
Coates' Canons Blog: Accountability Requirements for Certain Entities that Receive Appropriations from Local Governments

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As discussed in a previous **post**, local governments have broad authority to appropriate monies to private entities (including nonprofits, corporations, associations, and individuals). The monies, however, must be expended by the private entities only on projects, services, or activities that the local government could have supported directly. In other words, if a municipality or county has statutory authority to finance a particular program, service, or activity, then it may give public monies to a private entity to fund that program, service, or activity. But a municipality or county may not grant public monies to any private entity, including a nonprofit agency or other community or civic organization, if the monies ultimately will be spent on a program, service, or activity that the government does not have statutory authority to fund directly.

According to the North Carolina Supreme Court, a unit's governing board is responsible for ensuring that any funds appropriated to a private entity are spent for a statutorily authorized public purpose. See *Dennis v. Raleigh*, 253 N.C. 400 (1960). How does a local government satisfy this oversight requirement? Generally, a local governing board has much discretion in establishing accountability criteria for grantees. Effective October 1, 2012, however, the General Assembly will require certain entities that receive public funds—namely nonprofit corporations—to comply with specified transparency requirements.

Specifically, **S.L. 2012-169** requires a nonprofit corporation that receives over \$5,000 of public funds (from a local government, the State, or the federal government) within a fiscal year in grants, loans, or in-kind contributions, to provide the following information upon written request from any member of the public:

- (1) The nonprofit's latest financial statements. The financial statements must include a balance sheet as of the end of the fiscal year and statement of operations for that year. They also must contain "details about the amount of public funds received and how those funds were used."
- (2) The nonprofit's most recently filed Internal Revenue Service (IRS) Form 990, Form 990-EZ or a copy of its Form 990-N submittal confirmation. A nonprofit may redact information not required for public disclosure pursuant to 26 U.S.C. § 6104(d)(3). Alternatively, a nonprofit may satisfy this requirement if it posts this information on its website or if another entity posts the information as part of a database of similar documents. The information must be accessible by the general public without charge. Also, if another entity maintains the information, the nonprofits must include a link to the other entity's website on its own website.

The act exempts a few entities from disclosing this information because they already are required to report it to a state agency—(1) nonprofits required to report to the NC Medical Care Commission; (2) nonprofits required to report to the Local Government Commission; and (3) certain private colleges required to report to the State. These entities must provide information on their public websites about how to access the information, though.

In addition to these new requirements, **G.S. 159-40** allows a city or county that appropriates at least \$1,000 in any fiscal year to a nonprofit entity to require that the nonprofit "have an audit performed for the fiscal year in which the funds are received. . . ." and file a copy of that audit with the local government. There are certain entities that are exempt from this requirement, including volunteer fire departments, rescue squads, and ambulance squads. A local government still may require these entities (and all other private entities and individuals that receive public funds) to provide an accounting of how the monies are spent and to comply with other requirements as a condition of receiving the funds. These requirements should be spelled out clearly in a contractual agreement between the local government and the grantee.



Links

- canons.sog.unc.edu/?p=2632
- www.ncga.state.nc.us/Sessions/2011/Bills/House/PDF/H572v6.pdf
- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_159/GS_159-40.html