

## Introduction to Local Government Law



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## A Different Kind of Client

What can it do?



How does it do it?

- Source and Scope of Authority
- Corporate Nature: Contracting and Taking Action
- Working With Transparency
- Special Rules in Litigation

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## Can a city regulate saggy pants?



## The Structure of Local Government in North Carolina



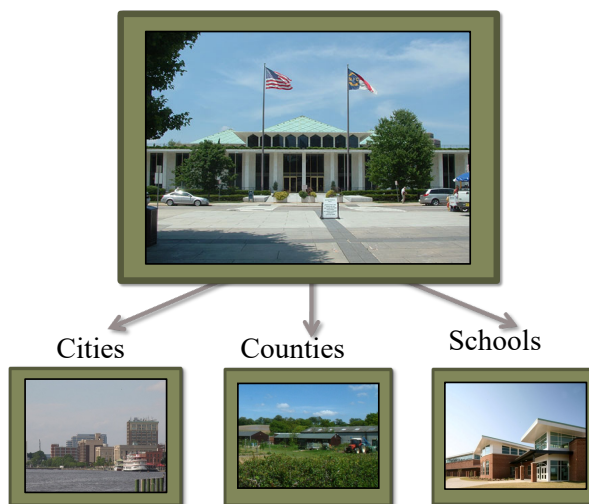
(This is a story about the power of the state legislature.)



Local Governments Have Limited Powers:  
No Inherent Authority

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State legislature creates local governments and  
delegates authority by statutes and local acts



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## Practice point



You may spend a lot of your time explaining to your board the concept and implications of limited authority.

# Local Acts Augment and Modify State Statutes

- **Local Acts**
  - Includes city charters and charter amendments
  - Applies to fewer than 15 units
  - May modify a statute for a particular unit
  - May be a freestanding provision
  - Limited by State Constitution (Art. II, Sec. 24) and other provisions that require legislation by “general law”



## 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

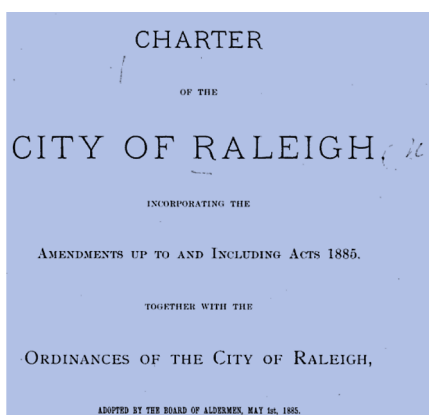
- Selection of mayor
- Style of corporation
- Name of unit
- Governing board name

### County only

- Selection of Chair

[School of Government](#)  
[Forms of Government Website](#)

## Practice point



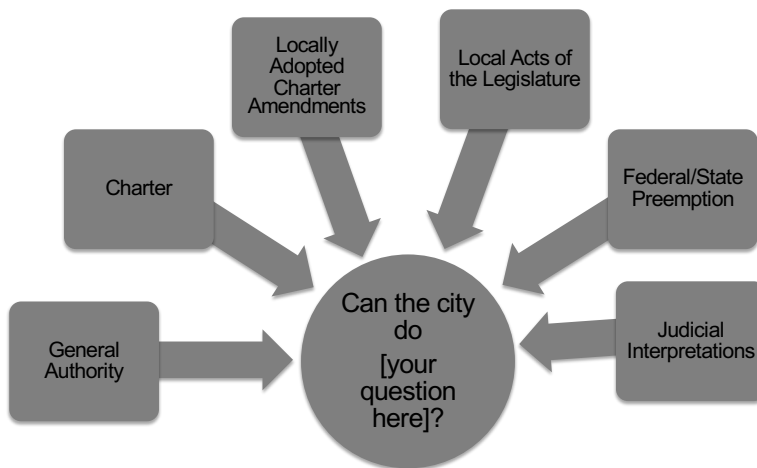
Find the current version of the charter

Get to know the charter

Research local acts

Uncover locally adopted charter changes

## Local Government Authority: The Big Picture



Local Governments Have Limited Powers  
No Inherent Authority



## Local Governments Have Many Delegated Powers

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## Most city authority is optional

- Police
- Fire
- Streets
- Water
- Sewer
- Zoning
- Solid waste collection



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## What Must Cities Do?



### Building Code Enforcement

“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

## Practice Point

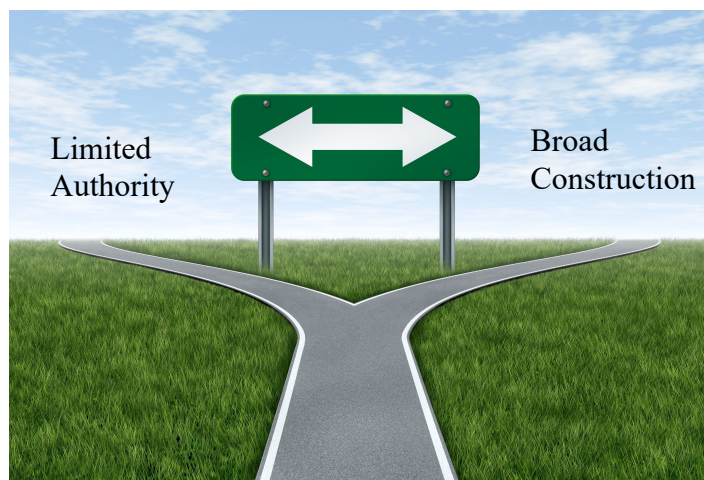


State law provides broad authority for interlocal cooperation.

See [Chapter 160A, Article 20](#)

An interlocal agreement doesn't confer new authority; obligations must be within the scope of existing authority.

## Scope of Authority



## DILLON'S RULE



Judge Dillon

A TOWN POSSESSES AND MAY EXERCISE THE FOLLOWING POWERS AND NO OTHERS:  
THOSE GRANTED IN EXPRESS WORDS;  
THOSE NECESSARILY OR FAIRLY IMPLIED IN OR INCIDENT TO POWERS EXPRESSLY GRANTED; AND THOSE ESSENTIAL TO THE ACCOMPLISHMENT OF CORPORATE PURPOSES.

CIRCA 1868



## Dillon's Rule vs. Home Rule

### Dillon's Rule

- A rule of judicial interpretation used to determine whether local governments have acted within the scope of their authority.



### Home Rule

- A form of legislative or constitutional delegation of authority to local governments.



## Broad Construction

### § 160A-4. Broad construction.

It is the policy of the General Assembly that the cities of this State should have adequate authority to execute the powers, duties, privileges, and immunities conferred upon them by law. To this end, the **provisions of this Chapter** and of **city charters** shall be **broadly construed** and grants of power shall be construed to include any **additional and supplementary powers that are reasonably necessary or expedient to carry them into execution and effect**: Provided, that the exercise of such additional or supplementary powers shall not be contrary to State or federal law or to the public policy of this State. (1971, c. 698, s. 1.)

## North Carolina Rule

- Broad construction only applies if the applicable enabling statute is ambiguous.
- If a statute is clear, the court is bound to apply it based on its plain meaning.
- The general ordinance statute (police power) is ambiguous and should be broadly construed.

*(King v. Town of Chapel Hill, 2014)*



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## Practice Point

### **Coates' Canons: NC Local Government Law**

This is an evolving area of the law.  
Subscribe to the blog and get  
timely updates on new cases.



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## Exercise Caution



When authority is not clear, beware of:

- Anything controversial
- Anything that involves a fee or tax that is not explicitly authorized

Consider seeking a local act

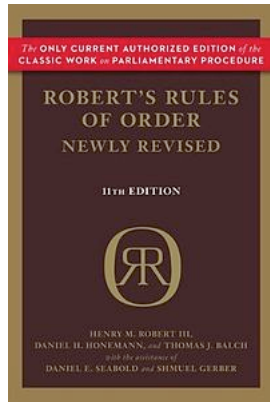
## Board as a Corporate Client

- Board can act only in a meeting, properly noticed, a quorum being present.



[Polling the Board](#)

## Practice Point



Know the Rules!

## Representing a Board

The governing board has default authority.

Mayors have limited authority.

Board can delegate unless statute requires board action.



[Does the Board Have to Approve This?](#)

## ~~Binding Future Boards~~ Binding Current and Future Boards

- Actions of one board are binding on the unit, even when the board composition changes.
- Contracts that purport to bind the exercise of discretion on matters that involve fundamental governmental powers are not valid. See [Binding Future Boards](#)

## Other Contracting Rules

Authorized purpose: constitutional, statutory

Budgetary authorization (preaudit)

Procedural requirements (bidding requirements for certain contracts)

Conflicts of interest: G.S. 14-234, criminal violation and void contract

Approval procedures: governing board when required, or proper delegation

## Practice Point



Consider establishing a contract approval process so that you can prevent problems before they occur.

## Litigation

- Municipal clients have advantages in court that are not available in arbitration or mediation:
  - Governmental immunity in tort
  - Application of statutes of limitation
  - No punitive damages against local governments

See [Lawrence Bulletin](#) for more on this topic



## Communicating with Your Client

Public records law does not fully recognize the attorney-client privilege

- Exception for communication to the board, about litigation against the unit, for 3 years
- Exception for trial preparation materials
- Subject matter exceptions; personnel, trade secrets, economic development

Closed sessions are allowed to preserve the attorney-client privilege



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## We're Here To Help

- School of Government Resources
- [Website](http://sog.unc.edu): [sog.unc.edu](http://sog.unc.edu)
- [Coates Canons](http://canons.sog.unc.edu): [canons.sog.unc.edu](http://canons.sog.unc.edu)
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