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## Coates' Canons Blog: Denying Government Services Due to Delinquent Property Taxes

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Earlier this week a city official asked this interesting question, “Can we refuse to allow residents who have not paid their property taxes to use city recreational facilities?” The city that raised the question operates a recreation center with a swimming pool and exercise equipment for which it charges residents a small membership fee. The city wanted to deny residents who owed delinquent taxes from becoming members and using the center.

My first reaction was, “No way!” The general rule of local government authority in North Carolina is that if a statute does not explicitly authorize local governments to engage in a particular activity then local governments may not engage in that activity. Nothing in the Machinery Act or elsewhere in the General Statutes explicitly authorizes a local government to refuse recreational services to delinquent taxpayers. Then cities must not be able to do this, right?

But as I thought more about the issue and bounced it off of my colleagues for their thoughts, I realized the answer wasn't quite that simple.

Both cities and counties are granted general authority to administer their taxes “in a manner not inconsistent with the statute authorizing that tax.” G.S. 153A-146 and G.S. 160A-206. Read expansively, this language could authorize local governments to look beyond the Machinery Act for creative methods to encourage payment of delinquent taxes.

But those same statutes also place limits on that creativity. Local governments are free to impose “reasonable penalties” of their own creation for the failure to pay a particular tax unless the statute authorizing that tax includes penalty and interest provisions. In other words, if the General Assembly identifies the specific penalties and interest charges that apply to a particular tax, local governments are limited to those penalties and interest charges and cannot create their own.

The Machinery Act clearly and explicitly provides for a variety of specific penalties and interest charges relating to property taxes. See G.S. 105-312 (10% discovery penalty), G.S. 105-357 (10% bad check penalty), and G.S. 105-360 (interest). It also specifies exactly which costs of collection may be passed along to the taxpayer. See G.S. 105-364 (10% outside collection fee), G.S. 105-367 (levy fees & costs), G.S. 105-368 (service fees for attachments), G.S. 105-369 (advertising costs), and G.S. 105-374 & -375 (foreclosure costs).

The limitation on additional penalties and interest beyond those identified in the Machinery Act most certainly prohibits local governments from charging taxpayers additional costs or fees for the non-payment of property taxes. The N.C. Attorney General said as much in a 2001 opinion objecting to an additional administrative fee imposed by a county for the late payment of property taxes.

That opinion concerned additional *financial* penalties for non-payment of property taxes. What about collection efforts that do not create additional financial obligations for taxpayers? Does the prohibition on additional “penalties and interest” extend to efforts by the taxing unit that are coercive but not financially so?

In my view, local governments have some room for creativity outside of the Machinery Act. I've suggested in past blog posts (here and here) that counties could employ unusual approaches to shame property owners into paying their taxes so long as the counties don't pass along the cost of those efforts to the taxpayers. For example, if a county wanted to rent one of those electronic billboards on Route 40 and flash the name of a different delinquent taxpayer on the billboard every 5 seconds, I think it could do so—assuming that it didn't charge the delinquent taxpayers for the cost of the billboard rental.

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Similarly, a local government could refuse to appoint delinquent taxpayers to government boards or commissions. It could even make timely payment of property taxes a requirement for city or county employment (assuming it has not enacted a “just cause” personnel ordinance).

But the denial of government services for the failure to pay property taxes is more problematic. For some services, it simply cannot be done.

My colleague Kara Millonzi explains here why local governments may not refuse to offer *public enterprise* services such as water, sewer or trash service based on a customer’s failure to pay property taxes (or any other tax or fee unrelated to the service in question).

For other services, state law prescribes requirements for the provision of those services which do not include the payment of property taxes. Access to a county library, for example, must be free to residents if a county chooses to fund a library. Similarly, local governments may not refuse to record deeds or issue building permits due to delinquent property taxes unless they receive authority through local legislation to add to the statutory requirements for those services.

That leaves us with services that are neither public enterprises nor subject to statutory requirements. Certainly recreational services fall into this category. So do police and fire, I think. And I cannot locate a statutory or common law prohibition against tying the provision of these services to the payment of local taxes.

Constitutionally, this type of discrimination would be subject only to “rational basis” review by the courts because it does not involve a fundamental right or a suspect class. In other words, delinquent taxpayers don’t benefit from special constitutional protection. Rational basis review requires great deference to elected officials and will condone a government action so long as it is rationally related to a legitimate government purpose.

It seems rational to me for a government to decide that the provision of services that are funded with general fund revenue be tied to the payment of property taxes, which of course provide the bulk of that revenue. Assuming the courts agree, discrimination against delinquent taxpayers in the provision of certain government services would pass constitutional muster.

Assuming this approach is legal, I can still think of a long list of other reasons why it might be less than ideal. At the top of that list would be the risk of headlines like this one: “Family Home Burns While Firefighters Watch.”

Even the refusal of less essential government services such as access to a recreation center could lead to negative PR for a local government. Some might think it unnecessarily harsh to refuse a family fitness and recreational opportunities (kids kept out of youth soccer leagues?) due to financial hardships that prevent them from paying their tax obligations. But I know plenty of other folks would find this approach perfectly reasonable.

I’ll leave those types of policy decisions to elected officials. My only advice to local governments considering creative approaches to property tax collection is to tread carefully and consider both legal and non-legal implications before adopting new policies.

## Links

- [www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=153A-146](http://www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=153A-146)
- [www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=160A-206](http://www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=160A-206)
- [www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=105-312](http://www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=105-312)
- [www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=105-357](http://www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=105-357)
- [www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=105-360](http://www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=105-360)
- [www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=105-364](http://www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=105-364)
- [www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=105-367](http://www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=105-367)
- [www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=105-368](http://www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=105-368)
- [www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=105-369](http://www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=105-369)
- [www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=105-374](http://www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=105-374)



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- [www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=105-375](http://www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=105-375)
  - [canons.sog.unc.edu/?p=4447](http://canons.sog.unc.edu/?p=4447)
  - [canons.sog.unc.edu/?p=6336](http://canons.sog.unc.edu/?p=6336)
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  - [www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=161-31](http://www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=161-31)
  - [www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=153A-357](http://www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=153A-357)
  - [news.yahoo.com/blogs/sideshow/tennessee-family-home-burns-while-firefighters-watch-191241763.html](http://news.yahoo.com/blogs/sideshow/tennessee-family-home-burns-while-firefighters-watch-191241763.html)