Coates' Canons Blog: Moving a County Courthouse – Moving a County Seat – One In The Same?

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Every county in our state has a county seat, in which sits the county courthouse and oftentimes other county offices. For many towns, especially in rural areas, being the county seat is a point of pride, marking the identity of the town. Historically, county seats were located near the geographic center of the county to accommodate those traveling to attend court and transact business with government officials. While such geographic considerations are now largely antiquated, the county is still obligated to provide courtrooms and other judicial facilities for the operation of courts (**G.S. 7A-302**). Can the county build a new courthouse at a location other than within the county seat? Can the county move the county seat itself to another location? What exactly is a county seat?

A search of the North Carolina General Statutes yields only a few references to the term "county seat," none of which actually defines what a county seat is nor provides for how a location or town is designated as such. Based on the nomenclature in some older local acts of the General Assembly that established counties, **Professor Jim Drennan** suggests the term "county seat" evolved as a shorthand reference to the county's "seat of justice," meaning the location or place where court convened (in other words, the location of the county courthouse). Indeed, many local acts that established counties specifically designated a particular location for the site of the county courthouse, occasionally referring to this location as the "county seat." For example, when Avery County was established in 1911, its enabling legislation established a special committee to recommend to the county commissioners two or more locations for the "county-seat, upon which a courthouse and jail shall be erected," with the final location being chosen by the voters in a county-wide election. (S.L. 1911-33, s. 11). Superior court in Scotland County was specifically required to sit in the Town of Laurinburg along with the "several offices required to be kept at the courthouse." (S.L. 1899-127, s. 8). The courthouse of Hoke County was sited "within the corporate limits of the Town of Raeford." (S.L. 1911-24, s. 11). And, in Lee County, the "court-house" was specifically located "on Lee Avenue, between Fifteenth Street and Sixteenth Street, as nearly as practicable midway between the Union Passenger Station in the Town of Sanford and the Atlantic Coast Line Railway Station in the Town of Jonesboro." (S.L. 1907-624, s. 10).

All of these local acts (as well as all others originally establishing counties) predate the enactment of **G.S. Chapter 153A** in 1973. **G.S. 153A-169** gives county commissioners broad authority over the care and use of county property, including county buildings. Under this statute, the board may designate and redesignate the location of any county department and site for any county building, including the county courthouse. While there is no mention of a "county seat" in G.S. 153A-169, it is clear that county boards of commissioners can redesignate the location of the county courthouse. In addition, **G.S. 153A-443** also gives the board of commissioners the authority to designate a new location for the courthouse (and its various parts) if the "traditional location [of the courthouse] has become inappropriate or inconvenient" for performing functions and posting notices required by law to be conducted or posted at the courthouse (such as on "the courthouse door" or "the courthouse steps").

But what if the location of the courthouse is specifically designated by local act? Can a board of commissioners relocate the courthouse to a site other than that prescribed by the General Assembly? Which controls – the commissioner's general authority under G.S. 153A-169 and -443, or the more specific act of the General Assembly? The North Carolina

Supreme Court answered this exact question in 1998 when the decision to move the Harnett County courthouse was challenged. In *Bethune v. County of Harnett,* 349 N.C. 343, 507 S.E.2d 40 (1998), the Harnett County Commissioners proposed to build a new courthouse at a location that, while still within the corporate limits of the Town of Lillington (the county seat), was outside the original boundaries of the town as they existed when the town became the county seat in 1859 pursuant to a vote of the county residents authorized by local act (S.L. 1859-5, s. 5). Plaintiffs argued that the original local act mandated the location of the courthouse, and the subsequent enactment of G.S. 153A-169 did not supersede the original local act. The court disagreed, relying on **G.S. 153A-3(d)** as the necessary expression of legislative intent to override prior local acts that restricted the authorities granted to counties and their boards of commissioners under Chapter 153A. To the extent that a prior local act restricted or limited a board's authority under Chapter 153A, that local act is superseded. Since the 1859 prescriptive location of the Harnett County courthouse limited the board's authority under G.S. 153A-169 to redesignate the location of the county courthouse, the court held that this local was superseded. Should any other county board decide to relocate its courthouse, a challenge to that decision presumably would be met with a similar result. *Bethune* makes clear that a county board of commissioners may relocate the courthouse anywhere within the county despite contrary restrictions or specific designations in prior local acts.

If a courthouse is moved, what becomes of the county seat? There is no statutory requirement that a county designate a particular town as being the county seat, only that the county provide court facilities (in fact, counties such as Currituck that have no incorporated municipalities cannot attach this designation to a town, and thus the designation attaches to the location of the courthouse). As Jim Drennan suggests, the county seat designation most likely has evolved as a short-hand description of the location of the courthouse (the "county seat of justice"). Thus, if the county moves its courthouse, it will also, in effect, move its county seat. It is the location of the courthouse that determines where the county seat is, not vice versa.

If the board relocates the courthouse outside the municipal limits of the current county seat (assuming the current county seat is located within a municipality), the board could designate the new courthouse location as the new county seat. Such as designation would be prudent given other statutory references to "county seat" for various court operations, such as the requirement that the county provide an office for the clerk of court in the "courthouse or other suitable place in the county seat" (**G.S. 7A-100(b)**), the requirement that district court sit in the county seat (**G.S. 7A-130**), and provisions for conducting superior court in locations other than the county seat (**G.S. 7A-42**).

When redesignating the courthouse site, the board must publish notice of its intent to do so once at least four weeks before the meeting at which the redesignation will be made (**G.S. 153A-169**). This procedural requirement is a far cry from that mandated in the original 1868 version of what is now G.S. 153A-169. Under that older version, relocating a county building required a unanimous vote of all members of the board of commissioners at the board's regular meeting in September, with public notice published in a "newspaper printed in the County, if there be one, and posted in one or more public places in every Township for three months next immediately preceding the annual meeting at which the final vote on the proposed change is to be taken." (S.L. 1868-20, s. 8). And, the new site could not be more than one mile from the old site without special approval by the General Assembly (i.e., a local act). Times have certainly changed.

The courthouse also serves as the location for a number of legally required functions and activities beyond the operation of court, such as posting public notices (literally on the courthouse door in some instances) and conducting certain sales and auctions (literally on the courthouse steps in some instances). **G.S. 153A-443** authorizes the board of commissioners to designate a new location for these functions if the board determines that the courthouse has become "inappropriate or inconvenient" for performing these functions. The board can take this action even if it is not relocating the county courthouse. If the board does relocate the courthouse, it must determine whether these functions will continue to be performed at the old courthouse or moved to the new courthouse. Most likely these functions will be performed at the new courthouse (unless an entirely different location is chosen). If so, G.S. 153A-443 requires the board to adopt an ordinance designating the new courthouse (or any other location) as the place where these functions are to be performed. The ordinance must be published at least once within 30 days after the date of its adoption and posted at the old courthouse for 60 days.

So, if a county board of commissioners decides to move the county courthouse, the board must take the following steps:

1. Publish notice of its intent to relocate the courthouse once at least four weeks before the meeting at which the board will take action on the relocation (G.S. 153A-169).

2. During the meeting (the statute doesn't specify what type of meeting, so presumably the board could consider this matter during a regular or special meeting), adopt an ordinance designating the new courthouse as the location for acts and notices required by law to be conducted or posted at the courthouse (G.S. 153A-443). If the location of the new courthouse is not within the current county seat, is advisable to designate the new location as the county seat (this could be done in the redesignation ordinance).

3. After the ordinance is adopted, publish it at least once within 30 days after its adoption, and post it for 60 days at the current courthouse location (G.S. 153A-443).

If the board has previously designated another location to serve as the place for acts and notices required by law to be conducted or posted at the courthouse, then steps #2 and #3 are not necessary. However, the board should still designate the new courthouse location as the county seat if that new location is not within the current county seat.

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Links

- canons.sog.unc.edu/moving-a-county-courthouse-moving-a-county-seat-one-in-the-same/courthouse/
- www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=7A-302
- www.sog.unc.edu/user/50
- www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=153A
- www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=153A-169
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