
Coates' Canons Blog: Filing oaths of office

By David Lawrence

Article: <https://canons.sog.unc.edu/filing-oaths-of-office/>

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An attorney called recently and asked about G.S. 14-229. That section prohibits a person from entering upon the duties of a public office without taking and subscribing the oath of office and then filing the oath "in the proper office." Where, he wanted to know, was the proper office for filing an oath. After all, failure to file the oath is a misdemeanor and the punishment is ejection from the office. It turns out the answer is a bit complicated.

The answer is easy for someone appointed to county or city office. G.S. 153A-26 directs that each person elected or appointed to a county office is to file the subscribed oath with the clerk to the board of commissioners; and G.S. 160A-61 directs that persons elected or appointed to a city or town office are to file the subscribed oath with the city or town clerk. But what of someone elected or appointed to some other local public office – a school board or sanitary district board member, a water and sewer authority board member, an area authority board member, and so on? There is no statute for these other offices comparable to that for county and city offices.

One possibility is to analogize from the county and city statutes and file the oath with the secretary or clerk to the board on which the office-holder sits or the "corporate secretary" of the organization for which the office-holder was elected or appointed. I was a little uncomfortable leaving it at that, though, and so I thought of checking the record retention schedules for some of these other organizations, to see if the schedules indicate where the records are to be kept. This turned out to be interesting. Some of the online schedules did not mention oaths of office at all, but a couple did. The schedule for transportation agencies directed that the original be filed with the clerk to the agency's board, and that if the officer were elected, a copy be sent to the clerk of superior court for recording. The schedule for school administrative units directed that the *original* copy for agency officers be sent to the clerk of superior court. Intrigued, I checked the county and municipal record schedules, and they also direct that a copy of the oath for *elected officers* be sent to the clerk of court for recording.

How did the clerk of court get involved? I couldn't find any statutory direction that oaths be filed with the clerk. When I called a friend in the Department of Cultural Resources, the answer was that the retention schedules had directed that oaths be filed with the clerk of court for many years. My best guess is that the notion of filing oaths with the clerk of court dates from the mid-fifties or earlier, when the clerk of court was still a county (and not state) official and was the repository of last resort for all sorts of documents. Indeed, under old chapter 153 (which was supplanted by chapter 153A in 1974), the oaths of county commissioners were to be filed with the clerk of court, but there was no comparable requirement for other local elected offices. The record maintenance rules for clerks of court, promulgated by the Administrative Office of the Courts, acknowledge that the clerks do receive oaths of office and provide for maintenance of them.

My bottom line for persons holding non-county or non-city offices is that the safest thing is to file their subscribed oaths of office in two places – with the secretary of their organization and with the local clerk of superior court.

David Lawrence is retired from the faculty of the School of Government. For questions about the subject of this blog post, please refer to our **list of faculty expertise** to identify the appropriate faculty member to contact.

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