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## Coates' Canons Blog: Limited Room for Referendums in North Carolina

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Where to put the new landfill? The county commissioners are feeling the pressure. The site in the east will upset the folks in the Eastville area, and the site in the west will upset the Westoners. One commissioner has an idea. Put the question on the ballot at the next election and let the voters of county decide. What could be more democratic? Can they do that?

No.

Under North Carolina law, only those elections specifically authorized by the state's constitution or by statute may be held. In the absence of such authorization, any particular kind of referendum simply may not be held. There is no statute authorizing commissioners to have the voters decide where to put a landfill. That's the commissioners' job.

Really? Important matters cannot be left to a vote of the people? That's right. In North Carolina, we are deeply committed to a republican form of government—little “R”. In a republic, we voters elect our representatives—to the state legislature, the county commissions, the city councils, and the school boards—and empower them to make laws on our behalf. If we are unhappy with the laws that they make, the remedy is to vote them out at the next election and put in representatives who will do things differently.

As a matter of philosophy, we go one step further. Not only do we empower our representatives to make laws on our behalf, but we charge them with the responsibility to do so. We expect them to study matters carefully, to engage in intense legislative consideration of issues, and to exercise their judgment in an informed and considered manner.

In other states, the philosophy is to varying degrees different. In California, for instance, there is much greater commitment to a democratic form of government—with a little “D”. In a democracy, the voters have much greater power to make decisions through the ballot box—to enact laws or to overturn laws their representatives have enacted. That's why we so regularly read about Proposition 9 or Proposition 48 on the ballot in California. An early one to gain national attention was Prop 13 in 1978, setting rules for property tax imposition that are still the law in California today. Many of the other western states are like California in allowing citizens to petition for referendums of all types.

But North Carolina is not California. Sam Ervin—later a U.S. Senator who gained great fame as a constitutional lawyer in the first set of Watergate hearings—stated the law for North Carolina in a 1954 opinion (*State v. A.B.C. Board*, 240 N.C. 177) when he was a member of the state Supreme Court:

“There is no inherent power in any governmental body to hold an election for any purpose. In consequence, an election held without affirmative constitutional or statutory authority is a nullity, no matter how fairly and honestly it may be conducted.”

In 1969, the North Carolina Attorney General cited Mr. Ervin's principle in answer to a question from Camden County (opinion of August 1, 1969 to E. Ray Etheridge, county attorney). The county had put into place an ambulance service but the commissioners were not sure they wanted to continue it. The county attorney asked: “May the county hold a referendum in order to determine whether the voters desire the service continued?” The answer from the attorney general was No. There was no statute authorizing such a vote, so it could not be held.

What is a city or county to do if it wishes to hold a referendum on an important question?

**General Statutes authorization.** First, it must look to the General Statutes of the state to see whether there is a statute

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authorizing the kind of referendum it wants to hold. Here and there in the statutes there are such authorizations. In fact, in many instances, a vote of the people is not only authorized, but it is required.

A very common kind of local referendum involves alcohol sales—the sale of beer or wine or mixed drinks and the operation of ABC stores for the sale of liquor. See GS 18B-600 and the statutes following it. Another is the issuance of general obligation bonds. If a city or county is going to pledge its taxing authority in support of bonds that it wishes to sell, that substantial obligation must be approved by a vote of the people. See GS 159-49. Here are others:

- changing the structure of city government GS 160A-101
- changing the structure of county government GS 153A-58
- local sales tax levy GS 105-465, -484, and -498
- sales tax for transportation, GS 105-511.2
- municipal incorporations GS 120-172
- school unit mergers GS 115C-67
- city-county consolidation GS 153A-405, GS 160B-18
- unified city/county government GS 153A-473
- creating mountain ridge protection districts GS 113A-214
- creating mosquito control districts GS 130A-353
- taxes for hospital districts GS 131E-45
- creating airport districts GS 63-80
- airport district bonds GS 63-87
- water and sewer authority contracts GS 162A-14
- inclusion in a metropolitan water district GS 162A-35
- inclusion in a sewerage district GS 162A-68
- creating/abolishing soil and water conservation districts GS 139-5 and -13
- soil and water conservation district land-use regulations GS 139-9
- watershed improvement district taxes GS 139-39
- property tax rate above set limit GS 160A-209 and -542, GS 153A-149
- supplemental school tax GS 115C-501
- supplemental community college tax GS 115D-33
- certain community development activities by cities GS 160A-456
- certain community development activities by counties GS 153A-376
- taxes to supplement revenue bond projects GS 159-97
- public transportation authority special tax GS 160A-583
- sale, lease or discontinuation of city-owned enterprises GS 160A-321
- rural fire protection district taxes GS 69-25.1
- various actions related to sanitary districts GS 130A-80 through -83

A recent addition to the list of referendums authorized by the General Statutes is the local-option quarter-cent sales tax. See GS Ch. 105, Art. 46. Since that authorization was enacted in 2007, the referendum has been held in approximately 80 counties and approved in 23.

There may be other authorizations scattered throughout the General Statutes that have not come to my attention and are not included in this list.

**Local act authorization.** What about the commissioners and their landfill question? There is no general statute authorizing that kind of vote, but they have one more hope. Perhaps the commissioners can get the General Assembly to pass a local act authorizing them to hold the vote. [For a discussion of local acts, look here.] If the General Assembly will do that, then they can go ahead with their referendum.

Exactly that happened in Caswell County in 1991. That year the General Assembly passed a local act (SL 1991-724) providing that the county commissioners “may direct the County Board of Elections to hold a referendum . . . for the purpose of submitting to the registered voters of Caswell County several options for satisfying the long-term solid waste disposal needs” of the county. The local act specified that the results of the vote “shall be for informational use” by the commissioners. That is, it was to be a non-binding “straw vote.”

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In 1993 (SL 1993-610), a local act authorized a referendum among the voters resident in the Duck Area Beautification District of Dare County to permit the county commissioners to impose a special property tax in their district.

In 2001 (SL 2001-10), a local act authorized the city council of Charlotte to conduct “an advisory referendum” on making capital investments in certain identified sports and cultural facilities—chiefly a minor league baseball stadium.

These types of authorizations by local act come up every once in a while.

**The special case of recall elections.** There is one kind of referendum that people wonder about frequently: the recall election. In many states the law permits voters to get up petitions to force a vote on removing an officeholder in the middle of the term. That happened in California in 2003 when in a recall referendum the governor was removed from office. In North Carolina, there is no provision in the General Statutes for recall, so it is simply not permitted—unless there is a local act permitting it. There are, in fact, local acts permitting recall elections of elected officials in the following cities:

- Aberdeen
- Asheville
- Belhaven
- Cajah’s Mountain
- Carrboro
- Chapel Hill
- Durham
- Foxfire
- Greensboro
- Hickory
- Lewisville
- Lumberton
- Oak Island
- Pinebluff
- Pleasant Garden
- Raleigh
- Randleman
- Rhonda
- River Bend
- Statesville
- Topsail Beach
- Troutman
- Winston-Salem

Recall is also permitted for the Burke County school board and the Chapel Hill-Carrboro school board. No counties have recall for their commissioners.

**Constitutional authorization.** Authorizations, as we have seen, can come from the General Statutes or from local act. They can also come from the North Carolina Constitution, chiefly in the form of referendums on amending the Constitution itself. The May 2012 referendum on limiting marriage to one man and one woman is an example.