
Coates' Canons Blog: May a Tourism Development Authority (TDA) Borrow Money?

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A Tourism Development Authority (TDA) is a local government entity that is typically created by a county or municipality to administer and expend local occupancy tax proceeds. Generally a TDA is a separate legal entity from the county or municipality that established it, although it may be reported as a component unit of the local government for financial reporting purposes. A TDA is categorized as a public authority for purposes of the Local Government Budget and Fiscal Control Act (**G.S. Ch. 159, Art. 3**).

There is no general law authority for a county or municipality to levy occupancy taxes or to establish a TDA. Instead, this authority is set out in well over 100 local acts that each apply to one or a few jurisdictions. There has been significant standardization of the local acts authorizing local governments to levy occupancy taxes and establish TDAs over the past ten to fifteen years. In most cases, a county or municipality must establish a TDA and remit all, or a large portion of, the net proceeds of the occupancy tax as a condition of levying the tax. The TDA's governing board administers the tax proceeds and makes funding decisions, subject to any statutory restrictions in the local act. A common restriction is that the money be spent to promote tourism and development within the unit's territorial boundaries.

Despite the standardization efforts, there are still significant variations in the authorizing language across jurisdictions. It is thus difficult to give general guidance on the function or operation of TDAs. The answers to most questions about a TDA's board structure, and the contours of its expenditure authority, are found only in the local act that authorized its creation. There are a few questions, however, that can be addressed more generally. One of these questions is whether a TDA may borrow money? The answer to this question is no. There is a way that a TDA can become indirectly involved in a borrowing transaction, though. Read on to learn more about this issue.

A TDA, acting by itself, has no authority to borrow money. That is because the North Carolina Constitution specifies that "[t]he General Assembly shall enact *general laws* relating to the borrowing of money secured by a pledge of the faith and credit and the contracting of other debts by counties, cities and towns, special districts, and other units, authorities, and agencies of local government." **N.C. Const. Art. V, Sect. 4(1)** (emphasis added). The constitution further provides that "[w]hensoever the General Assembly is directed or authorized by this Constitution to enact general laws . . . no special or local act shall be enacted concerning the subject matter directed or authorized to be accomplished by general or uniformly applicable laws, and every amendment or repeal of any law relating to such subject matter shall also be general and uniform in its effect throughout the State. General laws may be enacted for classes defined by population or other criteria." **N.C. Const. Art. XIV, Sect. 3**.

Thus, the General Assembly may not constitutionally confer the authority to borrow in a local act. The legislature has enacted a few general law provisions related to the collection and expenditure of occupancy tax proceeds. See **G.S. 160A-215; G.S. 153A-155**. However, none of these provisions authorize a TDA to borrow money.

Some of the local acts that authorize a county or municipality to establish a TDA, specify that a TDA may expend occupancy tax proceeds and other revenues to "finance" a facility that will be used to promote travel and tourism. The word "finance" is often interpreted to mean borrowing money. That is not its only definition, though. It also means, "to fund" or "pay for." Because the legislature may not give a TDA borrowing authority by local act, the term "finance," or any similar language in a local act, must be interpreted to have the latter meaning. That means that the TDA may fund a capital project with current revenues or savings, but it may not borrow money.

There is a way that TDAs become indirectly involved in a borrowing transaction. Any *unit of local government* may contract with one or more other units of local government to execute any undertaking that all of the parties to the contract are

statutorily authorized to undertake. **G.S. 160A-461**. A *unit of local government* is defined to include a TDA. See **G.S. 160A-460(2)**. If the local act authorizing a TDA allows it's governing board to appropriate money for a capital project, the TDA could enter into an interlocal agreement with a county or city to fund the project. The county or city could commit to borrow the funds necessary to front the costs of the project. And the TDA could commit to make yearly appropriations to the local government to cover some or all of the loan payments.

There are a few limitations to this approach. First, although the Local Government Budget and Fiscal Control Act authorizes a TDA to enter into a binding, multi-year contract (see **G.S. 159-13**), the TDA can only commit money that it actually receives. Aside from fundraising efforts, a TDA typically does not have authority to generate its own revenue. If a TDA does not receive sufficient occupancy tax (or other revenues) in any given year, the county or municipality may have to cover the difference to make the loan payment. The second limitation is that most, if not all, of the local acts that authorize the establishment of a TDA set specific limitations on how the occupancy tax proceeds and other TDA revenues may be expended. A TDA board must ensure that whatever it is committing to fund is within its statutory authority.

Links

- www.ncleg.net/EnactedLegislation/Statutes/HTML/ByArticle/Chapter_159/Article_3.html
- www.ncga.state.nc.us/legislation/constitution/nconstitution.html
- www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_160A/GS_160A-215.html
- www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_153A/GS_153A-155.html
- www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_160A/GS_160A-461.html
- www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_160A/GS_160A-460.html
- www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_159/GS_159-13.html