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## Coates' Canons Blog: “Approved as to Form”

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I sometimes get questions about the ubiquitous “approved as to form,” which appears on official documents, signed by the local government attorney. Is this just typical boilerplate, or is it a legal requirement for a contract, ordinance, or other official document? And what exactly does it mean when the attorney approves something as to form?

What does “approved as to form” mean?

The language itself might suggest that it signifies a limited approval –approval as to form rather than substance. The accepted meaning, however, implies a more complete legal review. Looking for definitions, I found several state and local laws or policies that require attorney general or local attorney approval of contracts, deeds, and other instruments as part of the official execution or validation process. The practice is also sometimes required for validating documents submitted to a public agency, such as surety bonds or deeds. Variations on the approval language include “form and sufficiency,” “form and substance,” “form and content,” “form and legality,” or most commonly, simply approval as to form. In each case the approval appears to signify the attorney’s determination that the documents meet all legal requirements.

For example, a model procurement code from Oregon (implemented by the **City of Ashland as Section 2.50.010**) provides that the designation “approved as to form” is the attorney’s “designation that a public contract on its face is legal, valid and binding.” The provision goes on to say that the designation “is not a guaranty or a warranty [that] the contract is in the [local government’s] best interests or eliminates exposure to personal liability.” A West Virginia state statute, which requires the attorney’s approval as to form, has been interpreted to be a review of “the legality of all the matters contained in the contract document as it relates to the Constitution, statutes, and the contract law of this state,...but does not include any matters extrinsic to the actual contract.” See, *State ex rel. Fahlgren Martin, Inc. v. McGraw*, 438 S.E.2d 338, 344-45 (1993).

So while the approval covers the legality of the instrument in a broad sense, it doesn’t encompass approval of the political or discretionary choices that are the responsibility of the client. In this sense, the approval may be considered ministerial, not unlike the preaudit certification by the finance officer under **G.S. 159-28(a)**. It certifies technical compliance with the law but does not amount to approval of the purpose, wisdom, or need for the contract, ordinance, or other official document so certified. That determination is made by the body or person who has authority to enter into the contract.

Is it required?

No North Carolina statute or case creates a requirement for the attorney’s approval of official local government documents. Some local ordinances, however, do require it. Examples include the City of Charlotte: “Every ordinance amending or repealing any ordinance and every new ordinance shall be proposed in writing and shall be approved as to form by the city attorney, the deputy city attorney or an assistant city attorney.” (**Section 1-9**; applied in *Charlotte Lumber & Mfg. Co. v. City of Charlotte*, 242 N.C. 189 (1955)); and the City of Raleigh: “All ordinances, except ordinances of a routine nature which are prepared by the City Clerk on forms which have been approved by the Council, shall be prepared by or have the approval as to form and legality of the City Attorney” (**Section 1-1041**). Some jurisdictions routinely include the attorney’s approval as to form on official documents, even if there is no local ordinance or charter provision that requires it.

The attorney’s approval as to form is a common practice for several good reasons. First, requiring the attorney’s signature imposes an internal process requirement for attorney review before important official documents are finalized. Second, it provides assurance to outside parties, citizens, or courts of the validity and finality of the action or obligation created on behalf of the local government. Like many other signatures local governments typically use, the choice is one of local discretion and the legal effect is primarily to provide evidence that the instrument has been reviewed and approved under



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local procedures. On the other hand, for internal purposes these approvals could as easily be evidenced by an internal checklist or control sheet. And while for external purposes, the use of multiple signatures (including the approval as to form) may provide assurance, it may also create ambiguity in the event that one or more signatures is not obtained. In such a situation, the absence of those signatures may create a challenge (or defense) as to the validity of the instrument. Where a local ordinance requires the attorney's approval, it may be argued that its absence renders the instrument void. (But see *Transdyn/Cresci JV v. City and County of San Francisco* 85 Cal.Rptr.2d 512 (1999), in which a city charter requirement for the attorney's approval as to form was held to be ministerial and the council's award of the contract created a binding obligation despite the attorney's failure to sign.)

Finally, since the process of "approving as to form" is so common, and definitions aren't provided in North Carolina law, local attorneys and their clients might find it useful to define the term, either within an ordinance that creates the requirement, or more informally, to clarify the extent or limits of the attorney's scope of review.

## Links

- [www.ashland.or.us/Files/ATTCH\\_ORD\\_Amends2.50.pdf](http://www.ashland.or.us/Files/ATTCH_ORD_Amends2.50.pdf)
- [www.ashland.or.us/Files/ATTCH\\_ORD\\_Amends2.50.pdf](http://www.ashland.or.us/Files/ATTCH_ORD_Amends2.50.pdf)
- [www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter\\_159/GS\\_159-28.html](http://www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_159/GS_159-28.html)
- [www.municode.com/resources/gateway.asp?pid=19970&sid=33](http://www.municode.com/resources/gateway.asp?pid=19970&sid=33)
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