
Coates' Canons Blog: Finance Officer Fidelity Bonds: When Are Multiple Bonds Required?

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Prudence serves as a finance officer for a North Carolina county. As a condition of her initial (and continued) employment Prudence is required to obtain and maintain a “true accounting and faithful performance bond” with coverage of up to \$50,000. (The county pays the annual premium on the bond.) Recently, the county agreed to handle the finances for the local tourism development authority (TDA). The TDA is a public authority that was created by resolution of the county’s governing board, as authorized by a local act of the General Assembly. The TDA is funded mainly through occupancy tax proceeds levied by the county. It has its own governing board, whose members are appointed by the county commissioners. Pursuant to the agreement between the TDA and the county, Prudence maintains the TDA’s accounts, deposits and invests its funds, and disburses TDA monies according to the directives provided by the TDA’s governing board. Prudence also prepares the TDA’s financial reports. Because of the nature of the relationship between the TDA and the county, the TDA is considered a component unit of the county and its financials are audited along with the county’s financials.

Prudence is a cautious person by nature and a stickler for following all of the legal provisions that govern her job functions. She recently re-read the **Local Government Budget and Fiscal Control Act (LGBFCA)** and focused in on the “fidelity bond” requirement in **G.S. 159-29**. Upon a close reading of the statute, Prudence believes that she may need to obtain a second bond for the finance work she is performing for the TDA. Prudence raises this issue with the county attorney, John Q. Gambler, but he quickly dismisses her concerns. In his opinion, the \$50,000 bond that Prudence already has is sufficient to cover all of her duties as the county finance officer, including managing the finances for the TDA.

Who has the correct interpretation of **G.S. 159-29**, Prudence or Mr. Gambler?

My bet is on Prudence. The provisions of the LGBFCA apply to each “unit of local government” and “public authority” in the state, as defined in **G.S. 159-7(b)(15)** and **G.S. 159-7(b)(10)**. As reflected in the different definitions, a unit of local government is a separate and distinct legal entity from a public authority for purposes of the LGBFCA. Each of these entities is independently required to comply with the provisions of the Act. For example, **G.S. 159-24** requires each unit of local government and each public authority to appoint a finance officer to perform certain duties (including those specified in **G.S. 159-25**). And, according to **G.S. 159-29**, the finance officer for each unit of local government and each public authority must “give a true accounting and faithful performance bond with sufficient sureties in an amount to be fixed by the governing board, not less than fifty thousand dollars (\$50,000).”

In the hypothetical described above, that means that both the county and the TDA must appoint a finance officer, and the finance officer for each entity must secure a bond in an amount of at least \$50,000. The TDA may contract with the county to have Prudence serve as the TDA’s finance officer. Under such an agreement, however, Prudence is serving as the statutory finance officer for two different entities. And she must satisfy the bonding requirement for each of the entities. If Prudence serves as finance officer for both the county and the TDA and only secures one bond for \$50,000 she (and the TDA) have not fulfilled the statutory obligation. This is true even if the bond purports to cover all of the duties Prudence performs as the county finance officer. Prudence likely has two options to satisfy the bonding requirements. Under the first option, she can secure two bonds—each for at least \$50,000. The county would be responsible for paying the premiums on one bond and the TDA on the other. Alternatively, if allowed by the bonding agency (or surety), she could secure one bond, for at least \$100,000, that clearly covers Prudence in her separate capacities as finance officer for the county and as finance officer for the TDA. Under this second option, the bond should clearly designate both the government entities as beneficiaries or obligees in the amount of at least \$50,000 each.

There is case law support for this interpretation of **G.S. 159-29**. In *Board of Education v. Bateman*, 102 N.C. 52, 8 S.E.

882 (1889), the North Carolina Supreme Court held that a local school board could not proceed against the bond of a county treasurer even though the treasurer was statutorily obligated to also serve as treasurer for the school board. State law at the time required that the county treasurer give a bond “conditioned that he will faithfully execute the duties of his office” Another statutory provision required the county treasurer to also execute a treasurer’s bond “conditioned for the faithful performance of his duties as treasurer of the county board of education” In performing these duties, the Chowan county treasurer allegedly misappropriated \$170.64 (in 1889 dollars), and the school board sought recovery against the treasurer’s bond. Although the facts indicate that the county treasurer secured two bonds, the court found that both covered his duties as county treasurer, not his duties as treasurer for the board of education. Thus, although the county treasurer allegedly misappropriated school funds while performing his official duties for the county, the school board was not allowed to proceed against the treasurer’s bond.

The court distinguished the situation where a county officer is statutorily required to secure a bond for the faithful performance of his duties and, subsequently, the individual is assigned additional duties the performance of which do not statutorily require a separate bond. Under this scenario, the initial bond would be sufficient to cover the additional duties. But in this case there was an independent bonding requirement associated with the additional duties; thus the county officer was required to secure an additional bond (or ensure that a single bond satisfied both statutory requirements). According to the court,

[w]hen a law charging an officer with a new duty requires, in express terms, an additional bond for its faithful performance, or one embodying conditions different from those necessary in that already required, an official default in misapplying funds received by virtue of such statute is not held to be a breach of the bond conditioned for the faithful discharge of the duties of the office, even when it embraces the new duties only in general, and not in specific, terms.

The requirement for separate bonds is not limited to the circumstances described in the above hypothetical. When an individual serves as a finance officer for more than one unit of government or public authority, the individual should satisfy the bonding requirement in **G.S. 159-29** for each separate entity. Furthermore, if an individual serves as a finance officer and as a tax collector, he or she must satisfy the bonding requirements in **G.S. 159-29** and in **G.S. 105-349**. (Note that a finance officer may not serve also as a tax collector unless pursuant to written permission of the secretary of the Local Government Commission.)

Links

- www.ncleg.net/EnactedLegislation/Statutes/HTML/ByArticle/Chapter_159/Article_3.html
- www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_159/GS_159-29.html
- www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_159/GS_159-7.html
- www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_159/GS_159-24.html
- www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_159/GS_159-25.html
- www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_105/GS_105-349.html