

Fiduciary Duty & Oversight

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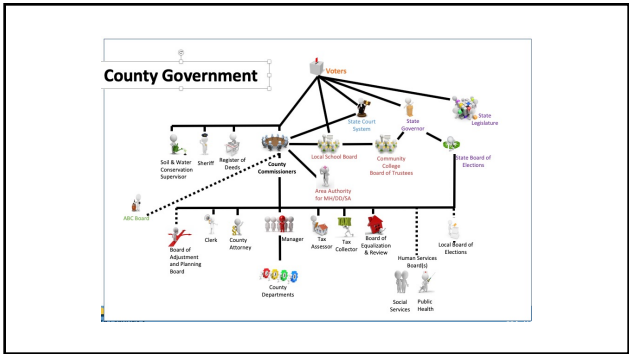
UNC

Center for Public Leadership and Governance

North Carolina Center for Governmental Accountability

ESSENTIALS OF
COUNTY GOVERNMENT

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Shared Governance within County Government			
Major State-Mandated Functions	Policy-Setting Authority	Funding Authority / Responsibility	Control Over Personnel
Law Enforcement	State, Sheriff, County Board	County Board	Sheriff (but County Board sets number of personnel and compensation)
Register of Deeds	State, County Board	County Board	Register of Deeds (but County Board sets number of personnel and compensation)
Public Schools	State, Local Board of Education	State, County Board	Local Board of Education
Public Health	State, Local Public Health Board/County Board	State, County Board	Local Public Health Board/County Board
Mental Health	State, Regional Mental Health Board	State, County Board	Area Mental Health Authority Board
Social Services	State, Local Social Services Board/County Board	State, County Board	Local Social Services Board/County Board
Elections	State, Local Board of Elections	State, County Board	Local Board of Elections (but county board sets total salary amount)
Community Colleges	State, Community College Board	State, County Board	Community College Board

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	County Commissioners	Sheriff	Finance Officer
AUTHORITY	<ul style="list-style-type: none"> Budget appropriations (power of the purse) May set maximum number of positions in sheriff's office (but must fund at least 2 deputies) Set sheriff's and sheriff office employees' compensation and benefits (but statutory limits on reducing compensation) 	<ul style="list-style-type: none"> Chief law enforcement officer of county Hires, supervises, fires all sheriff office personnel Independently elected; cannot be disciplined or fired (but must meet qualifications for office set by statute) 	<ul style="list-style-type: none"> Set finance-related policies and procedures (payroll, purchasing, travel, credit cards, etc.)
RESPONSIBILITIES	<ul style="list-style-type: none"> Fiduciary Duty (proper care and stewardship of public's assets) 	<ul style="list-style-type: none"> Care and custody of county detention facilities Statutory duties related to execution of writs, service of process, etc. Law enforcement duties 	<ul style="list-style-type: none"> Follow statutory and regulatory budgeting, internal controls and other financial management requirements Safeguard county assets

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Fiduciary Duty

What's Your Board's Role?

What's Your Role?

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In a conversation about another matter, the finance officer makes an off-the-cuff reference of his frustration with the Sheriff because the Sheriff did not follow the statutorily required process before entering into contractual agreements when purchasing new equipment. The finance officer tells you that it puts the finance officer in a difficult situation of having to violate the law to pay the invoices. According to the finance officer, the Sheriff often refuses to follow county finance policies, and the manager does not want to get involved. You are aware that the Sheriff, a popular public figure, and the county commissioners have had a challenging relationship in the past, with lots of power struggles.

How do you respond?

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Gaston town clerk issued unauthorized loans, commingled personal funds, auditors find

NEWS

Gates County sheriff, three deputies arrested for double dipping

Former leaders embezzled more than \$1 million from town of Landis, SBI says

Former NC airport employees guilty of embezzlement

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You're Responsible As An Individual, Too!

Sheriff James received \$2,665 check made out to "Washington County Detention"

Sheriff deposited \$2,000 in Sheriff's Office bank account and used rest for Sheriff's Office petty cash

Money used for Sheriff Office purposes

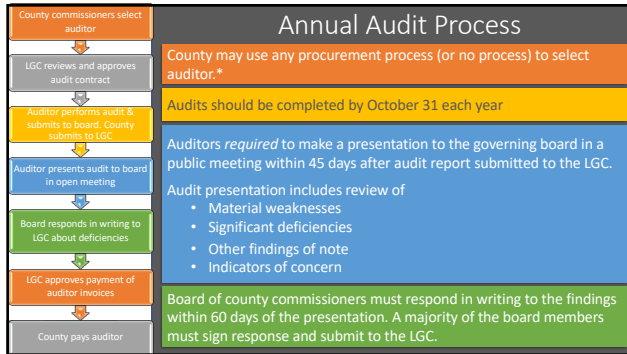
Sheriff did not follow statutory Local Government Budget & Fiscal Control Act (G.S. 159, Art. 3) requirements

Jury found Sheriff guilty of EMBEZZLEMENT

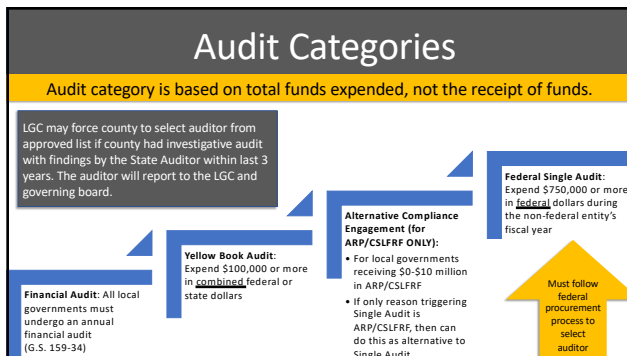
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Accountability & Oversight			
Audits	Local Government Commission	Internal Controls	Other
Annual independent financial audit (G.S. 159-34)	Approves audit contracts Reviews audits Issues regulations governing financial management Provides assistance in financial management	Governing board fiduciary duty Statutory roles and responsibilities Internal processes and procedures	Statutory remedies Whistleblowers Citizen suits State Auditor Granting entities Media scrutiny
Yellow book audit (if expend over \$100,000 combined state and federal \$'s)	Approves bonds (debt) and other financing agreements (including leases) Sells bonds May require finance officers and/or managers to participate in financial training Takes over financial management in extreme circumstances		
Single audit (if expend over \$750,000 federal \$'s)			
There are separate, yet overlapping, mechanisms to oversee the proper stewardship of public funds. No one mechanism is sufficient.			

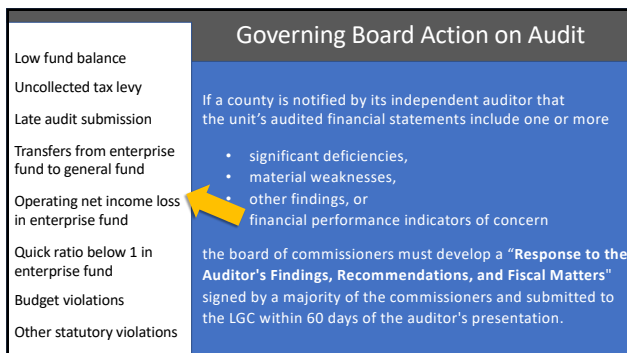
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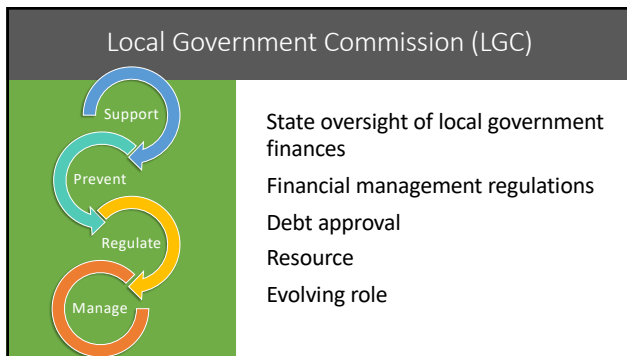
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Unit Assistance List	
<p>The UAL identifies units with concerns related to units' general fund, water/sewer quick ratio, income, and cash flow, and internal controls, or that have not yet submitted their audited financial statements (due four months following fiscal year end).</p> <p>July 2022 UAL</p>	<p>LGC may mandate</p> <ul style="list-style-type: none"> Finance staff and manager training Modifications to internal controls Contract with outside finance professionals <p>LGC approval required of more leases, vehicle financings, and other contracts.</p>

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LGC Takeover

The LGC may impound the books and records of a county and assume full control of all its financial affairs:

- when the county defaults on any debt service payment or, in the opinion of the LGC will default on a future debt service payment if the financial policies and practices of the county are not improved, or
- when the county persists, after notice and warning from the LGC, in willfully or negligently failing or refusing to comply with the provisions of GS. Ch. 159.

The LGC also may impound the books and records and assume full control of county water and/or sewer system, if certain criteria are met.

The LGC is vested with all the powers of the governing board as to the levy of taxes, expenditure of money, adoption of budgets, and all other financial powers conferred upon the governing board by law.

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Local Government Commission Dissolves Troubled Town of East Laurinburg

It is the First Time LGC Has Exercised Power Over Failing Local Government

New
Unsustainable
Cities Law

Review, Rehabilitation, and/or Dissolution of Unsustainable Municipalities

Establishes LGC-initiated and Municipal-initiated processes to do a thorough review of revenues and assets of a struggling municipality, formulate and implement an improvement plan (including partnering with county or other local governments), and, if it is not financially sustainable, a plan to dissolve the municipality

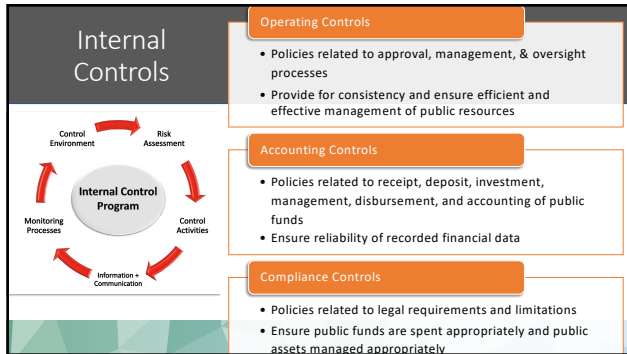
Also allows for citizens to petition for referendum on dissolution

Counties will likely take on more responsibilities for providing local government services

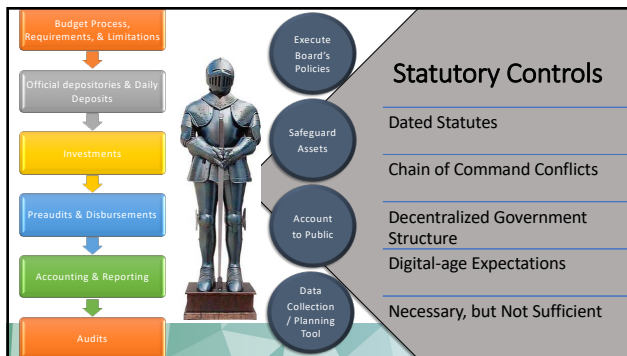
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Who Does What?					
Governing Board	Finance Officer	Budget Officer	Tax Collector	Purchasing Officer	Auditor
<ul style="list-style-type: none"> • Oversight / Fiduciary Duty • Adopts/amends budget(s) • Sets tax/fee rates • Appoints some finance personnel • Selects official depositories • Sets amount, pays for, and receives finance officer and tax collector bonds • Selects auditor • Receives and responds to audit report 	<ul style="list-style-type: none"> • Establishes and maintains accounting system • Controls expenditures and disbursements • Prepares and presents financial reports • Manages receipt and deposit of moneys • Manages debt service obligations • Supervises investments • Must be bonded 	<ul style="list-style-type: none"> • Prepares and submits annual budget and budget message to board • Executes budget(s) • In manager form of government, manager is the budget officer • In mayor/council form of government, board must appoint budget officer 	<ul style="list-style-type: none"> • Prepares tax bills • Collects taxes • Accounts for tax collections • Prepares and presents reports on tax collections • Must be bonded • For smaller units, may contract with county for tax collection 	<ul style="list-style-type: none"> • Negotiates / enters into contracts • Performs bidding/RFP processes • Ensures pre-audit performed • For smaller units, finance officer performs this function 	<ul style="list-style-type: none"> • Performs yearly independent audit

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Constitutional Limitations on Local Government

Public Purpose

"The power of taxation shall be exercised . . . for public purposes only . . ." N.C. Const. Art. V, Sect. 2(1)

You must have statutory authority to expend funds for any purpose

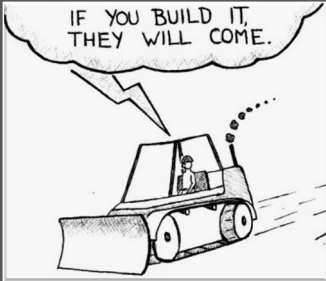
Public funds must be spent for the general benefit of your county's citizens

Exclusive Privileges & Emoluments

"No person or set of persons is entitled to exclusive or separate emoluments* or privileges from the community but in consideration of public services." N.C. Const. Art. I, Sect. 32

You may not provide direct benefit to private entities or individuals without receiving benefits in return


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Lawful?

City asks county to fund half of a major road project. Although the road project is within the city, it is a necessary part of an economic deal the county is working on to locate a large industrial manufacturing facility to the un-incorporated part of the county, located just outside city limits.

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Lawful?

A beloved city resident leaves his faucets running all day to accommodate his many cats. He has recently fallen behind on his rather high water bill. The department's normal procedure is to shut off the water and impose a penalty for the delinquency. The county manager feels sorry for the resident and requests that the county's governing board make an exception and waive his outstanding utility fees and late penalties. To a cheering crowd, the board votes unanimously to do so.

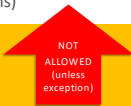

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Lawful?

At budget time, a local nonprofit asks the county for a \$1,000 donation.

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Support	vs.	Partnership
A local government generally DOES NOT have statutory authority to support a nonprofit's, community organization's, or other private entity's general operating or capital expenditures (but there are a few exceptions)		A local government may enter a partnership (contractual agreement) with any private entity to fund an activity, service, project, etc. that the local government has statutory authority to engage in.
		

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Partnership
<p>§ 153A-449. Contracts with private entities</p> <p>(a) Authority. – A county may contract with and appropriate money to any person, association, or corporation, in order to carry out any public purpose that the county is authorized by law to engage in.</p>
<p>Identify project, service, or other activity that local government could undertake itself.</p> <p>Contract with private entity to undertake it on behalf of the local government.</p>
<p>A budget appropriation is never sufficient to provide funding to a private entity. A local government needs to have a contractual agreement that specifies the project, service, or activity the private entity will carry out in exchange for payment by the local government.</p>

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Support

A local government generally **DOES NOT** have statutory authority to support a nonprofit's, community organization's, or other private entity's general operating or capital expenditures (but there are a few exceptions)

Even if exception applies, county still must have contract with private entity.

EXCEPTIONS

A county may contract with the following entities to support their general operating and/or capital expenditures:

- Volunteer fire departments and rescue squads
- Nonprofit museums or arts organizations
- Animal shelters
- Private hospitals
- Certain private entities serving developmentally disabled
- Certain historical organizations
