutely and without qualification, and to make every debt contracted for whatever purpose, and under all circumstances, illegal and void. Such a prohibition would be unreasonable. The duties of a county or city government cannot be performed without often contracting debts. Officers and servants of divers duties must be engaged, payable at some fixed interval—daily, monthly, or quarterly, as the case may be. The contract for employment creates a debt as soon as the service has been performed. It must necessarily remain a debt for some space of time, however short; and if the debt be thus made illegal, the corporation cannot lawfully pay, and the creditor cannot recover it. So of contracts to execute a certain work. For example, to build a bridge. An absolute prohibition to contract a debt

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¹74 N. C. 748 (1876). The city of Charlotte levied a tax of ¼ of 1% on the property valuation to be used to pay the interest and principal on bonds issued to make up deficiencies incurred for widening the city streets, and other necessary city purposes.
²Id. at 763 (dissent of Bynum, J.).
is a prohibition to contract at all, for every contract may and naturally does end in debt. We cannot suppose that the Constitution intended to deprive these great and necessary public corporations of a power which is usual to all corporations, which these have possessed, and which is necessary to their usefulness, if not to their very existence, except upon language which admits of no other meaning. From that day to this it has been held that local units of government may incur debts, as well as levy taxes, for necessary expenses without a vote of the people. The dissenting judge took one parting shot at the court's conclusion. "Such a construction only avoids one evil by flying to another. There is only one way of escape, and that is by applying the plain prohibition against the contraction of any debt, for any purpose, except in the way prescribed, to-wit, by popular vote.

"According to the construction put upon it by the Court, Art. VII, sec. 7, had as well be struck from the Constitution; as I am of opinion that practically it is thereby made inoperative." How much of poetry and how much of truth was wrapped up in these observations, the subsequent history of this section will reveal.

From 1868 to 1940 the Supreme Court of North Carolina has construed "necessary expenses" with alternating strictness and liberality in the effort to keep in the middle of the road. It has successively classified the following as necessary expenses within the meaning of Article VII, Section 7: (1) the ordinary expenses of government, including salaries and wages and office expense (decisions specifically mention salaries of mayor, treasurer, city attorney, janitor, county commissioners' pay, county attorney, sheriff's salary and expense of sheriff's office, register of deeds' salary and expense of office, clerk superior court's salary and expense of office, county account's salary, police,等).
jurors' fees, feeding and care of prisoners,\textsuperscript{9} tax listing expense, expense of holding elections,\textsuperscript{10} etc.); (2) the building and repair of municipal buildings such as city halls,\textsuperscript{11} county courthouses,\textsuperscript{12} guardhouses and jails,\textsuperscript{13} fire alarm systems,\textsuperscript{14} fire stations and sites therefor,\textsuperscript{15} police station,\textsuperscript{16} office rent for suitable headquarters,\textsuperscript{17} etc.; (3) the building

\textsuperscript{9} Nantahala Power & Light Co. v. Clay County, 213 N. C. 698, 197 S. E. 603 (1938), cited \textit{supra} note 7; Long v. Commissioners, 76 N. C. 273 (1877) \textit{sembl}e, cited \textit{supra} note 5; see Herring v. Dixon, 122 N. C. 420, 422, 29 S. E. 368, 369 (1898).

\textsuperscript{10} Nantahala Power & Light Co. v. Clay County, 213 N. C. 698, 197 S. E. 603 (1938), cited \textit{supra} note 7.

\textsuperscript{11} Hightower v. Raleigh, 150 N. C. 569, 65 S. E. 279 (1909), in which $125,000 of city bonds issued by Raleigh, under special legislative authority without a vote of the people, for the purpose of erecting a municipal building to be used as a police station, city hall, and for other municipal purposes, were held to be for necessary municipal expenses; Kinston v. Security Trust Co., 169 N. C. 207, 85 S. E. 399 (1915), in which $100,000 of city bonds issued to provide funds with which to pave and improve city streets, enlarge and improve the electric light plant, enlarge the water-works system, install an electric fire alarm system, and erect municipal buildings, were held to be for necessary municipal expenses.

\textsuperscript{12} Long v. Commissioners, 76 N. C. 273 (1877), in which a 10 cent tax on $100 property valuation levied by the county commissioners to provide funds with which to repair the county courthouse was held to be for a necessary expense; Halcombe v. Commissioners, 89 N. C. 346 (1893), in which a special county tax levied, under special legislative authority, without a vote of the qualified voters for the purpose of building a county courthouse, was held to be for a necessary expense; Vaughn v. Commissioners, 117 N. C. 429, 23 S. E. 354 (1895), in which the county commissioners issued county notes to provide funds with which to build a county courthouse. The court said: "It is absolutely essential to the administration of justice that a suitable court-house and jail should be built at every county site in the State." \textit{Id.} at 434, 23 S. E. at 355. Black v. Commissioners, 129 N. C. 121, 39 S. E. 818 (1901), in which county bonds were issued to provide funds with which to build a county courthouse; Burgin v. Smith, 151 N. C. 561, 66 S. E. 607 (1909); Jackson v. Commissioners, 171 N. C. 379, 88 S. E. 521 (1916), in which the county commissioners sought to issue $80,000 of bonds to provide funds to construct a courthouse and a "new and sufficiently capacious jail, with sufficient and modern conveniences, light, heat, water, and sewerage", and, also, "a house suitable for the jailer, on the same lot"; Nantahala Power & Light Co. v. Clay County, 213 N. C. 698, 197 S. E. 603 (1938), cited \textit{supra} note 7.

\textsuperscript{13} Haskett v. Tyrrell County, 152 N. C. 714, 68 S. E. 202 (1910), in which $6,500 county bonds were issued to provide funds with which to build a county jail; Jackson v. Commissioners, 171 N. C. 379, 88 S. E. 521 (1916), cited \textit{supra} note 12; Castevens v. Stanly County, 209 N. C. 75, 183 S. E. 3 (1935); Nantahala Power & Light Co. v. Clay County, 213 N. C. 698, 197 S. E. 603 (1938), cited \textit{supra} note 7. Cromartie v. Commissioners, 87 N. C. 134 (1882) \textit{sembl}e, in which a county tax of 34 1/3 cents on the $100 property valuation was levied to be used to repair the county jail, the county courthouse, bridges and for other necessary county expenses; see Vaughn v. Commissioners, 117 N. C. 429, 434, 23 S. E. 354, 355 (1895); Mayo v. Commissioners, 122 N. C. 5, 15, 29 S. E. 343, 346 (1898).

\textsuperscript{14} Kinston v. Security Trust Co., 169 N. C. 207, 85 S. E. 399 (1915), cited \textit{supra} note 11.

\textsuperscript{15} Briggs v. Raleigh, 166 N. C. 149, 81 S. E. 1084 (1914), in which the city issued $100,000 in bonds for the purposes of extending the sewer line, purchasing a site and building a fire house thereon, and for building permanent pavements. The court said: "It must be admitted that the purposes for which the bonds were issued are all municipal necessary expenses. . . ." \textit{Id.} at 151, 81 S. E. at 1085.

\textsuperscript{16} Hightower v. Raleigh, 150 N. C. 569, 65 S. E. 279 (1909), cited \textit{supra} note 11.

\textsuperscript{17} Nantahala Power & Light Co. v. Clay County, 213 N. C. 698, 197 S. E. 603 (1938), cited \textit{supra} note 7; Mitchell v. Trustees of Township No. 8, 71 N. C. 400 (1874).
and repair of public roads,\textsuperscript{18} streets,\textsuperscript{19} and bridges;\textsuperscript{20} (4) the building

\textsuperscript{18} Herring v. Dixon, 122 N. C. 420, 29 S. E. 368 (1898), in which a special county tax was levied, under special legislative authority, without a vote of the people, for the purpose of "laying out, discontinuing, establishing, building, constructing, and repairing public roads and public bridges" in the county; Tate v. Commissioners, 122 N. C. 812, 30 S. E. 352 (1898), in which the county tax was applied not only to constructing and maintaining roads, but also to the purchase of such implements, teams, wagons, camp outfit and stockade for the use and safekeeping of convict labor "as may be found necessary in the proper carrying on of the road construction"; Highway Comm. v. C. A. Webb & Co., 152 N. C. 710, 68 S. E. 211 (1910), in which constructing, improving, and macadamizing the public roads was held to be a necessary expense of a township; Commissioners v. Road Commissioners, 165 N. C. 632, 81 S. E. 1001 (1914); Hargrave v. Commissioners, 168 N. C. 626, 84 S. E. 1044 (1915); Woodall v. Highway Comm., 176 N. C. 377, 97 S. E. 226, (1918), in which the construction and maintenance of roads is held to be a necessary expense of a special highway district; Ellis v. Greene, 191 N. C. 761, 133 S. E. 395 (1926); Thomson v. Harnett County, 209 N. C. 692, 184 S. E. 490 (1936), in which $427,000 of county bonds bearing a 4% interest rate were issued to refinance a like amount of township road bonds bearing a 6% interest rate, under a plan whereby the county was to assume full liability for the various township road bonds, some of which were in default, by issuing county bonds therefor, was to hold the township bonds in a sinking fund, and was to pay the county bonds by a tax equal to 6% of the bonds issued by each township to be levied in the respective townships. See Brodnax v. Groom, 64 N. C. 244, 249 (1870).

\textsuperscript{19} Wilson v. Charlotte, 74 N. C. 748 (1876), cited \textit{supra} note 1, in which the court held that constructing and repairing city streets is within the class of necessary expenses, and that widening the streets must come under the same class; Tucker v. Raleigh, 75 N. C. 267 (1876) (work on city streets); Young v. Henderson, 76 N. C. 420 (1877); Greensboro v. Scott, 138 N. C. 181, 50 S. E. 589 (1905) (grading and paving the city streets); Hendersonville v. Jordan, 150 N. C. 35, 63 S. E. 167 (1908); Kinston v. Security Trust Co., 169 N. C. 207, 85 S. E. 399 (1915); Brown v. Hillsboro, 185 N. C. 368, 117 S. E. 41 (1923); Starmount Co. v. Hamilton Lakes, 205 N. C. 514, 171 S. E. 909 (1933), in which the court held that since the construction and improvement of streets, and the construction and maintenance of water-works and sewerage systems are within the class of necessary expenses, it is within the discretion of the town commissioners as to whether 22 miles of street grading, 3 miles of street paving, 712 miles of sewer main, and 81 miles of water main, costing not less than $200,000 in the aggregate, was a necessary expense of a municipal corporation covering an area of only about 14,000 square acres, and having a population of not over fifteen families.

Commissioners v. C. A. Webb & Co., 148 N. C. 120, 61 S. E. 670 (1908), in which $18,000 in city bonds issued for the purpose of building, repairing, and paving city sidewalks were held to be for necessary expenses of the city; Storm v. Wrightsville Beach, 189 N. C. 679, 128 S. E. 17 (1925), in which city bonds issued for the purpose of constructing public boardwalks on the streets and other public places of the town, were held to be for necessary municipal expenses.

\textsuperscript{20} Brodnax v. Groom, 64 N. C. 244 (1870), in which the county commissioners levied a special tax under special legislative authority for the purpose of building and repairing public bridges in the county: Satterthwaite v. Commissioners, 76 N. C. 153 (1877), in which county bonds were issued to purchase an existing toll-bridge across the Pamlico river for the purpose of establishing a free-bridge for the use of the public; Evans v. Commissioners, 89 N. C. 164 (1883); Herring v. Dixon, 122 N. C. 420, 29 S. E. 368 (1898), cited \textit{supra} note 18; Warsaw v. Malone, 159 N. C. 573, 75 S. E. 1011 (1912), in which the town of Warsaw issued bonds for the purpose of building and maintaining bridges therein; Martin County v. Wachovia Bank & Trust Co., 178 N. C. 26, 100 S. E. 134 (1919), in which $150,000 of county bonds to be used in building a bridge, and a road approaching same, were held to be for a necessary county expense, even though part of the bridge and road extended into the adjoining county; Emery v. Commissioners, 181 N. C. 420, 107 S. E. 443 (1921), in which $80,000 of county bonds to be used in building a bridge and approaches thereto were held to be for a necessary ex-
and repair of market houses;\textsuperscript{21} (5) the building and repair of county homes;\textsuperscript{22} and the maintenance of the poor;\textsuperscript{23} (6) furnishing adequate water supply, including the digging of wells;\textsuperscript{24} contracting for water supply, building of water-works plants; (7) the building of sewerage systems;\textsuperscript{25} (8) the building of electric light plants;\textsuperscript{26} (9) performing autopsy,\textsuperscript{27} maintenance of the public peace, and other phases of the administration of justice;\textsuperscript{28} (10) fire insurance for school buildings;\textsuperscript{29} expense, even though part of the bridge and approaches thereto extended across the line into another state.

Williams v. Commissioners, 119 N. C. 520, 26 S. E. 150 (1896) \textit{seem} (maintaining free public ferries in the county).

\textsuperscript{21} Smith v. New Bern, 70 N. C. 14 (1874) (construction of a market-house in and for the use of the city of New Bern); Wade v. Newbern, 77 N. C. 460 (1877), in which the city councilmen entered a contract to lease a warehouse for ten years, to be used as a market-house until a new one could be built; Swinson v. Mount Olive, 147 N. C. 611, 61 S. E. 569 (1908), in which the town issued $6,000 in bonds, with a vote of the people, for the purpose of building a market-house; Le Roy v. Elizabeth City, 166 N. C. 93, 81 S. E. 1072 (1914), in which expenditures for building a market-house and an esplanade adjacent thereto, and the reasonable expenses incurred in issuing the bonds to finance same are held to be necessary expenses.

\textsuperscript{22} Commissioners v. Sidney Spitzer & Co., 173 N. C. 147, 91 S. E. 707 (1917), in which the county commissioners issued bonds for the purpose of securing site for and building a county home; Norfolk Southern R. R. v. Reid, 187 N. C. 320, 121 S. E. 534 (1924); Nantahala Power & Light Co. v. Clay County, 213 N. C. 698, 197 S. E. 603 (1938) (maintenance of county home).

\textsuperscript{23} Jones v. Commissioners, 137 N. C. 579, 50 S. E. 291 (1905); Keith v. Lockhart, 171 N. C. 451, 88 S. E. 640 (1916) (support of the aged and infirm); Commissioners v. Sidney Spitzer & Co., 173 N. C. 147, 91 S. E. 707 (1917); Nantahala Power & Light Co. v. Clay County, 213 N. C. 698, 197 S. E. 603 (1938) (poor and paupers).

\textsuperscript{24} Tucker v. Raleigh, 75 N. C. 267 (1876) (cleaning out wells); see Smith v. New Bern, 70 N. C. 14, 19 (1874) (artesian well).

\textsuperscript{25} Fawcett v. Mount Airy, 134 N. C. 125, 45 S. E. 1029 (1903), in which the court held that a debt incurred by a city or town for the purpose of building and operating plants, and constructing a water-works system, to supply water and electric lights for municipal use, and to sell to its inhabitants, was for a necessary municipal expense; Greensboro v. Scott, 138 N. C. 181, 50 S. E. 589 (1905), in which $250,000 of city bonds were issued for the purpose of building and enlarging a water-works plant, building and maintaining a sewerage system and paving and improving city streets; Bradshaw v. High Point, 151 N. C. 517, 65 S. E. 601 (1909); Underwood v. Asheboro, 152 N. C. 641, 63 S. E. 147 (1910); Murphy v. C. A. Webb & Co., 156 N. C. 402, 72 S. E. 460 (1911); Kinston v. Security Trust Co., 169 N. C. 207, 85 S. E. 399 (1915); Swindell v. Belhaven, 173 N. C. 1, 91 S. E. 369 (1917); Storm v. Wrightsville Beach, 189 N. C. 679, 128 S. E. 17 (1925); Starmount Co. v. Hamilton Lakes, 209 N. C. 514, 171 S. E. 909 (1933), cited supra note 19; Burt v. Biscoe, 209 N. C. 70, 183 S. E. 1 (1935).

\textsuperscript{26} Fawcett v. Mount Airy, 134 N. C. 125, 45 S. E. 1029 (1903), cited supra note 25; Davis v. Fremont, 135 N. C. 538, 47 S. E. 671 (1904); Ellison v. Williamson, 152 N. C. 147, 67 S. E. 255 (1910); Kinston v. Security Trust Co., 169 N. C. 207, 85 S. E. 399 (1915) (enlarge and better equip the electric light plant); Swindell v. Belhaven, 173 N. C. 1, 91 S. E. 369 (1917) (system of electric lights); Williamson v. High Point, 213 N. C. 96, 195 S. E. 90 (1938).

\textsuperscript{27} Withers v. Commissioners, 163 N. C. 341, 79 S. E. 615 (1915), in which an autopsy made of a deceased's stomach, upon the order of the trial judge, in a criminal proceeding, was held to be a necessary county expense.

\textsuperscript{28} Nantahala Power & Light Co. v. Clay County, 213 N. C. 698, 197 S. E. 603 (1938), cited supra note 7; see Garsed v. Greensboro, 125 N. C. 159, 162, 35 S. E. 254, 255 (1900) (reasonable expense incurred in regulating the sale of liquor by others as a necessary county and municipal expense); Jones v. Com-
(11) incinerators; (12) parks and playgrounds; (13) professional services in refunding bonds; (14) contract with hospital for care of indigent sick and afflicted poor; (15) jetties; (16) abattoir; (17) county farm agent’s salary; and (18) cemeteries. By way of dictum the court has classified the following as necessary expenses: (19) hay scales and (20) town clock.

The court has classified the following as non-necessary expenses within the meaning of Article VII, Section 7: (1) liquor dispensary; (2) county stock fence; (3) chamber of commerce; (4) wharves and docks; (5) cotton platform; (6) county and city hospital; (7) missioners, 137 N. C. 579, 598, 50 S. E. 291, 298 (1905) (the maintenance of the public peace, and the administration of public justice is included in the term “necessary expense”).


Storm v. Wrightsville Beach, 189 N. C. 679, 128 S. E. 17 (1925), in which city bonds were issued for the purpose of constructing an incinerator for the destruction of garbage in the town.

In Atkins v. Durham, 210 N. C. 295, 186 S. E. 330 (1936), where the city of Durham issued $25,000 in bonds without a vote of the qualified voters, for the purpose of acquiring lands for public parks and playgrounds, including buildings thereon, and improving and developing same, and furnishing them with equipment and apparatus, the court held that for a city as populous and industrial as Durham, public parks and playgrounds were necessary expenses. Cf. Twining v. Wilmington, 214 N. C. 655, 200 S. E. 416 (1939), in which it was held that bonds for the purpose of acquiring bonds and establishing public parks and playgrounds, and equipping same, are not for a necessary expense of the city of Wilmington.


Martin v. Commissioners, 208 N. C. 354, 180 S. E. 777 (1935), in which Wake County, under special legislative authority, without a vote of the qualified voters, contracted to pay an annual rental up to $10,000, and to levy a special tax therefor, to Rex Hospital, for the medical treatment and hospital care of the indigent sick and afflicted poor in that city.

Storm v. Wrightsville Beach, 189 N. C. 679, 128 S. E. 17 (1925), in which city bonds were issued for the purpose of constructing jetties along the beach to keep back the ocean and to build up the town.

Moore v. Greensboro, 191 N. C. 592, 132 S. E. 565 (1926), in which bonds were issued, and a special tax levied, for the purpose of buying a site and erecting and equipping a city abattoir for the slaughter and inspection of cattle and beef.


Keith v. Lockhart, 171 N. C. 451, 88 S. E. 640 (1916), in which a county sought to borrow money for the purpose of building a line fence around the county in order to maintain a free range cattle law therein; Archer v. Joyner, 173 N. C. 75, 91 S. E. 699 (1917).

Keith v. Hedrick, 186 N. C. 392, 119 S. E. 767 (1923), in which the city council, under special legislative authority, sought to set aside the funds from a tax of from 1/30 to 1/10 of 1% on property, to be spent by the chamber of commerce of High Point, under its control and direction, for the purpose of aiding and encouraging the location of manufacturing, industrial, and commercial plants in and near the city, etc.


Walker v. Faison, 202 N. C. 694, 163 S. E. 875 (1932), in which the town
(7) municipal airport;\textsuperscript{45} (8) city auditorium;\textsuperscript{46} (9) schools;\textsuperscript{47} (10) public library;\textsuperscript{48} (11) land and buildings for athletic and recreational purposes;\textsuperscript{49} (12) railroads;\textsuperscript{50} and (13) "fire drill tower".\textsuperscript{51} By way of dictum,\textsuperscript{52} the court has classified an electric street car line as a non-necessary expense.

Since 1868, the court has reversed itself twice, transferring waterworks and electric lights from the non-necessary to the necessary expense grouping.\textsuperscript{53} While it has never reversed its ruling that schools constructed a municipal platform for the convenience of farmers and cotton buyers in loading, unloading, and selling cotton and truck.

\textsuperscript{44} Armstrong v. Commissioners, 185 N. C. 405, 117 S. E. 388 (1923), in which the county proposed to issue $150,000 in bonds, and levy a special tax, for the purpose of constructing and maintaining a tuberculosis hospital in the county; Burleson v. Board of Aldermen, 200 N. C. 30, 156 S. E. 241 (1930), in which the town aldermen proposed to issue $35,000 in bonds, and levy a special tax for the payment of same, for the purpose of constructing, maintaining, and operating a public hospital in the town; Palmer v. Haywood County, 212 N. C. 284, 193 S. E. 688 (1937), in which the county commissioners proposed to issue $30,000 in bonds, and to levy a special tax to pay same, for the purpose of constructing an annex to the county hospital, to be used principally for the care of the indigent sick and afflicted poor of the county; Sessions v. Columbus County, 214 N. C. 634, 200 S. E. 418 (1939).

Nash v. Monroe, 198 N. C. 306, 151 S. E. 634 (1930), in which the city aldermen proposed to borrow $5,000 with which to buy supplies and medical equipment for the city hospital, and the court held that the maintenance of a municipal hospital is not a necessary governmental expense.

\textsuperscript{46} Goswick v. Durham, 211 N. C. 687, 191 S. E. 728 (1937); Sing v. Charlotte, 213 N. C. 60, 195 S. E. 271 (1938), in which the city council proposed to spend $5,000, raised by taxation for a contingency and emergency fund, for the purpose of operating, maintaining, and further equipping the municipal airport.

\textsuperscript{47} Trustees of Goldsboro Graded School v. Broadhurst, 109 N. C. 228, 13 S. E. 781 (1891); Rodman v. Washington, 122 N. C. 39, 30 S. E. 118 (1898); Bear v. Commissioners, 124 N. C. 204, 32 S. E. 558 (1899); Smith v. School Trustees, 141 N. C. 143, 53 S. E. 524 (1906); cf. Collie v. Commissioners, 145 N. C. 170, 59 S. E. 44 (1907).


\textsuperscript{48} Twining v. Wilmington, 214 N. C. 655, 200 S. E. 416 (1939), in which the city proposed to issue bonds for the purpose of erecting and equipping a municipal building to be used in part as a public library; Westbrook v. Southern Pines, 215 N. C. 20, 1 S. E. (2d) 95 (1939), in which the city pledged its faith and credit to procure a grant from the Public Works Administration of the Federal Government to be used in the erection of a public library building.

\textsuperscript{49} Twining v. Wilmington, 214 N. C. 655, 200 S. E. 416 (1939).

\textsuperscript{50} Chester & Lenoir Narrow Gauge R. R. v. Commissioners, 72 N. C. 486 (1875); Wood v. Oxford, 97 N. C. 227, 2 S. E. 653 (1887); Lynchburg & Durham R. R. v. Commissioners, 109 N. C. 159, 13 S. E. 783 (1891); Commissioners v. Payne, 123 N. C. 432, 31 S. E. 711 (1898).

\textsuperscript{51} Armstrong v. Commissioners, 185 N. C. 405, 117 S. E. 388 (1923).

\textsuperscript{52} See Mayo v. Commissioners, 122 N. C. 5, 15, 29 S. E. 343, 346 (1898).

\textsuperscript{53} In the case of Fawcett v. Mount Airy, 134 N. C. 125, 45 S. E. 1029 (1903),
are not a necessary expense, it has reached a substantial equivalent through a belated construction of Article IX of the constitution. However, it has never withdrawn a function from the necessary expense grouping once the favored classification has been granted.

DIVIDING LINE

"It would be difficult or impossible to draw a precise line between what are and what are not the necessary expenses of the government of a city", said the court in Wilson v. Charlotte; and court decisions from that day to this have demonstrated the truth of this observation. It has been repeated until it has become a refrain in later cases. It broke into an almost despairing cry in Henderson v. Wilmington. In defining 'necessary expense' we derive practically no aid from the cases decided in other States. . . . We must rely on our own decisions."

And the fervor of this cry has constantly increased. But when we turn to "our own decisions", what do we find? "There are some things clearly within the line" of necessary expenses, said the court in Mayo v. Commissioners, such as courthouses, jails, public highways, public bridges. "There are others that are clearly outside the line of necessary expenses, such as appropriations to build railroads, cotton factories, to build and operate electric street car lines, etc." However, said the court, "The erection of electric light plants and water works plants may not be so far outside the line of power as some of the things mentioned. But we are of the decided opinion that they are outside. . . . The claim of power upon the plea of necessity must stop somewhere."

holding the building and operation of plants and water-works systems for the purpose of supplying water and lights to the city and its inhabitants, the court overruled the following cases: Charlotte v. Shepard, 120 N. C. 411, 27 S. E. 109 (1897), in which the city council proposed to levy a special tax to pay the interest and principal on bonds issued for the purpose of establishing a water-works system in the city; Mayo v. Commissioners, 122 N. C. 5, 29 S. E. 343 (1898), in which the city commissioners proposed to issue $20,000 in bonds for the purpose of buying and operating an electric light plant to light the public streets and public buildings of the town; Thrift v. Elizabeth City, 122 N. C. 31, 30 S. E. 349 (1898) (thirty-year contract to supply city with water); Edgerton v. Goldsboro Water Co., 126 N. C. 93, 35 S. E. 243 (1900) (one-year contract to supply city with water).

Collie v. Commissioners, 145 N. C. 170, 59 S. E. 44 (1907); Lacy v. Fidelity Bank of Durham, 183 N. C. 373, 111 S. E. 612 (1922); Frazier v. Commissioners, 194 N. C. 49, 138 S. E. 433 (1927); Hall v. Commissioners, 194 N. C. 768, 140 S. E. 739 (1927).

In Hargrave v. Commissioners, 168 N. C. 626, 631, 84 S. E. 1044, 1047 (1915), however, one of the justices, in a dissenting opinion, came to the conclusion that public roads should be taken from the category of necessary expense, his chief reason being that the framers of the constitution in 1868 did not foresee and did not intend that a debt of $300,000, or other unlimited amount, could be fastened upon the taxpayers of a county, without their consent.

74 N. C. 748, 759 (1876).
75 191 N. C. 269, 277, 132 S. E. 25, 29 (1926).
76 122 N. C. 5, 15, 29 S. E. 343, 346 (1898).
77 Ibid.
The court has indicated many tests and standards to guide itself and others in drawing this admittedly difficult line. When the court starts with the assumption that building roads is a necessary expense, it is easy to extend the assumption to include the building of streets, the widening of streets, the building of sidewalks and driveways, the building of bridges as links in streets and highways, and perhaps, the building of ferries as connecting links in a highway system; but, the logic stops at the seashore and leaves wharves and docks as connecting links between land and sea transportation outside the family of necessary expenses. Likewise, the court reasons that if the building of roads, streets, and bridges are necessary expenses, it can extend the analogy to include the grading, paving, repairing, and purchase thereof, and the purchase of teams, wagons, camp outfits, and other road building accessories, including a stockade for prisoners. If providing a city water supply is a necessary expense, the court has little difficulty in extending the notion from digging and cleaning out wells, to contracting for a supply of water, and to the building of its own water-works system. If the lighting of streets is a necessary expense, the city may replace the hand lighting of kerosene lamps on lamp posts with its own electric lighting system. Thus, new items are added to the list, and by logical extension from a given starting point, the concept of necessary expenses is expanded.

"The analogy of the law of necessaries for infants is the only one that occurs to us", said the court in one of the earlier cases. "It is held that if, considering the means and station in life of the infant, the article sold to him may be necessaries under any circumstances, they come within a class for which the infant may be liable, and upon his refusal to pay, it is for a jury to determine whether under the actual circumstances they were necessary. If, however, the articles are merely ornamental, and such as cannot, under any circumstances, be necessary to one of the means and station of the infant, a court, as matter of law, declare that the infant is not liable. We do not undertake to say that this analogy will furnish a rule which will admit of a close application. But if treated merely as an analogy, in the absence of other

60 In Fawcett v. Mount Airy, 134 N. C. 125, 129, 45 S. E. 1029, 1031 (1903), the court, after holding that lighting the streets of the town was a necessary expense, said: "It is well settled that the discretion of municipal corporations within the sphere of their powers is not subject to judicial control. . . . We can see no good reason why they may not also, without statutory authority, provide and maintain the necessary plant to generate and supply the electricity required. Possessing authority to do the lighting, that power carries with it incidentally the further power to procure or furnish whatever is necessary for the production and dissemination of the light."

61 Wilson v. Charlotte, 74 N. C. 748, 759 (1876).
guides, it may be of some general use.” With the help of this analogy, the court concludes that widening streets is a necessary expense to an infant of the means and station in life of the city of Charlotte. This test was repeated in a later case, but apparently was discarded thereafter on the theory of its originator that it “did not admit of a close application”.

Another test is whether the expenditure is necessary to the existence of the local unit of government. Does this mean what will barely sustain a unit’s life? What will keep the unit from falling back? What will help it grow? What will add to its comfort and convenience? Certainly the court has not limited the class of necessary expenses to those things essential to a bare living. “And it seems to us that it may be reasonably considered as certain,” said the court in Fawcett v. Mount Airy, “that the words ‘necessary expense’ do not mean expenses incurred or to be incurred for purposes or objects that are only for the procurement or maintenance of things absolutely essential to the existence of the municipality.” And the court proceeds to prove its point from previous decisions: “The expenditure of money for the widening of streets, the erection of market houses, town clocks, and hay scales are all considered as necessary expenses, and those things are not essential to the life of the municipality.” On the other hand, everything that will be useful and helpful to a unit’s growth will not be considered a necessary expense. For in Henderson v. Wilmington, the court, in holding that wharves and docks, admittedly helpful and even necessary to Wilmington’s growth as a seaport city, were not a “necessary expense”, said: “With the mere utility of the enterprise we are not concerned. Whether ‘shipping, foreign and coastwise’ would expand commerce is alien to the principle we are considering. The convenience, the benefit to be conferred upon a particular class, the insufficiency of present facilities, and a want of opportunity for commercial or industrial competition—these and similar premises are not factors that can control or even contribute to our solution of the present controversy.” Somewhere between the “subsistence line” and the “utility line”, the “necessary expense line” must be drawn.

Another suggested test is whether the expenditure is one of the “ordinary expenses” of the local unit. Does this mean expenses that were customary at the time the constitution was adopted in 1868? Or customary at the time the question is called to the attention of the court? Certainly not the former, because examination of statutes prior to 1868 reveals many customary expenses of local units never yet con-

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Fawcett v. Mount Airy, 134 N. C. 125, 45 S. E. 1029 (1903).

Id. at 127, 45 S. E. at 1030.

191 N. C. 269, 276, 132 S. E. 25, 29 (1926).
sidered as necessary expenses. Certainly not the latter, because examination of present statutes reveals many customary expenses of local units expressly held not to be necessary expenses. Nor does it mean expenses which have become customary expenses in a particular unit by long repeated expenditures, for this would permit a unit to create its own necessities by the force of habit. Apparently the court means the term "ordinary expenses" to be related in some degree to a unit's necessities for "existence plus". If so, this test leaves us where we started.

"The necessary expenses of a county," said the dissenting justice in Barksdale v. Commissioners, "must be such as are incident to the execution of the purposes for which it is created, and with which it is charged from time to time by the legislature." This was carried forward by a dissenting justice in Edgerton v. Water Company: "... When the Legislature of the State has required the town to procure water, to the above extent at least, it is a necessary purpose." It was repeated in the majority opinion in Wadsworth v. Concord: "We are of the opinion that when it is made the duty of the commissioners to provide lights it is at least a legislative construction of the Constitution that it is a necessary expense." This doctrine appeared in stronger terms in Commissioners v. Spitzer, where the court pointed out the constitutional observation that "'Beneficent provision for the poor, the unfortunate, and orphan' is 'one of the first duties of a civilized and Christian State'," and held that a county home was a necessary expense. But this doctrine proves too much. Local units derive their powers and duties from the legislature. Among those duties, the constitution

Aid to railroads, subscriptions to railroad stock, canals, and other internal improvements, etc.

N. C. Code Ann. (Michie, 1939), §2796 (municipal hospitals); id. §1297 (29) (county hospitals); id. §1334(8)(a) (school houses); id. §1334(8)(g) (public auditorium); id. §1334(8)(m) (airports and landing fields).

126 N. C. 93, 99, 35 S. E. 243, 244 (1900).

133 N. C. 587, 592, 45 S. E. 948, 949 (1903).

173 N. C. 147, 91 S. E. 707 (1917).

In Henderson v. Wilmington, 191 N. C. 269, 283, 132 S. E. 25, 33 (1926), a dissenting justice said: "The Legislature has recognized the necessity of certain things that municipalities can acquire and among them wharves (terminal facilities). The will of the Legislature is the supreme law of the land, subject to the Constitution. To say the least, the fact that the Legislature having given the municipalities the power in its discretion to acquire by purchase or condemnation and management and control of wharves, is a legislative construction that wharves are a necessity. This declaration should have great persuasive influence on a court."
itself distinguishes between necessary and non-necessary expenses.\textsuperscript{73}
The books are full of duties imposed on local units by the legislature which the courts have held not to be necessary expenses,\textsuperscript{74} nor even a public purpose for which public money may be spent.\textsuperscript{75}

Time and again judges have called the roll of governmental functions which have been held to be necessary expenses, and, by a process of induction, have concluded that another function is just as important and ought to be included in the list: as in \textit{Mayo v.
Commissioners},\textsuperscript{76} where a dissenting justice said that since the court has held that a guardhouse, a fire engine and an artesian well were necessary expenses, it ought to hold electric light plants to be a necessary expense; as in \textit{Henderson v.
Wilmington},\textsuperscript{77} where a dissenting justice argued that since the court had held electric light plants, water-works systems, sewerage facilities, roads, bridges, jetties, fire departments, guardhouses, market houses, courthouses, etc., to be necessary expenses, it ought to hold wharves and docks to be a necessary expense; as in \textit{Palmer v.
Haywood County},\textsuperscript{78} where a dissenting justice, after calling an even longer roll, reproaches the court with the fact that under its decisions “. . . it is lawful to incur an expense in building jetties in the sea to protect the property of summer cottagers on the seashore, but prohibits the construction of a hospital intended primarily to minister to the indigent sick and the afflicted poor—playgrounds and public parks to preserve the health of the well-to-do are necessary, while a hospital with its attendant nursing facilities, to restore health to those who are sick, is not.”

From time to time the court has tried to reduce the term “necessary expense” to a formula. In \textit{Fawcett v.
Mount Airy},\textsuperscript{79} it says: “The words ‘necessary expense’, then, must mean such expenses as are or may be incurred in the establishing and procuring of those things without which the peace and order of the community, its moral interests and the protection of its property and that of the property and persons

\textsuperscript{73} “No county, city, town or other municipal corporation shall contract any debt . . . except for the necessary expenses thereof: . . .” N. C. Const. art. VII, §7.
\textsuperscript{75} Ketchie v. Hedrick, 186 N. C. 392, 119 S. E. 767 (1923) (donation of public money, etc., to encourage business and industrial enterprises to locate therein).
\textsuperscript{76} 122 N. C. 5, 30, 29 S. E. 343, 351 (1898).
\textsuperscript{77} 191 N. C. 269, 281, 132 S. E. 25, 32 (1926).
\textsuperscript{78} 212 N. C. 284, 293, 193 S. E. 668, 674 (1937).
\textsuperscript{79} 134 N. C. 125, 127, 45 S. E. 1029, 1030 (1903).
of its inhabitants would seriously suffer considerable damage, leaving out of view the matter of the great inconvenience that would be attendant upon our present social life for want of such expenditures." And, again in *Henderson v. Wilmington*:80 "The decisions heretofore rendered by the Court make the test of a 'necessary expense' the purpose for which the expense is to be incurred. If the purpose is the maintenance of the public peace or the administration of justice; if it partakes of a governmental nature or purports to be an exercise by the city of a portion of the State's delegated sovereignty; if, in brief, it involves a necessary governmental expense—in these cases the expense required to effect the purpose is 'necessary' within the meaning of Art. VII, sec. 7...." But the court itself does not always get together on the meaning of its own terms. At one time it indicates that the test of a necessary expense is whether the duty is imposed by the General Assembly,81 and at another time it bluntly states that "There are many 'corporate duties' which are utterly remote from those relating to necessary expenses."82 The premise on which the majority opinion relies in *Henderson v. Wilmington* to prove that wharves and docks are not necessary expenses is the premise on which the dissenting opinion relies to prove they are necessary expenses. In *Palmer v. Haywood County*83 and *Sing v. Charlotte*,84 the majority opinions start from premises set forth in one group of court opinions and arrive at the conclusion that a given expenditure is or is not a necessary expense, and dissenting opinions starting from premises set forth in another group of court opinions arrive at an opposing conclusion. The tests are sometimes so broad as to prove all things to all men. What is included in "those things without which the peace and order of the community, its moral interests and the protection of its property . . . would seriously suffer considerable damage"? What is included in: "maintenance of the public peace", and in "the administration of justice"? What "partakes of a governmental nature"? What "purports to be an exercise of a portion of the State's delegated sovereignty"? In brief, what "involves a necessary expense"? Reasonable judges as well as reasonable men may reasonably differ on the meaning of these shibboleths.

80 191 N. C. 269, 279, 132 S. E. 25, 30 (1926).
81 Long v. Commissioners, 76 N. C. 273, 278 (1877), cited supra note 5: "The act prescribing the duties and powers of county commissioners, . . . enumerates among others . . . to repair the County buildings, . . . to raise necessary highway moneys, . . . to erect bridges, . . . to provide by tax for the maintenance and well ordering of the poor, . . . to feed prisoners, . . . to pay jurors, . . . All of these duties are obligatory. The expenses for each and all of them are of the class of necessary expenses." Commissioners v. Spitzer, 173 N. C. 147, 91 S. E. 707 (1917), cited supra note 70.
83 212 N. C. 284, 45 S. E. 1029 (1937).
84 213 N. C. 60, 195 S. E. 271 (1938).
Changing conditions may operate as a sort of atmospheric agent to transform a non-necessary into a necessary expense—provided the court's mind changes with conditions. The court in *Fawcett v. Mount Airy* \(^8^6\) (overruling a former decision that electric lights and waterworks were not a necessary expense) said, "... it is not to be expected in the changed conditions which occur in the lives of progressive people, that things deemed unnecessary in the government of municipal corporations in one age should be so considered for all future time. In the effort of the courts to check extravagance and to prevent corruption in the government of towns and cities, the judicial branch of the government has probably stood by former decisions from too conservative a standpoint, and thereby obstructed the advance of business ideas which would be most beneficial if put into operation; and this conservatism of the courts, outgrown by the march of progress, sometimes appears at a serious disadvantage." And this sentiment was echoed in *Swindell v. Belhaven*, \(^8^6\) where the court said: electric lights, waterworks and sewerage "might have been so regarded [as luxuries] many years ago, in their incipiency, but the luxuries of one generation have become the necessities of another. What would have sufficed for our ancestors would not begin to meet the needs of the twentieth century. These things naturally follow in the wake of an advancing civilization." The court points out many of the changing conditions underlying changing decisions: problems created by the growth of populous cities; such as the detection and prevention of vice and crime, the safeguarding of health and prevention of disease, and the prevention of fire and the facilitation of communication. \(^8^7\) In *Fawcett v. Mount Airy*, \(^8^8\) the court said: "The use of water from wells dug in populous communities is proscribed by the recent progress made in the science of bacteriology, the practical lessons of that science having been learned by the people generally.

"It is common knowledge that the most fearful scourges of certain most dangerous forms of fever arise from the use of water from wells in towns and cities; and it is out of the power of individuals in towns and cities to erect and operate appliances for supply of water. As to the question of lighting the streets and public places, the experience of all who live in towns and cities of any considerable population is that without lights upon the streets and in the public buildings both life and property would be insecure, to say nothing of the almost complete

\(^{8^2}\) 134 N. C. 125, 126, 45 S. E. 1029 (1903).

\(^{8^4}\) 173 N. C. 1, 4, 91 S. E. 369, 370 (1917).


\(^{8^8}\) 134 N. C. 125, 128, 45 S. E. 1029, 1030 (1903).
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destruction of the conveniences of life and the marring of its social features. The fire department, probably the most important of the municipal departments, would be rendered ineffective, and a considerable part of the commerce—trade of the country—would be destroyed; for under our changed conditions a good deal of the traffic between different communities and a respectable part of our mail service are conducted at night."

At times it appears that the courts have counted the cost of enterprises. This is apparent from the earliest decisions of the court: in Wilson v. Charlotte, the dissenting opinion argued that the plain intent and meaning of the Constitutional Convention of 1868 was to restrict debt and taxes to the utmost, and that the courts were guardians of that purpose. "Where, then, do we derive our right, as judges, to say the restriction applies to one purpose more than another, when the plain terms of the section apply to every purpose? I can well conceive cases where it would be more necessary to the growth and prosperity of a county or city to build railroads through or to them than to build a market-house or a bridge. Under the term 'necessary expenses' there are many other purposes for which debts may be contracted, as dangerous to the taxpayers as the building of railroads. Such a construction only avoids one evil by flying to another. There is only one way of escape, and that is by applying the plain prohibition against the contraction of any debt, for any purpose, except in the way prescribed, to-wit, by popular vote."

This notion appears again in Mayo v. Commissioners, where the majority opinion declares that electric lights are not a necessary expense: "Suppose we hold it to be within the corporate power to buy and operate electric light plants on a pledging of the faith and credit of the town; how long will it be until it will be claimed that electric street cars are necessary for the business, progress and convenience of the town? And, if we grant this claim of necessity, how will we resist that? What grounds have we to distinguish one from the other? If we sustain the plea of necessity for street cars, what is there to prevent the same claim of necessity to the growth, prosperity and convenience of the people of a town, to which there is no railroad, from pledging the faith and credit of the town to build a railroad? Especially so, if we allow the claim or admission of the corporate authorities to settle the question of necessity, as is claimed that they should do in this case. It is heard every day, in towns of much size, that a street railway is necessary to the growth and prosperity of the town; and, in towns that have no railroad, to hear it said 'that a railroad to this place is a necessity.' And it is contended for the defendant in this case that, if

74 N. C. 748, 766 (1876). 122 N. C. 5, 15, 29 S. E. 343, 346 (1898).
such town should make a subscription and issue bonds, or should propose to do so, and when suits should be brought to enjoin it from so doing, if the town alleged it was a necessary expense, it is to be taken as conclusive evidence that such street car or railroad is one of the necessary expenses of the municipality, and that the Court is bound by this claim or admission. If this be so, every town in the State would soon have railroads running to it, and a line of electric street cars, based upon the pledged faith and credit of the town. This cannot be the law."

It appears again in Hargrave v. Commissioners,91 where a dissenting opinion calling on the court to withdraw public roads from the classification of necessary expenses, says: "I have come to the conclusion that this Court has gone entirely too far in defining what are the necessary expenses of a county within the meaning of Art. VII, sec. 7, of the Constitution. At the time when the Constitution of 1868 was adopted, in which this section first occurs, we had a system of public roads throughout the State, maintained without special taxation, and although keeping them up by taxation may result in much better roads, yet I have no idea that the thought ever occurred to any member of the Convention of 1868, or to any of the voters of the State, that under that section it would ever be possible to fasten a debt of $300,000 upon a county for the purpose of constructing and keeping up its public roads, without the consent of its citizens.

"I have come to the conclusion that this Court should reverse itself upon that proposition. No one can tell to what extent this doctrine may be carried in the future. The proposition here is to issue $300,000 in bonds. What will the limit be? Suppose, instead of $300,000, the author of the bill had provided for the issue of a million dollars in bonds: this Court, according to the principles announced, would be compelled to sustain it, and the groaning taxpayers of Davidson County would have no remedy. This is inconsistent with all theories of local self-government and is antagonistic to the best interest of the State."

It appeared again in Keith v. Lockhart,92 where the court said that the term necessary expense "... should not be extended to include an indebtedness for a line fence around a part of a county which may, at times, require an extended outlay ..."; and again, in Ketchie v. Hedrick,93 where the court, in holding that a chamber of commerce was not a necessary expense nor even a public purpose, says: "If chambers of commerce, composed of business men and serving the advancement of the community in financial matters, can be termed governmental simply because they claim to be advancing the public welfare, from their

91 168 N. C. 626, 631, 84 S. E. 1044, 1047 (1915).
93 186 N. C. 392, 394, 119 S. E. 767, 768 (1923).
standpoint, and taxation can be levied upon the entire community to advance the ideas that ‘in their discretion’ they deem for the public welfare, we know of no reason why the entire public shall not in like manner be taxed for the benefit of the Rotary clubs, Kiwanis clubs, and Lions clubs, who, also, as well as the chambers of commerce, are composed of many of our best citizens, and who in the same manner are actuated by patriotic motives to advance the public welfare. Then the ladies have their sororities, the Daughters of the Confederacy, and many other admirable societies for the public good; and there will be no reason why there should not also be embraced as subjects for support by taxation the labor unions, who in their sphere are equally patriotic and are endeavoring to advance the best interests of the community as they see it.”

It is perhaps unnecessary to point out that this variety of interlocking, overlapping, and sometimes conflicting standards for determining what is and what is not a necessary expense, and the confusion frequently resulting therefrom, are not the creation of the present court; they have been advanced by many different judges under many different conditions existing in the nearly three-quarters of a century since 1868. They are among the materials on which judges have to rely in deciding cases.

Schools: Neither Necessary nor Non-necessary

Out of the court’s efforts to distinguish necessary from non-necessary expenses within the meaning of Article VII, Section 7, of the North Carolina Constitution, there has developed a third type of expenditure which falls in a class by itself: the public schools. If the public library is not a necessary expense, said the mayor of Wilmington, then the reform school is an earmark of civilization. He may perhaps be right, so far as Article VII, Section 7, of the North Carolina Constitution is concerned, for schools have never been held to be a necessary expense of a county, city or town, or other municipal corporation within the meaning of this section. The question was raised within three years after the Constitution of 1868 was adopted, in the case of Lane v. Stanly, when a township sought to levy taxes for schools, but it was not considered in the opinion of the court. Twenty years later the question was again raised when Goldsboro Township undertook to incur a debt for schools without the approval of a majority of the township’s qualified voters; and the court held that a township was a municipal corporation within the meaning of Article VII, Section 7, and that schools were not a necessary expense of a township. This conclusion

\[65\] N. C. 154 (1871).

was affirmed in *Sprague v. Commissioners.* In *Ellis v. Trustees,* the court extended the scope of its former decision by holding that a school district was a municipal corporation within the meaning of Article VII, Section 7, and that schools were not a necessary expense of a school district. In *Rodman v. Washington,* the court held that schools were not a necessary expense of a city or town. Nine years later in *Wharton v. Greensboro,* the court referred to schools as "admittedly not a municipal expense". This conclusion was affirmed in *Gastonia v. Citizens National Bank.* The question was raised in *Barksdale v. Commissioners,* in which a dissenting opinion called schools a necessary county expense, but the majority opinion decided the case on other grounds; and it was raised again seven years later in *Board of Education of Bladen County v. Commissioners,* with the same result. When the question was next raised in *Collie v. Commissioners,* the leading opinion again decided the case on other grounds, saying: "Nor are we called upon to hold that the tax to supplement the school fund in each county . . . may be upheld as a 'necessary county expense' . . ."; but this time a concurring opinion adopted the dissenting view expressed twenty-two years earlier calling schools a necessary county expense. That is the closest the schools ever came to the favored status, for, the next year, in *Hollowell v. Borden,* Justice Brown, writer of the leading opinion in the *Collie* case, spoke for a unanimous court: "It has never been held anywhere, so far as we know, that the expense of the public-school system of this or any other State is a necessary municipal expense." He settled the dust raised by the concurring opinion in the *Collie* case with the observation: "There is nothing in the recent decision of the Court in *Collie v. Commissioners* . . . which sustains the idea that our public-school system is a necessary municipal expense." Thus, so far as the public schools are concerned, counties, cities and towns, and other municipal corporations have had to do without the advantages accruing to the label of "necessary expense".

It is interesting to note the reasoning of the court. Schools are a "necessary expense" within the meaning of Article VII, Section 7, said the dissenting opinion in the *Barksdale* case, and elaborated in the dissenting opinion in the *Bladen County* case, because: "Counties must serve such purposes as the legislature, subject to the Constitution, requires, and expenses incurred in serving these purposes are 'necessary expense' "; the constitution specifically required that ". . . public schools

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89 165 N. C. 603, 81 S. E. 915 (1914). 97 156 N. C. 10, 72 S. E. 2 (1911).
90 165 N. C. 507, 81 S. E. 621 (1892).
100 145 N. C. 170, 173, 59 S. E. 44, 45 (1907).
101 148 N. C. 255, 61 S. E. 638 (1908). 105 Id. at 257, 61 S. E. at 638.
shall be maintained, at least four months every year . . .”, and the legislature has specifically authorized the counties to levy a tax therefor; therefore schools are a necessary expense. The court advances another argument a little harder to handle: the constitution specifically requires commissioners “. . . to exercise a general supervision and control of the penal and charitable institutions, schools, roads and bridges, levying of taxes and finances of said County as may be prescribed by law . . .”, with these duties apparently on an equal footing; the court has held that penal and charitable institutions are a necessary expense, that roads and bridges are a necessary expense, and therefore ought to hold that schools are a necessary expense; the argument for holding schools to be a necessary expense is even stronger than the argument holding roads and bridges and penal and charitable institutions to be necessary expenses, for the constitution specifically says that the commissioners are subject to indictment for failing to maintain schools and not for failing to maintain other functions.107

This second argument being a little too hot to handle, the court ignored it, and, later, went off on another road that eventually led to another rendezvous perhaps as good or better.108 For, said the court, while schools are not in the category of necessary expenses, they are not in the category of unnecessary expenses; they stand in a separate category of their own; the constitution puts them there—and we can’t help it; therefore the schools are not subject to the limitations of Article VII, Section 7, and have a preferred status of their own. The main part of the pressure put on the court to classify schools as a necessary expense was thereby removed. Part of the remaining pressure was removed as the state, not limited by Article VII, Section 7, increasingly took over the support of the schools, leaving the question to be raised, if at all, in the case of local supplements.109 Whether the court

107 N. C. Const. art. IX, §3 provides: “Each county of the State shall be divided into a convenient number of districts, in which one or more public schools shall be maintained at least six months in every year; and if the commissioners of any county shall fail to comply with the aforesaid requirements of this section, they shall be liable to indictment.”

108 Collie v. Commissioners, 145 N. C. 170, 59 S. E. 44 (1907).

109 Lacy v. Fidelity Bank of Durham, 183 N. C. 373, 111 S. E. 612 (1922), in which the state statute, authorizing the state to issue $5,000,000 in bonds, to set up a special School Building Loan Fund, and to lend money to the various counties for the purpose of building school buildings required to provide a six-months school term, and authorizing the counties to issue its bonds and levy a special tax therefor, without a vote of the qualified voters of the county, was held to be constitutional and not in violation of Article VII, section 7, of the constitution. After reviewing several cases construing Article IX of the constitution to be separate and independent of Article VII, Section 7, the court said: “Applying the principle, the restrictions contained in this Article VII, section 7, which prohibits counties, cities, and towns, or other municipal corporations, from contracting debts or levying taxes except for necessary expenses unless approved by a majority of the qualified votes therein, must be understood to refer to debts and taxes in furtherance of local measures and do not extend to a state-wide
might have ultimately yielded to this pressure belongs to the realm of speculation.  

**Courts and Commissioners**

What are the relative functions of the court and the local legislative bodies—county commissioners and city councilmen—in solving the problem of "necessary expenses"? In *Brodnax v. Groom*, the court stated the question as follows: "Who is to decide what are the necessary expenses of a County? The county commissioners; to whom are confided the trust of regulating all county matters. 'Repairing and building bridges' is a part of the necessary expenses of a County . . . so the case before us is within the power of the county commissioners. How can this court undertake to control its exercise? Can we say, such a bridge does not need repairs; or that in building a new bridge near the site of an old bridge, it should be erected as heretofore, *upon posts*, so as to be cheap, but warranted to last for some years; or that it is better policy to locate it a mile or so above, where the banks are good abutments, and to have *stone pillars*, at a heavier outlay at the start, but such as will ensure permanence, and be cheaper in the long run?"

Six years later, the dissenting opinion in *Wilson v. Charlotte* appears to assume that *Brodnax v. Groom* gave the sole say to the commissioners and put no limits to necessary expenses except the commissioners' will. But the majority opinion interprets it to mean that the courts are to decide *what are necessary expenses*, and the commissioners are to decide *whether those types of expenditures classed as necessary expenses by the court are in fact necessary in a particular time and place*. This interpretation has come to be the accepted interpretation of the relative functions of court and commissioners in subsequent decisions: as in *Vaughn v. Commissioners*, where the court measure of the instant kind, undertaken in obedience to a separate provision of the Constitution, and in which the counties are, as stated, expressly recognized as the governmental units through which the general purpose may be made effective." *Id.* at 380, 111 S. E. at 615. Frazier v. Commissioners, 194 N. C. 49, 138 S. E. 433 (1927); Hall v. Commissioners, 194 N. C. 768, 140 S. E. 739 (1927).

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In *Mitchell v. Trustees of Township No. 8*, 71 N. C. 400 (1874), the court in determining whether certain expenditures of a township are for "necessary expenses", seems to leave it almost wholly to the discretion of the governing body to decide what are the necessary expenses of the township. "At the time when the taxes complained of were levied," said Justice Reade, "the 'Board of Trustees had power to lay and collect all taxes which were required to defray the necessary expenses of the Township' . . . And having the power, very much—almost everything—must be left to the discretion of the Board to determine what were necessaries. It borders on the ridiculous to ask the Courts to say whether $34 for office rent, $20 for a book, $25 for a table, etc., etc., are necessary expenses.”

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"*Id.* at 760.  

"*Id.* at 760.  

"*Id.* at 760.
said: "It is within the province of the courts to determine . . . what classes of expenditures fall within the definition of the necessary expenses of a municipal corporation. But, conceding as we do, that the cost of erecting court-houses . . . is one of the necessary expenses of a county, we have no authority . . . of determining what kind of a court-house is needed or what would be a reasonable limit to the cost . . . . it is immaterial, in so far as the authority of the courts is affected, whether the board of commissioners provide for raising the money needed to erect the court-house by issuing evidences of indebtedness and realizing on them, so as to pay the cost of building as the work progresses, or whether they prefer to make a contract to pay in instalments and incur the risk of creating a floating debt." And, says the court in Fawcett v. Mount Airy,116 " . . . except in cases of fraud, the courts cannot control the discretion of the commissioners."

But with Mayo v. Commissioners,118 complications are foreshadowed in a dissenting opinion which says: "While electric lighting might not have been a necessity years ago, it has become so by general adoption today, and while it would not be a necessity for a smaller, poorer and less progressive town, even today, it may be indispensable for a larger and wealthier town rapidly increasing in population . . . ." (Italics supplied.) Here the court appears to be suggesting that it can not only determine the class of expenditures falling within the meaning of "necessary expenses", but that it can go further and determine the sort of unit in which that class of expenditure is necessary. In Storm v. Wrightsville Beach117 this differentiating notion is set forth in the court's opinion holding that "an incinerator for the destruction of garbage in a town, of all things, especially a town on a beach that functions mostly in the summer, is a necessary expense"; and so of a boardwalk and jetties. And, in Atkins v. Durham,118 the notion makes further headway as the court holds that playgrounds and parks are a necessary expense for a populous industrial city like Durham. It may be that these were incidental observations of the court and that no issue was made of the point on argument. For, in Starmount Co. v. Hamilton Lakes,119 where it was directly contended in argument that 81 miles of water main, 7 1-2 miles of sewer main, and 22 miles of streets were not necessary expenses for four or five families living on a 1400 acre farm incorporated as a town, the court directly held that its function ceased when it had decided what necessary expenses were and that it

116 134 N. C. 125, 129, 45 S. E. 1029, 1030 (1903).
117 122 N. C. 5, 26, 29 S. E. 343, 349 (1898).
118 189 N. C. 679, 682, 128 S. E. 17 (1925).
120 205 N. C. 514, 171 S. E. 909 (1933).
remained for the town authorities to decide whether they were needed and that it could not interfere with their discretion except in cases of fraud.

Thus, the issue is alive and still kicking. In *Palmer v. Haywood County*, Justice Connor, concurring in the opinion that the hospital in that case was not a necessary expense, observed "... that there may be a factual situation under which the construction or maintenance of a hospital for the care and treatment of sick and indigent persons may be a necessary expense of a town, city or county." And in *Sing v. Charlotte* Justice Clarkson dissented from the opinion that an airport was not a necessary municipal expense, on the ground that "an expense may be a 'necessary expense' for one municipality, but not a 'necessary expense' for another municipality", and that it was a necessary expense for a city the size of Charlotte. Justice Barnhill warned against this doctrine in his dissenting opinion in *Palmer v. Haywood County*, and undertook to bring a county hospital within the class of necessary expenses on the theory that it was primarily for the use of "the indigent sick and the afflicted poor" and therefore came within the class of necessary expenses, perhaps as an extension of the county home which had been held a necessary expense. The court must make its choice. If it chooses the original doctrine, it may classify governmental functions and select the function—such as the promotion of health, the administration of justice—to be called a necessary expense and leave the rest to the commissioners. If it chooses the latter notion it may go beyond the classification point and differentiate among localities—a notion which may be a spur and inducement to a larger town as was contemplated in *Sing v. Charlotte*, or a curb and bit when smaller places, in the opinion of the court, attempt to outrun their own headlights.

The pressure on the court to expand the concept of necessary expenses is as insistent today as ever. The court has overruled itself in the past, and expanded this concept to include electric lights and waterworks. The court is divided on many questions of necessary expense which have come before it in recent years. Is it likely that dissenting opinions will ultimately prevail and expand the limits of "necessary expenses" to include expenditures now excluded by a majority of the court: wharves and docks? airports? hospitals? In fact, how does the court stand on hospitals as a necessary expense? In *Armstrong v. Commissioners*, the court held that a tubercular hospital was not a necessary expense for the county; in *Nash v. Monroe*, the court held that "a hospital for the sick and diseased and others requiring surgical

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210 212 N. C. 284, 288, 193 S. E. 668, 671 (1937).
211 213 N. C. 60, 76, 195 S. E. 271, 279 (1938).
212 185 N. C. 405, 117 S. E. 386 (1923).
and medical attention" was not a necessary expense for the city; in Burleson v. Spruce Pine\textsuperscript{124} and Palmer v. Haywood County\textsuperscript{125} this conclusion was reiterated. But in Martin v. Commissioners\textsuperscript{126} and Martin v. Raleigh\textsuperscript{127} the court held that a thirty-year contract with a hospital at $10,000 a year to care for the "indigent sick and the afflicted poor" of Raleigh and Wake County was a necessary city and county expense. Chief Justice Stacy pointed out in a dissenting opinion that this decision could not rest on the authority of Commissioners v. Sidney Spitzer & Co.,\textsuperscript{128} for that was limited to the construction of a county home, and that it could not rest on Article XI, Section 7, of the North Carolina Constitution, for that limited the obligation to the care of "the poor, the unfortunate and orphan", while in this case the parties agreed that the contract would result in "modern hospitalization for the poor of Wake County and all of its citizens". Has this dissent become the majority opinion in Palmer v. Haywood County, arising two years later, when a point was made of the fact that the annex to the county hospital was "principally", but not exclusively, for the indigent sick and the afflicted poor? or is the case to be distinguished on the slender ground of legislative authorization suggested by the court? Has the majority opinion in the Palmer case become the opinion of a unanimous court in Sessions v. Columbus County,\textsuperscript{129} arising one year later? Do the two Martin cases mean that each of the near to half the counties in the state covered by the legislative enactment mentioned there can immediately follow suit? or that the remaining counties may through the device of added legislation be brought within the limits of necessary expense? If they may contract for hospital services, as a necessary expense, may not the time come when building their own hospitals will be considered a necessary expense? Such were the steps through which water-works systems became a necessary expense. In applying the doctrine of the Martin cases, will the court approve a contract for the medical care of "indigent sick and the afflicted poor" of all counties which now are or may be included in authorizing legislative enactments regardless of the size, population, wealth or other differentiating conditions? or will it follow the other view and inquire whether under the particular circumstances such a contract is a necessary expense?

What of other enterprises, seeking the preferred status whose questions have already reached the Attorney General's office? What is the status of expense pertaining to beautifying streets, parking lots, swim-

\textsuperscript{124} 200 N. C. 30, 156 S. E. 241 (1930).
\textsuperscript{125} 212 N. C. 284, 193 S. E. 668 (1937).
\textsuperscript{126} 208 N. C. 354, 180 S. E. 777 (1935).
\textsuperscript{127} 208 N. C. 369, 180 S. E. 786 (1935).
\textsuperscript{128} 173 N. C. 147, 91 S. E. 707 (1917).
\textsuperscript{129} 214 N. C. 634, 200 S. E. 418 (1939).
ming pools, and community houses? Is it a necessary expense to build a road or street, widen it, grade it, pave it, patch it, and not a necessary expense to beautify it? Is it a necessary expense to build roads and streets wide enough for cars to park on near the curbing or on the shoulder without impeding traffic, and not a necessary expense to purchase land for parking lots accessible to, but not adjacent to, travelled thorough-fares? Is it a necessary expense to build parks and playgrounds for outdoor play and recreation and not a necessary expense to build a community house for indoor play and recreation? And what if the swimming pool, ruled not to be a necessary expense, is included among the facilities of the outdoor park and playground now held to be a necessary expense? Which tests or combination of tests to be found in the opinions of the court are to be controlling in the future? The line, says the court over and over again, must be drawn somewhere, but where? After all, what difference has it made in the past, and what difference does it make now, whether expenditures are classified as necessary, as non-necessary, or in the category of the schools? These questions will be considered in a subsequent article. In the meantime it may be observed that in these cases the court is concerned with issues which transcend the "legal formalities" characterized in Henderson v. Wilmington, issues which relate to the whole problem of state and local taxation and finance, and involve the cost and care of public policy.