
Coates' Canons Blog: Internal Controls: Who Is Authorized to Open a Bank Account and to Deposit and Disburse Public Funds?

By Kara Millonzi

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Sheriff Andy Taylor holds a fundraiser to raise money for, and promote awareness of, his office's drug abuse resistance education (D.A.R.E.) program. The office raises approximately \$5,000 in cash and checks from the fundraiser (selling Aunt Bee's famous pies) and Sheriff Taylor promptly deposits these funds into a bank account that he has opened at the Bank of Mayberry. The bank account is in the name of the sheriff's office, and the sheriff and his deputy, Barney Fife, are the only individuals authorized to deposit or withdraw funds from the account. (The county finance department maintains accounts at another local bank.) Sheriff Taylor routinely deposits into the account monies his office receives from various fundraisers, as well as unsolicited donations. He also deposits into this account proceeds received from the federal government pursuant to its ICE Asset Forfeiture Program. (The monies from the federal drug program are earmarked and must be used for law enforcement purposes.) Both the sheriff and deputy sheriff keep meticulous records of all transactions involving the bank account. They ensure that all monies deposited into the account are spent for the appropriate purpose. And both sign all checks on the account for internal control purposes. There has never been any indication of improper handling of the funds by the sheriff's office.

Pursuant to its annual independent audit of the county's financials a new auditor discovers the sheriff's office's bank account. The auditor finds nothing wrong in the handling of the funds in the account, but he questions whether the sheriff's office has legal authority to maintain the account. Sheriff Taylor explains that the office has had the account for over twenty years and no one has ever questioned its propriety. He further maintains that the sheriff is an independently elected official and therefore not subject to all the same rules as other county departments. According to Sheriff Taylor, the only thing the law requires is that all the funds are accounted for and spent properly.

Unfortunately for Sheriff Taylor the law actually requires a little bit more. The Local Government Budget and Fiscal Control Act (LGBFCA) prescribes detailed rules and procedures regarding the receipt, management, and disbursement of all public funds. See **G.S. Ch. 159, Art. 3**.

All Public Funds Must Be Deposited In Official Depository

According to the LGBFCA, all moneys collected or received by an officer or employee of a local government or public authority must be deposited daily "with the finance officer or in an official depository" or submitted to a "properly licensed and recognized cash collection service." **G.S. 159-32**. This requirement applies to all local government or public authority officials, even those such as sheriffs and registers of deeds who are independently elected. And it applies to all revenues, including donations, grants, and even vending machine proceeds. There are no special exemptions from the LGBFCA provisions for the offices of independently elected officials or any other department heads or employees. Nor are there any exceptions for certain types of revenues, such as cash payments or proceeds earmarked for specific purposes. The governing board of the local government or public authority may waive the daily deposit requirement for any amounts received by the unit or authority of \$500 or less. But these funds must be deposited at least once per month.

Governing Board Must Select Official Depository

Who determines where the monies are deposited? This task is expressly delegated to the governing board of the unit or authority. **G.S. 159-31**. A board may choose one or more banks, savings and loan associations, or trust companies in the state to serve as an official depository. With the written permission of the Secretary of the Local Government Commission a board also may select a national bank located in another state. (A board may not select a credit union.) Because **G.S. 159-31** specifically delegates the authority to select the official depositories to the governing board, this duty may not be

performed by any other government official or employee. In fact, the board itself may not delegate this duty to another official or employee. The statute makes it “unlawful” for a public official or employee to deposit public funds “in any place, bank, or trust company other than an official depository. . . .” Furthermore, **G.S. 159-28(d)** prohibits a local government or public authority 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 originated by the local government or public authority through an official depository.” Thus, an employee or official may not deposit monies into, or disburse monies from, a financial institution that has not been designated an official depository by the governing board.

Finance Officer Manages Accounts in Official Depository

May, however, a department head or other official or employee establish a bank account at a financial institution that has been designated an official depository by the governing board? The answer is no. The finance officer of the unit is charged with oversight and management of the all monies that are collected by the unit or authority and deposited into an official depository. The finance officer may set up separate accounts within an official depository for each department or each project or she may choose to pool monies together in a single account. Even if monies are commingled in a single bank account, the monies still must be accounted for and allocated to the appropriate department according to the unit’s or authority’s budget ordinance. Revenues that are legally earmarked only for certain purposes also must be traceable to ensure proper expenditure.

Finance Officer of Deputy Finance Officer Must Authorize Disbursements of Public Funds from Official Depository in Accordance with Budget Ordinance or Project Ordinance

How are funds deposited into an official depository disbursed? First and foremost, no funds may be disbursed unless authorized by the governing board. This authorization generally comes from the annual budget ordinance or a project ordinance. According to **G.S. 159-8**, “no local government or public authority may expend any moneys, regardless of their source (including moneys derived from bond proceeds, federal, state, or private grants or loans, or special assessments), except in accordance with a budget ordinance or project ordinance” (The only limited exceptions are for funds accounted for in an intragovernmental service fund or a trust and agency fund, which do not have to be included in the budget ordinance.)

With respect to physically disbursing the funds, **G.S. 159-25(b)** requires that “all checks or drafts on an official depository be signed by the finance officer or a properly designated deputy finance officer and countersigned by another official of the local government or public authority designated for this purpose by the governing board.” (The governing board may waive the dual signature requirement if it determines that appropriate internal control procedures are in place.)

A unit’s governing board may designate one or more department heads or other employees or officials as deputy finance officers, thereby authorizing them to both sign and countersign disbursements. For example, a county board may designate the sheriff and one or more employees in the sheriff’s office as deputy finance officers. This would allow the sheriff or sheriff’s employees to make disbursements from funds deposited in an official depository. Of course, any expenditure must be in accordance with the budget ordinance adopted by the county’s governing board.

The governing board must officially make the deputy finance officer designation. A manager or finance officer (or any other employee or official) may not bestow this duty on an employee or official.

Hypothetical Example

Back to Mayberry—In this case, Sheriff Taylor lacked the statutory authority to open up the bank account at the Bank of Mayberry. He and Deputy Fife also lacked the authority to deposit funds into, and disburse funds from, the bank account. Instead, all funds, including the donations and federal monies, must be deposited into an official depository, so designated by the unit’s governing board. The governing board could choose to appoint Sheriff Taylor and/or Deputy Fife as deputy finance officers authorized to make disbursements from an official depository. In the absence of such a designation, all sheriff’s office disbursements must be made by the unit’s finance officer.



Links

- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/ByArticle/Chapter_159/Article_3.html
- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_159/GS_159-32.html
- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_159/GS_159-31.html
- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_159/GS_159-28.html
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- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_159/GS_159-25.html