

Coates' Canons Blog: Counting the Days

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Paul Purchaser is putting the final touches on his first Invitation for Bids (IFB) for Carolina City, and he's trying to figure out when he has to place the advertisement for the IFB in the newspaper. He knows the formal bidding statute says something about 7 days between the advertisement and the bid opening, but does that include weekends? Or holidays? And does he include the first day the advertisement appears in the count? Or the day of the bid opening itself?

Formal bids

The formal bidding statute, **G.S. 143-129**, says, "The advertisements for bidders ... shall appear at a time where at least seven full days shall lapse between the date on which the notice appears and the date of the opening of bids." In other words, if your advertisement appears on Monday, February 7, 2011, then you count seven full days (Tuesday the 8th, Wednesday the 9th, Thursday the 10th, Friday the 11th, Saturday the 12th, Sunday the 13th, and Monday the 14th) between that date and the date you can hold the opening: Tuesday, February 15th. The statute doesn't address weekends or holidays, and it doesn't say seven full *business* days, so it's safe to assume that you should include weekends and holidays. (Of course, you shouldn't hold your bid opening on a weekend or holiday, so plan accordingly!)

February 2011						
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20	21*	22	23	24	25	26
27	28		* 2/21 Presidents' Day (legal holiday)			

Building construction costing \$300,000 or more

If you're bidding out a building construction project costing \$300,000 or more, there's another notice period to consider. **G.S. 143-128.2** requires that, **at least 10 days prior** to the bid opening for such projects, local governments notify historically underutilized businesses (HUBs) "that have requested notices from the public entity for public construction or repair work and [HUBs] that otherwise indicated to the Office of Historically Underutilized Businesses an interest in the type of work being bid or the potential contracting opportunities listed in the proposal." (See **G.S. 143-128.2(e)(3)** for a list of items that must be included in the notification.) The same statute requires that bidders on building construction projects costing \$300,000 or more make certain good faith efforts to encourage participation by HUBs (a requirement I discussed in **an earlier post**). One of the specific good faith efforts listed in the statute is that the contractor take action to notify HUBs of the bidding opportunity at least 10 days before the bid opening date, and another of the good faith efforts listed in the statute is that the contractor make plans and specifications available to HUBs (or actually provide the plans and



specifications to HUBs) at least 10 days before the bid opening date. If you want your bidders to be able to take these steps, then you have to give them ample time to review the specifications and identify HUBs that may be interested in the bidding opportunity before they come up against that 10-day deadline, so that means placing your advertisement perhaps 15 days before the bid opening, or even earlier. (See the common sense note at the end of the post.)

Other timing issues involving buying and selling property

So let's say Carolina City has a regular board meeting on Thursday, February 24, 2011. At this board meeting, Paul Purchaser would like the board to consider a piggyback purchase (following the procedures in **G.S. 143-129(g)**). The piggybacking exception requires that the Carolina City Council approve the piggyback purchase at a regularly scheduled meeting, and the meeting can be held "no fewer than 10 days after publication of notice that a waiver of the bid procedure will be considered."

Paul would also like the board to consider a resolution approving a donation of surplus property to a local nonprofit under **G.S. 160A-280**, which requires at least 5 days notice before the board adopts the resolution. When must he advertise for the piggyback and the donation?

Well, there aren't any rules in the bidding statutes or the disposal of property statutes regarding how to calculate these deadlines. But there is a statute—**Rule 6 of the North Carolina Rules of Civil Procedure**—that does give specific guidance about how to calculate deadlines, and it is common practice to use the rules set out in that statute to calculate notice periods when other guidance isn't provided. Here's what Rule 6 says:

- Do not count the day notice is published. For example, if it's a 7-day notice period, count day 1 as the day *after* the notice is published.

February 2011						
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27	28		* 2/21 Presidents' Day (legal holiday)			

- If the period of time is less than seven days, exclude weekend days and holidays in the computation of days.



February 2011						
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X		5				
20	21*	22	23	24	25	26
27	28	* 2/21 Presidents' Day (legal holiday)				

- Do count the day that the meeting (or sale, or other event) takes place, unless that day is a Saturday, Sunday, or legal holiday, in which case the period runs until the next day that is not a Saturday, Sunday, or legal holiday. For example, if a meeting is to take place after a 10-day notice period, count day 10 as the day the meeting is to take place, and if day 10 is a Saturday, the earliest the meeting can take place is Monday, unless Monday is a legal holiday. If Monday is a legal holiday, the meeting must take place on the next day that is not a weekend day or legal holiday. If the statute you're dealing with establishes a minimum period of time (that is, if it uses the words "**at least** 10 days" or "**no less than** 10 days"), it's best to count day 10 as the *first* day the meeting could take place; the meeting could actually take place some reasonable time after that.

February 2011						
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4	5	6	7	8	9	X
20	21*	22	23	24	25	26
X	X	10				
27	28	* 2/21 Presidents' Day (legal holiday)				

Note that this last bullet point makes sense in the context of civil litigation, when courts rarely (if ever) take action on weekends or holidays, and the purpose of the timing rules involving civil litigation usually have to do with providing notice for something that will happen in court. However, in the context of providing notice for board meetings or public auctions, this part of the Rule may not always make sense, because board meetings and auctions can be held on weekends and legal holidays (although that doesn't happen very often). So my suggestion is this: if you're planning to hold a meeting or an auction on a weekend day or legal holiday, go ahead and include that day in your count.



February 2011						
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Let's return to Paul's consideration of when to provide notice of the piggyback and the donation. According to Rule 6, Paul will count the meeting date of Thursday, February 24th as day 10 for purposes of the piggyback notice. Counting backwards, he discovers that the notice must be published by Monday, February 14th. He includes weekends and the Presidents' Day holiday (February 21st) because the period of time is more than seven days, and day 1 is the day *after* the notice is published.

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For purposes of the donation notice, Paul counts the meeting date as day 5, but since the period of time is less than seven days, he doesn't include weekends or holidays. Again, day 1 is the day *after* the notice is published. This means that the notice of the donation must be published by Wednesday, February 16th.



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				1	2	X
20	21*	22	23	24	25	26
X	X	3	4	5		
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Use common sense

All of the notice periods discussed above are *minimums*. In other words, if the number of days during which the notice is posted is less than the number called for in the statute, the resulting contract (for purchase, construction, or sale of property) is void. Sometimes time is short and you really want your board to be able to take action as soon as legally possible. However, when considering how much time you need to provide notice to potential bidders, don't assume that the minimum required by statute will be enough time for the bidders to prepare their best bids. Consider the complexity and uniqueness of the product or project. Consider how many subcontractors or suppliers may be involved. You want the best bids you can get, so don't shortchange your bidders on bid preparation time or you'll end up shortchanging your taxpayers.

Links

- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_143/GS_143-129.html
- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_143/GS_143-128.2.html
- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_160A/GS_160A-280.html
- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_1A/GS_1A-1,_Rule_6.html