Coates' Canons Blog: Confidentiality of Applicants' Names

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Here's an idea that many people in local government in North Carolina cling to: the names of applicants for governmental jobs are confidential. It's a very handy idea. It allows a manager in a small county to apply for the manager's job in a large county without letting the cat out of the bag too soon. It allows the board of trustees of the community college to consider all applicants for the open position of president without having the newspaper second-guessing them. In short, it allows units of local government to conduct job searches out of the public eye, like private employers.

It's a very handy idea. But just how true is it? For some local government employers, the answer is not as straightforward as we might wish.

The idea comes from a 1992 decision of the North Carolina Supreme Court, *Elkin Tribune, Inc. v. Yadkin County Board of Commissioners*, 331 N.C. 735). The Tribune, a local newspaper, wanted to know the names (and look at the applications) of individuals who had applied for the open position of county manager. The county resisted and the matter eventually got to the state's highest court. The supreme court clearly and definitively held that the names and applications of applicants were confidential and could not be released to the newspaper or anyone else.

To reach that conclusion, the supreme court had to give a really close reading to the statute that governs confidentiality of county employee personnel files. It takes four steps to get there.

First, access to information in local government personnel files is governed by a set of confidentiality statutes. For counties, the applicable statute is GS 153A-98.

Second, the county confidentiality statute says that it completely controls access to information related to current employees, former employees, and applicants for employment. Access can be given to personnel file information about those three categories of individuals only if the statute specifically allows it.

Third, the county statute does specifically allow access to names and certain other information for current employees and former employees. It specifies that that information is to be available with respect to "employees," and it defines "employee" to include both current employees and former employees.

But, fourth, the county statute does not allow access to any information about applicants. That's because it does not define "employee" to include "applicant." So, the part of the statute that says personnel file information is confidential does apply to applicants. By contrast, the part of the statute that allows access to specified information, such as name and salary, does not include "applicants," only current and former employees. The conclusion, then, is that name and other information about applicants is confidential.

So, if a newspaper (or anyone else) wants to know the names of county employees, it is entitled to a list. If it wants to know the names of former employees, it is entitled to that list as well. If it wants to know the names of applicants for a job, however, it cannot have them

That case was decided back in 1992. The relevant parts of the county statute still read the same way, and the interpretation of the statute is the same. For counties, the names of applicants for jobs are confidential and cannot be given out.

For cities, the situation is the same. Back in 1992, the statute that governs cities as employers, GS 160A-168, was just like the county statute with respect to applicants, and it still is today. By direct analogy, the names of applicants for jobs

with a city are confidential, just as with counties.

So far, so good. Until the statutes are amended or the supreme court changes its mind, the personnel files of applicants for jobs with counties and cities are confidential. The names of applicants may not be given out.

What about other local governmental employers?

For community colleges (GS 115D-27 thru -30) and public schools, the answer is probably the same, but the statutes are just enough different that the four-step reasoning cannot be exactly applied. That's because those statues, as similar as they are to the county statute, do not define "employee" at all. They don't define the term to include "former employees" and thus by extension to exclude "applicants." So, steps three and four do not apply. When these statutes specify that certain information with respect to "employees," like name and salary, is available for access, does that access apply to former employees, as with counties and cities? It's very hard to say. And it's very hard to come to the conclusion that it applies to former employees but not applicants. Nevertheless, since that's how the courts have dealt with cities and counties, that's the way most community colleges and public school systems deal with the question of access to information about applicants—they don't allow it and they keep applicants' names confidential. Would the supreme court interpret those statutes the same way it has interpreted the county and city statutes? It's hard to say, but the best guess is Yes.

Other statutes apply to other local government employers. The statutes for district health departments (GS 130A-42), mental health area authorities (GS 122C-158), public hospitals (GS 131E-257.2), and water and sewer authorities (GS 162A-6.1) are like the county and city statutes. The statute for public health authorities (GS 130A-45.9) is like the community college and public school statutes.

Everybody acts as if names of applicants are confidential. For counties and cities that appears to be true. For community colleges and public school systems, the answer may be the same, but it is by no means clear.