What Actions Can Your Governing Board Take?

Newly elected majority has an agenda:

? City: Adopt an ordinance to deannex property for disgruntled property owners.

? City: Appropriate funds for a new downtown elementary school.

? County: Delegate to the manager to award all contracts for construction projects.

? County: Call for a city referendum on whether to build a new jail in the downtown area.
Key Concepts We’ll Discuss

• Law comes from several sources: Judges, legislators, and regulatory agencies.
• Local governments are created by states and have limited authority.
• In North Carolina, cities and counties have overlapping but distinct powers, roles, and structures.
• Individual board members have limited authority.

Local Government Authority Big Picture
Who Makes Law?

Courts

Agencies

Legislators

Discussion Exercise

Which level of government (federal, state or local) has the most power.

In answering the question, you choose and explain how you have defined “power.”
Delegated Powers May Be Limited-“Preempted” by Federal and State Law

U.S. Constitution: Art. VI, Clause 2:
This constitution, and the laws of the United States which shall be made in pursuance thereof . . . shall be the supreme law of the land . . . anything in the constitution or laws of any state to the contrary notwithstanding.
Federal Law Examples

- Constitutional
  - Due Process
  - First Amendment
- Statutory
  - Title VII
  - ADA
  - Social Security #
  - Privacy

Key Concept: Local Government Authority

All local government authority comes from the legislature. Actions must be authorized by state statute.
Legislative Authority

- The General Assembly shall provide for the organization and government and the fixing of boundaries of counties, cities and towns, and other governmental subdivisions, and, except as otherwise prohibited by this Constitution, may give such powers and duties to counties, cities and towns, and other governmental subdivisions as it may deem advisable.

- *NC Constitution, Article VII, Sec. 1*

Legislature Creates Local Governments . . . And Delegates Authority

- Cities
  - 160A
- Counties
  - 153A
- Schools
  - 115C
- Other
  - Enabling Statutes
Key Local Government Statutes

- 160A - City government
- 153A - County government
- 115C – Local School Units
- 159 - Budgeting, fiscal control, and bonds
- 105 - Taxation
- 143 - State government (purchasing and contracting; open meetings; environmental laws)
- 132 - Public records

Some Statutorily Authorized City Functions: Which Ones Are Required?

- Police
- Fire
- Streets
- Water
- Sewer
- Zoning
- Solid waste collection
- Regulation to protect general health, safety, and welfare
What Must Cities Do?

Building Code Enforcement

“Meaningful services” required to annex. Some major services required to incorporate and to receive state shared funds.

Compare County Functions

- Law enforcement
- Jail
- Medical examiner
- Court facilities
- Building code enforcement
- Public school support
- Social Services
- Public health
- Mental health
- Deed registration
- Election administration
- Tax assessment
What Both Cities and Counties May Do

- Fire Protection
- Water
- Sewer
- Solid Waste Collection
- Solid Waste Disposal
- Land Use Regulation
- Libraries
- Hospitals
- Parks and Recreation
- Tax Collection
- Animal Control

Broad authority for city/county cooperation
Chapter 160A (Article 20)

Centralization

Cities tend to be centralized organizations

Counties are highly decentralized, with separate elected officials and important functions under operating control of other boards
Local Acts

Acts of the General Assembly That Apply to Specific Units of Local Government

- Charters/Charter Amendments
- Deannexation
- Modifications of statutes
- Authorization of powers not granted in statutes

<table>
<thead>
<tr>
<th>City and County</th>
<th>City Only</th>
</tr>
</thead>
<tbody>
<tr>
<td>Governing board size</td>
<td>Name of unit</td>
</tr>
<tr>
<td>Governing board term</td>
<td>Method of election</td>
</tr>
<tr>
<td>Mode of election</td>
<td>Governing board name</td>
</tr>
<tr>
<td>Selection of mayor/chair</td>
<td>Forms of government</td>
</tr>
<tr>
<td></td>
<td>Style of corporation</td>
</tr>
</tbody>
</table>
Recent Trends in Local Legislation

• 2013 session brought significant restrictions on authority for some individual cities:
  • Land use decisions (rezoning, ETJ)
  • Control of assets (utilities, airports, land)

• 2015 and 2017 sessions brought election and boundary changes:
  • City and county redistricting
  • Deannexation of properties

• State constitution prohibits local acts on certain topics. Article II, Sec. 24

Local Government Relation to State

The legislature may giveth and the legislature may taketh away.
Lawful Exercise of Authority Checklist

• Is there authority for the action?
  – Is the specific action within the scope of authority?
  – Is it preempted?

• Who has authority to take the action?
  – Does the law (including the charter) require board action, or can the board delegate.

Lawful Exercise of Authority Checklist (con’t)

• Must comply with statutory procedures
  – Notice, bidding, public hearing
  – Agency regulations

• Must comply with common law (judicial interpretations of statutes)

• Must be constitutional
Individual Authority

What powers and possible liability do individual members of the governing board have?

What Can A Board Member Do?

? Ask the clerk to post minutes on city website.
? Insist that each individual board member has the legal right to add items to the board agenda.
? Demand that the clerk include her specific remarks in the board minutes.
? Ask the HR director to provide her access to personnel records of the police chief.
Municipal and County powers are exercised by the governing board unless specifically delegated by statute or by the board. Individual board members have few independent powers.

Mayors Have Limited Powers

- Preside at meetings
- Appoint certain commissions
- Declare emergency
- Civil Service (receiving papers for lawsuits)
- Ceremonial duties
- Other powers and duties delegated by the board or in charter
How Does The Board Take Action?

Board must act as a body in **legal** meetings
- Proper notice to members
- Proper notice to public
- Quorum present

Individual board members do not have authority to act on behalf of the unit unless the authority to do so has been delegated by the board.