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## Coates' Canons Blog: Now Therefore, Be It Resolved...

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Betty Sue has served on the Caring County Board of Commissioners during politically turbulent times — the civil rights movement, the war in Viet Nam, Apartheid in South Africa, women's rights, and the right to bear arms. On these and many other issues, the board has felt moved or been asked to weigh in, for or against, by adopting resolutions. The board has also adopted resolutions about more local issues and events, often at the request of citizens and local organizations — in support of the local marching band's trip to the state finals, recognizing Mrs. Beasley's Flower Shop for 50 years of service to the community, and in support of a local bill declaring Caring County the most caring county in North Carolina.

Now comes the Society for the Exploration of Communication with Aliens (SECA). They want the board to adopt a resolution supporting their efforts to communicate with living creatures on other planets. Betty Sue is concerned. Is this something the commissioners have authority to weigh in on? Even if they do, it doesn't seem like something they should really get involved with. But if they refuse, would they be open to criticism or even a legal challenge, given all the other groups they've supported? Must they create a policy on resolutions of this type in order to support their decision?

The basic answer to Betty Sue is that these types of resolutions have no legal effect and it is completely up to the board (or a majority of the board) to decide which ones to adopt. There are, however, a few areas where the board should exercise caution, as discussed more fully below.

### Types of Resolutions

Local government boards use resolutions for many different purposes. Some resolutions have legal effect and some don't. State statutes sometimes require the adoption of a resolution as a step in mandated process. For example, when a municipality initiates an annexation, the first step in the statutory procedure is the adoption of a "resolution of consideration." This type of resolution has a specific legal significance, as do many others that are required to complete particular actions, such as selling property or issuing bonds. Some units of government may also use resolutions to approve contracts, authorize expenditures, direct actions to be taken by staff, or even to approve ordinances (setting out the purposes and legislative intent supporting the regulation). These types of resolutions memorialize decisions and actions of the board and provide the proof that the actions were taken and are thus valid and enforceable. These resolutions have legal significance, although the same purposes may also be accomplished by simple motion.

Other types of resolutions have no legal significance at all. They simply express the sentiment or opinion of the board (or at least a majority of the board). These include the types described in the introductory paragraph above. Another example is a resolution of censure, which has no legal effect for local governments in North Carolina, but is simply a statement of the board's disapproval about a board member's actions or behavior. (For more on censure, see Fleming Bell's *A Model Code of Ethics for North Carolina Elected Officials*.)

A local government board has almost unlimited authority to say what it wants, as a board, about any subject. When they want to weigh in, boards typically do so through a resolution. There is no legal requirement for boards to adopt a policy delineating what types of resolutions to adopt. They are free to adopt some and not others, in their discretion. For the reasons discussed below, however, it might be a good idea for the board members to discuss how they will approach resolutions, especially those that are requested by external individuals or organizations. At a minimum, having a policy might allow the board avoid spending excessive amounts of meeting time discussing resolutions.

A resolution that is not part of a mandatory process may be approved by simple majority. There is no requirement for a public hearing or any other type of public input. Statutorily required resolutions may require notice or other specific

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procedures for adoption, depending on the underlying statute. It is important to note that something may be called a resolution but have the effect of an ordinance, contract, or other legal action. That's an important distinction since there are different requirements for approving, filing, and enforcing ordinances and contracts. *The key is that the ultimate effect of the ordinance and the procedures that apply to its adoption will be based on what the resolution actually says and does, rather than what it is called.*

#### Authority for Nonbinding Resolutions

There is no specific authority for boards to adopt nonbinding resolutions – the kind that simply amount to the board weighing in on something. But since such resolutions have no legal effect there does not appear to be any legal limitation on a board's authority to weigh in. Some resolutions, however, could create legal problems. Sometimes the board's expressed point of view can create liability for the unit or the individuals. Here are two examples of how this could happen:

**Influencing elections:** North Carolina cases (discussed here and here) limit public expenditure of funds to influence an election. Parallel statutes for cities and counties prohibit the use of public funds to “endorse or oppose a referendum, election or a particular candidate for elective office.” Although the funds involved in the preparation or adoption of a resolution are likely to be minimal, it's possible that the use of staff time or other resources could run afoul of these limitations.

**Constitutional issues:** A resolution might also affect constitutional rights of citizens. For example, a resolution stating the board's support for opening meetings with sectarian prayers that reflect the religious views of the population could violate the federal constitution's prohibition on government establishment of religion. (For more on prayer at meetings, go here.) A resolution stating a preference for a particular outcome in a quasi-judicial matter – such as board support for the issuance of a special use permit for a business that would provide lots of jobs – could constitute a violation of due process. (For more on this issue, go here.) Finally, disparaging remarks about a business person or employee could implicate due process, based on cases holding that the government is prohibited from interfering with the “liberty” interest private individuals have in pursuing their chosen trade.

#### Model, Sample or Borrowed Resolutions

Local governments often turn to model or sample resolutions, and may also borrow from resolutions others have used. This is especially useful if they have been created for or used by North Carolina local governments. As with any model, sample, or borrowed document, it's important to make sure the resolution as adopted is appropriate for the adopting unit's situation and purpose.

#### Hot Button Political Issues and Resolution Requests

Board members often receive requests from citizens and organizations to adopt resolutions on issues of local, state, national, international, and perhaps extraterrestrial (as in our case of SECA and Caring County), interest. Some of these do not involve matters over which the unit of government has any authority at all. As with any other resolutions, the board is free to weigh in on these matters. Hot button issue resolutions do not raise particular procedural or legal issues, but they do sometimes cause board members and attorneys to question whether the board should regularly or even occasionally state an official position.

When a resolution relates to something that is not directly or even indirectly within the jurisdiction of the board, the decision about whether to vote for it becomes a matter of each board member's personal view on the matter. Board members who are in the minority may have concerns about a resolution expressing the position of the board, when they may have strong objections to that position. Of course, that is simply a function of majority rule, but board members who lose the vote may feel worse about it when it's a matter of personal point of view on a political issue, rather than a matter about which they were elected to govern.

Individual board members are, of course, free to express their personal viewpoints to the citizens and the media as they see fit. In addition, as noted earlier, it may be useful for the board to develop internal policies or consensus on how to handle resolution requests from citizens or organizations.



## Links

- [www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter\\_160A/GS\\_160A-58.55.html](http://www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_160A/GS_160A-58.55.html)
- [www.sog.unc.edu/publications/books/model-code-ethics-north-carolina-local-elected-officials-guidelines-and-appendixes-hard-copy-format](http://www.sog.unc.edu/publications/books/model-code-ethics-north-carolina-local-elected-officials-guidelines-and-appendixes-hard-copy-format)
- [canons.sog.unc.edu/?p=4293](http://canons.sog.unc.edu/?p=4293)
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