Four Things to Know And A Checklist

Three sources of law

• And they each have distinct roles and limitations

Three levels of government

• And there is a hierarchy; local government is on the bottom.

States create local governments and define their structures and power.

• NC local governments get all their power from the legislature.

Local governments must act within the scope of their authority and according to statutory procedures.

• Checklist helps identify steps for valid action.
1. Three Main Sources of Law

- Legislators [Federal, State, Local]
- Regulatory Agencies [Federal, State]
- Courts/Judges [Federal, State]
2. Three Levels of Government

- **Federal**: Constitution and laws of the federal government have supremacy.
- **State**: Inherent powers, but cannot conflict with federal law.
- **Local**: All authority comes from states. Cannot conflict with federal or state law.
3. States create local governments and define their structures and power

- NC System: Authority comes in two forms:
  - General Laws
    - Chapter 160A (cities)
    - Chapter 153A (counties)
  - Local Acts
4. Local governments must act within the scope of their authority and according to statutory procedures

- **Legal Issue**: Is the specific activity within the scope of statutorily delegated powers?
Local government authority is affected by all of these sources of law.
Legislative Authority

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

- *NC Constitution, Article VII, Sec. 1*
State legislature creates local governments and delegates authority by statutes and local acts
Local Governments Have Limited Powers: No Inherent Authority
Key Local Government Statutes

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

• Constitutional limitation on local acts relating to certain subjects:

• Article II, Section 24

What is A Local Act (Blog Post)
Local Acts

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

• Charters/Charter Amendments
• Deannexation
• Modifications of statutes
• Authorization of powers not granted in statutes
Statutes Allow Locally Adopted Charter Changes

City and County
- Governing board size
- Governing board term
- Mode of election
- Method of election
- Forms of government

City Only
- Selection of mayor
- Style of corporation
- Name of unit
- Governing board name

County only
- Selection of Chair

School of Government
Forms of Government Website
Most city authority is optional

- Police
- Fire
- Streets
- Water
- Sewer
- Zoning
- Solid waste collection
“Meaningful services” required to annex. Some major services required to incorporate and to receive state shared funds.
Most County Functions Are Mandatory

- Law enforcement
- Jail
- Medical examiner
- Court facilities
- Building code enforcement
- Public school support

- Social Services
- Public health
- Mental health
- Deed registration
- Election administration
- Tax assessment
What Both Cities and Counties May Do

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

Many People Govern

City Council Governs
Helpful Tools

State law provides broad authority for interlocal cooperation.

See Chapter 160A, Article 20

An interlocal agreement doesn’t confer new authority; obligations must be within the scope of existing authority.
Local Government Relation to State

The legislature may giveth and the legislature may taketh away.
Preemption of Ordinances

An ordinance is preempted if it:

- Infringes a liberty protected by the N.C. or U.S. Constitution
- Outlaws something lawful under higher law
- Permits something unlawful under higher law
- Regulates a subject that higher law expressly forbids the local gov’t to regulate
- Regulates a field subject to implied preemption
- Defines and punishes an act already defined as a crime or infraction under higher law
Some Effects of Federal Supremacy And Preemption

- **Free Speech**
  - Free Speech/Public Forum
  - Free Speech Rights in Government Social Media Sites (Blog Post)

- **Employment: Termination for Cause**
  - Property Interest/Due Process

- **Regulation: Zoning regulation of religious uses**
  - Free Exercise of Religion (Constitution)
  - Federal Statutes (RLUIPA)
Statutory Authority Dictate What to Do And How to Do It

Here’s the basic rule about board approval: The governing board has authority to act on behalf of the unit and may delegate authority unless a statute specifically requires action by the board or a specific person.

Does the Board Have to Approve This?
Municipal and County powers are exercised by the governing board unless specifically delegated by statute or by the board. Individual board members have few independent powers.
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 Authority

What powers and possible liability do individual members of the governing board have?
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.
Mayors Have Limited Powers

- Preside at meetings
- Appoint certain commissions
- Declare emergency
- Civil Service (receiving papers for lawsuits)
- Ceremonial duties
- Other powers and duties delegated by the board or in charter
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?
  – If the board must act:
    – Must be by majority vote, (or as otherwise required by law), at a properly called meeting, with a quorum present.
Lawful Exercise of Authority Checklist (con’t)

- Must comply with statutory procedures
  - Notice, bidding, public hearing
  - Agency regulations
- Must comply with common law requirements
- Must be constitutional