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LOCAL GOVERNMENT LAW BULLETIN

LITTER CONTROL

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Of the many difficult tasks in managing solid waste, surely among the most difficult is litter control, or control of unlawful disposal of solid waste. This difficulty has at least two sources. First, litter-bugs [a term not found in any North Carolina or federal statute but legitimated in *Webster's Ninth New Collegiate Dictionary* (1984)] are rarely caught in the act, and second--as aesthetically jarring as litter is to look at--in the grand scheme of things the crime of littering is not a matter of high priority with law enforcement officers and prosecutors. This bulletin makes no claim to solve the difficulties involved in litter control. Rather, it is written in an effort to bring some light to the subject by, first, analyzing the criminal statute prohibiting littering and, second, discussing litter control by means of a local ordinance.

I. Criminal offense

The statute making littering a crime, G.S. 14-399, is long and complex. I have broken the statute into its component parts and discussed those parts under the following headings: elements of the crime and exceptions; persons who may violate the statute; definition of litter; motor vehicle presumption; penalties for violations; civil cause of action; officers authorized to enforce the statute; and preemption of local ordinances.

A. Elements of the crime and exceptions

The prohibited acts are "intentionally or recklessly" throwing, scattering, spilling, or placing or "intentionally or recklessly" causing to be blown, scattered, spilled, thrown, or placed or otherwise disposing of "any litter upon any public property or private property not owned [by the actor] within this State or in the waters of this State including, but not limited to, any public highway, public park, lake, river, ocean, beach, campground, forest land, recreational area, trailer park, highway, road, street, or alley...."[1]

The actor must have done the act intentionally or recklessly. "A person does an act (or makes an omission) intentionally when it is his purpose to do so, and he intentionally causes a result ... either when that result was his purpose or when he is aware that that result is nearly certain to flow from his act or omission. As a practical matter, intent ordinarily must be inferred. It can be inferred that a person intends the natural and probable consequences of his act...."[2] For example, a person who throws a paper cup out of the window of an automobile traveling on a state highway has intentionally disposed of litter in a manner that violates the statute.

[1] N.C. Gen. Stat. § 14-399(a).
[2] North Carolina Crimes: A Guidebook on the Elements of Crime 2 (Benjamin B. Sendor, ed., 3d ed. 1985).

The term "reckless" is not defined in G.S. 14-399; however, it is a term frequently used to explain the meaning of criminal (sometimes called culpable) negligence,[3] and therefore may be equated with that mental state. Criminal negligence "implies a greater deviation from reasonable conduct than does civil negligence; it means such recklessness or carelessness that shows a thoughtless disregard of consequences or a heedless indifference to the safety and rights of others."[4] For example, a person who dumps the contents of a trashcan into the open bed of a pickup truck and then drives on a highway--with the result that the trash blows out of the truck onto the roadway--has recklessly caused litter to be blown onto public property in a manner that violates the statute. Suppose, however, that the same person ties a canvas cover over the bed of the pickup but fails to secure one corner of the cover and trash is blown from the truck? In this case, the actor is probably merely negligent (has acted without due care), rather than recklessly, and has therefore not violated the statute.

The statute prohibits depositing litter on all categories of public property, that is, property owned by a state or local government, and includes by way of illustration public highways and public parks. It also includes by way of illustration "highway, road, street, or alley" but without the "public" modifier; most likely public highways, roads, etc., were meant. The statute further prohibits depositing litter on private property not owned by the depositor. This is an important qualification because it means that a landowner who allows litter to accumulate on his property, or who deposits litter on his own property, has not violated the statute. Finally, the statute prohibits depositing litter "in the waters of this State," including, by way of illustration, lakes, rivers, and the ocean. What is meant by "waters of this State"? The phrase is not defined in G.S. 14-399, and it has no generally accepted meaning. In reviewing other statutes for a definition that might be used, one finds the following definition of waters for purposes of controlling water pollution:

> any stream, river, brook, swamp, lake, sound, tidal estuary, bay, creek, reservoir, waterway, or other body or accumulation of water, whether surface or underground, public or private, or natural or artificial, that is contained in, flows through, or borders upon any portion of this State, including any portion of the Atlantic Ocean over which the State has jurisdiction.[5]

Even if this broad definition is imported into G.S. 14-399, there remains the question whether the qualification regarding depositing litter on privately owned lands applies to privately owned bodies of water. That is, may the owner of a private pond or lake throw litter in the water without violating the statute? Based strictly on the wording of the statute, one would say that the qualification does not apply: the prohibition against depositing litter in "waters of the State" is in the disjunctive ("*or* in the waters of this State"). If this interpretation is correct, then an owner of a private lake or pond who deposits litter in the water violates the statute; such an interpretation, however, raises the question whether the General Assembly has constitutional authority to criminalize littering by a property owner on his own property. Quite probably it does, since a criminal statute based on aesthetic considerations can be constitutional.[6] Enforcement of the statute against a private lake or pond owner is unlikely, but it would present some interesting legal questions.

The statute creates two exceptions in which the depositing of litter is not a violation. The first is when litter is deposited on property designated by the state or a local government for the disposal of garbage or refuse and the person depositing the material is authorized to use the property for disposal.[7] The second is when litter is deposited in a litter receptacle in such a manner that the litter will not be carried away or deposited by the elements on public or private property or waters.[8] The first exception deals with depositing litter in landfills and other disposal facilities. To qualify for this exception, however, the actor must be authorized to use the disposal facility. In a case, for example, where green boxes are provided only for the residents of County A and a resident of County B places trash in the green box, the resident of County B is not covered by the exception and has violated the statute. The second exception deals with depositing litter in trashcans and other designated containers.

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[3] See State v. Williams, 231 N.C. 214, 565 S.E.2d 574 (1950).

[4] North Carolina Crimes: A Guidebook on the Elements of Crime 3 (Benjamin B. Sendor, ed., 3d ed. 1985).

[5] N.C. Gen. State. § 143-212(6).

[6] State v. Jones, 305 N.C. 520, 290 S.E.2d 675 (1982) held constitutional a county ordinance that required owners of junkyards to screen the property from public view.

[7] N.C. Gen. Stat. § 14-399(a)(1).

[8] Id. § 14-399(a)(2).

B. Persons who may violate the statute

The statute's sweep of potential violators is broad: "No person, including but not limited to, any firm, organization, private corporation, or governing body, agents or employees of any municipal corporation shall [dispose of litter]."[9] The statute is unusual in its examples of what is meant by the term "person" by including "agents or employees of any municipal corporation...." It appears to be stressing the point that employees of cities and towns may be prosecuted under the statute.

C. Definition of litter

As used in the statute, "litter" is defined as "any garbage, rubbish, trash, refuse, can, bottle, box, container, wrapper, paper, paper product, tire, appliance, mechanical equipment or part, building or construction material, tool, machinery, wood, motor vehicle or motor vehicle part, vessel, aircraft, farm machinery or equipment, sludge from a waste treatment facility, water supply treatment plant, or air pollution control facility, dead animal, or discarded material in any form resulting from domestic, industrial, commercial, mining, agricultural, or governmental operations."[10] The term does not include "political pamphlets, handbills, religious tracts, newspapers, and other such printed materials the unsolicited distribution of which is protected by the Constitution of the United States or the Constitution of North Carolina."[11] The definition of litter is very broad, including items such as motor vehicles, aircraft, and sludge. Thus, under the statute, a person who abandons a junked automobile on a city street has "intentionally" placed litter on a public highway and could be prosecuted. Because newspapers and political and religious materials are excluded from the definition, someone who, for example, throws newspapers out of a vehicle onto a highway has not violated the statute.

D. Presumption regarding motor vehicles and water craft

When litter is "blown, scattered, spilled, thrown or placed from a vehicle or water craft," the operator (not the owner) is presumed to have committed the offense.[12] The operator may, of course, be able to rebut this presumption by presenting evidence that a passenger in the vehicle or water craft committed the offense. The presumption does not apply to a vehicle transporting agricultural products or supplies if the litter from that vehicle is a non-toxic, biodegradable agricultural product or supply. This exception to the presumption does not mean the operator of a vehicle transporting agricultural products or supplies cannot be convicted of the offense. It simply means the prosecutor must prove the operator committed the offense and do so without the aid of the presumption. And in a case where the operator is alone in the vehicle, the presumption is of no value anyway.

E. Criminal penalties

The criminal penalties are graduated according the quantity of litter illegally disposed of.

15 pounds or less and not for commercial purposes: Class 3 misdemeanor punishable by a fine of $100 to $500 for the first offense and $100 to $1,000 for the second and subsequent offenses. Plus the court may order the violator to pick up litter or perform other labor.[13]

More than 15 pounds but not more than 500 pounds and not for commercial purposes: Class 3 misdemeanor punishable by a fine of $100 to $1,000. Plus the court may order the violator to pick up litter or perform other labor.[14]

More than 500 pounds, any amount for commercial purposes, or hazardous materials: Class I felony, plus the court may order the violator to remove or render harmless the litter, restore property damaged by the offense or pay damages, or perform community service relating to the removal of litter.[15]

Additional penalties and enforcement measures: In addition to the criminal penalties described above, a court may enjoin a violation of the statute.[16] If a violation involved the use of a motor vehicle, the violator is charged one point on his driver's license, but no insurance points are assessed.[17] If a motor vehicle, aircraft, vessel, container, or other machine is used in the disposal of more than 500 pounds of litter,

[9] Id. § 14-339(a).
[10] Id. § 14-339(i)(4).
[11] Id.
[12] Id. § 14-399(b).
[13] Id. § 14-399(c).
[14] Id. § 14-399(d).
[15] Id. § 14-399(e).
[16] Id. § 14-399(f).
[17] Id. § 14-399(f1).

that property is declared contraband and is subject to seizure and forfeiture to the state.[18]

F. Civil cause of action

The statute creates a special civil cause of action in a case where a person is damaged by a violation of the statute that is a felony; that is, a violation that involves more than 500 pounds of litter, or is for commercial purposes, or one in which hazardous materials are disposed of. The injured party who brings the civil suit is entitled to receive triple the amount of his actual damages or $200.00, whichever amount is larger, plus attorney's fees and court costs.[19] A unit of government should be able to qualify as a "person" under this provision and bring a civil action if it sustains damages. Arguably, damages includes cleanup costs and any harm to natural resources.

G. Who may enforce the statute

Every law enforcement officer, as defined by the statute, is directed to enforce the statute,[20] and the definition is broad. It means "any officer of the North Carolina Highway Patrol, the State Bureau of Investigation, the Division of Motor Vehicles of the Department of Transportation, a county sheriff's department, a municipal law enforcement department, a law enforcement department of any other political subdivision, the Department, or the North Carolina Wildlife Resources Commission. In addition, and solely for the purposes of this section, 'law enforcement officer' means any employee of a county or municipality designated by the county or municipality as a litter enforcement officer; or wildlife protectors as defined in G.S. 113-128(9)."[21]

There are two curiosities about this definition, one minor and one major. The minor one concerns what is meant by an officer of "the Department?" What department is meant? The statute does not say, but most likely a reference to the Department of Environment, Health, and Natural Resources is intended. The major curiosity is that in addition to the usual roster of sworn law enforcement officers, the statute may be enforced by "any employee of a county or municipality designated ... as a litter enforcement officer." There is no requirement that such a designated litter enforcement officer be a sworn law enforcement officer or have law enforcement training. Objections may be raised to allowing untrained persons to enforce criminal statutes, both out of concern for the safety of the persons involved and for potential tort liability of the city or county that employs the person.

H. No preemption of local ordinances

The statute is careful to provide that it does not preempt the authority of the state or local governments to "enforce other laws, rules or ordinances relating to litter or solid waste management."[22] Thus, a city or county may adopt a litter control ordinance and enforce that ordinance by all of the procedures available for ordinance enforcement.

II. Local Litter Control Ordinances

Instead of relying on the criminal statute to combat littering, local governments will have greater success if they use ordinance provisions and enforce violations as violations of the local ordinance.

A. Enabling statutes

The statutes under which local governments may adopt anti-littering ordinance provisions are G.S. 153A-132.1 for counties and G.S. 160A-303.1 for cities. The scope of each statute is different. G.S. 153A-132.1 authorizes counties to adopt an ordinance making it unlawful to discard or place trash upon a street or highway or upon property owned or operated by the county unless the waste is placed in designated containers. On the other hand, G.S. 160A-303.1 authorizes cities to adopt an ordinance with the same prohibitions as a county (streets and highways and property owned or operated by the city) and also authorizes adoption of an ordinance that prohibits discarding or placing trash on private property without the consent of the owner. Thus, there is a difference in the reach of the two statutes, but as a practical matter, illegal dumping on private property can be prohibited by adopting a comprehensive solid waste management ordinance under G.S. 153A-136. This conclusion reinforces the thesis of this bulletin that enforcement of a local ordinance against littering should be viewed broadly as part of a comprehensive solid waste management program, and not as just an anti-littering campaign. Therefore, authority for the ordinance provisions will also be drawn from G.S.

[18] Id. § 14-399(g).
[19] Id. § 14-399(h).
[20] Id. § 14-399(j).
[21] Id. § 14-399(i)(3).
[22] Id. § 14-399(k).

153A-136, the general solid waste management authorizing statute for counties, and G.S. 160A-192, the similar statute for cities.

B. Ordinance provisions

To deal effectively with littering and other illegal disposal of waste, a local government should have the following provisions in its solid waste management ordinance (references are to provisions of a model solid waste management ordinance available from the Institute of Government):

1. Prohibition against storing or accumulating waste on the owner's property except in compliance with the ordinance, III.A.;
2. Requirement that all solid waste be removed from the property at least once every 7 days (or other time period), III.B.;
3. Requirement that solid waste be stored in a particular kind of container or receptacle, III.C.;
4. Requirement that solid waste be disposed of only in (a) a licensed landfill; (b) licensed incinerator; (c) receptacle designated by the city or county; or (d) any other method, including recycling, approved by the Department, III.G.;
5. Prohibition against discarding or disposing of solid waste on or along any street or highway or on public or private property unless the waste is placed in a designated receptacle or at a location designated for the disposal of solid waste, III.I.

C. Enforcement by civil penalty

A city or county ordinance may be enforced by prosecution as a misdemeanor, injunction, or civil penalty. Prosecution as a misdemeanor has some of the same disadvantages involved in prosecuting violations of G.S. 14-399: use of criminal process, burden of proof, reliance on the district attorney's office, and so on.

The enforcement method to be concentrated on here is the civil penalty. G.S. 153A-123(c) states: "An ordinance may provide that violation subjects the offender to a civil penalty to be recovered by the county in a civil action in the nature of debt if the offender does not pay the penalty within a prescribed period of time after he has been cited for violation of the ordinance." G.S. 160A-175(c) contains substantially identical language. To use the civil penalty as an enforcement tool, the ordinance must authorize use of a civil penalty and it must also provide that if the assessed penalty is not paid within thirty days, or sixty days, or some other period the city or county may recover the penalty by civil action. The statute does not establish a penalty scale or maximum amount of a civil penalty. It is recommended, however, that a local government adopting the civil penalty as an enforcement procedure set a maximum amount of the penalty and then take into account aggravating and mitigating factors in setting the penalty in each case. A suggested means of doing this is to set a maximum amount of the penalty in the ordinance--$1,000, $2,500, $5,000, or whatever--and then provide that the solid waste manager or city or county manager shall determine the amount of the penalty to be assessed in each case by taking into account such factors as the quantity of waste disposed of, the nature of the waste, and any damage to natural resources. In that way, if a single bag of waste is thrown on the roadside, a penalty of $50 to $100 could be assessed, but if someone illegally disposes of several appliances at a green box site, then the penalty could be substantially higher.

The notice of violation and assessment of the civil penalty should be in the form of a civil citation for an ordinance violation. The citation should include the following information: (1) name and address of the violator; (2) ordinance provision violated; (3) date and location of the violation; (4) description of the nature of the violation; (5) amount of the civil penalty; (6) statement that if the penalty is not paid to the city or county by (give a specific date) a civil action will be brought against the violator to recover the penalty. The ordinance provision that authorizes assessment of the civil penalty should also authorize the city or county manager or the unit's solid waste manager to sign the complaint on behalf of the city or county if a civil action is necessary to recover the penalty.

If it becomes necessary to bring a civil action to recover the penalty, the action will most likely be brought as a small claims action before a district court magistrate because the amount of the penalty will in most cases be $3,000 or less, which is within the magistrate's jurisdiction. A small claims action is initiated by filing an appropriate complaint with the clerk of superior court of the county in which the defendant resides. The clerk will issue a magistrate summons, and this commences the action. The clerk will also issue a notice of assignment of the action as a small claim, and this notice will contain the name of the magistrate who will try the case, and the time, date, and place where the case will be heard. At the trial before the magistrate, the rules of evidence will

generally be followed. The magistrate's judgment is enforceable in the same manner as any district court judgment.

Interest on the civil penalty may be claimed in the complaint. The ordinance provision that authorizes imposition of the civil penalty should also authorize the charging of interest at the legal rate (now 8%) from the date when the penalty becomes delinquent. G.S. 153A-123(c) provides that an action to recover a civil penalty is in the nature of an action on a debt, and *Security Nat'l Bank v. Travelers Ins. Co.*, 209 N.C. 17 (1935) and *Craftique, Inc. v. Stevens and Co.*, 321 N.C. 564 (1988) both hold that in an action on a debt, prejudgment interest may be recovered.

The taxing of court costs is at the magistrate's discretion, G.S. 6-20. The complaint should include a demand for reimbursement for costs, and the magistrate may award them to the plaintiff county.

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