
Coates' Canons Blog: Local Government Authority to Loan Money

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It is quiz time again. Which of the following (if any) loan transactions are authorized under North Carolina general law?

- a. A group of citizens has formed a softball league. The local league plans to host a large softball tournament as a fundraiser to support its activities. It lacks the resources to front the costs of the tournament, though. The citizens approach the city council for a \$5,000 loan. They intend to repay the city from proceeds generated by the tournament.
- b. A local ABC board wishes to make some capital improvements to one of its stores. The ABC board approaches the town in which it is located for a \$25,000 loan to help fund the capital project. The ABC board promises to repay the loan, with interest, within one year.
- c. Due to short-term cash flow issues, an area mental health authority requests that each of the counties in which it is located loan the authority \$75,000 to fund its operating expenses. The authority intends to repay the funds to the counties within the next several months.

The answer is only loan transaction (a.) is authorized under North Carolina general law. As discussed below, local governments generally have broad authority to loan money to other government and non-government entities, subject to a few important limitations.

Appropriations to Private and Government Entities

As discussed in a previous **post**, a North Carolina local government has broad authority to appropriate funds to individuals, associations, and corporations, as long as the monies are used to carry out a public purpose in which the local government is statutorily authorized to engage. See **G.S. 153A-449** (counties); **G.S. 160A-20.1** (municipalities). That means if a municipality or county has statutory authority to finance a particular program, service, or activity, it may give public monies to a private entity to fund that program, service, or activity. But a unit may not grant public monies to any private entity, including a non-profit agency, or community or civic organization, if the monies ultimately will be spent on a program, service, or activity that the government could not fund directly.

Similarly, local governments have broad authority to appropriate funds to other government entities. There are several statutory provisions that authorize, and at times require, such appropriations to other government units, authorities, or agencies. Additionally, **G.S. 160A, Art. 20** allows a local government to enter into an interlocal agreement with another government (or multiple governments) to undertake any activity in which both the units are authorized to engage. As part of an interlocal agreement either unit may agree to appropriate funds to the other in exchange for the provision of a service or the performance of a function or activity.

Loans to Private and Government Entities

What about loans to private entities or other government entities? There are a handful of statutory provisions that specifically authorize local governments to loan money to private or other government entities. More broadly, the authority to appropriate monies to a private or government entity likely also includes the authority to loan monies to that entity. Thus, to the extent that a local government has authority to appropriate monies to a private or government entity for a particular purpose, it also has authority to loan monies to the private or government entity for that same purpose. The unit's governing board has broad discretion to set the terms of the loan agreement, including the repayment period and reasonable interest and penalty charges, subject only to any statutory limitations on the appropriation authority. (Note that a unit is not required to charge interest on the loan.)

If a loan is made to another government entity, there is one further consideration. The borrowing government must have statutory authority to obtain the loan and the transaction must be structured according to the statutory requirements. Generally there are five mechanisms through which a county or municipality may borrow money—general obligation bonds, revenue bonds, installment purchase financings, special obligation bonds, and project development financings. Thus, if a county or municipality borrows from another government unit it must do so according to one of these authorized mechanisms and only for one or more of the authorized purposes. Other specialty governments, such as authorities, districts, boards, and commissions, typically have even more limited borrowing authority.

Hypothetical Loan Transactions

Using this framework, let's analyze the hypothetical loan transactions described above.

- a. A group of citizens has formed a softball league. The local league plans to host a large softball tournament as a fundraiser to support its activities. It lacks the resources to front the costs of the tournament, though. The citizens approach the city council for a \$5,000 loan. They intend to repay the city from proceeds generated by the tournament.

*This is an authorized loan transaction. A city has broad authority to provide and support recreation programs and activities. See **G.S. 160A, Art. 18**. It may provide these programs directly, or, pursuant to **G.S. 160A-20.1**, the city may contract with a private individual or entity for the provision of these programs and activities, according to whatever terms and conditions the city's governing board deems appropriate. As part of the contractual agreement the city could grant or loan money to one or more citizens to support the softball league tournament.*

- b. A local ABC board wishes to make some capital improvements to one of its stores. The ABC board approaches the town in which it is located for a \$25,000 loan to help fund the capital project. The ABC board promises to repay the loan, with interest, within one year.

*This is not an authorized loan transaction. A city lacks direct statutory authority to appropriate or loan funds to an ABC board. And the city may not rely on the interlocal agreement provisions under **G.S. 160A, Art. 20** because funding ABC operations or capital projects is not among the purposes in which cities are statutorily authorized to engage.*

- c. Due to short-term cash flow issues, an area mental health authority requests that each of the counties in which it is located loan the authority \$75,000 to fund its operating expenses. The authority intends to repay the funds to the counties within the next several months.

*This is not an authorized loan transaction. A county is authorized to appropriate (and thereby also loan) monies to an area mental health authority. See **G.S. 153A-247**; **G.S. 122C-115** (requiring a county to provide mental health, developmental disabilities, and substance abuse services through an area authority or through a county program). An area mental health authority, however, is not authorized to borrow monies to fund operational expenses. **G.S. 122C-147** authorizes an authority to borrow, but only to fund the acquisition of real and personal property by installment purchase agreement under **G.S. 160A-20**.*

Links

- canons.sog.unc.edu/?p=2632
- www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_153A/GS_153A-449.html
- www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_160A/GS_160A-20.1.html
- www.ncleg.net/EnactedLegislation/Statutes/HTML/ByArticle/Chapter_160A/Article_20.html
- www.ncleg.net/EnactedLegislation/Statutes/HTML/ByArticle/Chapter_160A/Article_18.html
- www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_153A/GS_153A-247.html
- www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_122C/GS_122C-115.html
- www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_122C/GS_122C-147.html
- www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_160A/GS_160A-20.html