



UNC
SCHOOL OF GOVERNMENT

Essentials of Municipal Government 2018

Electronic Materials

Essentials of Municipal Government 2018 Electronic Materials

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Gregory S. Allison

Teaching Professor; Secretary, School of Government Foundation Board of Directors

Gregory S. Allison is a teaching professor at the School of Government, where he lectures and provides technical support in the field of governmental accounting and financial reporting. He has been on the faculty since 1997 and is director of the School's Municipal and County Administration course. He was an assistant director with the Government Finance Officers Association of the United States and Canada in Chicago, Illinois; former finance director for the City of Morganton, North Carolina; and an auditor with the international accounting firm Deloitte and Touche. He is also co-author of the 8th and 9th Revised and 10th editions of *Governmental and Nonprofit Accounting*, published by Prentice Hall.

Allison was awarded the Outstanding Conference Speaker Award for both 2000 and 2001, the Outstanding Chapter Speaker Award in 2005, the Outstanding Discussion Leader Award in 2006, 2007, 2008, 2013, and 2015, the 5.0 Discussion Leader Award in 2014, and the 2014 R. Donald Farmer Award by the NC Association of Certified Public Accountants. He was awarded the Association's Outstanding Member in Government Award for 2000–2001. He was also recognized as the Albert and Gladys Hall Term Lecturer for Teaching Excellence for 2002–2004, and the Term Faculty Achievement Award for 2010–2012.



Lydian Altman

Director, Strategic Public Leadership Initiative

Lydian Altman joined the School of Government in 1999. Her prior work with public sector organizations included several years as a director or board member of nonprofit rape crisis and domestic violence agencies, community college administrator, and local government administrator. In her current work with the Strategic Public Leadership Initiative, she consults with elected and appointed leaders to create strategic plans that help organizations set clear priorities, allocate resources to pursue those priorities, and assess progress toward carrying out planned activities. She also facilitates retreats for governmental and nonprofit organizations and cross-sector community groups to help them plan and work together to solve public problems. Many of her project-generated articles have been published in ICMA's IQ Report and PM Magazine, the American Review of Public Administration, Popular Government, and PA Times. Altman holds a BS in industrial relations and an MPA from UNC-Chapel Hill.



Frayda Bluestein

David M. Lawrence Distinguished Professor of Public Law and Government

Frayda Bluestein joined the School of Government (then the Institute of Government) in 1991. From 2006 to 2017 she served as the School's associate dean for faculty development. Prior to joining the School, she worked in private law practice, focusing primarily on municipal and land use law, and for one year in the Legislative Drafting Division of the North Carolina General Assembly. Her publications include books and articles about local government structure and authority, public contracting, conflicts of interest and transparency laws. She is a frequent contributor to the School's [Coates' Canons: NC Local Government Law blog](#), writing on topics including North Carolina local government authority, annexation, public records, open meetings, conflicts of interest, and First Amendment issues affecting local government. She was awarded the School of Government's two-year professorship for outstanding junior faculty achievement in 1998, the two-year professorship for teaching excellence in 2004, and the David M. Lawrence Distinguished Professorship in 2014. In 2016, Bluestein was honored with the Grainger Barrett Award for Excellence from the Government and Public Sector Section of the North Carolina Bar Association and the Ernest H. Ball Award for Excellence in Municipal Law from the North Carolina Association of Municipal Attorneys. Bluestein earned a BA from the University of California at Berkeley and a JD from the University of California at Davis.



Norma Houston

Lecturer in Public Law and Government

Norma Houston joined the School of Government in 2006. Prior to that, she served as chief of staff and general counsel to State Senate President Pro Tempore Marc Basnight. She has also worked for UNC President Erskine Bowles and served as Dare County attorney, assistant attorney general in the NC Department of Justice, and staff attorney for NC Prisoners Legal Services. She is a member of the North Carolina State Bar and serves on the boards of several organizations. Houston has been an adjunct faculty member at the UNC-Chapel Hill School of Law and also teaches state government in the School's graduate program in public administration. She was named Albert and Gladys Hall Coates Term Lecturer for Teaching Excellence for 2015-2017. Houston earned a BS in criminal justice and psychology and a JD from the University of North Carolina at Chapel Hill.



Kara Millonzi

Albert and Gladys Hall Coates Distinguished Term Professor of Public Law and Government

Kara Millonzi joined the School of Government in 2006. She attained the rank of full professor in July 2017, and was awarded the Albert and Gladys Hall Coates Distinguished Term Professorship in September 2017. She specializes in local government finance law, general county law, and incorporation. She administers the Coates' Canons Local Government Law Blog, and has authored well over 100 posts on issues related to local government law and finance. Millonzi also administers NC

Finance Connect, an online community portal, centered around the topic of local government finance. She has authored numerous publications, including *A Guide to Billing and Collecting Public Enterprise Utility Fees for Water, Wastewater, and Solid Waste Services*, *Introduction to Local Government Finance* (3d. edition), and *The Governance and Funding Structure of North Carolina Public Schools*. She teaches several core finance courses and directs the NC County Attorneys Conference and Fundamentals Workshop and Local Government Finance Officers Conference each year. (A complete list of Kara's blogs, courses, publication, and other resources are located under the corresponding tabs on this page.)

Before joining the School, Millonzi practiced law with Testa, Hurwitz & Thibault, LLP in Boston and clerked for the Honorable Louis F. Oberdorfer, United States District Court for the District of Columbia. She is a member of the North Carolina State Bar and the Bar of the Commonwealth of Massachusetts. Millonzi earned a BA in economics, summa cum laude, Phi Beta Kappa, from the University at Buffalo and an MA in economics from the University of Maryland at College Park. She earned a JD, with highest honors, Order of the Coif, from the University of North Carolina at Chapel Hill, where she served as editor in chief of the *North Carolina Law Review*.



Kimberly Nelson

Albert and Gladys Hall Coates Distinguished Term Associate Professor of Public Administration and Government

Kim Nelson joined the School of Government in August 2013. She is a member of the *Public Administration Review* editorial board since January 2016 and will serve a three-year term. She taught for seven years in the MPA program at Northern Illinois University, where she received the 2010 Professor of the Year award from the students of the Division of Public Administration. Her research and teaching interests include local government management, form of government, and

innovation in local government. Previously, she taught at Southern Illinois University, the University of North Carolina Wilmington, and North Carolina State University. Nelson received an MPA from the University of Texas at San Antonio, and a PhD from North Carolina State University.



William C. Rivenbark

Professor of Public Administration and Government and MPA Program Director

Bill Rivenbark joined the School of Government (then the Institute of Government) in 1999. Prior to that, he worked for the city of Greenville, South Carolina, in various management positions. His research at the School of Government primarily involves performance and financial management in local government and has appeared in *Public Administration Review*, *Government Finance Review*, *Journal of Government Financial*

Management, *Journal of Public Affairs Education*, *Journal of Public Budgeting, Accounting & Financial Management*, *Popular Government*, *Public Administration Quarterly*, *Public Finance Review*, *Public Performance & Management Review*, and *State and Local Government Review*. He also is coauthor of *Performance Budgeting for State and Local Government* (M.E. Sharpe, 2003). He helped to develop the County and Municipal Fiscal Analysis tool, a web-based dashboard designed to help North Carolina local governments analyze their fiscal condition. He was named director of the MPA program at the School of Government in 2011. Rivenbark earned a BS from Auburn University, an MPA from Auburn University at Montgomery, and a PhD from Mississippi State University.



Michael R. Smith

Dean, School of Government; Professor of Public Law and Government; Executive Director, School of Government Foundation Board of Directors

Mike Smith was named dean of the School of Government when the School was created in 2001. He joined the faculty of the School (then the Institute of Government) in 1978 and served as director from 1992 to 2001.

As a faculty member, Smith wrote, taught, and consulted extensively in two fields: civil liability of public officials and legal aspects of corrections. As dean, he has expanded the School's capacity to assist public officials in the areas of management and leadership, finance, and administration, but without reducing the traditional strengths in public law. Smith has also improved faculty diversity and broadened the School's financial base through fundraising, which includes successfully securing a legislative appropriation to expand and renovate the Knapp Building, which was re-dedicated as the Knapp-Sanders Building in 2004. Smith also negotiated the successful transition of the Master of Public Administration program to the School of Government in 1997. He serves on a wide range of boards, commissions, and committees inside and outside the University.

Smith earned a BA from the University of Michigan and a JD from the University of North Carolina at Chapel Hill.



Carl W. Stenberg III

James E. Holshouser Jr. Distinguished Professor of Public Administration and Government

Carl Stenberg joined the School of Government in 2003. Previously, he served as dean of Yale Gordon College of Liberal Arts, University of Baltimore; director of the Weldon Cooper Center for Public Service, University of Virginia; executive director of the Council of State Governments; and assistant director of the US Advisory Commission on Intergovernmental Relations. He is former feature editor of *Public Administration Review* and co-author of *America's Future Work Force*.

Stenberg is a Fellow and former chair of the Board of Directors of the National Academy of Public Administration and past president of the American Society for Public Administration. He served as director of the MPA program at the School of Government from 2006 to 2011. Stenberg holds a BA from Allegheny College and an MPA and a PhD from the State University of New York at Albany.

North Carolina League of Municipalities Speaker Bios

Alison Alexander is the Manager of Laurel Park. She was appointed to that position November 16, 2013. Prior to Laurel Park, she served the Town of Waynesville, in the capacity of Assistant Town Manager from 2008 – 2013. She holds her Master's in Public Affairs from Western Carolina University. Alison serves on the Board of Directors for the NC League of Municipalities.

Mayor Gloristine Brown, Town of Bethel, has been active in her community for many years. Prior to her current role, Mayor Brown served as Mayor Pro-Tem and as Town Commissioner. Mayor Brown places a priority on improving economic development opportunities for the town, improving water and sewer infrastructure, increasing the availability of affordable housing, and enhancing the quality of life for all Bethel residents. She values positive and effective relationships with members of local, state and federal governments and works hard to find solutions through leadership and collaboration. Mayor Brown earned her Bachelor's and a Master of Public Administration from Strayer University. She serves on the Pitt Community College Board of Trustees and the Board of Directors for the North Carolina League of Municipalities. She also volunteers on many other organizations in Pitt County and the surrounding area.



John Connet is the City Manager of Hendersonville. John has a Bachelor's Degree from Western Carolina University and Master of Public Administration from Appalachian State University. John is a member of the International City/County Manager Association and the North Carolina City/County Manager Association.



Angela Dawson Christian was appointed as Town Manager of Newport in January 2014. She is responsible for administration and day-to-day operations of the town's departments. During her professional career, she has worked exclusively in local government specializing in finance, budgeting and management services. Prior to her appointment, she worked as Chief Operating Officer in Onslow County (NC) Government and various municipalities in Georgia, Florida and Tennessee. She has obtained her (CM) Credentialed Manager designation from ICMA - International City/County Management Association- there are only 1,300 in the country and is working toward becoming a certified Economic Development Professional. Angela received a Bachelor of Science degree from Georgia Southern University in Statesboro, Georgia and a Masters of Public Administration from University of Tennessee in Knoxville, Tennessee. Additionally, she has completed the Public Executive Leadership Academy at the University of North Carolina at Chapel Hill. She is an avid reader and actively involved in numerous civic and community organizations. Angela is married to Junie Christian and they have one daughter, Sherry.



Elton Daniels is the Town Manager of Selma, N.C. Prior to that he was the Assistant County Manager for Franklin County, N.C. He has over eight (8) years of Local Government Management experience. Elton has a Master of Public Administration Degree from the University of North Carolina at Wilmington and a Bachelor of Arts in Political Science from Furman University in Greenville, South Carolina. Daniels has also completed several certificate programs at the UNC School of Government including, but not limited to, the following: Public Executive Leadership Academy (PELA), Municipal and County Administration (MCA), and Leading for Results FELLOW. He is a member of the ICMA (International City/County Management Association) and serves on the Board of Directors for the North Carolina City/County Managers Association.



Mayor Jay Donecker, City of Reidsville, is the Chief Veterinary Officer at Serene, LLC. Mayor Donecker has been a veterinarian living and raising his family in Reidsville for over 30 years. As an elected official, Mayor Donecker works with his council to maintain a high level of trust by Reidsville's citizens for their local government while improving the quality of life for everyone.



Todd Herms is the Manager of the Town of Maiden. Previously, he served as manager in Town of Maiden. Todd is a graduate of Western Carolina University where he earned his bachelor's in political science and Master's in Public Administration.



Kim Hibbard is Chief Counsel for the NC League of Municipalities where she oversees legal assistance to member cities and towns, including inquiry service, charter revisions, model ordinances, legal memoranda and publications. Hibbard directs legal research activities, the amicus brief program, oversees various internal legal matters and coordinates provision of staff legal assistance to other departments and operations. She also serves as staff to N.C. Association of Municipal Attorneys. Hibbard earned her bachelor's degree and JD from the University of North Carolina at Chapel Hill.



Paul Meyer is the Executive Director of the NC League of Municipalities. Meyer is the sixth full-time executive director in the League's 105-year history. He began his service at the League as chief legislative counsel in 2009. In January, he was appointed director of governmental affairs. He brings a robust knowledge of municipal issues with more than 15 years of experience working on local government legislative and legal issues. Before joining the League, Meyer spent more than a decade advocating for county governments as a lobbyist for the North Carolina Association of County Commissioners. He has also worked in private law practice and in the commercial insurance field. He is a graduate of Wake Forest University and earned a law degree from Campbell University School of Law.



Vickie Miller is the Grassroots Coordinator with the NC League of Municipalities where she has responsibilities for coordinating outreach activities of the League membership that strengthen relationships with state elected officials. Miller has worked for the City of Durham and the North Carolina Department of Commerce where she ultimately became the Director of Community Investment. In this role, she oversaw the Department's Community Development Block Grant (CDBG) funding. Miller earned her BA and Master's Degrees in Education from the University of North Carolina at Chapel Hill and she holds certifications from the National Development Council in economic development and housing finance.



John Phelps has been on the staff of the League of Municipalities since 1995 and is now in the position of Associate General Counsel. Prior to joining the League he was in private law practice in Lillington for 11 years, and spent 2 years as vice president for public finance with J. Lee Peeler and Company in Durham. John is a native of Harnett County and received his undergraduate degree from Campbell University and his law degree from Campbell University School of Law. As a key member of the League's legal inquiry service, John has worked closely with many municipal officials throughout the state. He is the League's liaison to the NC Association of Municipal Clerks and has presented at a number of educational sessions for that Association. He has also presented to newly-elected municipal officials during the biennial sessions of the Essentials of Municipal Government programs.



Jeffrey Repp is the Manager of the City of Boiling Springs Lakes. He has served as City Manager for Boiling Spring Lakes since April 2012 and has over 30 years of municipal government experience with 22 years in Maryland where he was City Administrator of Cumberland, MD for 18 years before relocating to NC. He graduated with a Master in Public Administration from the University of South Dakota in 1986 and is currently one of three managers on the NCLM Board of Directors representing the eastern part of NC. He is an active member of NCCCMA and is currently Chairman of the Professional Development Committee.



Mayor Bob Scott served for 10 years on the Franklin Board of Aldermen. A native of Greenville, SC, he has lived in Franklin since 1967. He is a graduate of Western Carolina University, a graduate of the FBI National Academy and is a graduate of Palmetto Military Academy, the South Carolina National Guard's Officer Candidate School. He retired from the Western Carolina University Campus Police Department where he served as executive officer. Bob has been active in civic activities. He has served as president of the Franklin Area Chamber of Commerce and the Franklin Rotary Club. He is a member of the REACH board of Directors and has been an adjunct instructor at the North Carolina Justice Academy and Southwestern Community College. He holds the North Carolina Training and Standards Commission's Advanced Law Enforcement Training Certificate. Before changing careers, he was a long-time newspaper reporter, columnist and photographer. He served in the South Carolina National Guard and the U.S. Army Reserve as a public information and photo officer. Mayor Scott currently serves as a Director of the North Carolina League of Municipalities. Bob and his wife Nancy live in Franklin and have two children. George who lives in Columbia, SC and Joanna who lives in London. They also have two grandchildren. Nancy served on the town board for 11 years.



Roger Stancil is the Manager of the Town of Chapel Hill. Roger previously served the City of Fayetteville as city manager from 1997 to 2006. While there he managed growth of the City of Fayetteville from a population of 70,000 to 180,000, facilitated the redevelopment of the downtown, coordinated relationships with Fort Bragg and Pope Air Force Base and developed a successful multicultural learning organization. Roger earned a B.A. degree in Politics from Wake Forest University in 1971 and a Master of Public Administration degree from the University of North Carolina at Chapel Hill in 1982. A native of Rocky Mount, North Carolina, he enjoys spending time with his wife of 27 years, Carol, and their son Stephen and daughter Amanda. He likes to read, play the piano for personal enjoyment and spend time on the water.



Former Kure Beach Mayor Emilie Swearingen served on the Town Council for seven years. She earned a Master's Degree in Public Administration from North Carolina State University and worked for more than 30 years in State and local government. Mayor Swearingen worked closely with Legislators and local officials across the State for five years, through the League of Municipalities, on such issues as redistribution of sales tax revenues, and State funding of local infrastructure like beach nourishment. She is also known locally and nationally for her work on opposition to offshore oil.



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The Context for Municipal Government

Carl Stenberg

The Context for Municipal Government

Carl Stenberg
stenberg@sog.unc.edu
919-962-2377

With appreciation to Vaughn Upshaw and Max Kadel



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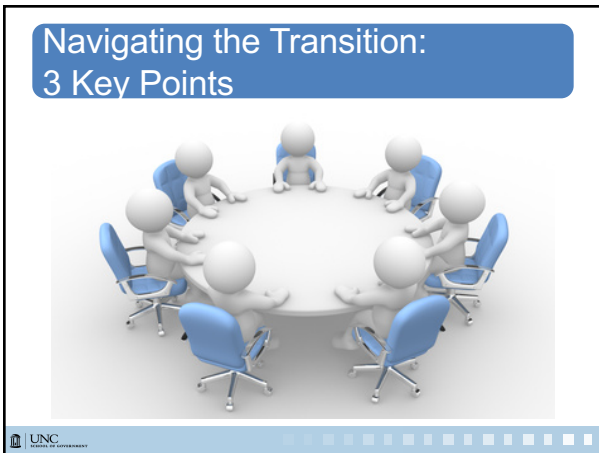


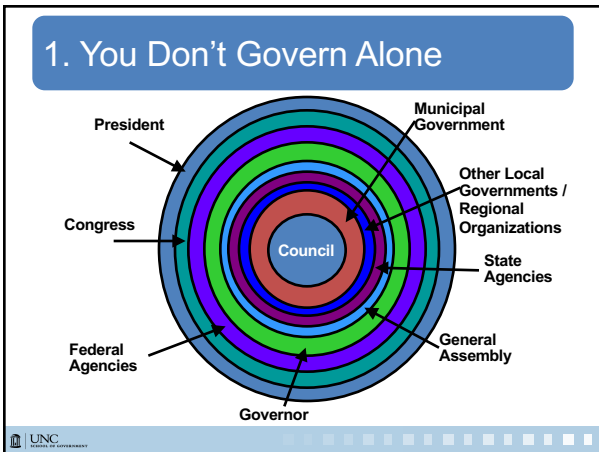
Let's hear from you...

- Why did you run for office?







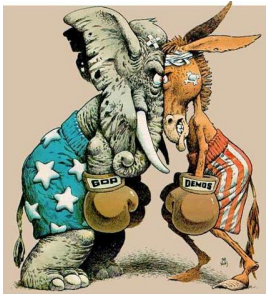


Where is the Cavalry?



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2. Governing is Hard Work



- Differs from “politics”
- Positions vs. interests
- Conflicts are built in
- Mixed messages
- High visibility
- Requires group work

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The Citizen's View



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Mixed Messages

- Give Us More for Less ("Quicker, Better, Cheaper")
- Don't Raise Our Taxes
- Don't Reduce Our Services
- Don't Make Us Pay For "Unnecessary" Services
- Get Rid of "Red Tape"

Life in the Fishbowl





3. Governing is About Public Values

- The task of government is to secure the “good society” for its citizens
- Governing for a good society starts with understanding public values



Public Issues are Value Conflicts



- Public issues cannot be resolved with just one value
- Conflicts arise when we want more of one value than another
- All values are important

Public Values Compass



Liberty

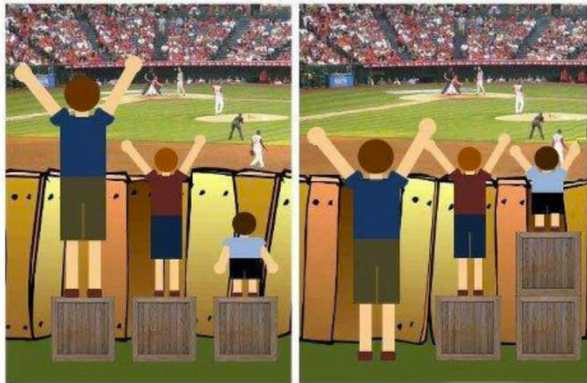
- Freedom
- Choice
- Opportunity
- Personal responsibility



Equality



- Fairness
- Justice
- Tolerance
- Level playing field



Community

- Safety
- Tradition
- Quality of life
- Belonging



Prosperity



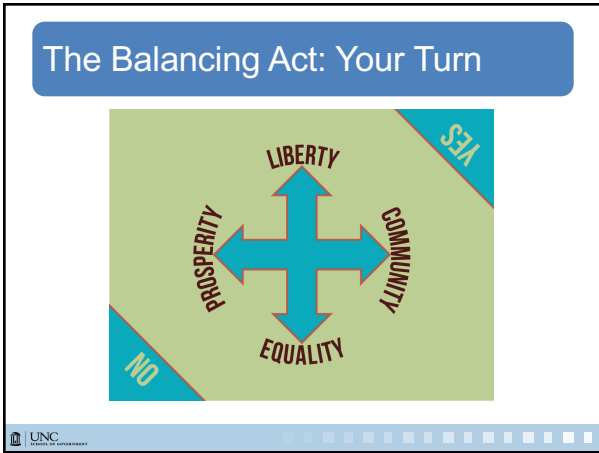
- Growth
- Productivity
- Jobs
- Quality of life
- Profit

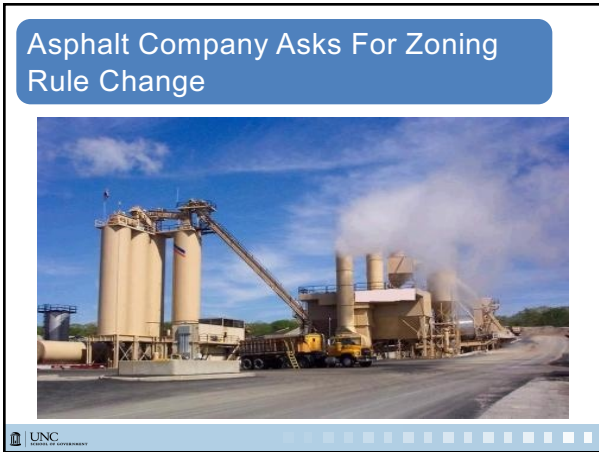
No Value Is Better



- No value is better or worse than another
- We want one value more than another
- We don't choose the same value every time







What Is Your Job?

- Decide what is the “common good”
- Respect the democratic process
- Judge each issue on it's own merit



So remember...

- Campaigning is not the same as governing
- Governing is about solving public problems
- Public problems arise from competing values about what is “common good”

Questions & Comments

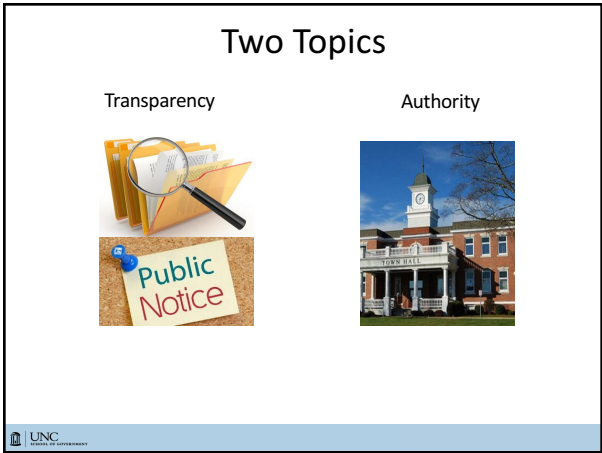


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What Municipalities Do, and How They Do It

Frayda Bluestein
Kim Hibbard








Welcome to Open Government





Overview: Transparency

- North Carolina **public records** and **open meetings** laws provide broad public access to your meetings and records.
- These laws create obligations for the **unit** and for you as an **individual**.







PUBLIC RECORDS



The Basics: Public Records

Any record made or received in the transaction of public business is subject to public access unless an exception applies.

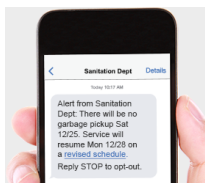


5 Questions About Public Records

1. What is a public record?
2. What is the right of access?
3. What can we charge?
4. What are some key exceptions?
5. What are the sanctions for violations?

1. What is a Public Record?

Types and forms of records defined: Documents, papers, letters, maps, books, photographs, films, sound recordings, magnetic or other tapes, electronic data-processing records, artifacts, or other documentary material, *regardless of physical form or characteristics.*



What is a Public Record?

Content of records defined: Made or received in the transaction of public business.



Is This a Public Record?

- ? Mayor sends an email to the clerk regarding the agenda for the next council meeting using her personal email account and her personal computer.
- ? Clerk sends an email to her daughter using her town-issued email account and her town-issued computer.

2 Key Concepts

Records created on **personal devices or accounts** are public records **if the content involves public business.**



Records created on government devices or accounts are **not public records if the content does not involve public business.** The government may have access to these records for internal purposes depending on computer use policies in effect.

Rule to Remember

It's the **CONTENT** of the record, not its location, that determines whether it is a public record.



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2. What is the right of access?

Provide records:

- to anyone who requests them
- to inspect or receive a copy
- regardless of why they want them
- in the medium requested if possible
- "as promptly as possible"



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Records Retention

- State issued records retention schedules dictate what must be kept, and for how long
- These schedules provide the legal authority to destroy records



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3. What Can We Charge?

✓ Actual, direct costs only ✗ Not personnel time



Special Service Fee

- Extensive use of information technology resources
- Extensive clerical or supervisory assistance
- Greater use of information technology resources
- NOTE: No clear authority to charge for substantive review of records.



4. What Are Some Key Exceptions?

Two types of exceptions:

1. **May release**, but not required to when the exception says "not public records"
 - Examples: Criminal investigation, economic development information
2. **Shall not release** when the exception says "confidential"
 - Examples: Personnel, trade secrets, law enforcement recordings

Personnel Records – Confidential-Limited Access

- Supervisors
 - Council-Manager cities: Manager
 - Mayor-council cities: Council
- Employees and former employees
 - *Not applicants*
- Others in public agencies if the custodian determines it is necessary
- Others by court order



Employee *Information* that **IS** Public

- Name
- Age
- Date of hire
- Terms of contract
- Current salary
- Date and amount of each increase and decrease (salary history)
- Date and type of certain personnel actions
- Date and general description of reasons for promotion
- Copy of notice of final dismissal for disciplinary reasons, setting forth basis for dismissal.



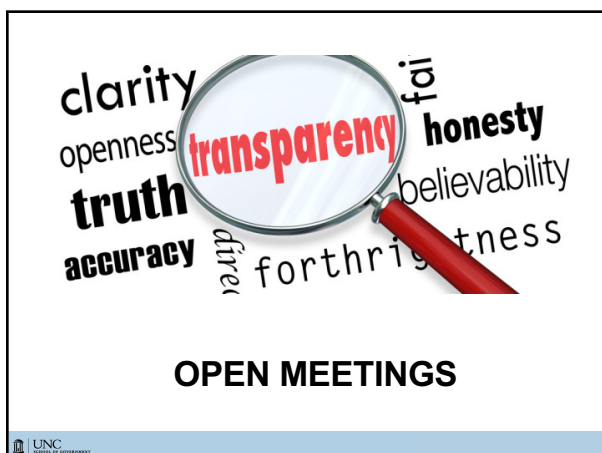
5. What Are the Sanctions for Violations?



A person denied access may file suit to force release of records.

1. Parties may mediate the dispute
2. Judge may require payment of attorneys fees unless city reasonably relied on case law or attorney general opinion
3. Individual liability only if not following city attorney's advice





5 Questions About Open Meetings

1. What meetings are subject to open meetings requirements?
2. What is an “official meeting” of a “public body?”
3. What is the right of access?
4. When is closed session allowed?
5. What are the sanctions for violations?



1. What meetings are subject to open meetings requirements?

“Official meetings” of “public bodies”



2a. What’s a Public Body?

Public Body

- 2 or more members
- Intentionally created or appointed
- Governmental (not private)
- Exercising any one of 5 functions

Functions

- Legislative
- Policy-making
- Quasi-judicial
- Administrative
- Advisory

Does **not** apply to meetings **solely** among staff.



Is This a Public Body?

- ? The mayors of all the cities in Wake County meet for lunch once a month.
- ? The mayor, the manager, and the clerk comprise the agenda committee and meet monthly to prepare the meeting agenda.
- ? The manager appoints a committee of employees to organize employee appreciation day events.



2b. What’s an Official Meeting?

- A majority of the members
- Gathering simultaneously in person or electronically
- To conduct a hearing, deliberate, vote, or otherwise conduct public business.



A purely social occasion is not an official meeting.



Are These “Official Meetings”?

- ? Seven-member board designates members A, B, and C as a committee to make recommendations on an issue. A calls B on the phone to discuss the issue.
- ? One board member sends email to the others, proposing a new policy. The members comment, using “reply all,” and the board member then emails a modified proposal.
- ? A majority of the board travels together to Raleigh for Town Hall Day.

Electronic Meetings

Majority of a public body interacting in an electronic conversation that is essentially simultaneous may constitute a meeting.



3. What is the Right of Access?

Law requires notice and opportunity to attend

| Type of Meeting | Notice Requirements |
|-----------------|---------------------------------------------------------------------------------------------------|
| Regular | Notice filed, posted, on website |
| Special | 48 hour notice to “sunshine list”; posted on website |
| Emergency | Notice to news media who have requested it, in same manner as given to members of the public body |
| Recessed | Post on website |



Right of Access

- No Open Meetings Law requirement to publish notice in the newspaper
- Right to attend does not include right to be heard. Public comment period required monthly under separate law.
- Public and press can record, video, photograph meetings



Minutes and General Accounts

- Public bodies must create and retain minutes of meetings and general accounts of closed sessions.
- Minutes legal function is to document actions taken; typically provide a summary
- General Accounts: So that a person not in attendance would have a reasonable understanding of what transpired. May be withheld from public as long as necessary to avoid frustrating the purpose of the closed session.



4. When Are Closed Sessions Allowed?

Limited authority to meet in closed session


Process: Motion made in open session, stating purpose of closed session






Closed Session Purposes (Partial List)

- Consider performance, qualifications, appointment, of individual public employees and public officers (not members of the board itself or other boards)
- Preserve attorney client privilege/consider handling of claims
- Discuss economic development
- Discuss bargaining position for property acquisition
- Matters involving alleged criminal misconduct
- Preserve confidentiality of records



Closed Session Myths




Myth: Council cannot vote or take action in closed session.

Truth: Some closed session provisions specifically allow it.

Myth: It's illegal to talk publicly about what happens in closed session.

Truth: Statute doesn't prohibit it, but some topics are confidential under other laws.



5. What Are the Sanctions for Violations?



Court Order:


1. Declaring that a violation occurred.
2. Prohibiting the city from future violations.
3. Invalidating actions taken.
4. Personal liability (intentional action; not following attorney's advice).



AUTHORITY

■ ■ ■ ■ ■ ■ ■ ■ ■ ■


**MUNICIPAL
INDIVIDUAL**



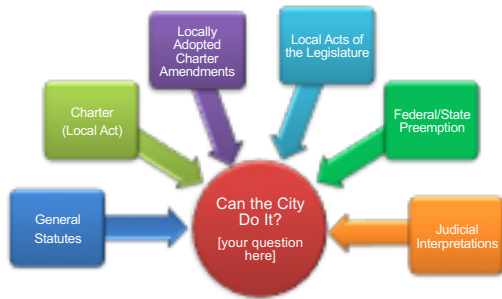
What Actions Can Your Council Take?

Newly elected majority has an agenda:

- ? Adopt an ordinance to deannex property for disgruntled property owners.
- ? Appropriate funds for a new downtown elementary school.
- ? Adopt an ordinance requiring adequate housing for backyard chickens.
- ? Conduct a city referendum on whether to ban the discharge of firearms within the city.



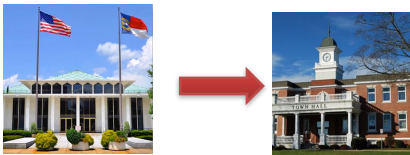
Local Government Authority Big Picture



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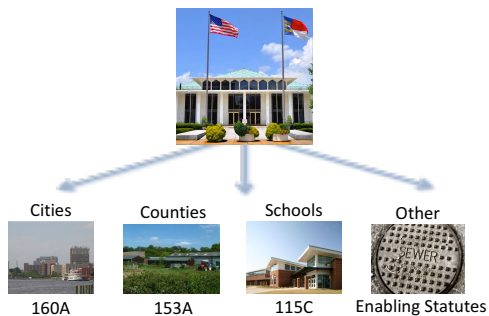
Key Concept: Municipal Authority

All municipal authority comes from the legislature. Actions must be authorized by state statute.



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Legislature Creates Local Governments . . . And Delegates Authority




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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 | • Social Services |
| • Jail | • Public health |
| • Medical examiner | • Mental health |
| • Court facilities | • Deed registration |
| • Building code enforcement | • Election administration |
| • Public school support | • Tax assessment |



Centralization

Cities tend to be centralized organizations



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



Delegated Powers May Be Limited- "Preempted" by Federal and State Law



Local Acts

Local Acts (Charter Amendments)

- Apply to one or a few units
- Modify or clarify local authority
- Examples in 2017 Session
 - An act authorizing municipalities in Guilford County to publish required notices electronically rather than in the newspaper
 - An act removing described property from the corporate limits of the Town of Carolina Shores (deannexation)
 - An act providing for regular municipal elections in the Towns of Troy and Star to be held in even-numbered years

Statutes Allow Some Locally Adopted Structural Modifications

- Governing board size
- Governing board term
- Mode of election
- Method of election
- Governing board name
- Selection of mayor
- Forms of government
- Style of corporation
- Name of unit



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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

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Relationship With Legislature Is Important



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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.

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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

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Individual Authority


What powers and possible liability do I have as an individual city governing board member?





What Can A Newly Elected 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 powers are exercised by the governing board unless specifically delegated by statute or by the board.


Individual board members have few independent powers.




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.





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Individual Liability

Rarely authorized to act individually
Rarely liable for individual actions

- Criminal liability for self-dealing or gifts and favors
- Individual liability for intentional violation of law (against legal advice)
 - Release of personnel information
 - Violation of constitutional rights
 - Violation of open meetings/public records




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Resources



Frayda Bluestein
School of Government
bluestein@sog.unc.edu



Kim Hibbard
NC League of Municipalities
khibbard@NCLM.ORG

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Chapter 8

Public Records

Frayda S. Bluestein

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Public Records Law Overview

North Carolina's public records law provides a broad right of access to records of public agencies. The main statutes that define the scope of the law are contained in Chapter 132 of the North Carolina General Statutes (hereinafter G.S.). Many exceptions and other laws that deal with public records can be found in other chapters. The School of Government publication *Public Records Law for North Carolina Local Governments* (2nd ed., 2009), by David M. Lawrence, provides a comprehensive guide to these laws and their interpretation by the courts.

As an introduction to this topic, the following list provides a summary of some of the most important basic concepts for understanding the law.

- The law applies to records made or received in connection with the transaction of public business.
- The law applies to all types of state and local government agencies, and all types of records, including paper and electronic records, recordings, films, videos, and photographs.
- A record that falls within the scope of the statute is subject to public access unless an exception provides otherwise.
- North Carolina courts have been unwilling to recognize exceptions to the law that are not found in existing statutes.

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- The statutory exceptions to the right of access fall into one of two categories: (1) confidential records, which the public agency is *prohibited* from releasing except under specified conditions, or (2) nonpublic records, to which there is no right of access but which the public agency *may* release in its discretion.
- The status of a record under the law is determined based on its content, not its location.
- Personal records (not related to the transaction of public business) are not public records, even if they are created using government resources. Records related to the transaction of public business are public, even if they are created using private resources.
- The right of access includes the right to inspect and obtain copies (although a few specific provisions limit some element of access for particular types of records).¹
- Anyone can request access; the right is not limited to citizens or constituents of the agency.
- State law limits a public agency's authority to charge for providing access to records, in most cases allowing a charge only for the actual cost of the paper or other medium, if any, on which copies are provided.
- Requirements for retention of public records are governed by rules promulgated by the State Division of Archives and History, Government Records Branch. These rules apply based on the content, not the form of the record. For example, there is no general rule for retention of email. Instead, the requirements for email records will vary depending on the content of the email.

Scope of the Public Records Law

G.S. 132-1 establishes a broad definition of “public record,” and G.S. 132-6 entitles any person to examine and have a copy of any public record. The state supreme court has concluded that these statutory rights extend to all documents meeting the definition of public record, unless the General Assembly has enacted a statute that limits or denies public access to a category of record.² As a result, the great bulk of material held by local governments in North Carolina is public record and therefore open to public access. Financial records, leases and contracts, insurance policies, reports, agency minutes, permit applications, emails, and information in computer databases are all examples of records that generally must be made available to the public upon request.

The definition of public record under the statute is quite broad and generally not limited by the form of the material in question or by the circumstances under which it was received or created. The statute begins by including within the definition not only documents and other papers but also “maps, books, photographs, films, sound recordings, magnetic or other tapes, electronic data-processing records, [and] artifacts, . . . regardless of physical form or characteristics.” It then goes on to state that the term includes the listed items “made or received pursuant to law or ordinance in connection with the transaction of public business.” Litigants have sometimes argued that the latter part of the definition—“made or received pursuant to law or ordinance”—is limiting and that only those records whose receipt is specifically required by statute or local ordinance are public records. The court of appeals rejected such a limiting reading in *News and Observer Publishing Co. v. Wake County Hospital System, Inc.*,³ holding instead that the term includes any material kept in carrying out an agency's lawful duties. Given its own public records decisions, the state supreme court has obviously accepted the same broad reading of the statute.⁴ In addition, the supreme court has held that the term includes preliminary drafts of documents and that a person need not wait until a record is finalized in order to examine it or have a copy.⁵

G.S. 132-1 extends the reach of the public records statute to every agency of state and local government in North Carolina. The section defines the covered agencies to include “every public office, public officer or official (State or local, elected or appointed), institution, board, commission, bureau, council, department, authority or other unit of

1. See, e.g., N.C. Gen. Stat. (hereinafter G.S.) § 132-1.13.

2. *News and Observer Publ'g Co., Inc. v. Poole*, 330 N.C. 465 (1992).

3. 55 N.C. App. 1 (1981).

4. E.g., *Poole*, *supra* note 2.

5. *Id.*

government of the State or of any county, unit, special district or other political subdivision of government.” Thus at the local level the law extends to counties; cities; school administrative units; community colleges; special districts, such as sanitary districts and metropolitan sewerage districts; and public authorities, such as water and sewer authorities, housing authorities, and drainage districts. It also extends to joint entities, such as councils of government, district health departments, area mental health authorities, regional libraries, and joint agencies established by contracts between local governments.

Personal Records Distinguished

Public employees often create records at work and use government resources that do not relate to the transaction of public business. Most commonly, perhaps, these might include email communications with family members, calendar entries reflective of personal activities, and other records of a purely personal nature. Based on the definition of public record under North Carolina’s statute, these types of records are not public records, since they are not made in connection with the transaction of public business. Under this definition, it is the subject and purpose of the record, rather than its location on a public or private medium, that governs its characterization as a public record. Although North Carolina case law has not addressed this issue to date, courts in other states have held that documents that are personal in nature do not become government records simply because they are found in a government office or on a government computer.

While personal records made on government-owned devices are not subject to general public access, they may be subject to access by the employer (the government agency). Inappropriate or excessive use of email for non-work-related purposes may violate local policies and could therefore become the basis for a personnel action. Policies governing use of government resources may provide the governmental employer (though not the general public at large) with legal access to material created by local government employees using public resources. Government access to and use of this personal information is limited by constitutionally protected privacy rights, which in turn are affected by the policies and practices in place within each specific jurisdiction.⁶

Records versus Information

The theory of the public records law is that when a government maintains records for its own operational purposes, the public enjoys a general right to inspect and copy those records (subject, of course, to statutory exceptions). But in general the public has no right to demand that a government maintain records that the government has no need for itself or to demand that a government maintain records in a way that facilitates use of the records by others if that use is unimportant to the government. Courts usually express this principle through the statement that the public records law does not require a government to create new records, and the General Assembly has affirmed this point in the statute itself.⁷

There are several important exceptions to this general rule. The first occurs when a government for its own reasons combines in a single document information that is exempt from public access and information that is not exempt. Simply because the document includes confidential information does not make the entire document exempt from public inspection. Rather, it is the government’s responsibility to delete (or redact) the confidential information and then make the remaining information public. In a sense this is creating a new record, but the law requires that it be done, and it requires that the agency bear the cost of doing so.⁸

The second exception involves access to personnel information. As noted below, most of the information in government employee personnel files is confidential, and local governments are prohibited from releasing such information except in limited circumstances. The statutes that govern access to personnel files, however, contain a list of *information* within those files that is open to the public. Because of the specific wording of these statutes, the public agency’s

6. See *City of Ontario, California, et al. v. Quon et al.*, 560 U.S. 746 (2010).

7. See G.S. 132-6.2(e) (“Nothing in this section shall be construed to require a public agency to respond to a request for a copy of a public record by creating or compiling a record that does not exist.”).

8. G.S. 132-6(c).

obligation is to provide the *information* requested (such as list of employee salaries or list of position changes for a particular employee), even if such a list does not exist as a separate record at the time of the request.

The Right of Access

Form of the Request

G.S. 132-6 accords the rights of inspection and copying to “any person,” and there is no reason to think that the quoted words are limiting in any way. The rights extend both to natural persons and to corporations and other artificial persons (such as associations, partnerships, and cooperatives). And they extend both to citizens of the government holding the record and to noncitizens. Furthermore, as a general rule a person’s intended use of the records is irrelevant to the right of access, and the records custodian may not deny access simply because of the intended use. Indeed, G.S. 132-6(b) *prohibits* custodians from requiring that persons requesting access to or a copy of a record disclose their purpose or motives in seeking access or the copy.

There is no specific authority to require that requests be in writing or that a requester identify himself or herself in order to obtain access. There are legitimate practical reasons to request and document requests in writing, but it is important for public agencies to recognize their lack of authority to condition access on the requester’s completion of such documentation.⁹

Form in Which Records Are Provided

Public agencies must provide records in the form in which they are requested, so long as the agency has the capacity to do so. Under G.S. 132-6.2(a), persons requesting copies “may elect to obtain [the records] in any and all media in which the public agency is capable of providing them. No request for copies of public records in a particular medium shall be denied on the grounds that the custodian has made or prefers to make the public records available in another medium.” The records may be certified or noncertified, at the option of the person making the request.

Time for Response

North Carolina’s public records law requires custodians of records to allow public records to be inspected “at reasonable times and under reasonable supervision” and copies to be provided “as promptly as possible.”¹⁰ The law does not set a specific time within which an agency must respond. What constitutes a reasonable or prompt response will depend on the nature of the request and the available personnel and other resources available to the agency that receives the request. A prompt response to a fairly simple records request ranges from immediate, within a few hours, or within a day or two. As the request becomes more substantial, however, and the burden on the custodian becomes correspondingly greater, it seems reasonable to allow the custodian somewhat more time to locate and deliver the desired records. Among factors that might appropriately delay granting access are the number of records requested, whether they are located in multiple or remote sites, how large the public agency is, and whether any part of the records must be redacted. Unless a request is extraordinary, however, a custodian probably should respond within a week or two at most.

9. For a discussion of what policies and procedures may be implemented for responding to public records requests, see Frayda Bluestein, “Ask, Don’t Compel: Local Government Authority to Establish Rules for Public Records Requests,” *Coates’ Canons: NC Local Government Law Blog* (UNC School of Government, June 15, 2011), sogweb.sog.unc.edu/blogs/localgovt/?p=4806.

10. G.S. 132-6(a).

Electronic Records and Metadata

As previously noted, the public records law applies to electronic records of all kinds, including word documents, email, text and voice mail messages, spreadsheets, and other electronically stored data. An emerging and as yet unclear aspect of the law deals with the extent to which the right of access extends to information that is embedded in electronic records. The term “metadata” is used to describe this type of information, which can range from email information that is automatically created (such as date and time information) to changes that can be seen in earlier versions of a document, to file name and other embedded data automatically created by computers and applications.¹¹ Although it’s clear that a public agency must provide records in electronic form if requested, it is not clear how much embedded information in an electronic record is considered part of the record that must be provided. For example, an email from a private citizen to a city official employee may contain the citizen’s email address. Must this information be provided to a person who requests a copy of the email? Neither the statutes nor the courts have addressed this issue to date, but courts in other jurisdictions have begun to develop interpretations of these and other issues related to the status of electronic information in public records.¹²

While the North Carolina statutes do not yet address what metadata is subject to public access, the law is clear about access to programming or other information technology system data. G.S. 132-6.1(c) specifies that public agencies are *not* required to disclose security features of their computer or telecommunications systems, nor are the unit’s computer passwords, system software, or codes subject to public access.

Custodians of Records

The public records law imposes a number of responsibilities on the *custodian* of public records. This official maintains public records, may bring actions to recover records improperly held by others, and is required to permit public inspection of records and provide copies of records to those who request them. G.S. 132-2 declares that the official in charge of an office that holds public records is the custodian of those records. Thus the register of deeds is the custodian of records in the register of deeds’ office, the sheriff is the custodian of records held by the sheriff’s department, the county assessor is the custodian of records held in the assessor’s office, and so on. G.S. 160A-171, however, provides that the city clerk is the custodian of all city records. This provision should probably be interpreted as applying to general supervision over records management as well as responsibility for the official records of the unit (such as minutes and ordinances) rather than literally requiring the clerk to be responsible for all records within each department and office of the city government. Although the custodian has the legal responsibility to provide access, many records requests necessitate review by the agency attorney and other staff prior to their release.

Fees for Providing Copies

G.S. 132-6 and 132-6.2 expressly permit fees for *copies* of public records but are silent about fees for the right of *inspection* only. This silence is the common statutory pattern around the country, and courts in other states generally have held that custodians may not charge fees for mere inspection, when the custodian does no more than locate and retrieve the record and no copy is provided.

11. For more discussion of metadata and emerging case law involving e-discovery and public records, see Kara Millonzi, “Metadata, E-Discovery, and E-Public Records in North Carolina,” *Coates’ Canons: NC Local Government Law Blog* (UNC School of Government, Sept. 15, 2011), <http://sogweb.sog.unc.edu/blogs/localgovt/?p=5432>.

12. See O’Neill v. City of Shoreline, 240 P.3d 1149 (Wash. 2010) (Email address is part of the record and must be provided if specifically requested.); Kara Millonzi, “Is Metadata a Public Record? Case Law Update,” *Coates’ Canons: NC Local Government Law Blog* (UNC School of Government, Oct. 21, 2010), <http://sogweb.sog.unc.edu/blogs/localgovt/?p=3417>. Note that G.S. 132-1.13 limits access to emails of subscribers to local government email lists, allowing inspection of such lists but not copying.

The statutes do not establish the fees that a custodian may charge for making a copy but rather give direction about the proper amount that may be charged. G.S. 132-6.2 directs that the fee be based on the *actual cost* of making the copy. The statute limits “actual cost” to “direct, chargeable costs related to the reproduction of a public record . . . [not including] costs that would have been incurred by the public agency if a request to reproduce a public record had not been made.” The statute’s use of “direct, chargeable costs” seems to rule out inclusion of indirect costs in determining fees for a copy. In addition, because the costs may not include costs that the agency would have incurred whether the copy was made or not, in most instances the fee may not include personnel costs; the person making the copy would have been paid whether he or she made the copy or did other work.

G.S. 132-6.2(b) authorizes public agencies to charge a “special service charge” for requests involving extensive use of information technology resources, including labor costs of the personnel providing these services. This authority appears to be limited to resources and labor associated with information technology and may not be sufficient authority for large requests that do not involve extensive use of information technology resources. Furthermore, the provision does not appear to authorize a surcharge for the labor involved in reviewing records to determine what records or parts of records may be provided.

Categories of Records Not Subject to the Right of Access

The General Statutes comprise literally dozens of statutes that create exceptions to the general right of access to public records. The following summary lists those that seem most important to local governments.

Personnel Records

A number of separate statutes exempt from public access most of the records in the personnel files of public employees.¹³ There is some variation among these statutes, but most permit the employee, as well as anyone with supervisory authority over the employee, to have access to almost everything in the employee’s file; they also permit certain others access to the file in very limited circumstances. In addition, each statute contains a list of information about each employee that is public record. This list includes the employee’s name, age, current salary and salary history, contract terms, original employment date, current position title and location, history of changes in position classification and disciplinary actions, and in the case of dismissal for disciplinary reasons, a copy of the final notice of dismissal, stating the reasons for the dismissal. Other information in the personnel file is confidential, and the public agency is prohibited from releasing it except under specified, limited circumstances. In addition, a number of statutes permit local governments to require criminal records checks of prospective employees, and G.S. 114-19.13 directs that the records provided by such a check are to be kept confidential.

Criminal Investigation Records

G.S. 132-1.4 establishes special rules of access to records generated while a law enforcement agency is investigating alleged or known violations of the criminal law. In general the statute denies the public any right of access to these records, with a few exceptions. The exceptions allow public access to records involving details of criminal incidents, information about persons arrested or charged, the circumstances of arrests, contents of 911 telephone calls (these may be provided with altered voice or transcribed to protect callers’ identity), radio communications between law enforcement personnel, and information about victims of crime and persons who file complaints or report violations.

13. G.S. 153A-98 (county employees); 160A-168 (city employees); 115C-319 through -321 (public school employees); 115D-27 through -30 (community college employees); 130A-42 (district health department employees); 122C-158 (area authority employees); 131E-97.1 (public hospital employees); 162A-6.1 (water and sewer authority employees); and 126-22 through -30 (state employees).

Legal Materials

Two statutes exempt certain legal materials from public access, though both exemptions are limited in duration. First, G.S. 132-1.1 exempts communications from an attorney to a public body in state or local government when the communications involve (1) a claim by or against the public body or the government for which it acts or (2) a judicial action or administrative proceeding to which the public body is a party or by which it is affected. This exemption, however, expires three years after the date the public body receives the communication. Second, G.S. 132-1.9 exempts trial preparation materials, such as documents showing the mental impressions or legal theories of an attorney or reports from consultants to be used at trial or in support of trial. Once the litigation is completed, however, this exemption ends. In addition, G.S. 132-1.3 specifies that settlement documents in any suit or legal proceeding involving a government agency are to be open to the public unless closed by court order.

Trade Secrets

G.S. 132-1.2 prohibits a government from allowing access to business trade secrets that have been shared with the government, as long as the business has designated the material as confidential or a trade secret at the time it was disclosed to the government.

Local Tax Records

Two statutes prohibit cities or counties from making public local tax records that contain information about a taxpayer's income or gross receipts.¹⁴ The kinds of local taxes that might generate such records are privilege license taxes, when measured by gross receipts; occupancy taxes; prepared food taxes; and cable television franchise taxes. In addition, some forms that must be filled out to qualify for property tax classifications—the homestead exemption and use-value taxation—also require taxpayers to reveal their income; and that information also is covered by these provisions.

Medical and Patient Records

A variety of statutes exempt from public access records about particular patients held by different sorts of health-related public agencies.¹⁵ These include records held by public hospitals, public health departments, mental health agencies, and emergency medical services providers.

Closed-Session Minutes and General Accounts

G.S. 143-318.10(c) permits a public body to seal the minutes or the general account of any closed session “so long as public inspection would frustrate the purpose of a closed session.”

Social Security Account Numbers and Other Personal Identifying and Personal Financial Information

Two statutes restrict or deny public access to information that can be used to steal a person's identity or that reveals certain sorts of financial information about a person. First, G.S. 132-1.10 prohibits government agencies from making public Social Security account numbers and other “identifying information” as defined in G.S. 14-113.20. This other information includes drivers' license numbers (except as they appear on law enforcement records), bank account numbers, bank card account numbers, fingerprints, and a few other types of similar information. Second, G.S. 132-1.1(c) exempts from public access billing information gathered or compiled as part of operating a public enterprise, such as a utility system. Billing information is defined as “any record or information, in whatever form, compiled or maintained with respect to individual customers.”

14. G.S. 153A-148.1 (county tax records); 160A-208.1 (city tax records).

15. G.S. 131E-97 (medical records and financial records of patients at health care facilities); 130A-12 (patient medical records held by local health departments); 122C-52 (patient medical records held by area authorities); 143-518 (medical records held by EMS providers).

Records Involving Public Security

Several statutes exempt material from public access because of public security concerns. G.S. 132-1.7 exempts from public access the specific details of public security plans and detailed plans and drawings of public buildings and infrastructure. This section also exempts plans to prevent or respond to terrorist activity. G.S. 132-6.1 exempts from public access the security features of a government's electronic data-processing systems, information technology systems, telecommunications networks, and electronic security systems.¹⁶

Contract Bid Documents and Construction Diaries

G.S. 143-131 specifies that a government's record of informal construction or purchasing bids it has received is not open to the public until the contract for which the bids have been solicited has been awarded. In addition, G.S. 133-33 permits the state and local governments to adopt rules that make confidential the agency's cost estimates for a construction project and any list of contractors who have obtained proposals for bid purposes.

Economic Development Records

G.S. 132-6(d) exempts from public access records that relate to the proposed expansion or location of specific business or industrial projects. Once the project has been announced, however, or once the company has communicated a decision not to locate or expand in the state, the exemption ends.

Social Services Records

G.S. 108A-80 and 108A-3 prohibit any person from obtaining, disclosing, or using a list of names or other information about persons applying for or receiving public assistance or other social services.

Library Records

G.S. 125-19 prohibits a public library from disclosing any record that identifies a person as having requested or obtained specific materials, information, or services from the library.

Telephone Numbers Held by 911 Systems

Several statutes prohibit local governments operating 911 systems from releasing telephone numbers received from telephone companies, except in response to an emergency.¹⁷

Framework for Responding to Public Records Requests

As this chapter has described, the public records law creates a broad right of access to government records. Access to records must be allowed unless an exception applies. The following framework provides a set of questions to be considered when responding to public requests for public records. The questions are set out below, followed by a brief explanation of the issues involved in answering each question.

Framework Questions

1. **Does a record exist that corresponds to the request?** *If not, no disclosure is required. If so, continue to question 2.*
2. **Is the record “made or received in the transaction of public business”?** *If not, no disclosure is required. If so, continue to question 3.*

16. See also G.S. 132-1.6, which exempts from public access emergency response plans adopted by a constituent institution of the University of North Carolina, a community college, or a public hospital.

17. G.S. 62A-51 and 132-1.5.

3. **Is there an exception that applies?** *If not, the requested access must be provided. If so, continue to question 4.*
4. **Does the exception apply to the entire record or only to certain information, and does it prohibit disclosure or deny right of access?** *If a prohibition applies to the entire record, do not disclose; if it applies only to certain information, redact and disclose. If there is no right of access to some or all of the information, but release is not prohibited, determine whether or not to release the entire or a redacted record.*

Framework Answers

1. Does a record exist that corresponds to the request?

Records can exist in many forms, but there will rarely be an issue about whether a particular record is of a type that is covered by the statute. The more significant aspect of this first question is whether a record actually exists that corresponds to the request. Sometimes public agencies receive requests for information that can be found in various records or which is known but not made part of any record. The obligation under the law is to provide access to or copies of records that exist, and the statute specifically says that a public agency is not required to respond to records requests by “creating or compiling a record that does not exist.” As noted above, a request for public information from an employee’s personnel file is an exception to this general rule.

2. Is the record “made or received in the transaction of public business”?

Most of the records that a public agency has do relate to the business of the agency. Records that are personal, however, are not related to the work of the agency and are not subject to disclosure under the public records law, even if they are created using government email systems or devices. This can describe a great many records, including personal emails and text messages created by public employees or officials.

3. Is there an exception that applies?

There are numerous exceptions to the public records law. The better part of David Lawrence’s *Public Records Law for North Carolina Local Governments* explains the various exceptions, and it is the most complete resource for information on how to interpret them. A careful assessment must be made about whether an exception covers a particular record or category of record since there must be a legal basis for refusing to provide access to records.

4. Does the exception apply to the entire record or only to certain information, and does it prohibit disclosure or deny right of access?

Some exceptions are described as exceptions to the right of access, though they do not prohibit the release of the records. The exceptions for criminal investigation information and economic development projects are examples of these types of exceptions. In these cases, the public agency is not required to provide the records, but it may choose to do so. Other exceptions, like those involving information in the personnel file and trade secrets, actually prohibit disclosure. In addition, there are some exceptions that have exceptions within them—that is, some exceptions identify specific information that would fall within the exception but that must nonetheless be made public. Both the personnel file and criminal investigation information exceptions contain these types of provisions. This part of the analysis requires careful attention to the various types of information that may be contained in a single record as well as a determination about whether all or part of the record is subject to public access. If an exception applies, the public agency may be allowed or even required to deny access to the entire record. In many cases, however, a particular record may contain a mix of public and nonpublic information. Depending on the wording of the particular exception, the public agency may be required to redact or separate confidential information from other information that is public. Although the public records law applies to records, not information, it also provides that a request for access to a record cannot be denied on the grounds that confidential information is commingled with nonconfidential information. Indeed, the law requires the public agency to bear the cost of separating the information in order to comply with the request. If an exception specifically prohibits disclosure of an entire record, redaction is not required.

Remedies for Denial of Access

Individuals who have been denied access to public records may attempt a mediated settlement under G.S. 7A-38.3E and may file an action under G.S. 132-9 to compel a public agency to provide the requested records. A claimant who substantially prevails in a claim under the statute may be allowed to recover attorneys' fees from the public agency. A court is prohibited from awarding attorneys' fees, however, if the public agency acted in reasonable reliance on (1) a court judgment or decision applicable to the agency involved, (2) a published opinion or order of any North Carolina court, or (3) a written opinion, decision, or letter of the North Carolina Attorney General.¹⁸ Individuals may be personally liable for attorneys' fees only if they failed to follow advice of counsel.

Records Retention and Disposition

G.S. Chapter 132 and G.S. 121-5 together establish responsibilities for records protection and records management for two kinds of actors. The first is each custodian of one or more public records, and the second is the state Department of Cultural Resources. Together the custodians and the department are responsible for maintaining the integrity of public records and for developing a plan for the management of records in every public office or agency.

G.S. 132-3 prohibits any public official from destroying, selling, loaning, or otherwise disposing of any public record except in accordance with G.S. 121-5. That section in turn empowers the Department of Cultural Resources to decide how long particular categories of records are kept and whether and when they may be destroyed. In furtherance of that responsibility, the department has adopted a series of Records Retention and Disposition Schedules for almost all forms of records held by local governments. The department maintains current copies of its records schedules on its website.¹⁹

Once agreed to by the officials of a particular local government, these schedules govern whether various categories of records may be destroyed and when that may occur. For example, the original of all minutes of a city or county governing board must be retained permanently at the city or county offices, with a microfilmed duplicate set maintained by the department at the State Records Center. Local government contracts may be destroyed three years after their termination, if there is no outstanding litigation, while records of vehicles owned and maintained by the unit may be destroyed after one year. Records of "short-term value" need not be retained beyond their usefulness to the custodian. As such, most emails may be destroyed by the sender and recipient as they see fit and need be retained only if the substance of the communication is subject to retention under a specific provision as set out in the applicable schedule.

Additional Resources

Additional information can be found by searching *Coates' Canons: NC Local Government Law Blog* (<http://sogweb.sog.unc.edu/blogs/localgovt>) using the keyword "public records." A comprehensive guide to the state's public records laws and their interpretation by the courts is provided by David M. Lawrence, *Public Records Law for North Carolina Local Governments*, 2nd ed. (Chapel Hill: UNC School of Government, 2009).

About the Author

Frayda S. Bluestein is a School of Government faculty member specializing in local government law.

This chapter updates and revises the previous chapter authored by David M. Lawrence, whose contributions to the field and to this publication are gratefully acknowledged.

18. See G.S. 132-9(c).

19. See the Government Records Section webpage at www.records.ncdcr.gov/local/default.htm.

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Chapter 9

Open Meetings and Other Legal Requirements for Local Government Boards

Frayda S. Bluestein

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This chapter describes various legal requirements that affect elected and appointed local governing boards. In addition to the county and city elected governing boards, there are many other appointed boards that carry out important functions and activities at the local government level. The North Carolina open meetings law applies to all public bodies, including local elected and appointed boards, councils, and commissions, and to subcommittees of these bodies. County and city governing boards are subject to additional state statutory requirements regarding meetings and voting. There are numerous locally appointed boards as well. Some are governed by state statutory requirements, such as rules about voting and conflicts of interest for quasi-judicial boards. Many locally appointed boards are created by local ordinance and are governed primarily by the rules and requirements set out in those ordinances.

The first section of this chapter provides a summary of the open meetings law. The second section deals with procedures that apply only to governing boards of counties and cities. The final section outlines how to determine the procedures that apply to statutorily mandated and locally appointed boards and commissions.

Open Meetings Law Requirements for All Public Bodies

Overview

The North Carolina open meetings law¹ gives the general public a right to attend official meetings of public bodies, except in those cases where the law permits closed sessions. The law defines the types of public entities and meetings to which it applies and sets out mandatory forms and timing of notice that must be provided. If public officials conduct a meeting and do not comply with the notice and access requirements under the law, there is no immediate legal consequence. Rather, the law creates a legal remedy for a person who has been denied access to the meeting to seek redress in court, as further outlined below. Failure to comply with the open meetings law often does, however, create negative publicity for the public body and may diminish the public's trust and confidence in their local government representatives.

Public Right of Access to Open Meetings

The public's right to attend meetings of public bodies represents a strong policy in favor of transparency in local government decision making. Compliance with the notice requirements is an essential element of providing the mandated access. As part of the right of access, the law allows media broadcast of meetings and permits any person to photograph, film, tape-record or otherwise reproduce any part of an open meeting.² The open meetings law does not, however, provide the public any right to speak at public meetings. As noted later in this chapter, a separate statute requires regular public comment periods at certain governing board meetings. Public hearings also provide opportunities for public input and are required for some types of actions.³ Other than these provisions, however, there is no general right for members of the public to be heard by, or to hear from, members of public bodies. It is up to each board to establish, in its discretion, additional opportunities for public input, either at meetings or through other channels. For a more complete discussion of citizen involvement in local government, see Chapter 10, "Citizen Involvement."

Official Meetings of Public Bodies

The notice and access requirements under the open meetings law are triggered when there is an "official meeting" of a "public body." The statute⁴ defines the term *public body* as any elected or appointed board, commission, committee, council, authority, or other body in state or local government that (1) has at least two members and (2) exercises or is authorized to exercise any of these powers: legislative, policy-making, quasi-judicial, administrative, or advisory. This definition—and thus the scope of the statute—is very broad. Public bodies in county or city government include the elected governing board; each committee of that board, whether it is a standing committee or an ad hoc committee; boards created by statute, such as the board of health and the board of social services; and each body established by action of the governing board, such as a planning board, a zoning board of adjustment, a parks and recreation commission, or a human relations commission. Other local level governing boards include local boards of education, community college boards of trustees, and governing boards of public hospitals.

All official meetings of public bodies must be open to the public, unless the purpose of the meeting is one for which a closed session is allowed under the statute. As defined in the statute⁵ an official meeting occurs whenever a *majority* of the members of a public body gather together to take action, hold a hearing, deliberate, or otherwise transact the business of the body. Even an informal gathering that includes a majority of the board triggers the statute if the members discuss or otherwise engage in the business of the public body.

Meetings solely among the professional staff of a public body and purely social gatherings among members of a public body are specifically excluded from the requirements of the law.

1. N.C. Gen. Stat. (hereinafter G.S.) Ch. 143, Art. 33C, §§ 143-318.9 through -318.18.

2. G.S. 143-318.14.

3. Public hearings are only required when a statute specifically calls for them. See David Lawrence, "When Are Public Hearings Required," *Coates' Canons: NC Local Government Law Blog* (UNC School of Government, Aug. 21, 2009), <http://canons.sog.unc.edu/?p=77>.

4. G.S. 143-318.10(b).

5. G.S. 143-318.10(d).

The definition of official meeting makes clear that an official meeting occurs by the simultaneous communication, in person *or electronically*, by a majority of the public body. Because the definition includes electronic communication, a telephone call or email communication that involves a simultaneous conversation among a majority of a public body would violate the open meetings law if notice and access are not provided.

Notice Requirements

A key component of the open meetings law is the requirement to provide advance notice of meetings. The statute requires that each public body give public notice of its official meetings, even those that will be conducted in closed session.⁶ These requirements apply to meetings of the governing board, to meetings of each appointed board, and to meetings of each committee of any of these boards. The type of notice required depends on the nature of the meeting, as described below. Specific additional types of notice required for county and city *governing boards* are described later in this chapter.

Regular Meetings

If a public body holds regular meetings, it gives public notice of those meetings by filing its schedule of regular meetings in a central location. For public bodies that are part of a county government, that location is the office of the clerk to the board of commissioners. For public bodies that are part of a city government, that location is the office of the city clerk. For local public bodies not part of a county or city, such as a local board of education, that location is the office of its clerk or secretary. The law also requires the schedule of regular meetings to be posted on the public body's website, if it maintains one. Once this notice is properly filed and posted, no other public notice is required for regular meetings held pursuant to the schedule. Changes in the regular meeting schedule are made by filing and posting a revised schedule at least seven days before the first meeting to occur under the revised schedule.

Special Meetings

If a public body meets at some time or place other than that shown on its regular meeting schedule, or if the public body does not meet on a regular schedule, it must give special meeting notice. Such a notice sets out the time, place, and purpose of the meeting and is provided in three ways. First, it must be posted on the *principal bulletin board* of the public body (or on the meeting room door if there is no principal bulletin board). Second, it must be mailed, emailed, or delivered to any person who has made a written request for notice of special meetings. Third, it must be posted on the website of the public body, if it has one. Each of these forms of notice must occur at least forty-eight hours before the meeting. A public body may require media requests to be renewed annually. Non-media requesters may be required to renew quarterly and must be charged a fee of \$10 per calendar year. No fee may be charged for email notices.

It is important to note that the statute requires the notice to specify the *purpose* of the meeting. Public bodies should be careful when conducting special meetings not to discuss or take action on matters not included in the scope of the notice.

Emergency Meetings

If the public body must meet within less than forty-eight hours, notice must be given to all *local* news media that have requested notice. Notice may be given by telephone or email or by the same method used to notify the members of the public body. An emergency meeting may be held only to address “generally unexpected circumstances that require immediate consideration by the public body,” and only matters meeting this standard may be discussed at the meeting.⁷ As noted later in this chapter, because of a separate notice requirement for city council members, a city council usually must allow at least six hours when scheduling an emergency meeting.⁸

6. G.S. 143-318.12.

7. G.S. 143-318.12(b)(3).

8. See G.S. 160A-71(b)(1).

Recessed Meetings

If a public body is in a properly noticed regular, special, or emergency meeting, it may recess that meeting to a time, date, and place certain. Notice of a recessed meeting is provided by announcing the time, date, and place of the recessed meeting in open session at the original meeting. In addition, the statute requires notice of the recessed meetings to be posted on the public body's website, if it has one.⁹

Closed Sessions

The open meetings law authorizes a public body to meet in closed session for any of nine specific reasons listed in the statute.¹⁰ This authority applies to all public bodies (not just governing boards), although many appointed boards rarely have justification to meet in closed session.

Procedures for Closed Sessions

A closed session can be a part of any regular, special, or emergency meeting, and the applicable notice of the meeting must be given, even if the entire meeting consists of the closed session. If a public body wishes to hold a closed session, the body must first meet in open session and then vote to hold the closed session. It is not sufficient for the presiding officer simply to announce that a closed session will be held. Rather, there must be a motion to go into closed session, and the motion must identify the permissible purpose from among those authorized in the statute. (A specific citation is not necessary as long as it is clear from the motion which provision is being invoked.) Once the closed session is complete, the public body must return to the open session to complete its business or to adjourn.

A brief overview of the closed session purposes most commonly used by local governments is set out below. For more detail, see the School of Government publication *Open Meetings and Local Governments in North Carolina: Some Questions and Answers*.¹¹

Confidential Records

A public body may meet in a closed session to discuss information that is part of a record that is confidential or otherwise not available to the public.¹² Thus, for example, a board of social services may have a closed session to discuss matters involving recipients of public assistance, because records about recipients are closed to public access. A motion to go into closed session under this provision must state the name or citation of the law that makes the information privileged or confidential.¹³

Attorney Consultations

A public body may meet in closed session with its attorney to discuss matters that are within the attorney–client privilege—that is, legal subjects.¹⁴ While in the closed session, the public body may give instructions to the attorney about handling or settling claims, litigation, or other proceedings. If a board meets in closed session under this provision in order to receive advice about an existing lawsuit, the motion to go into closed session must identify the parties to the lawsuit.¹⁵ The basis for this exception to the open meetings law is to preserve the attorney–client privilege. This means that the meeting cannot legally include any person who is not within that privilege.¹⁶

9. G.S. 143-318.12 (e).

10. G.S. 143-318.11(a)(1) through (9).

11. David M. Lawrence, *Open Meetings and Local Governments in North Carolina: Some Questions and Answers* (UNC School of Government, 7th ed. 2008).

12. G.S. 143-318.11(a)(1).

13. G.S. 143-318.11(c).

14. G.S. 143-318.11(a)(3).

15. *Id.*

16. For more detail on the scope of the attorney–client exception, see David M. Lawrence, “Closed Sessions Under the Attorney–Client Privilege,” *Local Government Law Bulletin* No. 103 (Apr. 2002), www.sogpubs.unc.edu/electronicversions/pdfs/lglb103.pdf.

Economic Development

A public body may have a closed session to discuss matters relating to the location or expansion of businesses in the area served by the public body.¹⁷ This is the authority under which a public body may in closed session develop an incentives package to attract a new business or encourage an existing business to expand.

Purchase of Real Property

A public body may hold a closed session to develop its negotiating position in the purchase of real property, and it may, while in closed session, give instructions to its bargaining agent in that transaction.¹⁸ Note that this provision *does not* authorize a public body to meet in closed session when it is *selling* real property.¹⁹

Employment Contracts

A public body may hold a closed session to develop its position in the negotiating of an employment contract, and it may, while in closed session, give instructions to its negotiating agent in that transaction.²⁰

Public Employees

A public body may hold a closed session to consider the qualifications, competence, performance, character, fitness, and conditions of appointment or employment of a public employee or public officer.²¹ In addition, a public body may hold a closed session to hear or investigate a complaint, charge, or grievance by or against a public officer or employee.²² A public body may not use this provision to discuss members of the public body itself or members of other public bodies. This provision does not allow closed session discussions of general personnel policies. It applies only to matters involving specific employees of the unit and does not extend to independent contractors or volunteers.

Criminal Investigations

A public body may hold a closed session to plan, conduct, or hear reports concerning an investigation of alleged criminal conduct.²³

Minutes and General Accounts

The open meetings law requires public bodies to prepare “full and accurate minutes” of all meetings and a “general account” of closed sessions.²⁴ Separate statutes for county²⁵ and city²⁶ governing boards also require each board, through its clerk, to keep full and accurate minutes of its proceedings. Although the statutes do not detail what full and accurate minutes should include, the proper content of board minutes is suggested by their purpose, which is to provide an official record, or proof, of governing board actions. Therefore, at a minimum the minutes should include two sorts of material: (1) the actions taken by a board, stated specifically enough to be identified and proved; and (2) proof of any conditions necessary to action, such as the presence of a quorum. Additional detail about matters that were discussed or individuals who addressed the board is often included but is not legally required. Minutes should be approved by the public body. The statutes do not establish a specific time frame within which minutes must be prepared or approved.

17. G.S. 143-318.11(4).

18. G.S. 143-318.11(5).

19. Procedures for selling real property are governed by Article 12 of Chapter 160A of the North Carolina General Statutes and are described in Chapter 23 of this publication.

20. G.S. 143-318.11(a)(5).

21. G.S. 143-318.11(a)(6).

22. *Id.*

23. G.S. 143-318.11(a)(7).

24. G.S. 143-318.10(e).

25. G.S. 153A-42.

26. G.S. 160A-72.

As noted, the purpose of minutes is to provide an official record, or proof, of council action. In a judicial proceeding, the minutes are the only competent evidence of council action, and as such, they may not be attacked on the ground that they are incorrect. Once approved, minutes may be modified in only two ways: (1) a person may bring a legal action alleging that the minutes are incorrect and seeking a court order to correct them; and (2) much more common, a council may itself modify its minutes if they are found to be incorrect.

Since public bodies have limited authority to take action in closed sessions, minutes of closed sessions can be quite skeletal. For closed sessions, the open meetings law requires, in addition to minutes, a general account of the closed session. The statute requires that the general account be detailed enough “so that a person not in attendance would have a reasonable understanding of what transpired.”²⁷ It is common for boards to combine the minutes and general account in a single document.

Minutes are generally open to the public under the public records law (see Chapter 8) and must be permanently retained. Closed session minutes, however, may be withheld from public access (sealed) for as long as is necessary to avoid frustrating the purpose of the closed session. Many public bodies initially seal all minutes and general accounts of closed sessions and then delegate to their attorney or other staff the responsibility for periodically reviewing these documents and opening them to public access when that is appropriate. Closed session minutes should be approved by the public body, and it may hold a closed session to do so.²⁸

Remedies

There are two statutory remedies for correcting violations of the open meetings law. The first is an injunction.²⁹ Any person may seek an injunction to stop the recurrence of past violations of the law, the continuation of present violations, or the occurrence of threatened future violations. The second is the invalidation of any action taken or considered in violation of the law.³⁰ Action taken at a meeting held in violation of the open meetings law is not automatically invalid, but a trial judge does have the option of entering such an order if a lawsuit is filed seeking that remedy. The court may award attorneys’ fees to the prevailing party in a lawsuit alleging a violation of the open meetings law, and it may order that they be paid personally by individual members of the public body if they are found to have knowingly or intentionally violated the law.³¹ Individuals cannot be held liable for costs if they follow the advice of counsel.

Additional Meeting Requirements for County and City Governing Boards

Boards of county commissioners and city councils hold ultimate authority to act for the local government. Chapter 3, “County and City Governing Boards,” describes the structure and roles of these important bodies. This section describes some of the specific meeting requirements that apply—in addition to those under the open meetings law—to these governing boards.

Governing Board Meetings

Specific statutes in Chapters 153A (counties) and 160A (cities) of the North Carolina General Statutes prescribe procedures for governing board meetings that supplement the requirements of the open meetings law. Both sets of requirements must be met.

27. G.S. 143-318.10(e). A case that sets out an acceptable general account is *Multimedia Publishing Co. of N.C., Inc. v. Henderson County*, 145 N.C. App. 365 (2001).

28. G.S. 143-318.11(a)(1).

29. G.S. 143-318.16.

30. G.S. 143-318.16A.

31. G.S. 143-318.16B.

Organizational Meetings

After each election the newly elected (or re-elected) members must qualify for office by taking and subscribing the oath of office. In addition, the governing board must organize itself. The meeting at which these events take place is known as the *organizational meeting*.

Counties

Section 153A-26 of the North Carolina General Statutes (hereinafter G.S.) directs that each commissioner elected or re-elected at the November election must take the oath of office on the first Monday in December following the election; at the same time, the board elects its chair and vice-chair for the ensuing year. If a commissioner is unable to take the oath at that time, he or she may take it later.

Cities

Unless a council sets an earlier date,³² a city council's organizational meeting is held at the board's first regular meeting in December following the election. At the organizational meeting, all newly elected and re-elected members, and the mayor, if newly elected or re-elected, must take the oath of office. If the city is one in which the board elects the mayor, this is done at the organizational meeting. The board must also elect a mayor pro tempore.³³

Regular Meetings

Counties

G.S. 153A-40 directs boards of county commissioners to hold at least one meeting each month, although they may meet more often if necessary. Many boards hold two regular meetings each month. The board may select any day of the month and any public place within the county for its regular meetings, but unless it selects some other time or place by formal resolution, the law requires the board to meet on the first Monday of the month at the courthouse.

Cities

G.S. 160A-71 directs each city's governing board to fix the time and the place of its regular meetings. If the board fails to act, the statute provides that meetings shall be held on the first Monday of each month at 10:00 a.m. Cities are not required to hold a meeting every month.

Special Meetings

Although both county commissioners and city councils may hold special meetings, the statutes under which they may do so are somewhat different. Under the county and city statutes governing meeting notice, a *special meeting* is any meeting other than a regular meeting.³⁴

In general, a governing board may take any action at a special meeting that it may take at a regular meeting. A few exceptions do exist, however, as some statutes require action to be taken at a regular meeting. Examples include adoption of ordinances awarding or amending franchises and action on several procedures for selling property. (Even so, a board may *discuss* these matters at a special meeting; it simply may not act.) Because of these exceptions, before taking any action at a special meeting, a board should consult its attorney to ascertain whether it may properly take the action. As noted earlier, it is also important to limit actions taken at special meetings to those matters identified in the notice of the meeting.

Governing boards must comply with the separate requirements for notice to the public of special and emergency meetings under the open meetings law as well as the procedures for notice to the board members, as described below.

32. G.S. 160A-68 permits a board to establish an earlier date, which may be any date within the period beginning on the day that the election results are officially determined and published and ending on the day that the board holds its first regular meeting in December.

33. G.S. 160A-70 specifies that the mayor pro tempore is to serve at the pleasure of the governing board.

34. G.S. 153A-40(b); G.S. 160A-71(b)(1).

Counties

G.S. 153A-40 permits a special meeting to be called by the chair or by a majority of the other board members. The law sets specific rules for calling special meetings. They must be called by written notice stating the time, place, and subjects to be considered. This notice must be posted on the courthouse bulletin board and delivered to each board member at least forty-eight hours before the meeting. Unless all members attend the meeting or sign a written waiver, only business related to the subjects stated in the notice may be transacted at a special meeting. It is important to remember, however, that expansion of the subjects to be addressed in a special meeting, even if allowed under this statute, may violate the open meetings law.

Cities

G.S. 160A-71 permits special meetings of a city council to be called in either of two ways. First, if a board is convened in a regular meeting or a duly called special meeting, it may schedule a special meeting. Second, the mayor, the mayor pro tempore, or any two members of the board may call such a meeting. They may do so by preparing and signing a written notice of the meeting—setting out the time and place and the subjects to be considered—and causing this notice to be delivered to each board member (or to his or her home). The notice must be delivered at least six hours before the meeting, but as noted earlier, the open meetings law requires forty-eight hours' *public* notice of a special meeting.

Emergency Meetings

Counties

G.S. 153A-40 provides that notice to board members is not required for a special meeting that is called to deal with an emergency, but it requires the person or persons calling the meeting to take reasonable actions to inform the other board members and the public of the meeting.

Cities

The city statutes do not specifically address emergency meetings. This means that the six-hour notice for special meetings applies to these types of meetings. Even though there is no minimum time for public notice of emergency meetings under the open meetings law, the six-hour board member notice requirement will usually limit a city's ability to hold a meeting with less than six hours notice. If, however, an emergency meeting is set in a regular or duly called special meeting, the six-hour notice requirement does not apply.

Meeting Location

While county commissioners' meetings are generally held within the county, G.S. 153A-40 permits out-of-county meetings in four specific instances (and not otherwise):

1. In connection with a joint meeting of two or more public bodies, as long as the meeting is within the boundaries of the political subdivision represented by the members of one of the participating bodies;
2. In connection with a retreat, forum, or similar gathering held solely to provide the county commissioners with information relating to the performance of their public duties (no vote may be taken during this type of meeting);
3. In connection with a meeting between the board and its local legislative delegation while the General Assembly is in session, as long as no votes are taken except concerning matters directly relating to proposed or pending legislation;
4. While the commissioners are attending a convention, association meeting, or similar gathering, if the meeting is held solely to discuss or deliberate on the board's position concerning convention resolutions, association officer elections, and similar issues that are not legally binding.

There are no comparable statutory restrictions on the location of city council meetings.

Rules of Procedure

Each governing board has the power to adopt its own rules of procedure. Exercise of this power can help prevent arguments over procedure that cannot otherwise be satisfactorily resolved. Boards often base their rules on *Robert's Rules of Order* or similar sources. Boards should be careful, however, to adapt these models, which are primarily intended for large groups, to the special needs of a small board. The School of Government publishes two resources—*Suggested Rules of Procedure for the Board of County Commissioners*³⁵ and *Suggested Rules of Procedure for a City Council*³⁶—that are adaptations of *Roberts Rules* designed specifically for North Carolina county and city governing boards.

Quorum

As noted earlier, a governing board may take action only during a legally constituted meeting. A meeting is legally constituted only when a quorum is present. As described below, the rules for determining a quorum are slightly different for counties and cities.

In both counties and cities, once a quorum has been attained and the meeting convened, a member may not destroy the quorum by simply leaving. G.S. 153A-43, for counties, and G.S. 160A-74, for cities, both provide that if a member withdraws from the meeting without being excused by a majority vote of the remaining members present, he or she is still counted as present for purposes of a quorum. In addition, the city statute provides that the member is counted as voting “yes” on all matters that come before the board after he or she leaves. There is no comparable provision in the county statute, but many boards of commissioners have adopted the same rule by board action.

Counties

G.S. 153A-43 defines a quorum as a majority of the membership of the board of commissioners, and it provides that the number is not affected by vacancies. Thus, if a board has six members, its quorum is four; and if there is a vacant seat, the quorum remains four.

Cities

G.S. 160A-74 defines a quorum as a majority of the actual membership of the council, including the mayor but excluding vacant seats. Thus, if a city is governed by a five-member board plus the mayor, the actual membership of the group is six, and a quorum is four. If one seat is vacant, however, the membership becomes five, and a quorum is three.

Governing Board Action

Governing boards take action in a variety of forms: ordinances, resolutions, motions, and orders. Textbooks usually define *ordinance* as a permanent rule of conduct imposed by a county or city on its citizens. Thus, ordinances may limit the amount of noise that citizens may make, regulate how they may use their land, or require their businesses to treat sewage before discharging it into the government’s system. In North Carolina, local governments also appropriate money and levy taxes by ordinance.

The other sorts of actions are less precise in their meaning. Textbooks often define *resolutions* as expressions of board opinion on administrative matters and *motions* and *orders* as actions resulting in or expressing a decision. Thus, a board might set out the unit’s policy on extension of utilities by resolution while approving specific extensions by motion or order. In practice, the distinction is not always so carefully drawn; often one board takes actions by order or motion that another takes by resolution.

Voting Rules

Both county commissions and city councils are subject to complicated rules that determine whether a measure has passed. In both counties and cities, the number of board members who must vote for a measure in order for that

35. Joseph S. Ferrell, *Suggested Rules of Procedure for the Board of County Commissioners* (UNC School of Government, 3d ed. 2002).

36. A. Fleming Bell, II, *Suggested Rules of Procedure for a City Council* (UNC School of Government, 3d ed. 2000).

measure to pass differs according to a number of factors: whether the measure is an ordinance or some other form of action, when the measure first comes before the governing board, and whether any members have been excused from voting on the measure. The actual provisions, however, differ between counties and cities.

Counties

The law does not regulate the manner in which orders and resolutions are adopted by a board of commissioners beyond the minimum requirement of a valid meeting at which a quorum is present, but several laws govern the adoption of ordinances.³⁷ An ordinance may be adopted at the meeting at which it is introduced only if it receives a unanimous affirmative vote, with all members of the board present and voting. If the ordinance passes at this meeting but with less than a unanimous vote, it may finally be passed by a majority of votes cast (a quorum being present) at any time within 100 days of its introduction. This rule does not apply to the following ordinances:

- The budget ordinance (which may be passed at any meeting at which a quorum is present);
- Any bond order (which always requires a public hearing before passage and in most cases requires approval by the voters as well);
- Any ordinance on which the law requires a public hearing before adoption (such as a zoning ordinance);
- A franchise ordinance (which must be passed at two separate regular meetings of the board).

City Ordinances

To be adopted on the day that it is introduced, a city ordinance must be approved by a vote of at least two-thirds of the actual membership of the council, excluding vacant seats. This rule applies to any city action that has the effect of an ordinance, no matter how it is labeled. In determining actual membership, the mayor is not counted unless he or she has the right to vote on all questions before the board. Thus, if a board has seven members and is presided over by a mayor who votes only to break ties, five members must vote in favor of an ordinance for it to be adopted on the day that it is introduced. If there is a vacant seat, however, the actual membership is then six, and only four votes are required to adopt the ordinance on that first day.

Given this special rule pertaining to the day of introduction, what constitutes introduction? The statute states that the day of introduction is the day on which the board *first votes on the subject matter* of the ordinance.³⁸ Examples of such a vote might include a vote to hold a hearing on the ordinance, refer it to committee, or try to pass it.

After the day on which it is introduced, an ordinance may be adopted by an affirmative vote equal to at least a majority of the board membership; vacancies do not affect the number necessary for approval. Members who have been properly excused from voting on a particular issue (see the discussion under the heading “Excusing of Members from Voting,” below) are not included in the membership for a vote on that issue. For example, a six-member board normally requires an affirmative vote of four members to adopt an ordinance. But if one member is excused on a particular issue, the board is treated as having only five members on that issue, and only three need vote affirmatively for the measure to pass.

Nonvoting mayors are not counted in determining how many members constitute the board. If there is a tie, however, the mayor’s vote is counted in determining whether the requisite majority vote has been attained. Thus, if a six-member board divides three to three on an issue and the mayor votes affirmatively to break the tie, the measure has received the four votes necessary for its adoption.

G.S. 160A-75 requires a majority vote of the board membership on a few other measures besides ordinances: (1) any action having the effect of an ordinance, no matter how it is labeled; (2) any measure that authorizes an expenditure of funds or commits a board to one, other than the budget ordinance or a project ordinance; and (3) any measure that authorizes, makes, or ratifies a contract.

37. G.S. 153A-45 through -47.

38. G.S. 160A-75.

With the exceptions just noted, the general law makes no special provision for the sort of city council vote necessary to adopt resolutions, motions, or measures other than ordinances. (Some charters do require that resolutions or other actions receive the same vote as ordinances.) For these actions the rule is that action may be taken by a majority of those present and voting, as long as a quorum is present. Thus, if a board has eight members, its quorum is five; and if only five members are present, a resolution or a motion may be adopted by a vote of only three of the five.

Excusing Members from Voting

G.S. 153A-44, for counties, and G.S. 160A-75, for cities, permit a board member to be excused from voting in two circumstances in which there is a potential conflict of interest: (1) when the question involves his or her own financial interest, and (2) when it involves his or her official conduct. In addition, these two statutes reference three other statutes that *prohibit* a board member from voting in certain circumstances because of a financial conflict: G.S. 14-234, when the board member may be interested in a contract being approved or considered by the board; G.S. 153A-340 or G.S. 160A-381, when the board is considering a zoning ordinance amendment that is likely to have a “direct, substantial, and readily identifiable financial impact on the member”; and G.S. 153A-345 or G.S. 160A-388, when the board is acting on a land use matter in a quasi-judicial capacity and the board member’s participation would violate the constitutional requirement of an impartial decision maker. These statutes are discussed in more detail in Chapter 7, “Ethics and Conflicts of Interest.”

In those situations in which the statutes do not expressly prohibit the interested board member from voting, the county statute specifies that the board must vote to excuse a member. The city statute is silent as to procedure, but unless the board has adopted a procedural rule authorizing a member to be excused by the mayor or to excuse himself or herself, such an abstention should be allowed only by vote of the remaining board members. If a member is excused, that member should neither vote nor participate in any way in the deliberations leading up to the vote.

Unless a board member is excused, he or she must vote; the statutes do not authorize unexcused abstentions. If a council member persists in abstaining without being excused, G.S. 160A-75 directs that the member be counted as voting “yes.” There is no comparable provision in the county statute, but many boards of county commissioners have adopted such a provision by rule.

The rules for mayors are slightly different than for commissioners or council members. If a mayor is elected by and from the board, he or she remains a board member and must vote. But a mayor who may vote only to break a tie has the option of not voting at all. The statute allows, but does not require, the mayor to break a tie. If he or she refuses to break a tie, the measure is defeated.

Public Hearings and Public Comment

As noted earlier, the open meetings law allows the public to attend meetings but does not provide a right to be heard. The public has opportunities for public comment through hearings and public comment periods. Some hearings are required,³⁹ such as the hearing on the budget ordinance, a bond ordinance, or a zoning ordinance or amendment. Others are held on the board’s own initiative to give interested citizens an opportunity to make their views known to the board on a controversial issue, such as a noise-control or towing ordinance.

State statutes also require boards of county commissioners, city councils, and school boards to offer at least one public comment period each month during a regular meeting, at which members of the public may comment on local government affairs more broadly.⁴⁰ This public comment period is discussed in more detail in Chapter 10’s discussion of citizen involvement.

The laws that require public hearings do not specify the manner in which they must be conducted; the laws only require that they be held. Nevertheless, G.S. 153A-52 and -52.1, for counties, and G.S. 160A-81 and -81.1, for cities, allow

39. Public hearings are required only when a statute specifically calls for them. See David Lawrence, “When Are Public Hearings Required,” *Coates’ Canons: North Carolina Local Government Law Blog* (UNC School of Government, Aug. 21, 2009), <http://canons.sog.unc.edu/?p=77>.

40. G.S. 153A-52.1 (counties); G.S. 160A-81.1 (cities); G.S. 115C-51 (schools).

the board to adopt reasonable rules governing the conduct of public hearings and public comment periods. These rules may regulate such matters as allotting time to each speaker, designating who will speak for groups, selecting delegates from groups when the hearing room is too small to hold everyone who wants to attend, and maintaining order as well as decorum. The statutes requiring public hearings and comment periods create constitutionally protected rights of expression for members of the public. Governing boards must be careful when regulating conduct to avoid restricting speakers based on the opinion or point of view they are expressing.

Rules for Quasi-Judicial Proceedings

County and city governing boards, as well as some types of appointed boards, sometimes function in a quasi-judicial capacity. Examples include decisions on certain types of land use permits or zoning variances and appeals of personnel actions. In these settings, boards are limited in their process and decision making by principles of due process, which is required because these actions affect constitutionally protected property rights. As noted above, the legislature has enacted specific voting rules to avoid conflicts of interest that apply in these situations. In addition, quasi-judicial hearings must be conducted consistent with the basic rules for a legal proceeding, including swearing in of witnesses and decisions based exclusively on evidence presented in the proceeding. These types of hearings should be distinguished from those designed to provide open forums for public comment or opinion. Indeed, only those who are qualified as witnesses or who have a stake in the outcome may speak at quasi-judicial hearings.

Remote Participation in Meetings

A board member who is unable to attend a meeting may wish to participate remotely by phone or Internet connection. The question of whether a person must be physically present to count toward a quorum is unclear under the statutes. The open meetings law definition of *official meeting* includes electronic meetings.⁴¹ But the open meetings law applies to all public bodies throughout the state, not just to local government boards, and it does not specifically authorize or even address the use of electronic meetings or individual electronic participation by local government boards. As noted above, the quorum and voting statutes refer to members being “present,”⁴² but courts in other states have found that a person may be considered to be present when participating remotely. Until there is more specific guidance from the legislature or the courts, remote participation may create a risk if the remote participant casts a deciding vote or is necessary to create a quorum. On the other hand, there is no legal risk if a member participates in a discussion (no vote being taken) or if there is a sufficient number of board members physically present to constitute a quorum. It is up to the governing board, in any event, to decide whether and under what circumstances to allow remote participation. Local governments may also authorize remote participation for boards they create and appoint. Boards that wish to allow remote participation should establish policies governing when it will be allowed.⁴³

Meeting Requirements for Appointed Boards

The preceding section of this chapter focused on rules that apply to county and city governing boards. Appointed boards are, of course, subject to the open meetings law but not to many of the more specific rules described above.

For purposes of understanding meeting requirements for appointed boards, it is helpful to consider them in two categories: those created by statute and those created by local county or city ordinance. Statutory boards include social services, public health, and ABC boards. Statutes establishing these boards include specific procedural and other requirements. Other boards and commissions are created by local ordinance or resolution under the governing

41. G.S. 160A-75.

42. G.S. 153A-44, 160A-74.

43. For a more detailed analysis of the legal aspects of remote participation, along with considerations for local policies, see Frayda S. Bluestein, “Remote Participation in Local Government Board Meetings,” *Local Government Law Bulletin* No. 133 (Aug. 2013), <http://sogpubs.unc.edu/electronicversions/pdfs/lglb133.pdf>.

boards' general authority to organize the local government⁴⁴ or under more specific authority, such as that authorizing the creation of boards of adjustment.⁴⁵

Statutes establishing or allowing the creation of specific appointed boards may include membership and procedural requirements that must be met. County and city governing boards establish other local boards by adopting ordinances, which contain the membership, purpose, and procedure under which they are to operate. Two School of Government resources are recommended for the creation and operation of these types of boards: *Suggested Rules of Procedure for Small Local Government Boards*⁴⁶ and *Creating and Maintaining Effective Local Government Citizen Advisory Committees*.⁴⁷

Additional Resources

Additional information can be found by searching *Coates' Canons: NC Local Government Law Blog* (<http://sogweb.sog.unc.edu/blogs/localgovt>) using the keyword "open meetings." Also see David M. Lawrence, *Open Meetings and Local Governments in North Carolina: Some Questions and Answers* (UNC School of Government, 7th ed. 2008).

About the Author

Frayda S. Bluestein is a School of Government faculty member specializing in local government law.

This chapter updates and revises previous chapters authored by David M. Lawrence and Joseph S. Ferrell, whose contributions to the field and to this publication are gratefully acknowledged.

44. G.S. 153A-76 (counties); G.S. 160A-146 (cities).

45. G.S. 153A-345 (counties); G.S. 160A-388 (cities).

46. A. Fleming Bell, II, *Suggested Rules of Procedure for Small Local Government Boards* (UNC School of Government, 2d ed. 1988).

47. Vaughn Mamlin Upshaw, *Creating and Maintaining Effective Local Government Citizen Advisory Committees* (UNC School of Government, 2010).

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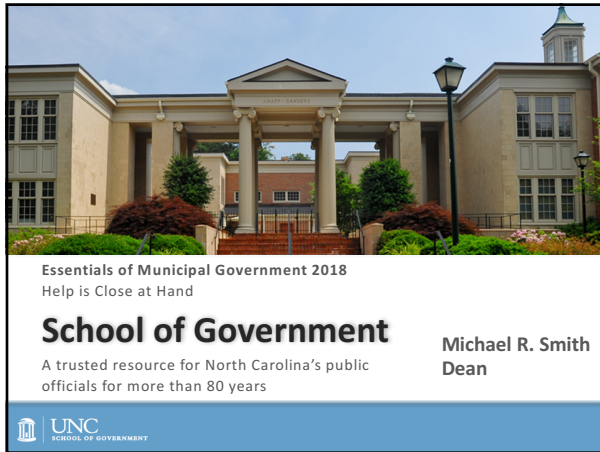


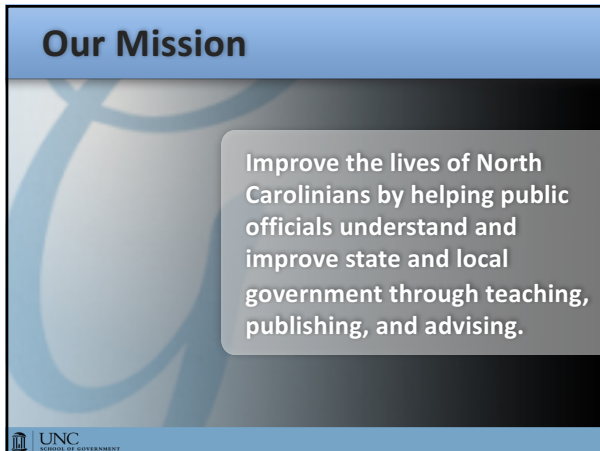
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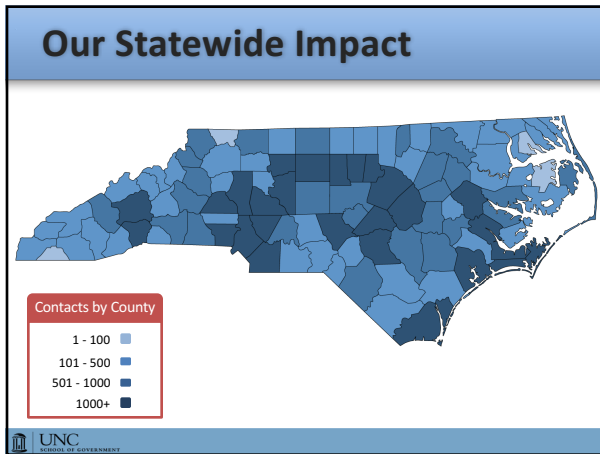
Help Is Close at Hand Part - 1

Mike Smith









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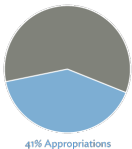
- Nonpartisan
- Policy neutral
- Responsive



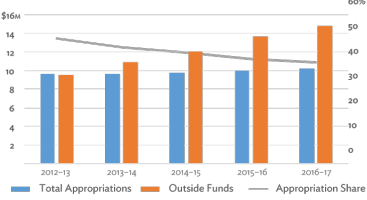
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Roles and Responsibilities for Municipal Governing Boards

Carl Stenberg

Mayor Bob Scott (Hickory, Asheville)

Mayor Jay Donecker (Chapel Hill)

Mayor Emilie Swearingen (Sunset Beach)

Mayor Gloristine Brown (Greenville)

Governing Board Roles and Responsibilities

Carl Stenberg
stenberg@sog.unc.edu
919-962-2377
With appreciation to Vaughn Upshaw and Max Kadel



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Session Questions


1. What are we required to do by law?

2. How can we be most effective working as a group?

3. How can we best manage our meetings?


4. How can we make good group decisions?






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1. What are we required to do by law?





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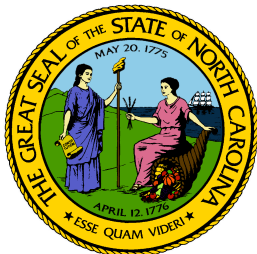
Start with your city’s charter

- Powers and limits of the municipality
- Governing body’s composition
- Form of government
- Terms of office
- Meetings, quorum, vacancies
- Election methods

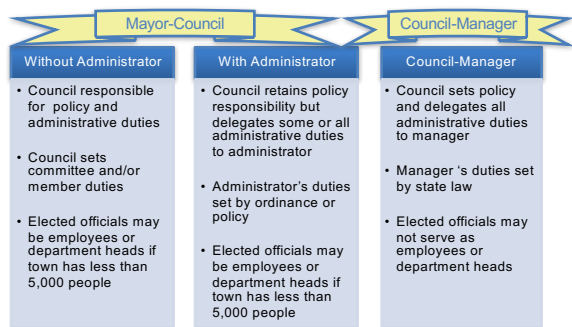


And NC Statutes

- Chapter 160A
- Municipal functions
- Includes roles and responsibilities for
 - Council
 - Mayor
 - Manager
 - Clerk
 - Attorney



Two Forms of Municipal Government



City Council Duties(§ 160A)

- Organizes city government
- Promotes orderly and efficient administration of city affairs
- Confers powers and duties upon mayor and others
- Appoints the city manager



Mayoral Duties(§ 160A)

- Preside at meetings
- Call special meetings
- Mayor cannot
 - veto actions of the council;
 - appoint or remove
- Usually votes to break a tie
- Other powers conferred by the council



Mayors as Presiding Officers

- Time keeper
- Organized
- Prepared
- Teacher
- Control the floor
- Impartial
- Composed
- Precise
- Focused
- Temperate



City Clerk and Attorney

- Every city must appoint a clerk (§160A-171)
- Cities must appoint an attorney as their legal advisor (§160A-73)



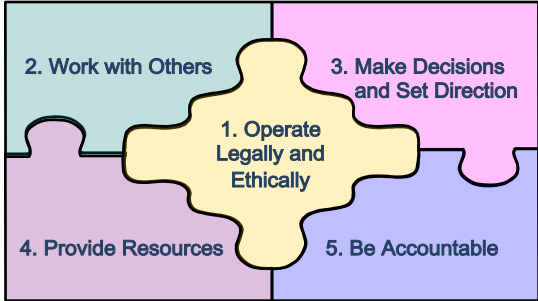
City Manager Duties (§160A-148)

- Direct and supervise all departments
- Appoint, suspend or remove all city employees
- See that all laws are faithfully executed within the city
- Attend all meetings of the council
- Prepare and submit the annual budget
- Annually report on the city's finances and activities
- Make other reports council requires
- Perform any other duties authorized by the council

2. How can we work together most effectively as a group?



Governing Board Responsibilities

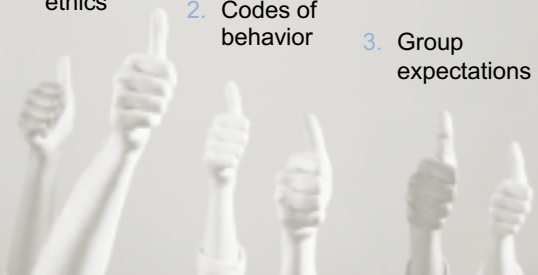


Upshaw, V. 2006

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Types of group agreements


1. Codes of ethics
2. Codes of behavior
3. Group expectations



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Code of Ethics


- Guide individuals to operate within the law
- Legally required
- Model codes
- Locally adapted and self-enforced



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Group expectations

- Guides behavior of the group as a whole
- Negotiated among all members of the group
- When any member changes, expectations change also

[illegible]

Be open-minded

Don't throw people under the bus

Don't cause distractions

Be smart about what you say

Pay attention

Respectful of others opinions

Don't dismiss

No random thoughts

Participate

Be appropriate

Have P.R.I.D.E.

Come prepared w/ evidence + support

If someone is wrong - be careful w/ correcting

No blunt or polite

Be polite

No private convos

I'm sorry but I disagree

Friendly - not harsh

Don't cut people off

Discussion

Sample Code of Ethics
City of Hickory

- Section I. A Council member shall obey the law. Council members shall obey all laws that apply to their official actions as Council members.
- Section II. A Council member need uphold the integrity and independence of his or her office.



Sample Code of Ethics
City of Hickory, con't.

- Section III. A Council member need avoid impropriety in the exercise of his or her official activities.
- Section IV. Council members must diligently perform the duties of his or her office. Council members should faithfully perform the duties of their offices.



Sample Code of Ethics
City of Hickory, con't.

- Section V. A Council member shall conduct the affairs of the Council in an open and public manner.
- Section VI. Council members shall attend ethics education training.



Sample Code of Behavior
City of Belmont

(a) Honor the role of the chair in maintaining order. It is the responsibility of the chair to keep the comments of members on track during public meetings. Members should honor efforts by the chair to focus discussion on current agenda items. If there is disagreement about the agenda or the chair's actions, those objections should be voiced politely and with reason, following procedures outlined in parliamentary procedure.



Sample Code of Behavior
City of Belmont, con't.

(b) Practice civility and decorum in discussions and debate. Difficult questions, tough challenges to a particular point of view, and criticism of ideas and information are legitimate elements of debate by a free democracy in action. Free debate does not require nor justify, however, public officials to make belligerent, personal, impertinent, slanderous, threatening, abusive, or disparaging comments.



Sample Code of Behavior
City of Belmont, con't.

(c) Avoid personal comments that could offend other members. If a member is personally offended by the remarks of another member, the offended member should make notes of the actual words used and call for a "point of personal privilege" that challenges the other member to justify or apologize for the language used. The chair will maintain control of this discussion.



Sample Code of Behavior
City of Belmont, con't.

(d) Demonstrate effective problem-solving approaches. Members have a public stage and have the responsibility to show how individuals with disparate points of view can find common ground and seek a compromise that benefits the community as a whole.



3. How can we
productively
manage our
meetings?



Why do we need procedures?

1. Boards must act as a body

2. Public business should be orderly and efficient

3. Boards act by majority


4. Every member has equal opportunity to participate
5. Procedure should be followed consistently

6. Decisions should be made on the merits of the matter


7. Rules should help, not hinder



Proper procedure takes practice





- Adopting the agenda
- Making and voting on motions
 - Substantive
 - Procedural
- Postponing a decision
- Going in/out of closed sessions



Procedures for Managing Public Comment


- Limit time
- Sign-up sheet
- Allow large group representative
- Restrict signs/displays
- Direct comments to council, not individuals






Session Summary

1. What we do is established by state law and a city's charter
2. We need agreements to work together effectively
3. Meeting procedures enable boards to be orderly and efficient

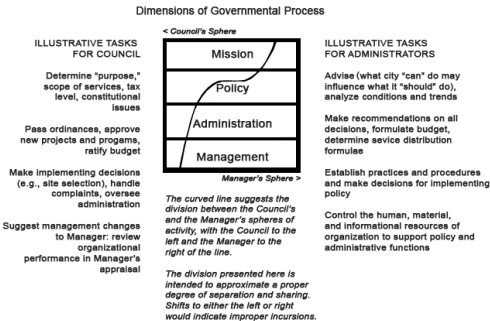




4. Making Good Decisions as a Group

We create *value* by providing
what *services*?
to which *people*?
at what *quality*?
and what *cost*?

Figure 5-1: Dichotomy-Duality Model *Mission-Management*
Separation with Shared Responsibility for Policy and Administration



Source: "Dichotomy and Duality: Reconceptualizing the Relationship between Policy and Administration in Council-Manager Cities," *Public Administration Review* 45 (January/February 1985), 228.

Questions & Comments



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Ethics for Elected Officials

Frayda Bluestein
Norma Houston



Goals for Our Session:


- ✓ Distinguish between legal and ethical standards
- ✓ Identify key legal issues and ethical considerations
- ✓ Discuss and compare views about civility among board members



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Ethics vs. Law

If people act *legally* are they also acting *ethically*?



If you *can* do it, does that mean you *should* do it?

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Key Concepts

1. Your conduct involves both **legal requirements** and **ethical considerations**
2. The law places **limits** on:
 - Voting
 - Contracting
 - Gifts & Favors
 - Misuse of Confidential Information
 - Misuse of Public Property
 - Other offenses related to misuse of public office
3. Your **ethical obligations** include:
 - Obeying all applicable laws
 - Upholding integrity and independence of office
 - Avoiding impropriety in exercise of official duties
 - Faithfully performing duties of office
 - Conducting board business in open and public manner

(G.S. 160A-86(b))

You Have A Choice



You have a **choice** about how to act; you should evaluate **legal** and **ethical** factors in deciding how to act

Deciding How to Act: Two Questions

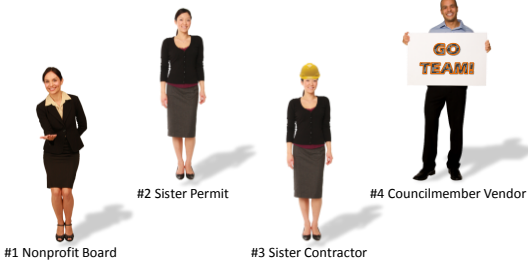


CONFLICTS OF INTEREST



What Do You Think – Is It Ethical?

Case Problem Scenarios



Legal Authority for Being Excused from Voting

Prohibited When:

- Legislative zoning decisions in which you have a **financial interest**
- Quasi-judicial decisions in which you have a **fixed opinion, bias, financial interest, or close personal relationship**
- Public contracts from which you derive a **direct financial benefit**

May Be Excused If:

- Matter before board involves your **own financial interest**
- Matter before board involves your **official conduct**

Self-Benefiting in Public Contracting

G.S. 14-234(a)(1)

Making or
administering
a contract



If you're involved at any point in the contracting process, you're involved in "making or administering" the contract

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Self-Benefiting in Public Contracting

G.S. 14-234(a)(1)

Making or
administering
a contract



Direct benefit to
you or
your spouse



There's a **direct benefit** if you or your spouse:

1. Own more than 10% of the company,
2. Receive income or commission from the contract, or
3. Acquire property under the contract

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Self-Benefiting in Public Contracting

G.S. 14-234(a)(1)

Making or
administering
a contract



Direct benefit to
you or
your spouse



Class 1
misdemeanor* &
void contract*



***Unless an exception applies:** banks and utilities, friendly condemnation, spouse employment, public assistance programs, small jurisdictions

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Self-Benefiting in Public Contracting

G.S. 14-234(a)(1)

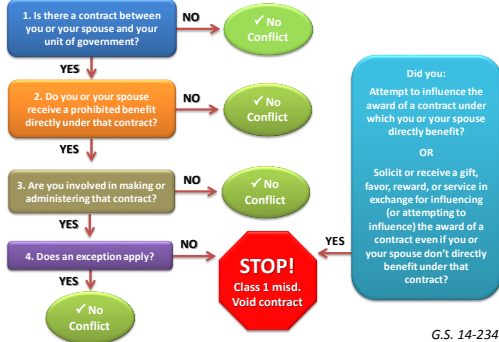
- Not like other financial conflicts - cannot cure this conflict by being excused from voting
- Unless an exception applies, cannot enter into contract – period!
- If exception applies, conflicted official cannot participate or vote



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Conflicts of Interest in Contracting



G.S. 14-234

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Is It Legal? #1 Nonprofit Board

A city council member also serves on the board of the local nonprofit arts council. The arts council is seeking grant funds from the city to support its annual craft fair. The grant request comes before the city council for consideration.



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Conflict of Roles?

- Service on nonprofit is not a **financial conflict** and missions may be in alignment
- But consider possible **future conflicts**:
 - Legal or financial dispute – commissioner on both sides
 - Expectation of allegiance by both boards
 - Confidentiality of information



Is It Legal? #2 Sister Permit

A city council member's sister is a local developer and has applied for a special use permit for a major project in city.



Is It Legal? #3 Sister Contractor

A city council is considering awarding a major construction contract to a council member's sister. The sister's company is the lowest responsive, responsible bidder.



Is It Legal? #4 Councilmember Vendor

A recently elected city council member owns a t-shirt company in the city. The Parks & Rec Department has regularly purchased uniforms for its little league teams from the council member's company.



Can You Vote? 2 Questions:

| 1. Does the Matter Involve ...? | 2. Do You Have A ...? | If So ... |
|--------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------|
| Legislative Land Use (examples: rezoning or text amendment) | Direct, substantial, and readily identifiable financial interest in the matter | Cannot participate or vote |
| Quasi-Judicial Hearing (examples: special use permit or appeal of a personnel decision) | Fixed opinion prior to the hearing, undisclosed ex parte communications, close familial, business, or other relationship with an affected person, or financial interest in outcome | Cannot participate or vote |
| Contract | Prohibited direct benefit that would be derived by you or your spouse under the contract and the contract is allowed under an exception | Cannot participate or vote |
| All Other Matters | Financial interest in the matter or does the matter involve your own official conduct | May be excused from voting |

How to Manage Perceptions



Many local codes of ethics require all council members to **"avoid the appearance of impropriety in the exercise of their official duties."**

If you are required by law to vote, how might you manage the perception that you have a conflict of interest?

GIFTS & FAVORS



Gifts and Favors from Contractors

G.S. 133-32



Prohibited Giver:

Contractor or vendor who is:

1. Past (within 1 year)
2. Current
3. Potential future



= Class 1 misdemeanor, unless an exception applies



Gifts and Favors from Contractors

G.S. 133-32



Prohibited Recipient:

Public officer or employer who:

1. Prepares plans or specifications for public contracts, or
2. Awards or administers public contracts, or
3. Inspects or supervises construction



= Class 1 misdemeanor, unless an exception applies



Gifts and Favors from Contractors

G.S. 133-32

Exceptions:

Honoraria Souvenirs Banquets Professional Organizations Family / Friends



Honoraria

Gifts and Favors from Contractors

G.S. 133-32

Exceptions:

Honoraria Souvenirs Banquets Professional Organizations Family / Friends



Souvenirs / advertising items of nominal value

Gifts and Favors from Contractors

G.S. 133-32

Exceptions:

Honoraria Souvenirs Banquets Professional Organizations Family / Friends



Meals at banquets

Gifts and Favors from Contractors

G.S. 133-32

Exceptions:

| | | | | |
|-----------|-----------|----------|----------------------------|------------------|
| Honoraria | Souvenirs | Banquets | Professional Organizations | Family / Friends |
|-----------|-----------|----------|----------------------------|------------------|



Gifts to professional organizations

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Gifts and Favors from Contractors

G.S. 133-32

Exceptions:

| | | | | |
|-----------|-----------|----------|----------------------------|------------------|
| Honoraria | Souvenirs | Banquets | Professional Organizations | Family / Friends |
|-----------|-----------|----------|----------------------------|------------------|



Non-business customary gifts from friends or family (must be reported to agency head)

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Gifts & Favors Decision Tree

```

graph TD
    Q1[1. Is the giver of the gift a:  
• Past (within the previous 12 months),  
• Current, or  
• Potential future vendor or contractor with your unit?] -- NO --> A1[✓ CAN accept the gift]
    Q1 -- YES --> Q2[2. Are you involved in preparing or administering a contract (or inspecting or supervising a construction project) with the prohibited giver on behalf of your unit?]
    Q2 -- NO --> A2[✓ CAN accept the gift]
    Q2 -- YES --> Q3[3. Is there an exception?]
    Q3 -- YES --> A3[✓ CAN accept the gift]
    Q3 -- NO --> STOP[STOP!  
Class 1 misd.]
  
```

G.S. 133-32

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Can You Accept – Open Your “Gift”!



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Gift Ban Rule of Thumb

When In Doubt, Do Without!



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COMPLIANCE

**RULES
ARE
RULES.**



Local Codes of Ethics



Boards develop their own or use a model code

Code can identify legal requirements and create standards for ethical behavior

<https://www.sog.unc.edu/publications/books/model-code-ethics-north-carolina-local-elected-officials-guidelines-and-appendixes-hard-copy-format>



Compliance



Compliance is voluntary, unless the actions violate a state law and that state law provides a remedy



But. . .there is always the court of public opinion!



What is Censure?

Resolution expressing dissatisfaction with the board member's conduct

Has no legal effect!



What Can Be Done About Unethical Behavior?

- Recall: No general authority (some units have charter provisions allowing it)
- Amotion: Common law power to remove board member - very high standard and due process required



Coates' Canons Blog
<http://canons.sog.unc.edu/removing-an-elected-official-by-amotion-judge-says-it-can-be-done/>



What is Civility?

Definition of CIVILITY

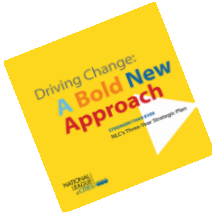
plural civilities



- 1 *archaic* : training in the humanities
- 2 a : **civilized** conduct; *especially* : **COURTESY, POLITENESS** in our politics
 b : a polite act or expression

What Does Civility Look Like?

Ethics and Civility



We believe in...

- Representative, participatory local government.
- Local government as the cornerstone of government in the United States.
- The value of public service.
- The value of diversity throughout our organization and our communities.
- Municipal authority over municipal issues.
- A commitment to the highest ethical standards among all public officials.
- Civility and mutual respect.
- Anticipating the needs of communities and developing strategies to meet those needs and improve the quality of life.
- Partnerships, coalitions and collaborations to strengthen cities and our advocacy efforts.

[National League of Cities Goals & Beliefs](#)



Remember Your Ethical Obligations:

- Obeying all applicable laws
- Upholding integrity** and independence of office
- Avoiding impropriety in exercise of official duties
- Faithfully performing duties of office
- Conducting board business in open and public manner

(G.S. 160A-86(b))



SOG Model Code Standard:

Acting With Integrity

- Treating other board members and the public with respect
- Honoring the opinions of others even when the board members disagree with those opinions
- Recognizing that they are part of a larger group and acting accordingly



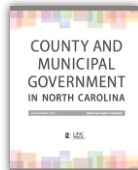
City Councils as Models of Civility



Additional Resources



<https://www.sog.unc.edu/resources/microsites/ethics-local-government-officials>



<https://www.sog.unc.edu/publications/books/county-and-municipal-government-north-carolina-second-edition-2014-hard-copy-format>



<https://canons.sog.unc.edu/>

Thank You!



Frayda Bluestein
919.966.4203

bluestein@sog.unc.edu

Norma Houston
919.843.8930

nhouston@sog.unc.edu

One Last Thing . . . *Don't Forget Your Verification Form!*

To get credit for today's ethics training:

- ✓ Fill out **both** parts of the verification form
- ✓ Keep the top part for **your records**
- ✓ Give the bottom part to your board **clerk – do not send to the SOG!**

Chapter 7

Ethics and Conflicts of Interest

Frayda S. Bluestein and Norma R. Houston

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Ethics in Government: Why It's Important

The conduct of local government officials and public employees affects public perceptions of and trust in government. Citizens expect local officials and public employees to act in the best interest of the public and not to use their office for their personal benefit. In some cases, laws restrict the conduct of local public officials, but in many cases they have a choice in how to act, for example, when deciding whom to hire, when to contract, and how to vote. North Carolina laws governing the conduct of local officials focus on financial interests in voting and contracting as well as on other ways in which government decision makers might personally benefit from the actions they take. In addition, constitutional due process requirements focus on the need for fair and unbiased decision making when certain types of private rights are at stake.

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I. Requirements for Local Elected Officials

Ethics Education Requirement

North Carolina law requires elected members of the governing boards of cities and counties, unified governments, consolidated city-counties, sanitary districts, and local boards of education to receive at least two (2) clock hours of ethics education within twelve (12) months after each election or reelection (or appointment or reappointment) to office. The education program must cover laws and principles that govern conflicts of interest and ethical standards of conduct at the local government level; it is designed to focus on both the legal requirements and the ethical considerations so that key governmental decision makers will have the information and insight needed to exercise their authority appropriately and in the public interest. The ethics education requirement is an ongoing obligation triggered by re-election or reappointment to office.¹

While state law does not require ethics education for local employees and members of local appointed boards (such as boards of adjustment or advisory committees), a local governing board may impose this requirement on these groups under the board's local ethics code or other ordinance or policy.

Local Codes of Ethics

North Carolina law also requires the governing boards subject to the ethics education requirement to adopt ethics resolutions or policies (often referred to as "codes of ethics") to guide board members in performing their duties.² The ethics resolution or policy must address at least five key responsibilities of governing board members enumerated by statute:

1. obey all applicable laws about official actions taken as a board member,
2. uphold the integrity and independence of the office,
3. avoid impropriety in the exercise of official duties,
4. faithfully perform duties,
5. act openly and publicly.

The statute does not impose or authorize sanctions for failure to comply with ethics codes. Boards have no explicit authority to sanction their members as a means of enforcing the ethics code or for other purposes. However, failure to adopt a code or to comply with its provisions may elicit citizen and media criticism and may itself be considered unethical.

As with the ethics education requirement, state law does not require that ethics codes be applied to local employees and members of local appointed boards (such as boards of adjustment or advisory committees), but a local governing board may choose to extend the provisions of its code of ethics to these groups.

Some state government officials and senior employees are subject to the State Government Ethics Act,³ which establishes ethical standards of conduct for those covered under the act and regulates individuals and entities that seek to influence their actions. The North Carolina State Ethics Commission is responsible for enforcing the act, including investigating alleged violations. Most local government officials and employees are not subject to the State Government Ethics Act by virtue of their local government positions.⁴ Consequently, the State Ethics Commission does not have the authority to investigate allegations of unethical conduct by local government officials.

1. N.C. Gen. Stat. (hereinafter G.S.) §§ 160A-87 and 153A-53.

2. G.S. 160A-86; G.S. 153A-53.

3. G.S. Chapter 138A.

4. Individual officials and employees may be subject to the act if they also serve in a state level capacity covered under it, such as serving on a covered state board or commission. In addition, voting members of the policy-making boards of Metropolitan Planning Organizations (MPOs) and Rural Transportation Planning Organizations (RPOs) (these boards are often referred to as "transportation advisory committees" or "TACs") are subject to ethics requirements specific to their service on the MPO or RPO TAC (G.S. 136-200.2(g)–(k) for MPOs and G.S. 136-211(f)–(k) for RPOs). For more information about the state ethics and lobbying

Censuring Board Members

Although state law does not provide specific authority for boards to sanction their members for ethical violations, elected boards do have general authority to pass resolutions or motions, and some boards use a motion or resolution of censure to address ethical or legal transgressions by board members, including violations of the board's code of ethics. This type of censure has no legal effect other than to express dissatisfaction or disapproval by the board (or a majority of the board) of the actions or behavior of one of its members. There are no specific procedural requirements for such an action. The School of Government's model code of ethics includes recommendations for a censure process.⁵

II. Conflicts of Interest in Voting

Ethical and conflict of interest issues often arise as questions about whether a board member may, must, or must not vote on a particular matter in which he or she has some personal interest. In general, a governing board member has a duty to vote and may be excused from voting only in specific situations as allowed by statute. North Carolina law does not explicitly authorize county or city board members to abstain or recuse themselves from voting. Instead, the statutes describe limited grounds for which a member may be excused from voting.

The statutes governing voting by county and city board members are slightly different, and especially for cities there is some ambiguity about the proper procedure for excusing a member. The county statute, G.S. 153A-44, provides that the board may excuse a member, whereas the city statute, G.S. 160A-75, simply says that a member "may be excused" without specifying who does the excusing. Another important difference is that the city statute enforces the duty to vote by providing that if a person is present at the meeting, does not vote, and has not been excused, the person is considered to have voted "yes." The county statute does not contain this provision. Both statutes are specific, however, about the reasons for which a person may be excused from voting. In addition, three other statutes prohibit board members from voting in situations involving contracting, land use decisions, and quasi-judicial decisions.

The Duty to Vote

Board members are often advised to avoid even the appearance of a conflict of interest, and in many situations and on many issues a board member may choose to act or to refrain from acting due to a concern about such an appearance. When it comes to voting, however, a board member's duty to vote overrides this choice, in some cases requiring a person to vote, while in only limited circumstances is a person required to refrain from voting. The general voting statutes—Sections 153A-44 (counties) and G.S. 160A-75 (cities) of the North Carolina General Statutes (hereinafter G.S.)—allow governing board members of cities and counties to be excused from voting *only* on matters

1. involving the consideration of the member's own official conduct or financial interest (board member compensation is not considered financial interest or official conduct) or
2. on which the member is prohibited from voting under the following statutes (discussed below):
 - (1) exemptions to the prohibition against directly benefiting under a public contract (G.S. 14-234),
 - (2) zoning matters (G.S. 153A-340(g); G.S. 160A-381(d)), and
 - (3) quasi-judicial decisions (G.S. 153A-345.1; G.S. 160A-388(e2)).

laws that apply to state officials, see Norma R. Houston, "State Government Ethics and Lobbying Laws: What Does and Does Not Apply to Local Governments," *Local Government Law Bulletin* No. 135 (March 2014), <http://sogpubs.unc.edu/electronicversions/pdfs/lglb135.pdf>.

5. A. Fleming Bell, II, *A Model Code of Ethics for North Carolina Local Elected Officials* (Chapel Hill: UNC School of Government, 2010), <http://shopping.netsuite.com/s.nl/c.433425/it.A/id.2531/f>.

When there is a question about whether a board member has a conflict of interest in voting, the first thing to determine is what type of matter is involved. Specific statutes govern the standard to be applied, depending on the nature of the matter before the board for decision. The following is a short list of circumstances that will help identify the appropriate standard to apply:

1. If the matter involves a legislative land use matter (such as a rezoning or text amendment), the standard is as follows: a board member *shall not* vote where the outcome of the matter is reasonably likely to have a direct, substantial, and readily identifiable personal financial impact. G.S. 160A-381(d); G.S. 153A-340(g).
2. If the matter involves a quasi-judicial function (such as the issuance of a special use permit or an appeal of a personnel decision), the standard is as follows: a board member *shall not participate or vote* if the member has a fixed opinion (not susceptible to change) prior to the hearing; undisclosed ex parte communications; a close familial, business, or other associational relationship with an affected person; or a financial interest in the outcome. G.S. 153A-345.1; G.S. 160A-388(e2). Note that this provision applies to any person (not just a governing board member) who serves on a board and exercises quasi-judicial functions.
3. If the matter involves a contract from which the member derives a direct benefit (this comes up only if the contract is allowed under an exception to the statute), the standard is as follows: the board member is *prohibited from participating or voting*. G.S. 14-234(b1).
4. For all other matters that come before the governing board for a vote, the standard is as follows: the board member *may be excused* if the matter involves the member's own financial interest or official conduct. G.S. 160A-75; G.S. 153A-44. As noted above, these general voting statutes specifically acknowledge a conflict under any of the other three statutes as grounds for being excused.

Note that each of the first three specific statutes *prohibits* the member from voting. Under the fourth statute, however, it is unclear whether the use of the word “may” in the general voting statutes is intended to make excusing a member from voting optional or whether it simply describes the permissible grounds for being excused.

What Constitutes Financial Interest

North Carolina courts have often ruled on matters involving conflicts of interest. School of Government Professor Fleming Bell fully explores the case law in *Ethics, Conflicts, and Offices: A Guide for Local Officials*. It's important to note, however, that some conflict of interest cases arise in the context of constitutional due process considerations or contracting issues, matters that are now governed by specific statutes that incorporate the standards from the cases. School of Government Professor David Owens analyzes the case law on conflicts of interest in land use matters in *Land Use Law in North Carolina*.

Other matters are governed by the general voting statutes, which contain the more broadly stated “own financial interest” standard. Several cases involving legislative and administrative decisions suggest that courts use a deferential standard when evaluating what constitutes a financial interest. For example, in *Kistle v. Randolph County*,⁶ board members' ownership of property near the area in which a school site was located was considered insufficient to constitute conflict of interest. And in *City of Albermarle v. Security Bank and Trust*,⁷ council members' direct ties to competing financial institutions did not require them to abstain from voting on a proposed condemnation of a portion of the bank's land. These holdings seem appropriate given the underlying obligation to vote as well as the usual judicial deference given to local government decisions in the absence of a clear abuse of discretion.

The following factors, based on case law and the statutes, may be useful in determining when a person may be excused from voting under the general voting statutes.

6. 233 N.C. 400 (1951).

7. 106 N.C. App. 75 (1993).

Number of People Affected

The range of financial impact on board members can be thought of as a continuum based on the extent to which the effect is unique to the board member, on one end of the spectrum, or experienced by many or most citizens, on the other end. If the effect on the board member is the same as the effect on a significant number of citizens, then it is fair to allow the individual to vote. The board member is affected as part of a larger group of citizens, and the vote can serve to represent that group. This is perhaps the most important factor. Even a significant financial effect may not be disqualifying if it is one that is universally or widely experienced by citizens in the jurisdiction.

Extent of the Financial Interest (Benefit or Detriment)

The general voting statutes refer to financial *interest*, not financial *benefit*, as some of the other statutes do. This means that a positive or a negative financial impact may be a basis for excusing a member from voting. An insignificant financial interest, however, whether positive or negative, is not enough to sway a person's vote and should not be used to avoid the duty to vote. Obviously, the significance of a financial interest must be considered in relation to the individual's particular situation, though it might be assessed based on what a reasonable person would do in that situation.

Likelihood That the Financial Impact Will Actually Occur

Sometimes several actions in addition to the specific vote in question are needed for an alleged financial interest to materialize. For example, a person who is a real estate agent votes in favor of a loan which will facilitate a project that the real estate agency might have the opportunity to offer for sale. Without more to suggest that the sales opportunity will actually arise and be available to the board member, such a chain of events is probably too speculative to form a basis for being excused from voting.

III. Conflicts of Interest in Contracting

Several state laws place limits on the ability of elected officials and public employees at the state and local government level⁸ to derive personal benefit from contracts with the governmental units they serve. These laws reflect the public's need to ensure that contracting and other decisions are made in a neutral, objective way based on what is in the public interest and not in consideration of actual or potential benefit to the decision maker. However, these laws do not prohibit all activity that the public might consider improper. Instead, they identify particular activities that the legislature has identified as serious enough to constitute a criminal offense. Situations that are not illegal may nonetheless be inappropriate, so public officials should always consider the public perception of their actions in addition to the legal consequences.

Contracts for Personal Benefit

A criminal statute, G.S. 14-234, prohibits a public officer (elected or appointed) or a public employee from deriving a direct benefit from any contract in which he or she is involved on behalf of the public agency he or she serves. The statute contains two additional prohibitions. Even if a public official or employee is not involved in making a

8. While the statutes discussed in this section apply to all state and local government officials and employees, certain senior-level state officials and employees are subject to specific standards of conduct under the State Government Ethics Act, G.S. Chapter 138A. This act does not generally apply to local government officials and employees unless they also serve in a state capacity, such as serving on a state board or commission covered under the act. Similarly, local government officials and employees are generally exempt from G.S. Chapter 120C, which regulates lobbying senior-level state officials and employees.

contract from which he or she will derive a direct benefit, the official or employee is prohibited from influencing or attempting to influence anyone in the agency who is involved in making the contract. In addition, all public officers and employees are prohibited from soliciting or receiving any gift, reward, or promise of reward, including a promise of future employment, in exchange for recommending, influencing, or attempting to influence the award of a contract, even if they do not derive a direct benefit under the contract. Violation of this statute is a Class 1 misdemeanor. Key definitions contained in the statute, along with several important exceptions, are discussed below.

As defined in the statute, a person “derives a direct benefit” from a contract if the person or *his or her spouse* (1) has more than a 10 percent interest in the company that is a party to the contract, (2) derives any income or commission directly from the contract, or (3) acquires property under the contract.⁹ Note that while the prohibition includes a direct benefit to a spouse, it does not extend to other family members or friends, or to unmarried partners. If the employee or official or his or her spouse does not derive a direct benefit from it, a contract between a public agency and a family member, friend, or partner of a board member or employee does not violate the law. Another important aspect of the statutory definition is that it does not make illegal a contract with an entity in which a county or city official is an employee as long as no commission or other direct benefit is derived from the contract.

Since the definition of direct benefit includes the acquisition of property, board members and employees who are involved in the disposal of surplus property are prohibited from purchasing that surplus property from their unit of government. Elected and appointed officials (but not employees) may be able to do so if the unit falls within the “small jurisdiction exception” described below.

The law also specifies what it means to be involved in “making or administering” the contract, which is a necessary element in the statutory prohibition. Individuals who are *not* involved in making or administering contracts are not legally prohibited from contracting with their unit of government. Activity that triggers the prohibition includes participating in the development of specifications or contract terms, or preparation or award of the contract, as well as having the authority to make decisions about or interpret the contract.¹⁰ Performing purely ministerial duties is not considered “making or administering” the contract.¹¹ The statute also makes clear that a person is involved in making the contract when the board or commission on which he or she serves takes action on the contract, even if the official does not participate. Simply being excused from voting on the contract does not absolve a person with a conflict of interest from potential criminal liability. If an exception (discussed below) applies, the interested party may be excused from voting and legally contract with the unit. However, unless an exception applies, simply being excused from voting does not eliminate a conflict under the statute.

As noted above, public officials or employees may legally benefit from a contract with the unit of government they serve as long as they are not involved in making or administering it. Thus, for example, employees who are not involved in disposing of surplus property may legally purchase items from the unit, and the unit may legally contract to acquire goods or services from employees whose county or city job does not involve them in making or administering the contract.

The broad prohibition in G.S. 14-234 is modified by several exceptions. In any case where an exception applies, a public officer who will derive a direct benefit is prohibited from deliberating or voting on the contract or from attempting to influence any other person who is involved in making or administering the contract.¹² Contracts with banks, savings and loan associations, and regulated public utilities are exempt from the limitations in the statute,¹³ as are contracts for reimbursement for providing direct assistance under state or federal public assistance programs under certain conditions.¹⁴ An officer or employee may, under another exception, convey property to the unit but only through

9. G.S. 14-234(a1)(4).

10. G.S. 14-234(a1)(2), (3).

11. G.S. 14-234(a1)(5).

12. G.S. 14-234(b1).

13. G.S. 14-234(b)(1).

14. G.S. 14-234(b)(4).

a condemnation proceeding initiated by the unit.¹⁵ An exception in the law also authorizes a county or city to hire as an employee the spouse of a public officer (this exception does not apply to public employees).¹⁶

A final exception applies only in cities with a population of less than 15,000 and in counties with no incorporated municipality with a population of more than 15,000.¹⁷ In these jurisdictions, governing board members as well as certain members of the social services, local health, or area mental health boards, of the board of directors of a public hospital, and of the local school board may lawfully contract with the units of government they serve, subject to several limitations contained in the exception. First, the contract may not exceed \$20,000 for medically related services and \$40,000 for other goods or services in any twelve-month period (note this requirement specifically applies to any twelve-month period, not necessarily a fiscal year). In addition, the exemption does not apply to any contract that is subject to the competitive bidding laws, which includes purchase and construction or repair contracts with an estimated cost of \$30,000 or more. Contracts made under this exception must be approved by special resolution of the governing board in open session. The statute imposes additional public notice and reporting requirements for these contracts and prohibits the interested board member from participating in the development of or voting on the contract. A contract entered into under the “small jurisdiction” exception that does not comply with all the procedural requirements applicable to this exception violates the statute.

Contracts entered into in violation of G.S. 14-234 violate public policy and are not enforceable. There is no authority to pay for or otherwise perform a contract that violates the statute unless the contract is required to protect the public health or welfare and limited continuation is approved by the Local Government Commission.¹⁸ Prosecutions under the statute are not common (although some have occurred), but situations in which board members or public officials stand to benefit from contracts involving public funds often make headlines.

Gifts and Favors

Another criminal statute, G.S. 133-32, is designed to prevent the use of gifts and favors to influence the award and administration of public contracts. The statute makes it a Class 1 misdemeanor for a current contractor, a contractor who has performed under a contract with a public agency within the past year, or a person who anticipates bidding on a contract in the future to give any gift or favor to public officials and employees who have responsibility for preparing, awarding, or overseeing contracts, including inspecting construction projects. The statute also makes it a Class 1 misdemeanor for those officials to receive the gift or favor.

The statute does not define gift or favor. A reasonable interpretation is that the prohibition applies to anything of value acquired or received without fair compensation unless it is covered by a statutory exception. These exceptions include advertising items or souvenirs of nominal value, honoraria for participating in meetings, and meals at banquets. Inexpensive pens, mugs, and calendars bearing the name of the donor firm clearly fall within the exception for advertising items and souvenirs. Gifts of a television set, use of a beach cottage, or tickets to a professional sports event probably are prohibited. Although meals at banquets are allowed, free meals offered by contractors under other circumstances, such as lunch, should be refused. Some local governments have adopted local policies establishing a dollar limit for gifts that may be accepted; however, a gift allowed under a local policy must still be refused if it violates state law.

The statute also allows public officials and employees to accept customary gifts or favors from friends and relatives as long as the existing relationship, rather than the desire to do business with the unit, is the motivation for the gift. Finally, the statute specifically does not prohibit contractors from making donations to professional organizations to defray meeting expenses, nor does it prohibit public officials who are members of those organizations from partici-

15. G.S. 14-234(b)(2). The statute specifically authorizes the conveyance to be undertaken under a consent judgment, that is, without a trial, if approved by the court.

16. G.S. 14-234(b)(3).

17. G.S. 14-234(d1). Population figures must be based on the most recent federal decennial census.

18. G.S. 14-234(f).

pating in meetings that are supported by such donations and are open to all members (for example, sponsorship of a conference event that is open to all conference attendees).

It is important to distinguish between gifts to individuals and gifts to the government entity itself. A contractor may legally donate goods and services to the local government for use by the unit. For example, a local business can legally donate products to the unit for its own use or for the unit to raffle to employees for an employee appreciation event. Gifts or favors delivered directly to individuals for their personal use should be returned or, in some cases, may be distributed among employees such that each person's benefit is nominal. The latter approach is common for gifts of food brought to a department by a vendor. Public officials should inform contractors and vendors about the existence of the gifts-and-favors statute and about any local rules in effect within the unit addressing this issue.

Misuse of Confidential Information

G.S. 14-234.1 makes it a Class 1 misdemeanor for any state or local government officer or employee to use confidential information for personal gain, to acquire a pecuniary benefit in anticipation of his or her own official action, or to help another person acquire a pecuniary benefit from such actions. Confidential information is any non-public information that the officer or employee has learned in the course of performing his or her official duties.

IV. Conflicts of Interest for Specific Categories of Officials and Public Employees

In addition to the statutes discussed above that apply to all local officials and employees, specific conflict of interest prohibitions apply to certain groups of officials and employees, including those discussed briefly below.

Building Inspectors

Both city and county building inspectors are prohibited from having a financial interest in or being employed by a business that furnishes labor, materials, or appliances for building construction or repair within the city or county jurisdiction. All employees of city and county inspection departments, including individuals working under contract with those departments, are prohibited from engaging in any work that is inconsistent with their public duties. In addition to these general prohibitions, the statute requires a city or county to find a conflict of interest if the employee (including individuals working under contract with an inspection department) has a financial or business interest in the project being inspected or has a close relationship with or has previously worked within the past two years for the project's owner, developer, contractor, or manager.¹⁹

Project Designers

Architects and engineers performing work on public construction projects are prohibited from specifying any materials, equipment, or other items manufactured, sold, or distributed by a company in which the project designer has a financial interest.²⁰ Project designers are prohibited also from allowing manufacturers to draw specifications for public

19. G.S. 153A-355 (counties) and G.S. 160A-415 (cities).

20. G.S. 133-1.

construction projects.²¹ A violation of these restrictions is punishable as a Class 3 misdemeanor; violators lose their licenses for one year and a pay a fine of up to five hundred dollars (\$500).²²

Public Hospital Officials and Employees

Boards of directors and employees of public hospitals and hospital authorities and their spouses are prohibited from acquiring a direct or indirect interest in any hospital facility, property planned to be included within a hospital facility, or a contract or proposed contract for materials or services provided to a hospital facility. Limited exceptions to this prohibition apply; a contract entered into in violation of these prohibitions is void and unenforceable.²³

Local Management Entity (LME) Board Members

Local management entity (LME) board members cannot contract with their LME for the delivery of mental health, developmental disabilities, and substance abuse services while serving on the board (and are not eligible for board service so long as such a contract is in effect).²⁴ Nor can an individual who is a registered lobbyist serve on an LME board.

Housing Authorities

Commissioners and employees of a housing authority, or of a city or county when acting as a housing authority, are prohibited from having or acquiring any direct or indirect interest in any housing project, property included or planned to be included in any project, or a contract or proposed contract for materials or services to be furnished or used in connection with any housing project.²⁵

V. Conflicts of Interest Applicable to Federal Grant Funds

The Grants Management Common Rule (GMCR) is a set of federal regulations that generally apply to the management of federal grant funds and include both specific procurement requirements as well as conflict of interest prohibitions that differ in some ways from state law. Grantees and subgrantees are required to adopt a written code of conduct that (1) addresses real and apparent conflicts of interest, (2) imposes prohibitions against accepting gifts and favors from vendors and contractors, and (3) establishes disciplinary actions for violations. In addition, the GMCR prohibits real or apparent financial or other interests in a contract funded with federal funds by officers, employees, and agents of grantees and subgrantees as well as their spouses, immediate family members, partners, and soon-to-be-employers. Finally, the GMCR prohibits all officers, employees, and agents of grantees and subgrantees from accepting gifts or favors from current or future contractors. A violation of these prohibitions can result in disciplinary action and loss of federal funding. Local governments should consult with the federal granting agency to ensure full compliance with the GMCR or any other federal regulations applicable to federal grant funds.

21. G.S. 133-2.

22. G.S. 133-4.

23. G.S. 131E-14.2 (public hospitals) and G.S. 131E-21 (hospital authorities).

24. G.S. 122C-118.1(b).

25. G.S. 157-7.

Additional Resources

Bell, A. Fleming, II. *Ethics, Conflicts, and Offices: A Guide for Local Officials*. 2nd ed. Chapel Hill: UNC School of Government, 2010.

_____. *A Model Code of Ethics for North Carolina Local Elected Officials*. Chapel Hill: UNC School of Government, 2010.

Bluestein, Frayda S. *A Legal Guide to Purchasing and Contracting for North Carolina Local Governments*. 2nd ed. with supplement. Chapel Hill: UNC School of Government, 2007.

Ethics for Local Government Officials, UNC School of Government webpage, www.sog.unc.edu/programs/ethics.
“Ethics & Conflicts.” *Coates’ Canons: NC Local Government Law Blog*, canons.sog.unc.edu/?cat=5.

Houston, Norma R. “State Government Ethics and Lobbying Laws: What Does and Does Not Apply to Local Governments.” *Local Government Law Bulletin* No. 135 (Mar. 2014).

About the Authors

Frayda S. Bluestein is a School of Government faculty member specializing in local government law. Norma R. Houston is a faculty member of the School of Government and a fellow of the Parr Center for Ethics at UNC Chapel Hill.

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The School of Government at the University of North Carolina at Chapel Hill is the largest university-based local government teaching, advising, and research organization in the United States. Its mission is to improve the lives of North Carolinians by engaging in practical scholarship that helps public officials and citizens understand and improve state and local government.



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Financial Management in Municipal Government: A Top 10 Primer

Bill Rivenbark (Hickory, Greenville)

Greg Allison (Chapel Hill, Sunset Beach)

Kara Millonzi (Asheville)


Vickie Miller

Financial Management in Municipal Government

A Top 10 Primer


Gregory S. Allison
Kara A. Millonzi
William C. Rivenbark

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Purpose of Presentation


- To present the top 10 subject areas of financial management in municipal government that every council member should know.
- To discuss common financial dilemmas faced by council members in municipal government.



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1) The Local Government Budget & Fiscal Control Act

- State legislation that contains the fiscal requirements in which local officials must follow in regard to the multiple aspects of public budgeting and financial management (Chapter 159).



UNC
SCHOOL OF GOVERNMENT

1) The Local Government Budget & Fiscal Control Act

- Examples of fiscal requirements include:
 - Each local government shall appoint a budget officer.
 - Unless otherwise directed, the budget officer shall submit a proposed balanced budget to the governing board.
 - In each year of a revaluation, the budget officer shall include a revenue-neutral tax rate in the budget for comparison purposes.



2) Budget Preparation and Enactment

- The statutory budget calendar is budget requests to budget officer by April 30; proposed budget to governing board no later than June 1; and adopted budget ordinance on or before July 1.
- Municipalities are required by law to adopt a balanced budget ordinance, where the sum of estimated net revenues plus appropriated fund balance equals appropriations.



3) Revenues

- It is recommended that council members understand the mechanics of major revenue sources and receive periodic updates on budget-to-actual variances.
- Property and sales taxes represent two major revenue sources in municipal government.



3) Revenues

- Property tax
 - Valuation is county responsibility and is established by January 1 for the following fiscal year.
 - Tax levy = (assessed value / 100) x tax rate.
 - The estimated percentage of collection for property taxes, which cannot exceed the current collection percentage, is multiplied by the tax levy to determine the revenue estimate for balancing the budget.



3) Revenues

- Sales tax
 - County levy that is collected by state.
 - All counties levy a 2.0 percent sales tax – 1.5 percent is returned to county on point of delivery and 0.5 percent on per capita basis.
 - County shares with municipalities based on per capita or ad valorem formula.



4) Fund Balance

- Fund balance available for appropriation equals cash and investments minus the sum of liabilities, encumbrances, and deferred revenues arising from cash receipts.



4) Fund Balance

- Reasons for fund balance:
 - Working capital
 - Emergencies
 - Source of capital financing
 - Bond rating
 - Balancing the budget

4) Fund Balance

- Municipalities carry significant general fund balances.
 - 10 percent to 25 percent of expenditures for large municipalities.
 - 30 percent or more of expenditures for small and medium municipalities.

4) Fund Balance

- Local governments should adopt by resolution a fund balance policy that clearly states its percentage threshold.
- Local Government Commission (LGC) recommends that fund balance should be at least 8 percent of general fund expenditures.

5) Local Government Commission

- The LGC, which is a division of the Department of State Treasurer, provides state oversight of North Carolina local finance.



5) Local Government Commission

- Roles of LGC include:
 - Approves and sells local government debt.
 - Regulates local financial management.
 - Can take over local unit in financial trouble.
 - Sends out memos, warning letters, etc.
 - Provides assistance to local governments.



6) Appropriations

- Major areas of appropriation in municipal government are public safety (police & fire), solid waste, transportation, parks & recreation, and general administration.



6) Appropriations

- Budgets are more than a financial plan for the coming fiscal year. They are strategic plans for organizational direction and performance plans for service efficiency and effectiveness.
- Budget calendars are commonly expanded to accommodate long-term goals and performance objectives.



7) Capital Planning

- Local governments often use a separate process, known as capital budgeting, for acquiring major capital assets.
- When the capital budget includes a multi-year forecast (5 years) of capital needs, it becomes a capital improvement program.
- Predetermined criteria are commonly used to make decisions regarding capital asset (mandate, public safety, etc.)



8) Capital Financing

- Pay-as-you-go financing.
 - Annual budget
 - Fund balance
 - Capital reserve fund (G.S. 159-18)



8) Capital Financing

- General obligation bonds: secured by taxing power and requires voter referendum. Commonly used for major infrastructure projects.
- Revenue bonds: secured by net revenues of self-supporting enterprise and commonly used for water and sewer projects.



8) Capital Financing

- Project development bonds: secured by the revenues generated from the tax increment created from public and private development in a project development financing district.
- Installment purchase financing: secured by property financed and commonly used for expensive equipment.



9) Fund Accounting

- Local governments in North Carolina are required by statute to follow generally accepted accounting principles (GAAP).
- GAAP requires the use of fund accounting.
- Each fund is a separate fiscal and accounting entity, with its own self-balancing accounts.



9) Fund Accounting

- Three broad categories of funds
 - Governmental (general fund, special revenue fund, debt service fund, capital projects fund, and permanent fund).
 - Proprietary (enterprise fund and internal service fund).
 - Fiduciary (pension trust fund, investment trust fund, private-purpose trust fund, and agency fund).



10) Financial Reporting and Annual Audit

- Local governments are required to prepare Basic Financial Statements.
 - Management’s discussion & analysis
 - Government-wide financial statements
 - Fund financial statements
 - Note disclosures
- Some local government prepare a comprehensive annual financial report (CAFR)



10) Financial Reporting and Annual Audit

- An annual audit of a local government’s financial statements is required by law.
 - Performed by an independent CPA
 - Should be completed by October 31
- Financial statements are the responsibility of management.



10) Financial Reporting and Annual Audit

- Purpose of an audit is to ensure that financial statements report the financial position of a local government in accordance with GAAP.



Common Financial Dilemmas in Municipal Government

- a) A municipality is considering a monthly fee on solid waste removal to avoid a property tax increase. Would you support this initiative?
- b) The budget officer has balanced the proposed budget by appropriating fund balance. What questions would you ask before approving the budget?



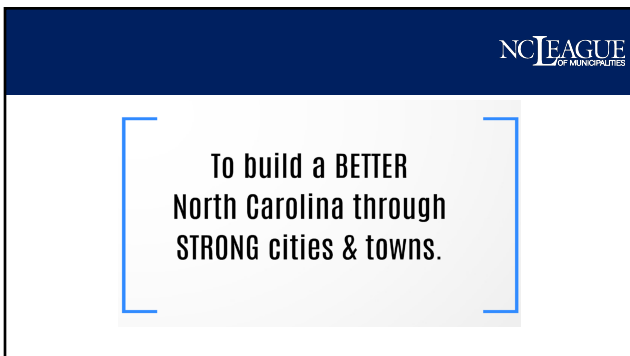
Common Financial Dilemmas in Municipal Government

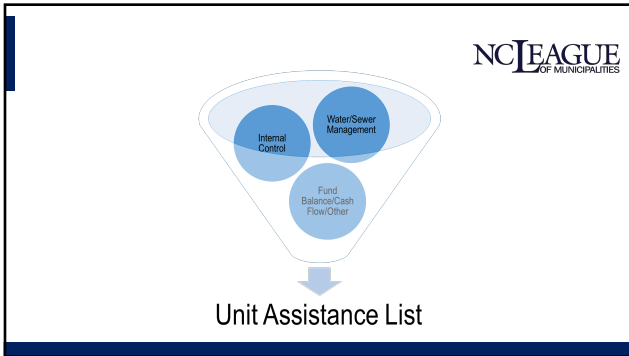
- c) The proposed budget contains an interfund transfer from the water and sewer fund (enterprise) to the general fund. Is this legal and appropriate?
- d) Your municipality receives an unqualified audit opinion. However, it also receives an extensive management letter. Should you be concerned and what is your role as a council member?

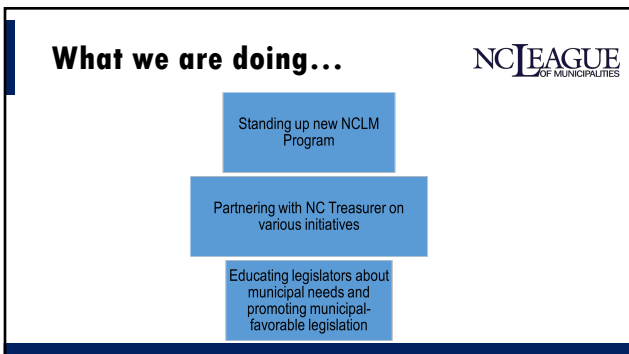














Contact Information

Chris Nida, Director
Research &
Strategic Initiatives
cnida@nclm.org
919-715-3945



Break Out Sessions Working Together: Roles, Responsibilities, and Relationships

Mayor-Council Municipalities – John Phelps, Hartwell Wright

Council-Manager Municipalities – Kim Nelson, Carl Stenberg

Hickory: Alison Alexander, Todd Herms

Chapel Hill: Roger Stancil, Elton Daniels

Asheville: Alison Alexander, John Connet

Sunset Beach: Tim Owens, Terri L. Parker

Greenville: Jeff Repp, Angela Christian

ICMA Code of Ethics

The mission of ICMA is to create excellence in local governance by developing and fostering professional local government management worldwide. To further this mission, certain principles, as enforced by the Rules of Procedure, shall govern the conduct of every member of ICMA, who shall:

1. Be dedicated to the concepts of effective and democratic local government by responsible elected officials and believe that professional general management is essential to the achievement of this objective.
2. Affirm the dignity and worth of the services rendered by government and maintain a constructive, creative, and practical attitude toward local government affairs and a deep sense of social responsibility as a trusted public servant
3. Demonstrate by word and action the highest standards of ethical conduct and integrity in all public, professional, and personal relationships in order that the member may merit the trust and respect of the elected and appointed officials, employees, and the public.
4. Recognize that the chief function of local government at all times is to serve the best interests of all people.
5. Submit policy proposals to elected officials; provide them with facts and advice on matters of policy as a basis for making decisions and setting community goals; and uphold and implement local government policies adopted by elected officials.
6. Recognize that elected representatives of the people are entitled to the credit for the establishment of local government policies; responsibility for policy execution rests with the members.
7. Refrain from all political activities which undermine public confidence in professional administrators. Refrain from participation in the election of the members of the employing legislative body.
8. Make it a duty continually to improve the member's professional ability and to develop the competence of associates in the use of management techniques.
9. Keep the community informed on local government affairs; encourage communication between the citizens and all local government officers; emphasize friendly and courteous service to the public; and seek to improve the quality and image of public service.
10. Resist any encroachment on professional responsibilities, believing the member should be free to carry out official policies without interference, and handle each problem without discrimination on the basis of principle and justice.
11. Handle all matters of personnel on the basis of merit so that fairness and impartiality govern a member's decisions, pertaining to appointments, pay adjustments, promotions, and discipline.
12. Public office is a public trust. A member shall not leverage his or her position for personal gain or benefit.

Adopted by the ICMA Executive Board in 1924, and most recently revised by the membership in June 2017.

