SOUTHERN ARCHITECT

MAY 1959

NCAIA
CONVENTION
JULY 16-18
Asheville

Official Publication
North Carolina Chapter
AIA
American Institute
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OFFICIAL PUBLICATION • NORTH CAROLINA CHAPTER • THE AMERICAN INSTITUTE OF ARCHITECTS

Southern Architect

Volume 6 May 1959 Number 5

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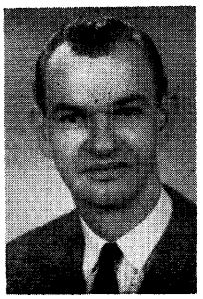
CONTENTS

ODELL NOMINATED AIA DIRECTOR

ODELL



MACKINTOSH

A. G. Odell, Jr., FAIA of Charlotte and a past President of the N. C. Chapter A.I.A., was proposed as Regional Director in a highlight of the South Atlantic Regional meeting held April 13-17 on a cruise out of Charleston on the M.S. Italia. Odell's election is subject to confirmation at the Annual Meeting of the American Institute of Architects in New Orleans in June. Another North Carolinian, David M. Mackintosh, Jr., AIA also of Charlotte, was proposed as Secretary-Treasurer. This double honor to North Carolina architects came as a highlight of the business meeting.

Robert L. Clemmer, AIA of Hickory, President of the N. C. Chapter A.I.A., headed the six man delegation of North Carolinians attending the meeting. Others present were Luther S. Lashmit, AIA of Winston-Salem, Fred W. Butner, Jr., AIA of Winston-Salem, John S. Holloway, AIA of Raleigh, Henry L. Kamphoefner, FAIA of Raleigh and Joseph D. Rivers, AIA of Durham. Also attending from North Carolina was Jack Bell of the Mabie Bell Company of Greensboro.

One of the highlights of the meeting was an address by American Institute of Architects President John Noble Richards, FAIA of Toledo, Ohio. (Mr. Richards talk is carried on pages nine-ten in this issue.)

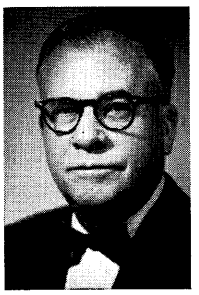
The 1960 meeting will be held in North Carolina at a date and place to be decided on by the Chapter at its Summer Meeting.

FOUNDATION CHANGES ITS NAME

On April 21st corporation papers were filed with the North Carolina Secretary of State changing the name of the North Carolina Architectural Foundation to the North Carolina Design Foundation. The Foundation was established in 1948 by the Executive Committee of the N. C. Chapter American Institute of Architects. Purpose of the Foundation is to attract outstanding faculty members for the N. C. State College School of Design and to raise funds to retain them. Officials stated that the Design Foundation will continue to carry out functions of the current organization but that the new name will encompass a broader field of operations since the School of Design has enlarged the scope of its work with the addition last year of the Department of Products Design. Marion A. Ham, AIA of Durham is President of the Design Foundation this year.

PRESIDENT'S MESSAGE

Some thoughts on the Regional Conference of the South Atlantic District on board the Italia: It was historic in that it marked the last meeting with Florida as a member of the District. Floridians were conspicuous by their absence which accounted in part for the relatively small attendance. The attendance from our own Chapter was quite small. South Carolina was the host Chapter. Clinton Gamble presided.



CLEMMER

President Richards was present and delivered the keynote address. Emerson Goble, Editor of the Architectural Record was another speaker. Technical discussions and demonstrations on acoustics, lighting and mechanical engineering were conducted by nationally known authorities followed by a panel summary moderated by Harlan E. McClure.

One of the highlights of the convention was another panel discussion entitled "Continuing Education for Practitioners" with the four deans of the area state architectural schools serving as panelists and with Herbert C. Millkey acting as moderator. Keen interest and enthusiastic participation in this discussion culminated in the passing of a resolution by the assembly to the effect that "the Director of the South Atlantic District of the A.I.A. take immediate measures to appoint a committee to establish mechanisms to propagate and support continuing professional education on state, regional, and national levels." Also the District appropriated one scholarship for a teacher or prospective teacher to the Summer Seminar each year under the R-17 program, the recipient to be selected by the Regional Director.

Another highlight was the very moving and beautiful "word painting" of the Frank Lloyd Wright funeral written and delivered by Mr. Richards who had attended the services only two days previous.

There were 20 architectural exhibits from the four states. Due to some shipping difficulties our Chapter exhibits did not arrive in time. Richards, Gamble and Goble acted as a jury. Five awards of merit were made. There were no building products exhibits.

By previous agreement and on recommendation of the Regional Council the division of the present treasury was officially made on the basis of 58.43 per cent to the newly constituted South Atlantic District and 41.57 per cent to the Florida District, this division being based upon the total number of Corporate members in each District at the time of the 1959 Regional Conference.

Proudly we announce that A. G. Odell, Jr., F.A.I.A. was nominated for the office of Director and that D. M. Mackintosh, Jr., A.I.A. was nominated for the office of Secretary-Treasurer of the South Atlantic District subject to ratification by the National Convention in June.

North Carolina will be the host Chapter for the 1960 Regional Conference.

ROBERT L. CLEMMER, President
N. C. Chapter, A.I.A.

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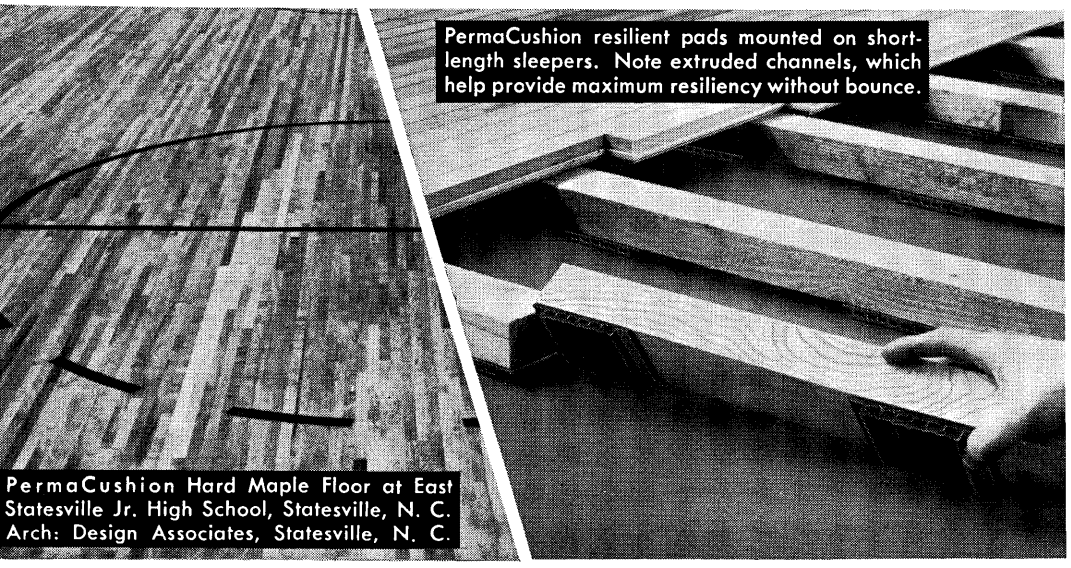

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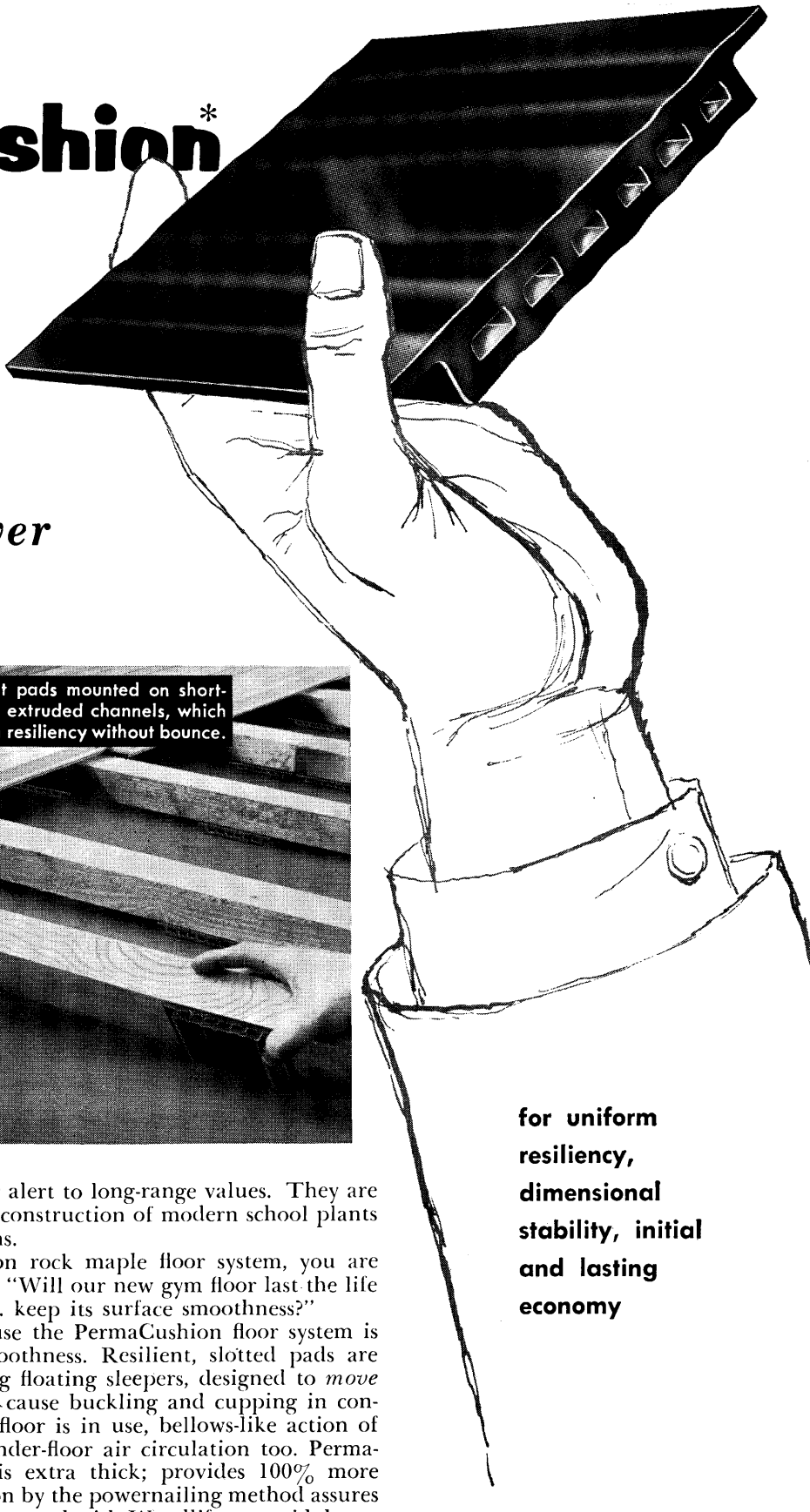

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AIA south atlantic regional convention 1959

In photo above AIA President John Noble Richards of Toledo, Ohio and Mrs. Richards celebrating their 21st anniversary. In photos in right column (top) Richards addressing convention; (second) in jackets from second left to second right, Mrs. Lashmit, N.C.A.I.A. President Clemmer, of Hickory, Mrs. Clemmer, Luther Lashmit, AIA of Winston-Salem; (third) diners facing camera Mrs. and John Holloway, AIA of Raleigh, flanked left by Mr. and Mrs. James Hunt and right by Mrs. and Mr. Albert Suttles all of Alberton, Georgia; (bottom) sunning Mrs. Lashmit, Mrs. & Mr. Fred Butner, Jr., AIA of Winston-Salem, Mrs. and Mr. Jack Bell of Greensboro, Mrs. Henry Kamphoefner of Raleigh.

THE ARCHITECT IN THIS TECHNICAL AGE

JOHN N. RICHARDS, FAIA,
President, American Institute of Architects

presented during the South Atlantic Region AIA Cruise

In the excitement of our new and expanding technologies, architects must remember that their prime responsibility is service to people—the satisfaction of man's craving for harmony and beauty. . . .

The theme I have been asked to address you upon is: *"The architect in this technical age."* That's a long subject. My main thought on it is a very simple one: The role of the architect in this technical age is, I believe, to utilize our developing new technology for a new assertion of man's eternal values.

If this sounds too abstract, let me try it in even simpler terms: The role of the architect in this technical age is to use our new technology to create beauty as well as utility.

Now, surely that isn't all. Nor is it simple. Nor is it original. But I feel that this very naive generalization can never be overstressed.

We all tend to get wrapped up in our new technology. We get excited about the great potentialities of space exploration, the atomic age, the chemical age, the push button age, the curtain wall age, the ceramic tile age, the hyperbolic paraboloid age, the reinforced concrete age . . . that we forget the essence of our creations: *man and his craving for harmony and beauty.*

Technology — all architectural philosophy of the past few decades to the contrary — is *not* beautiful. It is *not* harmonious. It may provide comfort but not delight. Industry realized this some time ago. Nobody lets the engineers alone design complex technical products. Manufacturers employ industrial designers and when they want to get very fancy or finny, they get "stylists" for their cars, refrigerators and electric irons. Only important buildings are at times still designed exclusively by technicians.

Now, I am not saying all this to belittle technicians — none of us could do without them — or to dampen enthusiasm for this technical age. I marvel at each new discovery, each new invention, each new product. There is absolutely no question that our new technology has the potentials of ushering in new, undreamed-of blessings for mankind. We may already be in the beginnings of a new Renaissance.

There are, of course, dangers and they are constantly being pointed out to us by our thinkers and critics. Among these dangers of this technical age is, first of all, man's inability to depart from our quarrelsome habits and settle things peacefully in the world. In short, our entire technological civilization may simply be blown to bits.

Another danger is that we serve technology rather than letting technology serve us. A case in point is the motor car. As Lewis Mumford has said, one is often led to think that for many people the principal purpose of existence has come to be not a better life, but longer cars to move us greater distances at higher speeds. Too many people think that owning and operating automobiles is why we were born, why we are given an education, why people come together in cities. The result, as we all know, is that the car threatens to choke the city to death with its smog and congestion.

A third and even more likely danger of technology is that we delight so much in the creature comforts it is able to provide us that we mistake technical advance for human progress; that we consider lasting values to be obsolescent.

Dean Burchard believes that our new technology and planning skill can assure us a better future. He is, however, not so certain that this future is also within the range of our popular aspirations. He finds it hard to believe that people who listen to the monotonous rhythms of rock-and-roll records while a carhop brings them chicken-in-the-rough and a chocolate malted are not convinced that they already enjoy an abundant life. But I feel the very fact these dangers are being pointed out to us will help us avoid them. Our captain will confirm the

fact that navigation is much easier when he knows just where the shallow and difficult waters are.

I believe that we can steer clear of these dangers and that, as I said, we are in the beginnings of an era comparable to that of the fifteenth and sixteenth centuries in Europe — the Renaissance. You may doubt it, but you can't really argue with me about it. No matter. My point is: What do we chiefly remember about the first Renaissance?

Like ours, it was a period of great technical innovations and inventions which rapidly transformed the world as it was then known. There was the invention of printing . . . of paper . . . of the mariner's compass . . . of gunpowder. There was the discovery of the human anatomy . . . the exploration of continents beyond the ocean . . . the substitution of the Copernican for the Ptolemaic system of astronomy. These were great and vital and revolutionary developments, comparable in importance to the invention of the electronic tube, the airplane, and the harnessing of atomic energy.

But the greatest accomplishment of that period, you will agree, was not gunpowder, but the Sistine Chapel; not the compass, but the Farnese Palace in Rome, the palazzos of Venice and later St. Paul's in London.

The men who enriched humanity beyond measure are not only Gutenberg, Aldus Manutius and Galileo; but Leonardo, Michelangelo, Bernini, and Sir Christopher Wren. The great discovery of the age was not just that saltpeter, sulphur and charcoal can be mixed to produce a loud and deadly explosion, but that the proper study of mankind is man. And while — unfortunately — gunpowder has become quite obsolete as a means of extended diplomacy, the need to place man in the center of creations and aspirations is still as true as ever.

I am neither an historian, nor a prophet. But I am quite sure that the future will rate our exciting new building materials and building technology far less important than what we do with them. What we do with them for *people!* That is one of my points.

The other is that only the invention of printing, of paper, of the compass and all the rest of Renaissance technology made that marvellously creative age of humanism possible. Our new technology gives us the same chance. It is up to us to use it. This is particularly true of architects. We must be, in a sense, Renaissance men.

This thought, too, has been expressed many times before. It has been said — and I subscribe to it — that to be truly creative the architect must acquire greater general knowledge than ever before in the history of the profession. We are one profession which cannot allow itself to fall into the trap of over-specialization.

We must know, understand, and perhaps even master the latest developments in building technology and engineering — but remain above them. We must know and understand more about people — their sociology and psychology. We must be businessmen. And planners. And many other things.

But above all we must remain designers and artists, able and willing to create order and harmony out of the mass of complicated facts and factors of building technology, building sociology and building economics each new edifice presents. Only thus can we create beauty.

There are, perhaps, some of us who have the genius to be all these things in one. Undoubtedly our age, too, will produce real Renaissance men. But they'll be few. The rest of us will have to combine our knowledge, our mental and technical resources — we have to team up and band together in unity and fellowship to meet the challenge of our profession in this difficult but exciting age. END

BIDDING AND AWARD OF CONSTRUCTION CONTRACTS

By JOHN P. DAVEY

Since earliest recorded history, the skill, imagination and foresight of architects and engineers have been complemented and augmented by the resourcefulness and skill of the contractor in devising new methods of construction. The finest plans and specifications ever devised are of little value until the thoughts and ideas of the designer have been given life and vitality by the skilled artisans employed by the Contractor.

Many of our contract forms and practices came from England and other European countries. A builder in early England was a master mason who performed the functions of designer, builder and who also supervised the work to assure that it was performed properly and the workmen paid according to their ability.

The earliest construction contract of record in this country appears to be one entered into in Salem, Mass. in 1642. The project was a meeting house for the Town of Salem. The contract was for the framing and erection of the building. Provisions were made for partial payments as the work progressed.

The practice of obtaining competitive bids as a preliminary to the award of construction contracts, particularly where public funds are involved, is one of long standing. Competitive bids are required for all public works undertaken with public funds, regardless of whether the funds are town, county, city, state or those of the Federal Government. The usual provisions of the various statutes require that the construction contract will be awarded to the responsible bidder submitting the lowest acceptable bid, after public advertising.

In the case of projects that are financed by private funds it is customary to have the project built by contractors who have been selected preliminary to bidding on the basis of their qualifications.

Under this procedure the Owner, Architect, or Engineer selects a minimum of three bidders and invites proposals from them.

The "Suggested Guide to Bidding Procedure" which has been developed through the joint efforts of the Committee on Contract Documents of the American Institute of Architects and a special Committee of the Associated General Contractors, recommends that the selected bidders be confined to not more than six bidders. "The Suggested Guide to Bidding Procedure" has been published by the American Institute of Architects as A.I.A. Document 333. The Document can also be obtained from the Associated General Contractors, 20th and E Streets, Washington 6, D. C.

In the case of selected bidding, bids should be solicited only from responsible contractors. Accordingly, the contract should be awarded to the Contractor submitting the lowest acceptable bid.

When Is a Bid Acceptable?

A bid is considered acceptable if it is responsive to the bidding documents and signed by responsible members of contracting firms. In other words, the bid should be free from any condition written in by the Contractor limiting in some way or other restricting his bid. For example, if the specification required that the building be completed in 300 days from the date of the award of the contract, a bidder might write on his bid that he would require 350 days to complete the project. The Contractor's bid is accordingly not a responsive bid and is generally spoken of as a conditional bid.

The specifications usually contain a provision whereby the Owner can, if he elects, waive any informality in the bidding which he considers to be to his advantage. This should not be abused however, as the bidders are put to great expense in preparing their bids and are entitled to have their

bids considered and the contract awarded in a fair and equitable manner.

The acceptability of a bid is substantially the same regardless of whether the bids are obtained from a selected list of bidders or whether they are obtained on an open competitive basis obtained through advertising.

Performance, Payment Bonds

In the case of the publicly owned project, it is customary to require that the Contractor furnish a Performance and Payment Bond in the amount of at least 50 percent of the contract amount. Frequently, the bonds are combined into one bond, known as a Performance and Payment Bond. Where a construction contract is awarded by the Federal Government, the State Mechanics' Lien laws are not applicable. In order to afford Mechanics and Suppliers of Materials an equal measure of protection to those afforded by State lien laws a separate Payment bond is required by Federal Law.

The reasons for requiring bonds covering both performance and payment are to assure that the Contractor will not only construct the building in accordance with the plans and specifications but further, that all mechanics and material suppliers will be paid.

The Performance Bond originated in cases where one or more individuals would sign a bond guaranteeing that the Contractor would build the project in accordance with the contract drawings and specifications. Frequently, a Contractor would build the building in accordance with the plans and specifications and thereby relieve the Sureties even though there were thousands of dollars worth of unpaid bills for labor and materials. In order to correct this situation it became the practice to require that the contractor furnish another bond guaranteeing the payment of all mechanics and laborers as well as suppliers of materials and equipment. This type of bond is known as a Payment Bond.

Generally, in the case of publicly owned projects, it is considered that a Performance and Payment bond furnished by a Surety Company authorized to do business in the State, constitutes conclusive evidence of the Contractor's ability to finance the construction of the project. This assumption is generally correct. However, the specifications should be so written that the Surety will be responsible not only for the completion of the project but also for any loss the Owner suffers as a result of the Contractor's failure to complete the project within the time stipulated in the contract.

If the Surety company is not made responsible financially for the delay in completing the project, they, frequently, have no interest in expediting the completion of the project.

The Specifications should stipulate the time for completion as well as the amount of liquidated damages if the Surety is to be held responsible for the Contractor's delay in completion of the project. Where the time of completion of the project is not spelled out in the contract the Contractor is required by law to complete the project in a "reasonable time." In the absence of a provision for liquidated damages the Contractor is legally liable to compensate the Owner for the "actual loss" he incurs when the Contractor fails to complete the project in the time specified or in a "reasonable time" as discussed above.

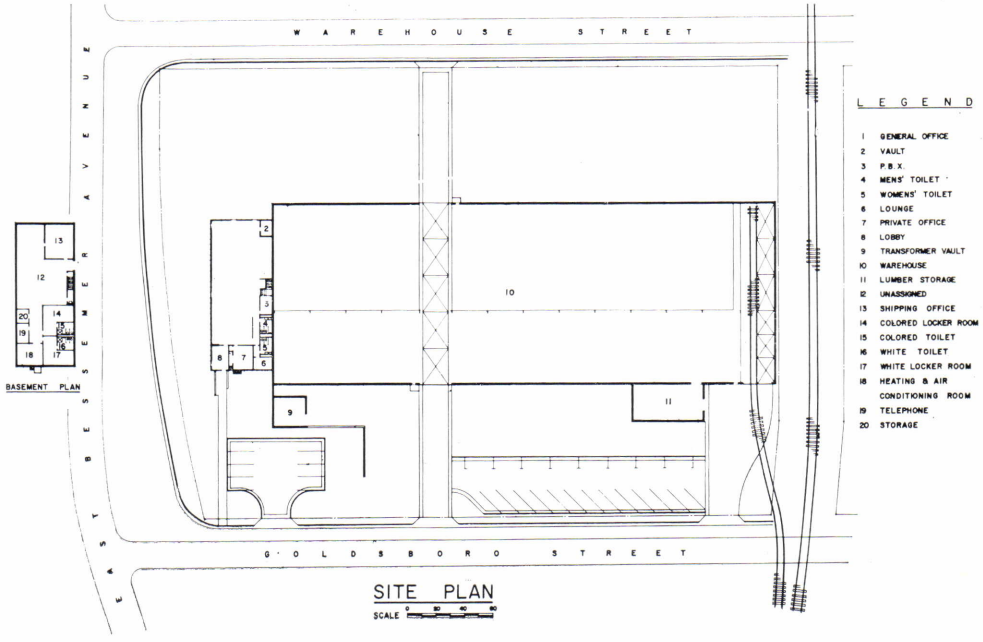
If the time for completion and liquidated damages are not established in the contract it would be extremely difficult if not impossible to collect from a Surety to reimburse the Owner for the loss incurred due to the delay caused by the Contractor.

Where buildings or other projects are not publicly owned the requirement for furnishing Performance and Payment bonds is frequently omitted. The decision to omit the Performance and Payment bond

(Continued on Page 17)

warehouse, greensboro

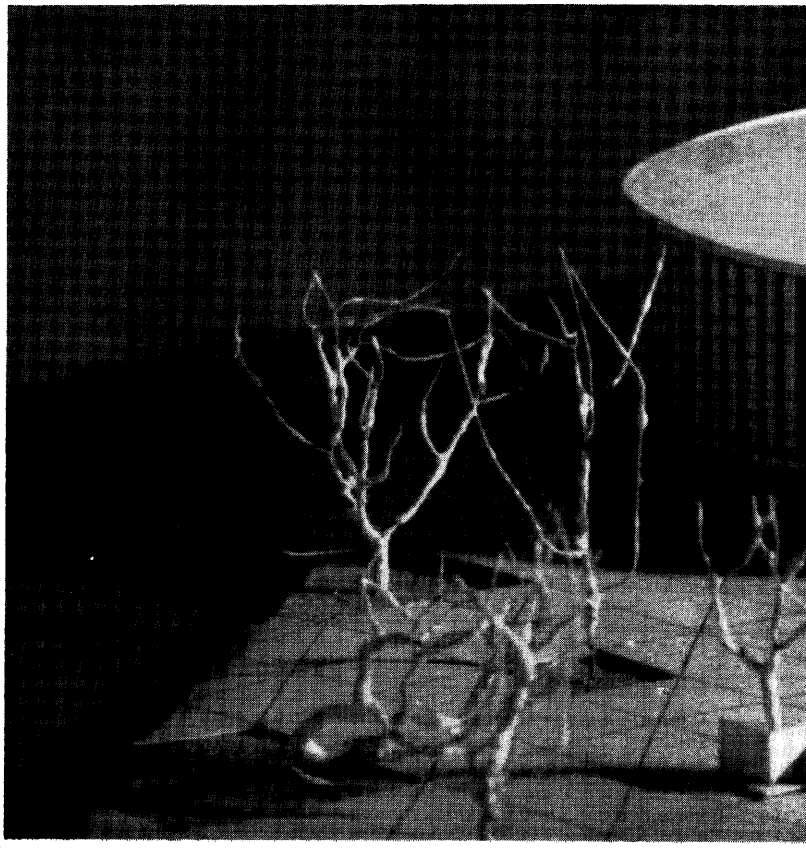
This 65,000 square foot building for Edgecomb Steel Company of Greensboro was built last year. The two story office building has Executive offices on the upper level and shipping and receiving offices and employees dressing rooms and toilets on the lower level. The warehouse is one-story with bituminous drives and railroad spur track entering the storage areas. The steel structural frame has exterior walls of the office insulated curtain walls with anodized aluminum panels and of the warehouse insulated sandwich walls with ribbed aluminum siding on the outside and steel siding on the inside. A solid brick wall is between the warehouse and office. Interior petitions are concrete block, brick and sound insulated double steel stud partitions. Floors are concrete slab on grade, with those in the warehouse 9" double reinforced, and in the office fireproof steel beams and concrete slab between the floors. The office area has a packaged air conditioner with duct distribution and a forced hot water heating system. The warehouse area has four direct oil fired space heaters.



McMINN, NORFLEET & WICKER, AIA, ARCHITECTS
greensboro

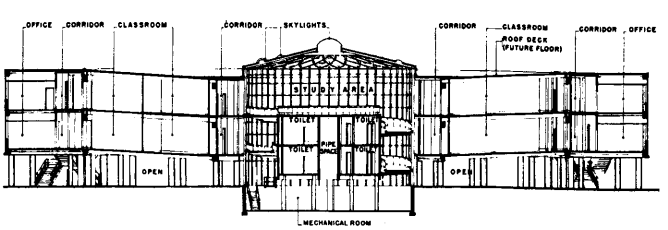
HOLT CONSTRUCTION COMPANY, CONTRACTOR
graham

circular classroom building



This new classroom building to be constructed on the campus of N. C. State College, approved by the 1957 General Assembly, will be named Harrellson Hall for the former college Chancellor. Approximately 206 feet in diameter the circular structure was decided on due to the limited availability of land on the academic campus (it is planned to be almost directly south of the College Union Building), as well as its requirements of a minimum of foundation and roof construction and economy in heating and cooling due to equal distances involved in radial structural numbers. The building is designed to provide classrooms for all of the schools of the college, and will also house offices of various college departments. It is to be built on stilts, allowing easy entrance and exit from the center circular 12 foot wide ramp and from the staircases located on the perimeter, since the maximum load of the contemplated structure may run as high as 6,000 students, making essential rapid entrance and exits. All classrooms are within the interior of the building and will be artificially lighted. Inside the flat outer rim of offices will be a continuous corridor off of which on the interior of the building will be classrooms with floors sloping gradually to an inner ring where another corridor, ramps and restroom facilities will be located. A dome on the top center of the building will not only permit light to enter the central ramp area but will house a study area on the top of the central core immediately below the dome.

ARCHITECTS
HOLLOWAY-REEVES, AIA
& E. W. WAUGH, AIA
raleigh



CROSS SECTION
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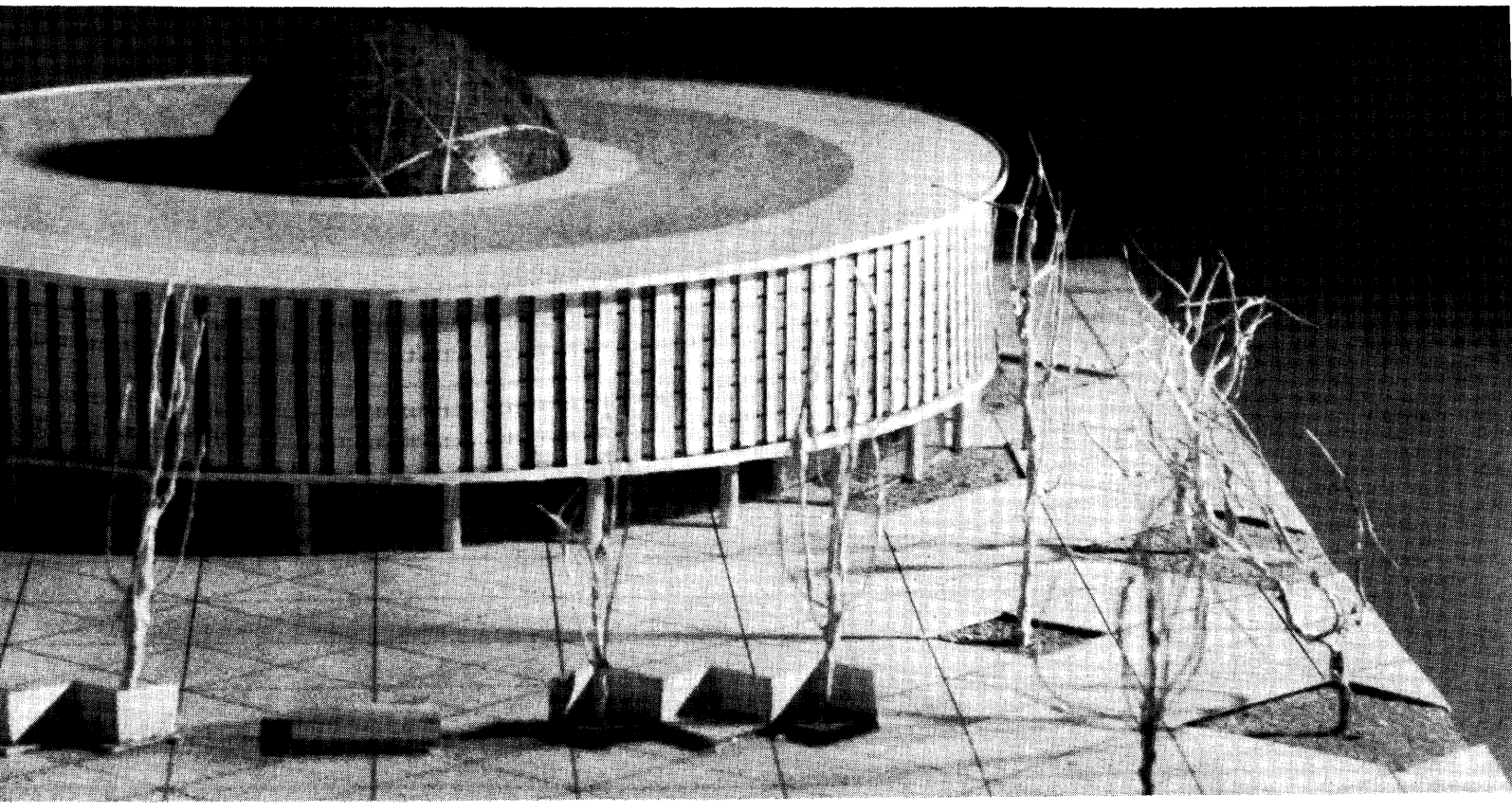
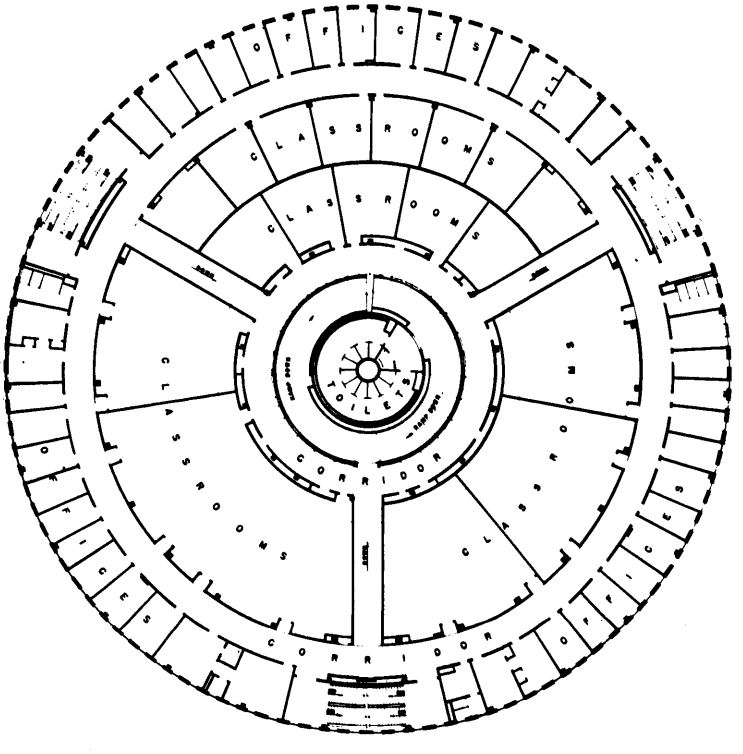
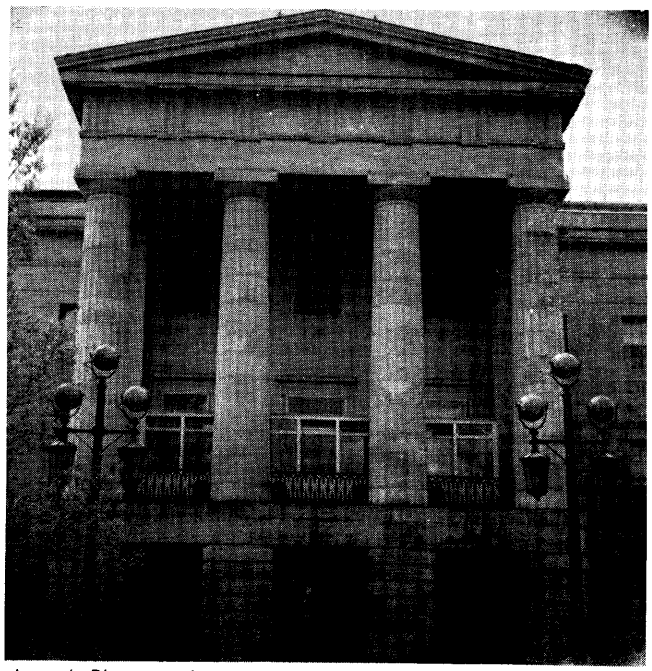


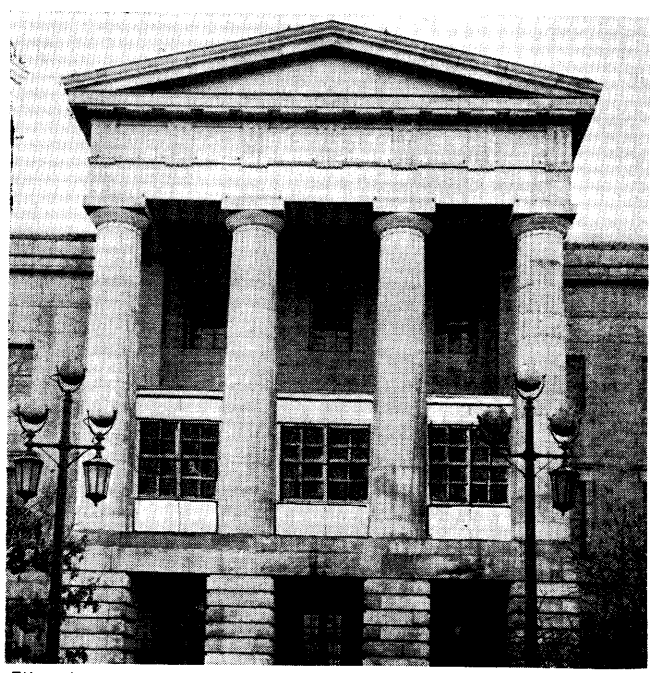


TYPICAL FLOOR

LETTERS TO THE EDITOR



Actual Photograph



Elliott's conception

STATE OF NORTH CAROLINA

DEPARTMENT OF ADMINISTRATION

F. B. TURNER, STATE PROPERTY OFFICER

RALEIGH

April 13, 1959

Mr. Robert L. Clemmer, President
North Carolina Chapter - A.I.A.
226 Second Street, N.W.
Hickory, N. C.

Dear Bob:

There appears on page 23 of the February 1959 issue of the SOUTHERN ARCHITECT, copy of a picture which appeared in the Raleigh News & Observer which picture was prepared by Cecil D. Elliott, Associate Professor of Architecture, School of Design, North Carolina State College, and there appears an editor's note at the bottom of the page which reads "This structure was built for the press, but Governor Hodges has assured the public that it will be removed, immediately on adjournment of the Legislature."

Your attention is called to the fact that this was a sketch prepared without knowledge of what was being planned for the building and without determining in advance of making the sketch, what was being planned for the press room. Your attention is also called to the fact that no person among those who criticized the idea ever visited this office where the work was being planned to determine just what was being planned or how it was to be built. The sketch as prepared by Cecil D. Elliott, A.I.A., Associate Professor of Architecture, School of Design, North Carolina State College, does not resemble the enclosure which was provided.

Attached are two photographs of the enclosure as it was built.

The main differences are that Elliott's sketch pictures a structure 18 feet high and extending beyond the center of the columns and pictures the ornamental iron railing as having been removed from the building.

The enclosure as built is 10 feet high and is entirely within the confines of the columns of the building and the ornamental iron rail has been left in place.

It is, in my opinion, unfortunate that the News & Observer did select a picture which was prepared for the paper by some irresponsible person and carry such a picture with the implication that this is the structure which was built.

When you have had an opportunity to compare these photographs with the picture which appears on page 23 of the SOUTHERN ARCHITECT for February 1959, it may be that you would like to have your magazine carry a correction.

Very truly yours,
F. B. Turner

BIDDING AND AWARD OF CONSTRUCTION CONTRACTS

(Continued from Page 12)

should be made by the Owner and not the Architect and Engineer.

The annual percentage of failures in the contracting profession is too high for either the Architect or Engineer to assume responsibility for omitting Performance and Payment bonds from the contract.

Where Performance and Payment bonds are not required, the financial sheet submitted by the Contractor should be studied with care. There is a tendency to assume that because a Contractor is a large operator it follows automatically that he is in a sound financial condition. It should be borne in mind that when a Contractor is a large operator his risks are also, of necessity, correspondingly large.

In cases where the Contractor is not required to furnish Performance and Payment bonds, the Architect or Engineer should be extremely cautious in regard to progress payments to assure that the Contractor is not overpaid as the work progresses. Where the specifications require that the Contractor must furnish Performance and Payment bonds from an approved Surety Company, failure to furnish satisfactory bonds is sufficient grounds to void the Contractor's bid.

Determining Qualifications, Responsibility of Bidders

In evaluating the experience qualifications of a contractor, there is no general rule other than one that the contractor must be able to show that he has built buildings or projects of comparable size and complexity. In the case of mechanical and electrical equipment the courts have held that where a builder is unable to show that his equipment has been previously installed, coupled with a successful record of operation, this will constitute justification for rejection of a bid.

It is customary to request the Contractor to submit a "Qualification Questionnaire." The "Qualification Questionnaire" usually includes a current financial statement and a list of projects that the particular Contractor has built in recent years. The form should be signed and notarized by the Contractor before it is submitted.

Standard qualification questionnaires have been prepared jointly by the American Institute of Architects, the American Society of Municipal Engineers, and the Associated General Contractors of America. They have prepared both "Standard Pre-Qualification Questionnaires" and Standard Questionnaires." These forms are excellent.

The "Qualification Questionnaire" provides basically, information relative to the financial qualifications and construction experience of the particular bidder.

The matter of determining whether a bidder is a "responsible" bidder under open competitive bidding, is frequently a difficult determination. "The Suggested Guide to Bidding Procedure" recommends that the bidding be confined to responsible contractors selected by the Architect or by means of an adequate method of prequalification. In the case of a publicly owned facility the decision relative to the qualifications of the bidder will have to be determined by the contracting authorities and not by the Architect or Engineer, as recommended in the Suggested Guide to Bidding Procedure.

The Architect or Engineer, in the case of privately owned facilities can select the bidders if he elects, particularly if the Owner of the project is an individual or partnership. In the case of a corporation, the decision should be made by the Board of Directors of the Corporation and not by the Architect or Engineer unless there is an express action by the Board of Directors authorizing the Architect or Engineer to select the bidders. In any event where

the qualifications of a bidder are questionable, the matter should be discussed with the Owner of the project before refusing the plans and specifications to a prospective bidder. The Owner, after all, will be the contracting party and should accept the responsibility for refusing to furnish plans and specifications to a prospective bidder and should not shift the responsibility to the Architect or Engineer.

In the case of publicly owned facilities where it is necessary to advertise for bids, it is customary to furnish plans and specifications to anyone who pays the usual deposit for the bidding materials. The decision as to whether a particular bidder is a responsible contractor is reserved until the bids are opened. In this way it is only necessary to judge the qualifications of the contractor submitting the low bid.

The failure of a bidder to possess a license to operate as a General Contractor or as a Specialty Contractor in the State where the project is located, of course is sufficient reason for not awarding a contract to that particular bidder.

A factor other than the financial ability and construction experience of the particular contractor, which should receive consideration in the award of a construction contract, is the reputation of the Contractor. The reputation of the Contractor is something which cannot be judged on the basis of the data in a "Qualification Questionnaire."

The United States District Court in a case which arose in Massachusetts,

O'Brian vs Carney
6 Feb. Supple. 761 stated:

Selection of the "lowest responsible bidder" by Federal officers requires that not only the pecuniary ability but also the judgment, skill, capacity of the bidder be considered.

The court in the same case stated that the statute requiring competitive bids was enacted for the benefit of the government and not for the bidder.

The Supreme Court of Montana in Kivich vs Civar, 110 Pac. 2nd 969, decided in February 1941, summed up many of the decisions by other courts relative to the duties and obligations of the awarding authorities evaluating competitive bids where the award of a contract is required by law to be awarded to the "responsible bidder submitting the lowest acceptable bid." The court stated that the decision by officers in whom the power is vested cannot be set aside unless the action of the tribunal is arbitrary, oppressive or fraudulent.

In the case of Hibbs vs Arensberg, et al., 119 Atlantic 727 the Supreme Court of Pennsylvania in January 1923 stated:

Ordinarily courts will not interfere with the exercise of the discretion of executive officers of school districts in performing their functions but will interfere if it appears their action was based on misconception of law, or ignorance through lack of inquiry or was the result of arbitrary will or caprice or improper influence or in violation of law.

The foregoing opinion is frequently cited as the rule of law applicable to the determination of the responsibility of a bidder.

The courts have held that the fact that a bidder can furnish Performance and Payment Bonds does not of itself constitute an assurance that the low bidder is a "responsible bidder" within the meaning of the law requiring competitive bidding.

The Court in Douglas vs Commissioners 108 PA 559 stated "Giving a bond alone does not make up for responsibility; we have too many Bonding companies willing to indemnify almost anything."

The ability to furnish a Performance and Payment Bond as stated by the various courts is not an exclusive measure of whether a contractor is a re-

sponsible bidder; it is nevertheless a factor that must receive careful consideration before rejecting a low bid. It may not pose a great problem where the two lowest bids are close together in amount and only a nominal saving can be effected by awarding the contract to the Contractor submitting the lowest bid. In cases where there is a wide difference in the low and second low bid, the fact that the low bidder can furnish a bond guaranteeing the performance of the contract it makes it difficult if not impossible to pass over the low bidder where public funds are involved. The courts have made it clear that the best interests of the taxpayer is the primary consideration in determining whether the awarding authorities were justified in awarding a contract to other than the low bidder.

The courts consistently hold that the skill and judgment of the bidder can be considered in determining whether the bidder is a "responsible bidder" within the meaning of the law. Skill and judgment are intangibles and it would be difficult in the absence of concrete examples to justify awarding a contract to other than the low bidder on the basis of his lack of skill or judgment.

There are three measures to determine whether a bidder is a "responsible bidder"—namely, his financial resources, ability and integrity. These factors can be evaluated as follows:

1. Financial resources. In the case of publicly owned facilities the Contractor's ability to furnish Performance and Payment Bonds in the amount required by the contract is usually sufficient evidence of the bidder's financial resources. In addition to the bond or bonds, the Contractor should have as a "rule-of-thumb," ten percent of the contract amount in either liquid or quick assets.

2. The Ability of the Contractor should be evaluated on the basis of projects completed by the particular Contractor. The Contractor should be able to satisfy the awarding authorities that he has built similar projects in size and complexity. The Contractor's reputation for completing projects within the contract time is a factor that should also receive consideration.

The ability of the Contractor to work successfully with Architects, Engineers, Subcontractors and Material Suppliers is extremely important. It is not unusual for a contract to be augmented by Change Orders as much as twenty percent of the original contract amount. If the Contractor is not cooperative with all of the parties named above, it will be extremely difficult to obtain acceptable proposals in connection with Change Orders. All of these factors can be considered in evaluating the ability of low bidders.

3. The Integrity of the Contractor can usually be evaluated on the reputation of the Contractor in the conduct of business with Subcontractors, Material Suppliers and those who have been employed by the Contractor as Laborers or Mechanics. A Contractor who has been in business only a short time will have earned a reputation among these people.

In some cases the awarding authorities consider the reputation of the bidder on the basis of his general moral standards as well as his reputation for sobriety. In regarding the moral standards of the bidder it would be dangerous for the awarding authorities to consider this factor in the absence of an arrest and conviction of the commission of a felony.

The reputation of a bidder for sobriety is an important consideration, but it is a difficult matter on which to justify the award of a contract to another bidder, in the absence of a record of arrest and conviction. It is likely that a lack of sobriety would affect the ability of contractors as discussed under Item 2 above. In the event it can be shown

that the Contractor's indulgence in alcoholic beverages has adversely affected his work on other projects, this could constitute grounds for considering that the bidder is not a "responsible" bidder and would accordingly justify the award of a contract to another bidder.

The ultimate decision whether the bidder is the "lowest responsible bidder," is one that can be resolved only by the legally constituted Board of Award. The decision is not one for which the Architect or Engineer should attempt to accept responsibility. *It is entirely proper and in fact a duty of the Architect or Engineer to make recommendations to the awarding authorities relative to financial qualifications as well as to the ability and integrity of the low bidder.*

The Architect and Engineer should each be familiar with the basic legal principles established by the various courts in order to furnish the awarding authorities with a worthwhile opinion regarding the qualifications of the low bidder. The Architects or Engineers should determine the basic facts regarding qualifications of the low bidder. The determination relative to the applicable principle of law is one which should be left exclusively to the legal counsel advising the awarding authorities.

(Editor's Note: This article was first published in the March 1959 edition of the Construction Specification Institute's national magazine, "The Construction Specifier." The author, John P. Davey, is a past vice-president and national director of CSI and is a member of the Bar and a consultant to the State of Ohio.)

NORTH CAROLINA PERSONALITY OF THE MONTH

DR. ELLEN WINSTON

This is another of a series of articles giving a sketch of the leaders of various organizations and fields of business with which members of NCAIA are connected.

Dr. Winston, North Carolina's Commissioner of Public Welfare, is a native North Carolinian, having been born in Swain County. She received her Ph.D. from the University of Chicago. In 1948 she was awarded the honorary degree of Doctor of Humanities by the Woman's College of the University of North Carolina, and in 1952 she was awarded the honorary degree of Doctor of Laws by Converse College, her alma mater.

Dr. Winston has held various research positions with the National Economic and Social Planning Association, the Carnegie Corporation of New York, and a number of Federal agencies. As a result of these activities and other interests she has written extensively in the fields of social and economic problems. She spent four years as head of the department of sociology and economics at Meredith College, and came from that position to her present office on June 1, 1944.

She is a past president of the North Carolina Conference for Social Service. Among her activities on a national basis, she completed a two-year term as President of the American Public Welfare Association as of January 1, 1959, after also serving as a Vice President. She was a member of the Fact-Finding Committee for the Midcentury White House Conference of Children and Youth. She was for three years a member of the Slum Clearance Advisory Committee of the U. S. Housing and Home Finance Agency and completed a three-year term on the Executive Committee of the National Conference on Social Welfare. She served in various capacities for the National Conference on Social Welfare. She was Chairman of the Southern Region, Child Welfare League of America for 1951-52. She was a member of the Committee on Federal Aid to Welfare of the Commission on Intergovernmental Relations. She was recently elected to the Board of Directors of the Council on Social Work Education for a two-year term. Dr. Winston is a member of the National Committee for the 1960 White House Conference on Children and Youth and has recently been appointed to the twelve-member National Council on Child Welfare authorized by the 1958 Congress. She is a member of the Federal-State Committee on Aging and the Southern States Advisory Committee on Aging of the Council of State Governments.

ARCHITECTS AND BUILDERS IN THE NEWS

Opens Office

James H. Benton, AIA of Charlotte, announces the establishment of his office at 1366 East Morehead Street. Benton was formerly a partner of the firm Sloan, Wheatley, Mackintosh and Benton.

Opens Office

Lawrence H. Mallard, AIA of High Point, has announced the opening of an office at 2820 Lawndale Drive in Greensboro.

Elected

Ralph Reeves, AIA of Raleigh, has been elected Vice-President of the Sphinx Club of Raleigh, a social club with quarters in the Hotel Sir Walter.

Opens Office

Stuart R. Penn, AIA of Asheville, has announced the opening of an office at 405 South Sterling Street in Morganton.

Nominated

Mrs. Leslie N. Boney, mother of N. C. Chapter A.I.A. Vice-President Leslie N. Boney, Jr. of Wilmington, and wife of member Leslie N. Boney, Sr. and Mother of members Bill and Charles Boney, was among the fifteen mothers nominated for the 1959 North Carolina Mother of the Year.

New Appointment

Carolinas Branch Associated General Contractors of America has named Joseph G. Hamrick as Executive Assistant in charge of their South Carolina operations. He will have headquarters in Columbia in the Wade Hampton Hotel. Mr. Hamrick has served for the past four years as Assistant to the President of H. L. Coble Construction Company in Greensboro.

Transfers

Bosworth C. Beckwith, AIA of Wilson, has transferred his membership to accept a position in Honolulu with the firm Lemmon, Freeth, Haines and Jones. He and his wife left in early May and he will be affiliated with the Hawaiian Chapter.

Index of Advertisers

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ARCHITECTURAL CALENDAR

MAY 6: Charlotte Council of Architects, Chez Montet, Charlotte.

MAY 6, 13, 20, 27: Architects Guild of High Point, High Point.

MAY 7, 22: Raleigh Council of Architects, (7) S & W Cafeteria, (22) College Inn, Raleigh.

MAY 19: Construction Specifications Institute, Winston-Salem Chapter, Winston-Salem.

JUNE 1: Deadline for items for this publication's next issue.

JUNE 3-6: N. C. Board of Architecture Summer Series Examinations, School of Design, N. C. State College.

JUNE 14-17: N. C. Board of Architecture, Blowing Rock.

JUNE 18: Professional Engineers of N. C., Sedgefield Inn, Greensboro.

JUNE 19: F. Graham Williams Co., 36th Annual Golf Tournament, E. Lake Country Club, Atlanta, Ga.

JUNE 22-23: N. C. Building Inspectors Association Annual Meeting, New Bern.

JUNE 22-26: AIA Convention, Hotel Roosevelt, New Orleans, La.

JULY 16-18: N. C. Chapter American Institute of Architects Annual Meeting, Grove Park Inn, Asheville.

JULY 16: Western Council of Architects, Shelby.

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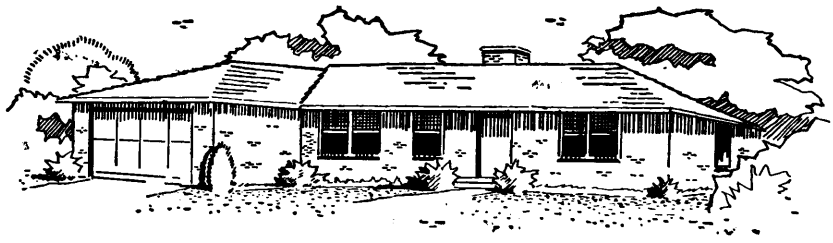

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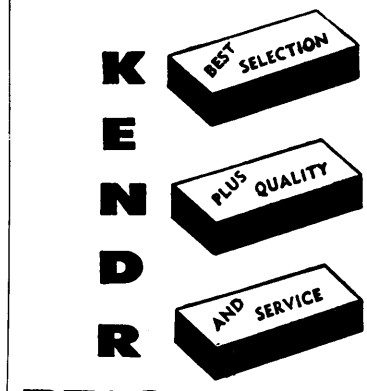

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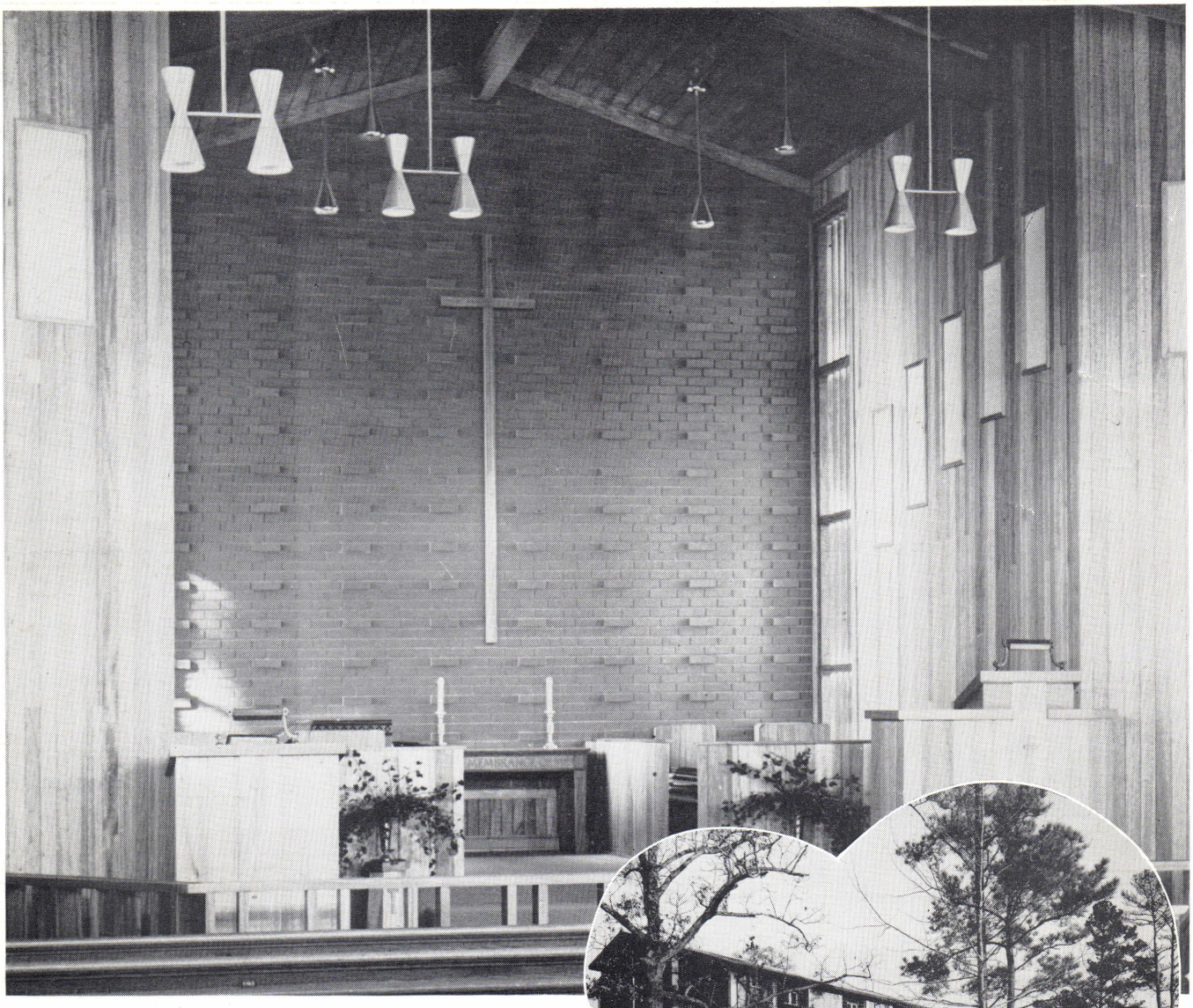

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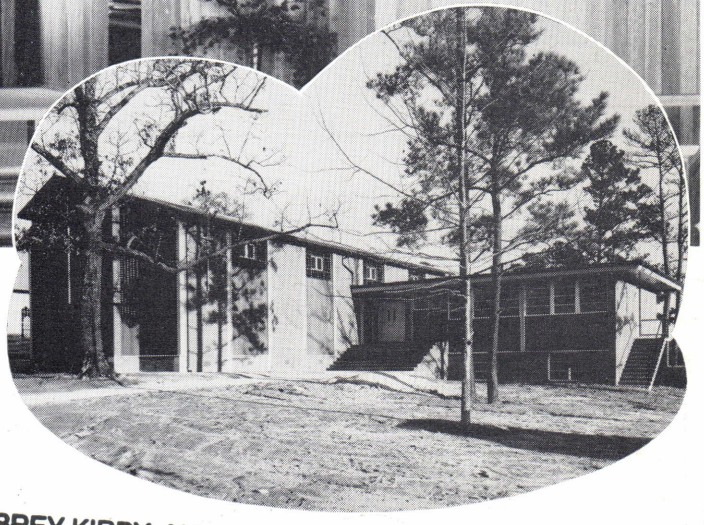

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