
Coates' Canons Blog: County Fire Tax Districts

By Kara Millonzi

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Counties and municipalities in North Carolina are not required to furnish (or fund) fire protection services for their citizens, but many local governments provide, or contract for the provision of, these services within their units. And, typically that fire protection extends beyond basic fire prevention and suppression services to include, among other things, emergency dispatch services, medical and other response services, and building code enforcement. The types and level of fire services that local governments provide and fund often vary significantly across their territorial boundaries, though. There is no duty of equal service to all properties or citizens within a unit. That means that a local governing board may choose to provide fire services in some areas within its jurisdiction and not in others, or it may choose to provide a higher level of fire services in some areas than in others. Counties, in particular, tend to provide different levels of fire services across their unincorporated territories. This raises questions about how local governments can and should fund the fire services.

Most local governments use general fund revenues, including general property tax revenues, to fund at least a portion of their fire services. In fact, municipalities typically finance all (or almost all) of their fire protection services with general fund revenues. Counties have an additional option. At least under certain circumstances, counties may establish special tax districts to fund fire services. There are actually two different types of tax districts available to fund fire services—rural fire protection districts and county fire service tax districts. The special tax districts allow counties to raise revenue from those property owners who directly benefit (or more directly benefit) from the fire services.

This **Local Finance Bulletin** analyzes the authority for creating the districts and levying the district taxes, as well as the processes for establishing and modifying the districts. It also explores the relationships among the fire tax districts, fire response areas, and fire insurance districts. As a teaser to that broader exposition, this post briefly describes the two types of fire tax districts counties are allowed to establish and highlights the major differences between them.

Rural Fire Protection Districts (G.S. Ch. 69, Art. 3A)

Until around the mid-1900s, counties typically did not furnish fire services in their unincorporated territories. Instead, property owners were left to secure their own fire protection. Over time, rural areas became increasingly subject to urban-type development, resulting in pressure on county governments to provide and fund fire protection services in these areas. In recognition of this change, the General Assembly granted counties the authority to establish rural fire protection districts for the purpose of levying a special property tax (rural district tax) to fund the fire services provided in each district.

A county's governing board may not simply establish a rural fire protection district. It must first receive a petition signed by at least 35 percent of the resident freeholders living within the proposed district. (Although not statutorily defined, the term "resident freeholder" is best understood to require that individuals both have an ownership interest in real property in the proposed district and live in the proposed district.) The proposed district must encompass only territory outside the corporate limits of any municipality (municipal territory may be added later under certain circumstances), but it may include territory that lies in more than one county. **G.S. 69-25.1**. (If the proposed district falls within more than one county, the petition must be submitted to the boards of county commissioners of all the counties in which the area lies.)

Once a county board of commissioners receives a valid petition, it must call an election within the proposed district on whether or not to establish the district and levy the rural district tax. The statute sets the maximum tax rate at \$0.15 per \$100 in assessed property valuation in the district. Counties may not accept a petition or hold a referendum that calls for a different maximum rate limit, even if it is lower than \$0.15 per \$100 valuation. (The previous maximum limit was \$0.10 per \$100 valuation and some districts are still subject to this limit.)

If a majority of voters participating in the referendum approve the ballot issue, the county board(s) of commissioners may establish the district. The district is a municipal corporation—a separate legal entity from the county or counties in which it

lies. The county board(s) of commissioners may serve as the district's governing board. Alternatively the commissioners may appoint a three-member fire protection district commission (fire commission) to govern the district. Even if a fire commission is appointed, it serves "at the discretion of and under the supervision of the board[s] of county commissioners" **G.S. 69-25.7**. And, by statute, the county board(s) of commissioners are responsible for setting the district tax rate each year (**G.S. 69-25.4**) and determining how services are provided in the district (**G.S. 69-25.5**).

The county board(s) of commissioners are not required to levy the rural district tax—instead the board is instructed to "levy and collect [the rural district tax] in such amount as it may deem necessary" **G.S. 69-25.4**. With one exception, the rural district tax applies to all real and personal property in the district that is subject to the county's general property tax(es). The proceeds from the rural district tax must be used to fund fire services that are provided in the district. There are a number of options for service provision. The county may establish a county fire department to serve properties in the district. This option usually is cost prohibitive, though. Instead, the district's governing board typically contracts with one or more volunteer fire departments or municipal fire departments to provide the fire services (at least the fire prevention and suppression services).

Confusion often arises as to who controls the district—the district's governing board, the county board(s) of commissioners or the fire department's governing board. The practical answer is that all three have some degree of control. The county board(s) of commissioners sets the tax rate and determines how services will be provided in the district. The district's governing board enters into contracts with the fire department to procure the services for the district. The fire department is a contracting agent of the district. As such, its degree of control over service provision is dictated by the contract's terms. Note, however, that subject to any existing contractual agreements, a county's board of commissioners may change service providers or the nature of the services that are being provided at any time. See *Knotville Volunteer Fire Dept., Inc. v Wilkes County*, 85 N.C.App. 598, 355 S.E.2d 139 (1987). A volunteer or municipal fire department does not have a statutory right to continue to serve a particular district, even if the fire department has incurred significant expense (or even borrowed money) to fund operating or capital expenses to serve the district.

There are fairly detailed (and, at times onerous) processes to modify an existing rural fire protection district. See **G.S. 69-25.11**. And, in order to abolish a rural fire protection district altogether, the county must receive a petition from at least 15 percent of the resident freeholders in the district and then hold a successful referendum authorizing the abolishment. **G.S. 69-25.10**. The county board(s) of commissioners may effectively abolish a district without going through this statutory process, though. Because the commissioners determine the rural district tax rate, a county board could simply choose not to levy the tax in any given fiscal year. As discussed below, several counties have taken this approach in recent years in order to switch to funding fire services through the second type of tax district, the authority for which affords county commissioners much more flexibility.

County Fire Service Districts (G.S. Ch. 153A, Art. 16)

The second type of district that a county may establish to fund fire protection and rescue services is a county service district. A county is authorized to define one or more areas within the county to establish a service district to "finance, provide, or maintain" one or more of a specific list of authorized services, facilities or functions "in addition to or to a greater extent than those financed, provided or maintained for the entire county" **G.S. 153A-301**. This authority stems from an effort by the General Assembly in the mid-1970s to make municipal-type services more widely available to county residents. Among the authorized services for which service districts may be created are "fire protection" and "ambulance and rescue" services. **G.S. 153A-301(a)(2) and (7)**. Unlike a rural fire protection district, a county service district is not a municipal corporation and has no independent authority. It is established and maintained by the county, under the control of the county board of commissioners.

It is much easier to establish a fire service district than to create a rural fire protection district. A county board simply must find that: (1) there is a demonstrable need for providing one or more of the services in the district; (2) it is impossible or impracticable to provide the services on a countywide basis; (3) it is economically feasible to provide the proposed services in the district without unreasonable or burdensome annual tax levies; and (4) there is a demonstrable demand for the proposed services by persons residing in the proposed district. **G.S. 153A-302(a1)**. In making its determination the board must consider a number of factors, including the resident or seasonal population and population density in the proposed district; the appraised value of property subject to taxation in the proposed district; the present tax rates of the county and any municipalities or other special districts in which the proposed district is located and the ability of the proposed district to sustain the additional taxes necessary to support the proposed district. **G.S. 153A-301(a)**. After the

board makes the appropriate findings, it must hold a public hearing on the proposed creation of the service district. **G.S. 153A-302(c)**.

Once a service district is created, the county board of commissioners may, but is not required to, levy an annual property tax within the district in addition to the property tax or taxes it levies throughout the county (service district tax). **G.S. 153A-307**. The service district tax applies to all real and personal property in the district that is subject to the county's general property tax(es). Unlike the rural fire protection district tax, generally there is no specific maximum tax rate limitation for service district taxes. Such taxes are subject to the general aggregate property tax limit of \$1.50 per \$100 valuation. That means that the district tax, when combined with the county's general property tax rate(s) and any other service district tax rates, may not exceed \$1.50 per \$100 valuation, unless the district's voters have approved the portion of the rate in excess of this limitation. (Under certain circumstances, a county board of commissioners may restrict itself to a lower maximum allowable service district tax rate.)

Revenue generated from the service district tax is specifically earmarked to finance the fire services provided in the district. **G.S. 153A-305**. As with the revenue generated from a rural fire protection district tax, a county has much flexibility in expending the service district tax proceeds to fund these services. Many counties contract with one or more volunteer or municipal fire departments to furnish at least some of the services. The fire departments are contracting agents of the county. And, subject to any existing contractual terms, a board of county commissioners may change service providers, the nature of the services that are being provided, and the amount appropriated to fund these services at any time.

In order to modify or abolish a county fire service district, a county's board of commissioners must follow detailed statutory provisions, although most are not as detailed as those governing rural fire protection districts. For example, unless the county has outstanding bonds or notes issued to finance projects in a district, a county's board may abolish the district by simply adopting a resolution and holding a public hearing. **G.S. 153A-306**.

Converting Rural Fire Protection District to County Fire Service District

It is not uncommon for a county to have a mix of rural fire protection districts and county fire service districts within its territorial boundaries. What if a county sought to convert one type of district to the other? A county's governing board usually wants to convert a rural fire protection district to a county fire service district (or transfer property from a rural fire protection district to a county fire service district) because the latter has less statutory restrictions. Both types of districts serve largely the same purpose—namely, they both provide a mechanism to target a county's taxing power on those property owners who most directly benefit from the expenditure of the tax proceeds. Despite this, there is not an easy process to convert one type of tax district into another type of tax district or to modify the boundary lines between the different types of tax districts.

In fact, territory in a rural fire protection district may not be transferred directly into a county fire service district. There are two methods to accomplish this result indirectly, though. The first option is to abolish the rural fire protection district according to the relevant statutory procedures and then establish one or more county fire service districts, again according to the relevant statutory procedures.

The second option is to overlay one or more county fire service districts over a rural fire protection district. Under the latter option, a county's board of commissioners could continue to levy the rural fire protection district tax and also levy the county service district tax on real and personal properties that are located in both districts. Alternatively, the governing board could cease levying the rural fire protection district tax and rely only on the service district tax to fund fire services in the area that is encompassed by both districts. Several counties have taken advantage of this second option in recent years. They have ceased levying taxes in their existing rural fire protection districts (without actually abolishing the districts). And they have created a single county fire service district that comprises the entire unincorporated territory in the county. The counties' governing boards typically allocate the proceeds from the service district tax among the various fire departments that serve different parts of the district according to their individual budgetary needs.

Links

- sogpubs.unc.edu/electronicversions/pdfs/lfb43.pdf
- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/ByArticle/Chapter_69/Article_3A.html



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- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/ByArticle/Chapter_153A/Article_16.html