
Coates' Canons Blog: Excusing Board Members from Voting on the Budget

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Article: <https://canons.sog.unc.edu/excusing-board-members-voting-budget/>

This entry was posted on June 19, 2017 and is filed under Board Structure & Procedures, Budgeting & Appropriations, Conflicts Of Interest, Ethics & Conflicts, Quorum & Voting Requirements

North Carolina city and county governing board members have a duty to vote. The general voting statutes, G.S. 153A-44 (counties) and G.S. 160A-75 (cities), allow members to be excused from voting on matters involving their “own financial interest.” What if the annual budget contains provisions that affect a board member’s financial interest? Is the member prohibited from voting on the whole budget, or perhaps on only parts of the budget? And how would a board member come to have a financial interest in the budget? Isn’t it illegal for board members to contract with their units of government? This blog post describes some common scenarios involving the issue of budget approval and board member financial interests, and suggests a strategy for addressing it.

Board Member Financial Interests

Governing board members may have multiple direct and indirect financial dealings with the local governments they serve. Board members set their own compensation in the budget, but the voting statutes specifically provide that “financial interest” does not include compensation and allowances of members of the board. Board members also have financial interests that are common to most or all of the citizens of the jurisdiction. For example, many board members own real property in their city or county, so they pay property taxes. In jurisdictions that provide utility services, board members will likely also be utility customers. Does the fact that board members have financial interests in the setting of tax and utility rates disqualify them from voting on the budget? Most likely not. As I’ve noted in this blog post, board members’ financial interests in tax and utility rates are affected the same way as all or most of the constituents of the unit. As such, these decisions likely do not disqualify board members from voting. Indeed, if it were otherwise, very few if any of the board members would be able to vote on the budget.

The budget may also include some taxes or fees that affect a smaller group of people, and in some cases that smaller group might include a board member. For example, a board member may own property in a special taxing district, such as a municipal or county service district. A city or county budget may also include a business registration fee, and a board member could be affected as one among a limited group of businesses that are subject to the fee. In these cases, an analysis of the factors described in the blog post I mentioned above will be necessary to determine whether the board member’s financial interest is sufficient to fall within the voting exception.

Another potential financial interest may arise when a board member or a board member’s spouse contracts directly with the city or county. The North Carolina “self-dealing statute” (G.S. 14-234), generally prohibits board members from entering into contracts for their own benefit. Under G.S. 14-234(b)(3), however, the spouse of a board member may serve as an employee of the unit. In addition, G.S. 160A-158 allows any city with a mayor-council form of government and a population under 5,000 to appoint the mayor or any board member to serve as a department head or other employee, and to be compensated for that service. In these cases, budgetary decisions affecting compensation or other terms of employment for town employees create a financial interest for a board member.

A similar situation can occur when a county commissioner or the spouse of a county commissioner is an employee in a county school district that receives funding from the county. Although the county commissioners do not set salaries of school employees, the county’s allocation of funds to schools can certainly have an impact – positive or negative – on those employees.

Voting on the Budget

So what happens when it's time to vote on the budget? Is a board member who has a financial interest in one part of the budget prohibited from voting on the whole thing? I don't think the board member *is prohibited from voting*. Voting is *prohibited* under G.S. 14-234 when the vote is on a contract with a board member or a board member's spouse. While the budget may affect terms of existing contracts, it is not itself a contract, so the voting prohibition in G.S.14-234 doesn't apply. Similarly, votes setting tax rates or fees that affect a particular board member are not votes on contracts.

Does this mean the member *must* vote on the budget, even if he or she has a financial interest? No, but it does mean that, if the member is to be excused from voting, it will have to be under the county or city general voting statutes, G.S. 153A-44 or G.S. 160A-75. These statutes *allow* but *do not require* members to be excused from voting on matters involving their own financial interest. The board may very well have authority to excuse the member from voting on the entire budget, but that may be seen as too broad an approach. The budget includes a series of important policy decisions, and it may not be fair to the member, or more importantly, to the member's constituents, to deprive the member of a vote on all of those matters.

Can the board take a vote on a version of the budget that excludes the provision that involves the member's financial interest, and then separately vote on the provision that involves the financial interest with the interested board member not voting? Though this is a more targeted approach it probably won't work. The board has to adopt the budget as a single ordinance, and excluding a specific revenue source or appropriation would alter the calculations required for a balanced budget. And even though it is possible to amend the budget before it becomes effective, there are limitations on the types of changes that can be made in such an amendment. As described in Kara Millonzi's blog post here, state law prohibits amendments that affect certain elements of the budget, including changes in the tax rate or in the appropriation to the school district. So an amendment following the adoption of the rest of the budget ordinance is simply not a practical solution.

It is common, however, for city and county boards to vote on pieces of the budget in stages *prior* to adopting the final budget ordinance. While these votes are not binding, they allow the board to make individual policy decisions as they work through the budgeting process. This preliminary vote process offers a potential strategy for handling conflicts arising from a member's financial interest in a particular budget provision. Under this approach the board would take a preliminary (nonbinding) vote on the budget provision that involves the board member's interest and excuse the interested member from voting on it. If the matter passes then it can be incorporated into the final version of the budget ordinance. When the board member later votes on the final version of the budget ordinance, it will be clear from the preliminary vote that the member's vote was not necessary to approve the provision that involves his or her financial interest.

Finally, it is important to note that the main authority to excuse a member from voting is limited to matters affecting the member's own *financial* interest. The budget ordinance may include appropriations to individuals or organizations with which board members have a relationship, but not a financial one. Examples include board members who serve on the boards of nonprofits to which the unit may appropriate funds (see my blog post here regarding this situation), and board members whose emancipated children, siblings, or other relatives are employees of the unit. While board members might be perceived as having conflicts of interest regarding budget provisions that affect these situations, the statutes do not provide authority for them to be excused from voting if the pertinent provisions do not affect their *financial* interest.

Links

- www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=153a-44
- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_160A/GS_160A-75.html
- www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=14-234
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