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## Coates' Canons Blog: Local Government Authority: Piecing it Together

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Students of local government law learn first and foremost that all local governments get their

powers from the state. In North Carolina, local authority comes primarily from local and general laws enacted by the General Assembly. A particular city may be governed by a mix of 1) its charter, which is a local act of the General Assembly, 2) numerous general statutes, mostly, but not entirely, found in Chapter 160A, 3) assorted local acts, and perhaps, 4) local ordinances modifying its structure, as authorized under the general law. How can the officials and citizens of a North Carolina city or county sort all of this out to get an accurate picture of the powers and structures that affect them? Fortunately, the general statutes provide some guidance, but finding all the relevant pieces and fitting them together can be challenging.

### Local Acts and Charters

We tend to think of a city's charter as a single document that may be modified from time to time. The general law, however, defines "charter" as "the entire body of local acts currently in force applicable to a particular city." **G.S. 160A-1(1)**. Counties do not have charters, but are governed by one or more local acts that define their boundaries and structure just as charters do for cities. (For more on local acts, you can read this [post](#)). Given this collection of different sources of authority, it is sometimes difficult to determine which provisions govern.

### Relationship Between General Laws, and Charters or Local Acts

Parallel statutes in Chapters 153A (counties) and 160A (cities) make clear that the legislature intended to provide flexibility for cities and counties, and to preserve unique provisions while granting the broadest possible scope of authority through local acts and general laws.

First, the statutes make clear that when the legislature rewrote the enabling statutes for cities (in 1972) and for counties (in 1974), it did not repeal or amend any local acts in effect prior to the rewrites. **G.S. 160A-2; 153A-2**.

Next, the statutes provide guidance about how to interpret provisions in charters and local acts that are different from or in conflict with the general laws. **G.S. 153A-3** and **160A-3** set out several rules of interpretation, which apply based on what type of provision is involved.

For Procedures: If a general law and a local act or charter each provide a procedure that contains every action necessary for the performance of a power, right, duty, function, privilege, or immunity, the two procedures may be used in the alternative and the city or county may use either one. If the general law and the local act or charter both contain such a procedure, but the local act version of it *does not* contain every action necessary for the performance or execution, then the city or county may choose either one and the local procedure is supplemented as necessary by the procedure in the general law.

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For Powers: If a power, duty, function, privilege or immunity is conferred on a city or county by a general law, and a charter or local act enacted earlier than the general law omits or expressly denies or limits the same power, duty, function, privilege or immunity, the general laws supersede the charter or local act.

I must admit that I have found it difficult to interpret these statutes, especially when determining whether a particular procedure contains “every action necessary” for the performance of an authorized activity. A few cases have applied them.

In *Cardwell v. Forsyth County Zoning Bd. of Adjustment*, 88 N.C. App. 244, 247-48, 362 S.E.2d 843, 845-46 (1987), a county local act was held to apply over a later-enacted general law. The case involved the question of whether a majority vote (as required in the local act) or a four-fifths vote (as required in the general law) applied to a Board of Adjustment decision. Citing G.S. 153A-3 (a) and (b), the court held: “The Forsyth County Zoning Ordinance was enacted and in effect as of 4 April 1967, well before 1 January 1974, as provided by G.S. 153A-3. G.S. 153A-345(e) changes the majority vote previously mandated to a four-fifths vote but does not clearly show a legislative intent to repeal or supersede the local act already in effect.” This holding is consistent with the rule under G.S. 153A-2 that the enactment of the general law did not repeal a previously adopted local act.

In another county case, however, the court refused to enforce the local act, concluding that the later-enacted general law governed. In *Bethune v. County of Harnett*, 349 N.C. 343, 346-47, 507 S.E.2d 40, 41-42 (1998), there were existing local acts that established the location of the courthouse (which dictates the location of the county seat, as described in Norma Houston’s blog post here). The court found that by enacting G.S. 153A-169, the legislature expressed the clear intent to allow counties to redesignate county courthouse sites, rejecting the plaintiff’s argument that a subsequent general law cannot repeal or supersede an earlier local act without a clear expression of intent by the legislature. The court held, “to the extent that the 1855 and 1859 special local acts concerning Harnett County omit or limit the authority of the elected Board to designate or redesignate the location of the county courthouse, the local acts are superseded by N.C.G.S. § 153A-169.” This is an example of the rule as applied to powers under G.S. 153A-3(c).

Another example of a case involving powers is *Brown v. City of Winston-Salem*, 171 N.C. App. 266, 271-72, 614 S.E.2d 599, 602-03 (2005). The issue was whether the authority to annex under the general law superseded a provision in the charter that required annexations to be approved by referendum. The plaintiff argued that the charter provision involved a procedure that did not contain all acts necessary for the annexation to take place, and that it was therefore supplementary to the general law. The court held, instead, that the charter provision imposed a limitation on the power to annex so the later-enacted general law, which granted broader powers, superseded the charter.

The case of *Disher v. Weaver*, 308 F. Supp. 2d 614, 625-26 (M.D.N.C. 2004) involved an employee who would have had a property interest in her job under the charter, which provided a fixed term of employment and procedures for discharge. The city adopted the manager form of government by local ordinance, as authorized under the general law (discussed below). Under the manager form of government, the manager has authority to discharge employees without due process. The court ruled that this broader authority superseded the charter and the employee was terminable “at will.” This result is consistent with the G.S. 160A-110, discussed below.

It’s a bit difficult to generalize from these cases, but a common element seems to be a deference to the exercise of authority by the local government, and an expansive view of the authority granted. In a particular case, it may be difficult to distinguish between situations that involve conflicting procedures and those that involve limitations or omissions of powers and authority.

#### Local Modifications Enacted After a General Law

The statutory provisions described above deal with differences or conflicts in charters and other local acts that were enacted before a general law on the same subject. What about local acts enacted *after* the general law? For example, consider a town that is incorporated in 2012 under a charter that makes all annexations by that town subject to a referendum? Based on the *Brown* case described above, this would be treated as a limitation on the power of the local government, rather than a procedure. Unlike *Brown*, however, I believe a court would hold that the charter governs. The situation does not fall within G.S. 160A-3, which applies only if the limitation existed prior to the enactment of the broader general law. This result makes sense. The statutes and cases just described focus on legislative intent. If the legislature enacts local provisions that modify the existing general law, it is reasonable to assume that the intent is for those

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modifications to supersede the existing law. Indeed, some charters (see, for example, the **Town of Badin** and the **Village of Bald Head Island**) specifically include a statement that G.S. 160A-3 does not apply, and that the restrictions in the charter supersede the general law.

#### Modification by Local Ordinance

Cities and counties have authority under the general laws to make certain structural changes by local ordinance. (For a comprehensive explanation of these procedures go to the School of Government's webpage **here**.) For example, a city charter may establish the city as having a mayor-council form of government, with a separately elected mayor with veto power. The city may, by local ordinance, change the form of government to manager-council. But does that override the charter? The answer is that it does as to the form of government, but it leaves the rest of the charter in place. **G.S. 160A-110** specifies that "The charter of any city that adopts a new form of government as provided in this Article shall continue in full force and effect notwithstanding adoption of a new form of government, except to the extent modified by an ordinance adopted under the authority conferred and pursuant to the procedures prescribed by this Article."

#### Finding the Pieces and Putting Them Together

A challenge for local government officials is finding all of the various local and state laws that together form the basic rules and powers that apply in their particular jurisdiction. Charters, local acts and locally adopted ordinances should be on file with the local government. Local acts beginning with the 1959 legislative session are also searchable on the **General Assembly's website**, and charter changes made by local ordinance are required to be filed in Legislative Library, which maintains them in hard copy. It is especially important to know about local modifications of the general law that remain in effect and govern the procedures and powers of a particular jurisdiction.

For more on this topic, see: **[Local Acts and General Laws: Another Look](#)**.

## Links

- [www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=160A-1](http://www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=160A-1)
- [www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=160A-2](http://www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=160A-2)
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