

THE FRANKLIN TIMES

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Lets all PULL for a BIGGER and BETTER Louisburg.

Florida was visited by a severe wind and rain storm the past week.

Louisburg is the BEST town on earth, but lets make it a little BETTER—join the Chamber of Commerce and PUSH.

The railroad strike situation is still serious. Some claim it will be settled before the walkout, others claim there is nothing that can stop it.

And some one is suggesting J. W. Bailey, former revenue collector as Governor of North Carolina in 1924. There is no telling who will be mentioned next.

The hearing of the receivership case of the Ascock Drug Co. was completed Thursday evening of last week, by the appointment of Maj. S. P. Boddie, Receiver. A most excellent selection.

We know that our readers will join with us in welcoming Plain Tom back to the columns of the TIMES. It has been many years since his interesting and encouraging letters have appeared in print in the TIMES, but he has always been held as one of our most esteemed correspondents. We hope he will make full use of space in the future and help us in our forward advance.

Now that the Chamber of Commerce has shown the Warehousemen and buyers that tobacco can be brought to Louisburg, let them get up and get at it and live up to the market. There is no reason why Louisburg shouldn't have as good a market as anywhere, but you can't blame a farmer for going where he thinks he can get more money for his crop, and see a bigger interest taken in his behalf.

There is some talk of the revival of the Recorder's Court for Franklin County. We were under the impression that the people of the County were paying all the taxes they want to pay. Its a dead coast that a Recorder's Court would cost the County around \$6,000 a year. The average voter can determine around what portion of this will be saved the County. They can't argue that the costs will take care of it as the same costs would be paid into the Superior Court, and the establishment of the Recorder's Court would not relieve the County of a cent of cost of the Superior Court. Another thing it would do would be to increase the salary of the County officers. Do you want it?

While we were not supporters of Gov. Morrison, and there are many things he or his administration have done that we do not approve of, we can't help but admire his stand in the case of J. T. Harris. We see absolutely no use having Courts to try criminals if we are going to have Governors turn them loose. Its true a few days more time given the man to live would not have seriously hindered the effect of the execution, still at best it would have resulted in a prolongation of the agony of expectation or paved the way to directly or indirectly turn a criminal loose on the public neither of which would have been wise. The American people are entirely too sympathetic and emotional, and in this case too many let their tender feelings get the upperhand of their better judgment. The fact that the Supreme Court was divided, is no argument in Harris favor as it is the rarest thing at all that it is ever unanimous on any question of importance. Heretofore we have been "cussing" Governors for using their pardoning powers. Now we are "cussing" him for not using them. Lets-be consistent and let the law take its course. Society will profit thereby.

HALLOWEEN ENTERTAINMENT AT CEDAR ROCK.

The public is cordially invited to a Halloween entertainment at Cedar Rock High School on Monday night, Oct. 31. Come and enjoy an hour or two of fun. Admission 10c for children, 20c for adults. Proceeds for the benefit of the school.

SUPREME COURT DECISION

In Franklin County Tax Case, Holding to 40 Per Cent Reduction.

The following is a copy of the Supreme Court decision on the Franklin County tax injunction case: North Carolina Supreme Court, Fall Term 1921, No. 250, Franklin.

J. R. Williams, Et Als, taxpayers v. County Commissioners of Franklin Co. Appeal by Defendants from order of Bond J. continuing restraining order to the hearing.

This is an action by J. R. Williams and others, taxpayers of Franklin County to restrain the county commissioners of Franklin from revaluation and raising the levy of taxes after the date prescribed by law. The restraining order was granted by Devin J. 2 August 1921. The motion to dissolve the restraining order was heard by Bond J. in Raleigh on 22 August 1921.

The motion was refused and the restraining order was continued to the final hearing. Appeal by Defendants. W. M. Person for plaintiffs. W. H. YARBROUGH and Ben T. Holden for defendants.

Clark, C. J. The defendant board of commissioners of Franklin County in accordance with the provisions of laws 1921 Ch. 33 met on Tuesday after the first Monday in April 1921 and after inquiry and investigation as to the value of the real estate in said county recommended the value be reduced by a horizontal reduction of 40 per cent applicable to the whole county. Their recommendation was certified to the state tax commission under section 28 (a) and approved by the state tax commission 15 June 1921, was the same day certified to the defendant board of county commissioners. Thereafter on the second Monday in July 1921 the defendant county commissioners met as a board of equalization for the purpose of hearing complaints and equalizing values in the various localities. There being a number of complaints, the commissioners in order to ascertain more fully the values in the different localities passed resolution to inspect such parcels of real estate in company with the various taxlisters or other freeholders residing in their respective townships, and after making such investigations the commissioners on 26 July issued 904 notices to taxpayers in 2 townships in which they had made an increase of approximately a million and a half dollars in valuation to another township in which they had made an increase of \$10,000 and to taxpayers in the 3 townships of Youngville, Franklinton and Louisburg in which there had also been increases in taxation, to show cause against the increase on 2 Aug. but no notices were sent out to any taxpayers in other townships. There are ten townships in Franklin County. Why this discrimination does not appear.

The ground upon which Judge Devin granted the restraining order and Judge Bond refused to dissolve the same and continued the restraining order to the final hearing and upon which this court is asked to affirm rests chiefly, if not entirely, upon the proposition that the county commissioners acted without authority in attempting to revalue the property in the parts of the county above designated at a time when they were Functus Officio.

Laws 1921 Ch. 33 Sec. 23 (a) authorizes the board of county commissioners on Tuesday after the first Monday in April 1921, acting as a board of review, to make a horizontal reduction through the county, if, in their judgment they find that the assessed value is in excess of the actual value. At such meeting the board of commissioners made a horizontal cut of 40 per cent as above stated, which was certified to the state tax commission "not later than 20 April 1921"; and the state tax commission approved said horizontal reduction, and certified their approval to the county commissioners "not later than 15 June"; the statute provides: "This section further provides that this horizontal reduction "shall be the values at which the property shall be assessed for taxation unless and until the same shall have been changed and revised by the state tax commission, and certified to the board of county commissioners of such county, which shall be done, not later than 1 July 1921." This was certified as above stated on 15 June.

Section 23 (b) of said Ch. 33 further provides that the county commissioners shall have authority to hear specific complaints of over-valuation or under-valuation of any particular tracts of land if the complaint is made and the re-assessment and re-appraisal by the board was made during the month of May. This was not done during May as to any of the property affected by the re-valuation as to which this injunction is served.

Section 23 (b) further provides that the county commissioners may appoint auditor or any resident freeholder of the county to investigate and report upon all such specific complaints and provides "The board of commissioners shall thereupon approve or revise such recommendations, and shall not later than 15 July 1921 make report to the state tax commission of the increases and reductions in the valuation of specific properties made under authority of this section.

Said Chapter 33 Sec. (c) provides that if the board of commissioners at their regular meeting on first Monday in April 1921 "shall be of the opinion that the valuation of real estate in such counties is so unequal as between the owners of real property in such county as to require more general revision of assessments than is practicable to be made under provision of subsections (a) and (b) of this section"—that is by horizontal cut reduction as was made, and by specific complaint which should have been filed in May—"or the value of the real property as heretofore appraised in such county as a whole is in excess of the present actual value of such property, it may by resolution so find and order that such revision be made. In the event that such order is made, it shall be in lieu of the remedies provided subsection (a) and (b) of this section, and the board of county commissioners shall appoint a board of review composed of 3 resident freeholders who have general knowledge of the value of real estate in such county, and such board of review may appoint such revision, not later than 1 July 1921." Then follows the manner in which they should execute their duties, which as above provided should be completed "not later than 1 July 1921." This section further provides "a complete abstract of such revised assessment by townships, giving average value per acre, and value of town lots, and the value as a whole shall be made to the board of county commissioners of such county, and to the state tax commission "not later than 15 July 1921," and shall be subject to the authority of the state tax commission, as the state board of equalization, so as to preserve a proper equalized value of real property in the several

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counties. Section 23 (d) provides that the report of the county commissioners made pursuant to section 23 (b) and the abstracts as reported by the board of review under section 23 (c) shall be the basis for the assessment of taxes, unless and until the same are changed by the tax commission on or before 1 September 1921 certify down to the board of county commissioners of the several counties its findings and conclusions upon said report and abstracts. It will be seen by perusal of the above provisions of the statute that section 23 (a) authorized the county commissioners on the first Tuesday after the first Monday in April to make a horizontal reduction of the valuation throughout the county and report the same to the state tax commission not later than 20 April 1921, and that said commission shall act upon said report and that said values shall be the values assessed for taxation unless changed by the state tax commission who shall certify down their action not later than 1 July 1921. The action of the county commissioners in making a 40 per cent reduction was approved and certified to defendants 15 JUNE. Then Sec. 23 (b) provides that during May specific complaints may be made as to the valuation of any particular tract of real estate after the general equalization order provided for in the preceding section shall have been made, and the board during the month of May may act upon such complaints and shall report any modifications thereby made in the general order and shall report such modifications "not later than 15 July" to the tax commission. That not having been done, the attempt of the board on the second of August 1921 to make increases of over one and a half million dollars in the valuation for taxation of the property of 904 tax payers in 3 townships and towns was without authority of law and the restraining order was properly granted by Judge Devin and the refusal to dissolve the same by Judge Bond must be affirmed. The defendants, however, contend that they acted under sec. 23 (c) which authorized the county commissioners when they "shall be of the opinion that the valuation of real estate in such county is so unequal as between the owners of real estate in such county as to require a more general revision of assessments than is practicable to be made, under the provisions of subsections (a) and (b) of this section"—that is by a general horizontal reduction and by specific complaints—they "may" by resolution so find and order that such revision be made. In the event such order is made it shall be in lieu of the remedies provided in subsections (a) and (b) of this section. It therefore an alternative remedy which the commissioners might have elected to adopt in their meeting on Tuesday after the first Monday in April. But having adopted the other system of "horizontal reduction and specific complaints" they could not in July proceed to act under subsection (c). Even if they could do so, it would be necessary to set aside their horizontal reduction of 40 per cent as to the entire county though it had been approved by the state tax commission, and then proceed under subsection (c) in lieu thereof. There is this further insuperable objection that if subsection (c) had been chosen as the alternative to the "horizontal reduction and specific complaints" the legislature provided that proceedings thereunder should be completed "not later than 1 July 1921," and that the county commissioners should make their report of such revision under subsection (c) to the state tax commission "not later than 15 July 1921" and that body should certify down their action on or before 1 September 1921. On Tuesday after the first Monday in April the board of commissioners had their election to proceed by a general horizontal reduction and specific complaints which they did and which has been approved by the state tax commission. Or, they might have chosen then to have proceeded under subsection (c) under which the work could be completed "not later than 1 July" and reported "not later than 15 July" to the tax commission which was practicable. They chose the first method. When becoming dissatisfied with that they attempted in August to proceed under subsection (c) they had no authority to set aside the horizontal reduction which had received the approval of the state tax commission for they were functus officio and it was too late because the statute was specific that the revision should be completed "not later than 1 July" and reported to the state tax commission "not later than 1 July." There are some circumstances under which a requirement that a certain act shall be done on a date named may be treated as directory, but that is not possible when the statute conferring a power provides that it shall be performed "not later than" the time specified. The order appealed from is AFFIRMED.