

**STATUTES GOVERNING
CASH MANAGEMENT AND INVESTMENTS
BY LOCAL GOVERNMENTS IN NORTH CAROLINA**

- I. Responsibility of finance officer for cash management and overview of finance officer's cash management duties: GS 159-25(a)(2), (4), and (6), GS 115C-436(a)(3)

- II. Banking: GS 159-31 and -32, GS115C-444 and -445

- III. Investments: GS 159-30, GS 115C-443

- IV. Disbursements: GS 159-25(b), -28(b) and (d), and -28.1, GS 115C-441, -438, and -439

- V. LGC regulation and internal control: GS 159-25(c) and-33

- VI. Reports: GS 159-33 and -33.1, GS 115C-446

- VII. Fidelity bonds: GS 159-29, GS 115C-442

- VIII. Collection of property taxes by bank or financial institution: GS 105-321(e).
Payment of property taxes by credit card: GS 105-357

- IX. Embezzlement: GS 14-90, -92, and -14-1.1

- X. Federal laws affecting local government cash management and investments
 - A. Securities laws regulating brokers, dealers, & others selling securities to localities. See Girard Miller, *Investing Public Funds*, pp. 8-9
 1. Primary dealers. Federal Reserve regulates.
 2. Banks: FDIC, Federal Reserve, and State Banking Commission regulate.
 3. Other securities brokers and dealers: SEC regulates under Government Securities Act of 1986 (P.L. 99-571). This Act regulating brokers & dealers selling government securities exclusively. The National Securities Markets Improvements Act of 1996 increased SEC regulation of financial advisors.
 - B. 1984 amendments to federal bankruptcy code exempting repurchase agreements from "stay" orders preventing creditors from seizing assets in bankruptcy situations. See Miller, *Investing Public Funds*, p. 9.

§ 115C-436. Duties of school finance officer.

(a) The school finance officer shall be responsible to the superintendent for:

- (1) Keeping the accounts of the local school administrative unit in accordance with generally accepted principles of governmental accounting, the rules and regulations of the State Board of Education, and the rules and regulations of the Local Government Commission.
- (2) Giving the preaudit certificate required by G.S. 115C-441.
- (3) Signing and issuing all checks, drafts, and State warrants by the local school administrative unit, investing idle cash, and receiving and depositing all moneys accruing to the local school administrative unit.
- (4) Preparing and filing a statement of the financial condition of the local school administrative unit as often as requested by the superintendent, and when requested in writing, with copy to the superintendent, by the board of education or the board of county commissioners.
- (5) Performing such other duties as may be assigned to him by law, by the superintendent, or by rules and regulations of the State Board of Education and the Local Government Commission.

All references in other portions of the General Statutes or local acts to school treasurers, county treasurers, or other officials performing any of the duties conferred by this section on the school finance officer shall be deemed to refer to the school finance officer.

(b) The State Board of Education has authority to issue rules and regulations having the force of law governing procedures for the disbursement of money allocated to the local school administrative unit by or through the State. The Local Government Commission has authority to issue rules and regulations having the force of law governing procedures for the disbursement of all other moneys allocated or accruing to the local school administrative unit. The State Board of Education and the Local Government Commission may inquire into and investigate the internal control procedures of a local school administrative unit with respect to moneys under their respective jurisdictions and may require any modifications in internal control procedures which may be necessary or desirable to prevent embezzlements or mishandling of public moneys. (1975, c. 437, s. 1; 1981, c. 423, s. 1.)

§ 115C-445. Daily deposits.

Except as otherwise provided by law, all moneys collected or received by an officer, employee or agent of a local school administrative unit or an individual school shall be deposited in accordance with this section. Each officer, employee and agent of a local school administrative unit or individual school whose duty it is to collect or receive any taxes or other moneys shall deposit his collections and receipts daily. If the board of education gives its approval, deposits shall be required only when the moneys on hand amount to as much as two hundred fifty dollars (\$250.00), but in any event a deposit shall be made on the last business day of the month. All deposits shall be made with the finance officer or in an official depository. Deposits in an official depository shall be immediately reported to the finance officer or individual school treasurer by means of a duplicate deposit ticket. The finance officer may at any time audit the accounts of any officer, employee or agent collecting or receiving any taxes or other moneys, and may prescribe the form and detail of these accounts. The accounts of such an officer, employee or agent shall be audited at least annually. (1975, c. 437, § 1; 1981, c. 423, s. 1.)

§ 115C-441. Budgetary accounting for appropriations.

(a) **Incurring Obligations.** — Except as set forth below, no obligation may be incurred by a local school administrative unit unless the budget resolution includes an appropriation authorizing the obligation and an unencumbered balance remains in the appropriation sufficient to pay in the current fiscal year the sums obligated by the transaction for the current fiscal year. If an obligation is evidenced by a contract or agreement requiring the payment of money or by a purchase order for supplies and materials, the contract, agreement, or purchase order shall include on its face a certificate stating that the instrument has been preaudited to assure compliance with this section. The certificate, which shall be signed by the finance officer, shall take substantially the following form:

"This instrument has been preaudited in the manner required by the School Budget and Fiscal Control Act.

.....
(Date)

.....
(Signature of finance officer)"

An obligation incurred in violation of this section is invalid and may not be enforced. The finance officer shall establish procedures to assure compliance with this section.

(b) **Disbursements.** — When a bill, invoice, or other claim against a local school administrative unit is presented, the finance officer shall either approve or disapprove the necessary disbursement. The finance officer may approve the claim only if he determines the amount to be payable, the budget resolution includes an appropriation authorizing the expenditure and either (i) an encumbrance has been previously created for the transaction or (ii) an unencumbered balance remains in the appropriation sufficient to pay the amount to be disbursed. A bill, invoice, or other claim may not be paid unless it has been approved by the finance officer or, under subsection (c) of this section, by the board of education.

(c) **Board of Education Approval of Bills, Invoices, or Claims.** — The board of education may, as permitted by this subsection, approve a bill, invoice, or other claim against the local school administrative unit that has been disapproved by the finance officer. It may not approve a claim for which no appropriation appears in the budget resolution, or for which the appropriation contains no encumbrance and the unencumbered balance is less than the amount to be paid. The board of education shall approve payment by formal resolution stating the board's reasons for allowing the bill, invoice, or other claim. The resolution shall be entered in the minutes together with the names of those voting in the affirmative. The chairman of the board or some other member designated for this purpose shall sign the certificate on the check or draft given in payment of the bill, invoice, or other claim. If payment results in a violation of law, each member of the board voting to allow payment is jointly and severally liable for the full amount of the check or draft given in payment.

(c1) **Continuing Contracts for Capital Outlay.** — An administrative unit may enter into a contract for capital outlay expenditures, some portion or all of which is to be performed and/or paid in ensuing fiscal years, without the budget resolution including an appropriation for the entire obligation, provided:

- (i) The budget resolution includes an appropriation authorizing the current fiscal year's portion of the obligation;
- (ii) An unencumbered balance remains in the appropriation sufficient to pay in the current fiscal year the sums obligated by the transaction for the current fiscal year; and

§ 115C-438. Provision for disbursement of State money.

The deposit of money in the State treasury to the credit of local school administrative units shall be made in monthly installments, and additionally as necessary, at such time and in such a manner as may be most convenient for the operation of the public school system. Before an installment is credited, the school finance officer shall certify to the Controller of the State Board of Education the expenditures to be made by the local school administrative unit from the State Public School Fund during the month. This certification shall be filed on or before the fifth day following the end of the month preceding the period in which the expenditures will be made. The Controller shall determine whether the moneys requisitioned are due the local school administrative unit, and upon determining the amount due, shall cause the requisite amount to be credited to the local school administrative unit. Upon receiving notice from the State Treasurer of the amount placed to the credit of the local school administrative unit, the finance officer may issue State warrants up to the amount so certified.

The Controller may withhold money for payment of salaries for administrative officers of local school administrative units if any report required to be filed with State school authorities is more than 30 days overdue. The Controller shall withhold money for payment of salaries for the superintendent, finance officer, and all other administrative officers charged with providing payroll information pursuant to G.S. 115C-12(18), if the local school administrative unit fails to provide the payroll information to the State Board in a timely fashion and substantially in accordance with the standards set by the State Board.

Money in the State Public School Fund and State bond moneys shall be released only on warrants drawn on the State Treasurer, signed by such local official as may be required by the Controller of the State Board of Education. (1975, c. 437, s. 1; 1981, c. 423, s. 1; 1987, c. 414, s. 14.)

Cross References. — As to controller's duty on issuing requisition for funds, see § 115C-29.

Effect of Amendments. — The 1987

amendment, effective June 18, 1987, added the last sentence of the second paragraph.

§ 115C-439. Facsimile signatures.

The board of education may provide by appropriate resolution for the use of facsimile signature machines, signature stamps, or similar devices in signing checks and drafts and in signing the preaudit certificate on contracts or purchase orders. The board shall charge the finance officer or some other bonded officer or employee with the custody of the necessary machines, stamps, plates, or other devices, and that person and the sureties on his official bond are liable for any illegal, improper, or unauthorized use of them. (1975, c. 437, s. 1; 1981, c. 423, s. 1.)

§ 115C-446. Semiannual reports on status of deposits and investments.

Each school finance officer shall report to the Secretary of the Local Government Commission on January 1 and July 1 of each year, or such other dates as the Secretary may prescribe, the amounts of money then in his custody and in the custody of treasurers of individual schools within the local school administrative unit, the amount of deposits of such money in depositories, a list of all investment securities and time deposits held by the local school administrative unit and individual schools therein. In like manner, each bank or trust company acting as the official depository of any administrative unit or individual school may be required to report to the Secretary a description of the surety bonds or investment securities securing such public deposits. If the Secretary finds at any time that any moneys of a local school administrative unit or an individual school are not properly deposited or secured, or are invested in securities not eligible for investment, he shall notify the officer in charge of the moneys of the failure to comply with law. Upon such notification, the officer shall comply with the law within 30 days, except as to the sale of securities not eligible for investment which shall be sold within nine months at a price to be approved by the Secretary. The Local Government Commission may extend the time for sale of ineligible securities, but no one extension may cover a period of more than one year. (1975, c. 437, s. 1; 1981, c. 423, s. 1; c. 866, s. 3.)

**§ 105-321. Disposition of tax records and receipts;
order of collection.**

(a) County tax records shall be filed in the office of the assessor unless the board of county commissioners shall require them to be filed in some other public office of the county. City and town tax records shall be filed in some public office of the municipality designated by the governing body of the city or town. In the discretion of the governing body, a duplicate copy of the tax records may be delivered to the tax collector at the time he is charged with the collection of taxes.

(b) Before delivering the tax receipts to the tax collector in any year, the board of county commissioners or municipal governing body shall adopt and enter in its minutes an order directing the tax collector to collect the taxes charged in the tax records and receipts. A copy of this order shall be delivered to the tax collector at the time the tax receipts are delivered to him, but the failure to do so shall not affect the tax collector's rights and duties to employ the means of collecting taxes provided by this Subchapter. The order of collection shall have the force and effect of a judgment and execution against the taxpayers' real and personal property and shall be drawn in substantially the following form:

State of North Carolina
County (or City or Town) of
To the Tax Collector of the County (or City or Town) of
.....:

You are hereby authorized, empowered, and commanded to collect the taxes set forth in the tax records filed in the office of
..... and in the tax receipts herewith delivered to you, in the amounts and from the taxpayers likewise therein set forth. Such

§ 105-357. Payment of taxes.

(a) Medium of Payment. — Taxes shall be payable in existing national currency. Deeds to real property, notes of the taxpayer or others, bonds or notes of the taxing unit, and payments in kind shall not be accepted in payment of taxes, nor shall any taxing unit permit the payment of taxes by offset of any bill, claim, judgment, or other obligation owed to the taxpayer by the taxing unit.

(b) Acceptance of Checks and Credit Cards. — The tax collector may accept checks, credit cards, or both in payment of taxes. Acceptance of a check or credit card is at the tax collector's own risk. A tax collector who accepts credit cards in payment of taxes may add a fee to each credit card transaction to offset the service charge the taxing unit pays for credit card service. A tax collector who accepts a credit card or check in payment of taxes may issue the tax receipt immediately or withhold the receipt until the check has been collected or the credit card invoice has been honored by the issuer.

If a tax collector accepts a check or a credit card and issues a tax receipt and the check is returned unpaid (without negligence on the part of the tax collector in presenting the check for payment) or the credit card invoice is not honored by the issuer, the taxes for which the check or credit card was given shall be deemed unpaid; the tax collector shall immediately correct the copy of the tax receipt and other appropriate records to show the fact of nonpayment, and shall give written notice by certified or registered mail to the person to whom the tax receipt was issued to return it to the tax collector. After correcting the records to show the fact of nonpayment, the tax collector shall proceed to collect the taxes by the use of any remedies allowed for the collection of taxes or by bringing a civil action on the check or credit card.

A financial institution with which a taxing unit has contracted for receipt of payment of taxes may accept a check in payment of taxes. If the check is honored, the financial institution shall so notify the tax collector, who shall, upon request of the taxpayer, issue a receipt for payment of the taxes. If the check is returned unpaid, the financial institution shall so notify the tax collector, who shall proceed to collect the taxes by use of any remedy allowed for collection of taxes or by bringing a civil action on the check.

(1) Effect on Tax Lien. — If the tax collector accepts a check or credit card in payment of taxes on real property and issues the receipt, and the check is later returned unpaid or the credit card invoice is not honored by the issuer, the taxing unit's lien for taxes on the real property shall be inferior to the rights of purchasers for value and of persons acquiring liens of record for value if the purchasers or lienholders acquire their rights in good faith and without actual knowledge that the check has not been collected or the credit card invoice has not been honored, after examination of the copy of the tax receipt in the tax collector's office during the time that record showed the taxes as paid or after examination of the official receipt issued to the taxpayer prior to the date on which the tax collector notified the taxpayer to return the receipt.

(2) Penalty. — In addition to interest for nonpayment of taxes provided by G.S. 105-360 and in addition to any criminal penalties provided by law for the giving of worthless checks, the penalty for giving in payment of taxes a check that is returned because of insufficient funds or nonexistence of an account of the drawer is ten percent (10%) of the amount of the check, subject to a minimum of one dollar (\$1.00) and a maximum of one thousand dollars (\$1,000). This penalty does not apply if the tax collector finds that, when the check was presented for payment, the drawer of the check had sufficient funds in an account at a financial institution in this State to pay the check and, by inadvertence, the drawer of the check failed to draw the check on the account that had sufficient funds. This penalty shall be added to and collected in the same manner as the taxes for which the check was given.

(a) For felonies that occur on or after the effective date of Article 81A of Chapter 15A [July 1, 1981] of the General Statutes, the following punishments shall be applicable:

§14-1.1

ART. 1. FELONIES AND MISDEMEANORS

§14-1.1

- (1) A Class A felony shall be punishable by death or life imprisonment as provided by Article 100 of Chapter 15A of the General Statutes;
 - (2) A Class B felony shall be punishable by life imprisonment;
 - (3) A Class C felony shall be punishable by imprisonment up to 50 years, or by life imprisonment, or a fine, or both imprisonment and fine;
 - (4) A Class D felony shall be punishable by imprisonment up to 40 years, or a fine or both;
 - (5) A Class E felony shall be punishable by imprisonment up to 30 years, or a fine or both;
 - (6) A Class F felony shall be punishable by imprisonment up to 20 years, or a fine or both;
 - (7) A Class G felony shall be punishable by imprisonment up to 15 years, or a fine or both;
 - (8) A Class H felony shall be punishable by imprisonment up to 10 years, or a fine or both;
 - (9) A Class I felony shall be punishable by imprisonment up to five years, or a fine or both;
 - (10) A Class J felony shall be punishable by imprisonment up to three years, or a fine or both.
- (b) A felony not assigned by statute to any felony class shall be punishable as a Class J felony. (1979, c. 760, s. 1; 1979, 2nd Sess., c. 1316, ss. 1, 47, 48; 1981, cc. 63, 179; c. 662, s. 2.)