



NC Municipal Finance for Lawyers

Kara A. Millonzi, Robert W. Bradshaw Jr. Distinguished Professor of Public Law and Government
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millonzi@sog.unc.edu

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Municipal Finance

-  Constitutional issues
-  Grants and Contracts
-  Fiscal management /
Fiduciary duty
-  Borrowing Money

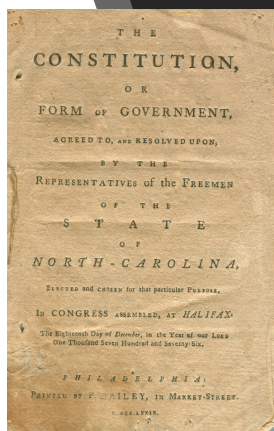
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Every Topic Has a Blog Post!

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Constitutional Issues



- Public Purpose
- Prohibition on Exclusive Emoluments
- Property Tax Classifications, Exclusions, Abatements
- Loan/Gift of Credit
- Borrowing Money

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Limitations on Local Government

Public Purpose

"The power of taxation shall be exercised . . . for public purposes only . . ." N.C. Const. Art. V, Sect. 2(1)

Exclusive Privileges & Emoluments

"No person or set of persons is entitled to exclusive or separate emoluments* or privileges from the community but in consideration of public services." N.C. Const. Art. I, Sect. 32

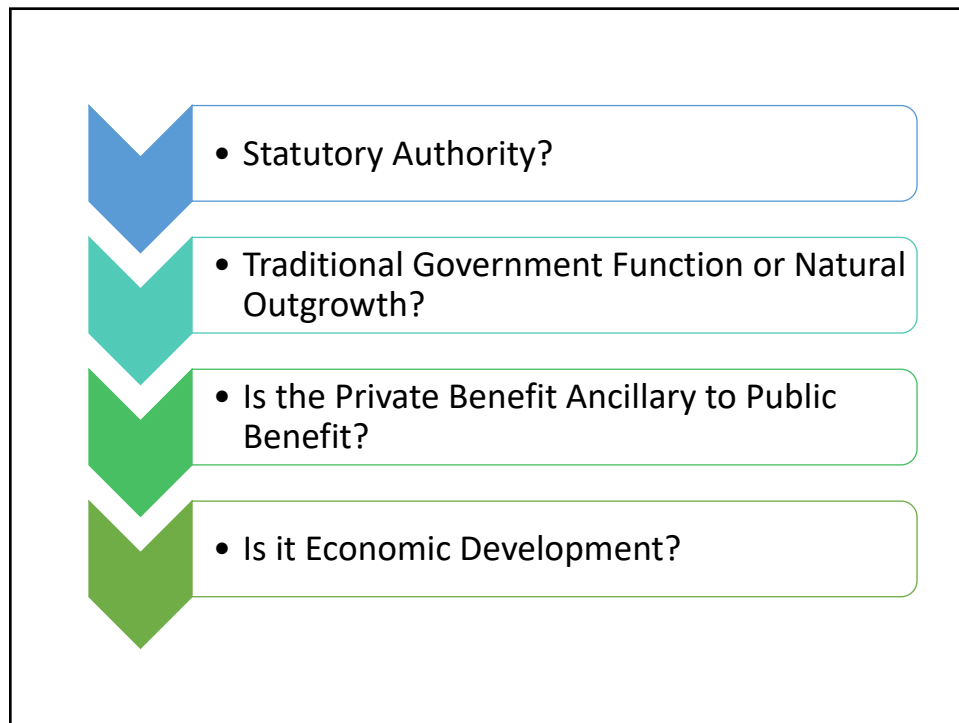
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Public Purpose?

County wants to attract a new industrial plant just outside city limits. In order to better serve the plant, city street needs to be extended (within city limits) to connect to main state highway. City agrees to undertake the extension, but only if the county splits the cost with the city.



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COVID-19

Exclusive Emolument?

During COVID-19 crisis, local government allows employees to take sick leave and vacation leave that had not yet been earned for the year.

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Exclusive Privilege?

A beloved city resident leaves their faucets running all day to accommodate their many cats. They have recently fallen behind on their rather high water bill. The department's normal procedure is to shut off the water and impose a penalty for the delinquency. The city manager feels sorry for the resident and requests that the city's governing board make an exception and waive his outstanding utility fees and late penalties. To a cheering crowd, the board votes unanimously to do so.

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2-Part Test

"the exemption or benefit is intended to promote the general welfare rather than the benefit of the individual, and . . . there is a reasonable basis for the legislature to conclude that the granting of the exemption or benefit serves the public interest."

Highlands v. Hendricks, 164 N.C. App. 474 (2004)

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Exclusive Privilege?

At budget time, a local nonprofit asks the city council for a \$1,000 donation.

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Grants/Gifts to Private Entities

Cities generally do not have authority to provide grants/gifts/donations to private entities.

Instead, a “a city may contract with and appropriate money to any person, association, or corporation, in order to carry out any public purpose **that the city is authorized by law to engage in.**” G.S. 160A-20.1

And see *Dennis v. Raleigh*, 253 N.C. 400 (1960).



KEEP
CALM
AND
JUST SAY
NO

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Municipal Programs with Private Benefits	Private Programs with Community Benefits
<ul style="list-style-type: none"> • Is it a municipal program/activity? • Is there statutory authority for the program/activity? • Municipality may provide benefits to private individuals as part of program/activity. 	<ul style="list-style-type: none"> • Is it a private program/activity? • Is there statutory authority for municipality to undertake program/activity itself? • Municipality may contract with private entity to perform activity on municipality's behalf.

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Gift or Loan of Credit

Likely equivalent to local government's taxing power

"No county, city or town, special district, or other unit of local government shall **give or lend its credit** in aid of any person, association, or corporation, **except** for public purposes as authorized by general law, and unless approved by a majority of the qualified voters of the unit who vote thereon."

NC Const. Art. V, Sect. 4(3)

"A loan of credit within the meaning of this Section occurs when a county, city or town, special district, or other unit, authority, or agency of local government exchanges its obligation with or **in any way guarantees the debts of an individual, association, or private corporation.**"

Likely broader than guaranteeing private loans

NC Const. Art. V, Sect. 4(5)

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Gifts or Loans of Credit

1. Borrowing through non-voted GO debt and lending proceeds to private person or entity
2. Borrowing through non-voted general obligation debt and acquiring stock in a private company
3. Guaranteeing private obligations
4. Borrowing through non-voted general obligation debt and using the proceeds primarily to benefit a private person or private entity
5. Engaging in a joint venture with one or more private persons or private entities

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Guaranteeing Private Obligations

Probably applies to:

- Guaranteeing a private entity's loan
- Guaranteeing contract or tort obligation of private entity
- Open-ended indemnification agreements

Likely does not apply to:

- Loan loss reserve funds (limited to current pot of money)
- Limited indemnification agreements (limited to current pot of money)

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Fiscal Management:
G.S. 159, Art. 3

- Budget Process & Requirements
- Budget & Finance Officers
- Cash Management & Investments
- Obligor & Disbursing Monies
- Accounting & Reporting
- Annual Audit
- Local Government Commission (LGC)

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Pre Audit for payments

Preaudit

- Required process before municipality enters into any contract involving obligation to pay money
- 3-part process including signed certificate on contract
- Contract void if not done properly
- Personal liability and misdemeanor

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Governing Board Duty

- Adopts / amends budget
- Sets fiscal policy
- Supervises budget officer
- Selects official depository (bank)
- Contracts for audit/receives audit report
- Requests and reviews financial reports
- FIDUCIARY DUTY**



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Board & Attorney Best Practices

- Get Trained
- Develop relationships
- Ask questions
- Appoint internal auditor/audit committee
- Establish whistle-blower process
- Review audits/management letters
- **SET EXPECTATIONS**



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Borrowing Money

KEEP
CALM
AND
CALL YOUR
BOND ATTORNEY

- General Obligation Bonds
- Revenue Bonds / Special Assessment Bonds
- Project Development Financing Bonds

KEEP
CALM
AND
DO YOUR
HOMEWORK

- Installment Financings (160A-20s)
- Loans from State or Federal Government (160A-17.1 & 17.2)

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Bedtime Reading

- G.S. 159, Art. 3 (budget & fiscal control)
- G.S. 159-28 (preaudit & disbursement processes)
- G.S. 160A-20 (installment financings)
- G.S. 160A-456 (community development)
- G.S. 158-7.1 (economic development)
- G.S. 160A, Art. 16 (public enterprises)

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