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## Coates' Canons Blog: Daily Deposit Requirement

By Kara Millonzi

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**UPDATE: Spring 2018. This blog has been updated to reflect 2017 legislative changes to G.S. 159-32.**

It is summer camp registration time at Fun City's parks and recreation department. Department staff members are processing hundreds of registrations each day. That also means that the department is receiving hundreds of dollars in daily cash, checks, and credit card payments. The parks and recreation department collects registration payments throughout the year, but the volume is exponentially greater during the two- to three-week period of summer camp registration. The department is located in a satellite building, about three miles from the city hall (which houses the city's central administration and finance offices.) A parks and recreation staff member normally deposits any moneys collected into the city's bank account around 4:00pm each day. During the summer camp registration period, however, it is very difficult to collect the moneys, account for them, and deposit them each day. The director wants to install a safe in her office and keep the moneys in the safe until the end of the registration blitz. That way staff can focus on processing the registrations and not worry about dealing with the moneys until after things calm down. The department also needs cash to make change. It will be much easier to keep the cash from registrations for this purpose than to make continued requests to the finance department. Finally, the department collects deposits for equipment rentals. It will be more efficient for the department to retain the deposited funds and simply return the check or cash when the equipment is returned.

Wanting to respond to recent customer service complaints, the manager supports the parks and recreation director's idea. However, the city's finance officer, Debbie Downer, has some concerns. She does not like the idea of all that money sitting in a safe in the parks and recreation department for several weeks. Although the director's office is locked, the building is accessible at all hours of the day and night by the general public for various recreation activities. She also recalls some law that says that the department can have only \$250 on hand at any one time. The manager asks the city attorney to weigh in on the following questions:

1. May the parks and recreation department keep registration moneys it collects (cash and checks) in a safe for several days or weeks? If so, is there any limit on the amount that the department has on hand at any one time?
2. May the department keep checks or cash that it receives as an equipment deposit in a safe and return the funds to the appropriate individual when the equipment is returned?
3. May the department use cash that it has collected to make change?

**1. May the parks and recreation department keep registration moneys it collects (cash and checks) in a safe for several days or weeks? If so, is there any limit on the amount that the department has on hand at any one time?**

### ***Daily Deposit Requirement***

The answer to the first question is probably not. The Local Government Budget and Fiscal Control Act, specifically **G.S. 159-32**, requires that all moneys "collected or received by an officer or employee of a local government or public authority" be deposited "with the finance officer or in an official depository" or shall be "submit to a properly licensed and recognized cash collection service" daily. (See this blog **post** for a discussion of official depositories.)

### ***Units/Departments Subject to Daily Deposit Requirement***

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The requirement extends to collections of the tax collector, the utility department, the inspections department, the register of deeds, the sheriff's office, the parks and recreation department, etc. It also applies to moneys collected by dependent agencies of a local unit, such as the health department, the board of elections, the county library, or a public bus system. If an agency is part of a county or municipality for purposes of budget adoption and control, it and its officers and employees also are part of the county or municipality for purposes of the daily deposit requirement.

### ***Revenue Subject to Daily Deposit Requirement***

The statute makes no distinction amongst types of moneys collected or received by a local unit. It applies to taxes and fees, as well as moneys collected through fundraisers, donations, grants, loans, appropriations, gifts, and even certain vending machine sales. Sometimes local units collect monies on behalf of other governments, or on behalf of private entities or individuals. For example, some units collect funds for local non-profits along with water and sewer payments. Other units contract with private electric and gas companies to accept customer payments on behalf of the private companies. County prison officials typically collect and hold funds belonging to inmates. Many cities collect funds to maintain private cemetery plots within a municipal cemetery. A unit typically holds these funds in a fiduciary or agency capacity. They are not recognized as revenue in the unit's budget. Nevertheless, the funds are subject to the daily deposit requirement because they are "collected or received" by the unit.

### ***Exemptions from Daily Deposit Requirement***

The statute does exempt certain collections: **G.S. 159-32** states that if another law provides for a different method of depositing moneys collected or received, the daily deposit requirement does not apply. Some statutes direct the distribution of proceeds received by a unit. For example, a sheriff must turn over the net proceeds of an execution sale to the clerk of superior court. Similarly, **G.S. 15-15** directs a law enforcement officer to disburse the net proceeds of a sale of confiscated, found, or abandoned property to "the treasurer of the county board of education of the county in which such sale is made . . . ." These statutory provisions do not provide for a different deposit method, though. It is therefore unlikely that they supersede the directive in **G.S. 159-32**.

### ***Timing of Daily Deposits***

Does the statute require that every dollar collected, whether at 9:00am or 4:59pm, be deposited the day it is collected? The answer is probably not. A reasonable interpretation of the law is that each department that collects or receives moneys must make at least one deposit each day. This may result in some funds being retained overnight (or possibly even over a weekend) in a safe or other secure area within a department.

### ***\$500 Threshold***

Furthermore the statute allows a unit's governing board to authorize a unit to make the deposit only when moneys on hand amount to \$500 or more, although a deposit must always be made on the last business day of each month. Note that it is unclear whether the \$500 limit applies to each individual who collects or receives monies, or whether it is intended as an aggregate limit for the whole unit. Each local government should consult with its attorney about how to interpret the provision.

## **2. May the department keep checks or cash that it receives as an equipment deposit in a safe and return the funds to the appropriate individual when the equipment is returned?**

The answer, once again, is probably not. As discussed above, **G.S. 159-32** requires that all funds "collected or received" by a unit be deposited daily with the finance office or in an official depository. The appropriate procedure in this case is for Fun City to deposit the funds and then cut a refund check when the equipment is returned.

### ***Daily Deposit Requirement Applies to All Funds "Collected or Received" by Unit***

Some units have argued that moneys they hold "on deposit"—to secure utility payments, for room or equipment rentals, or to secure certain construction projects—are exempt from **G.S. 159-32** because the funds are not "received" by the local unit. The reach of **G.S. 159-32** is very broad, though. It applies not only to funds that are "received" by the unit in a legal

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sense but also to all funds “collected” by the unit.

### ***Certain Moneys not “Collected or Received” by Unit***

There is at least one circumstances in which a unit possesses monies that it has not “received” or “collected” for purposes of **G.S. 159-32**. **G.S. 159-17.1** provides that “moneys received by a public authority . . . or unit of local government on account of operation of vending facilities shall be deposited, budgeted, appropriated, and expended” pursuant to the LGBFCA. The statute does not require that all proceeds from vending facilities on government property be received by that government. Rather, it simply requires that when such moneys are “received” by the government, they be deposited and otherwise handled pursuant to the LGBFCA. Therefore, if a unit permits others, whether a vending company or a group of employees, to place vending facilities on the unit’s property and to receive and retain the proceeds from those facilities, the moneys in question are not subject to the daily deposit requirement. If the unit collects and keeps the moneys, however, the funds must be deposited according to the law.

Another possible exception to this requirement is for deposits that are included in sealed bids for construction projects that have not yet been opened by a local unit. It may be reasonable to assume that the moneys have not been “received” or “collected” for purposes of **G.S. 159-32** until the sealed bids are open. However, if the deposit check is not included in the sealed bid (for example, if the check is submitted separately), it is much harder to argue that the funds have not been “collected” by the unit. **G.S. 159-32** likely requires that the deposit check be deposited.

### **3. May the department use cash that it has collected to make change?**

The answer is probably yes. **G.S. 159-28(d)** prohibits a local unit from paying a “bill, invoice, salary, or other claim except by a check or draft on an official depository, a bank wire transfer from an official depository, or an electronic payment or an electronic funds transfer initiated by [the unit] . . . .” This provision effectively forbids a unit from maintaining a petty cash fund to make small dollar purchases. The provision likely does not apply when a unit simply is making change when accepting a cash payment.

## **Links**

- [www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter\\_159/GS\\_159-32.html](http://www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_159/GS_159-32.html)
- [www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter\\_15/GS\\_15-15.html](http://www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_15/GS_15-15.html)
- [www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter\\_159/GS\\_159-17.1.html](http://www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_159/GS_159-17.1.html)
- [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)