

---

## Coates' Canons Blog: Property Tax Collection Remedies Beyond the Machinery Act

By Chris McLaughlin

Article: <https://canons.sog.unc.edu/property-tax-collection-remedies-beyond-the-machinery-act/>

This entry was posted on April 28, 2011 and is filed under Finance & Tax, Property Taxes

---



Local governments are always looking for creative ways to collect their taxes. While the pillory pictured here would be pretty darn effective, I can't recommend it on legal or moral grounds. But plenty of more acceptable options exist beyond those that are explicitly referenced in the Machinery Act.

Durham County, for example, uses a super-cool gizmo to scan license plates in parking lots and instantly report whether taxes are owed on those plates. If so, then the county can place a flyer on the car's windshield gently reminding the taxpayer of the tax debt and of the county's right to levy on the car. As a Durham County taxpayer, I know that approach would certainly get my attention. (Kim Simpson, please know that my taxes are all paid up.)

The Machinery Act doesn't mention this high-tech scanner, but that's okay. Nowhere in that act does it state that its remedies are exclusive. My view is that local governments can be creative as they wish, so long as they follow two basic rules. First, don't take a taxpayer's property or infringe upon a taxpayer's right to interact with the government without clear statutory authority. Second, don't pass along the costs of these creative approaches to the taxpayers.

Meaning I think Durham County's scanners and flyers are fine if the county eats the costs, but I don't think the county could slap a parking boot on those cars. How about renting a flashy electronic billboard along I-85 to spell out the names of delinquent taxpayers in 10-foot tall neon letters? Be my guest, so long as you don't add the cost of that billboard to those taxpayers' accounts.

More common is the requirement that a deed for real property not be recorded by the register of deeds until the tax collector certifies that no delinquent property taxes are owed on the property. While this remedy sounds impressive, there are a few important caveats involved. First, not every county has this option. As of today, 73 counties possess such authority under NCGS 161-31. (See S.L. 2011-45 for the most up-to-date list.) Second, the statute allows for a promise to pay the taxes from the closing attorney in lieu of actual payment. Enforcing this promise can be a problem, as I'll get to in a minute. Third, the requirement covers only county taxes and municipal taxes that are collected by the county. Cities that collect their own taxes are out of luck. (Duplin County is the lone exception; see S.L. 2010-24.) Fourth, the requirement covers only taxes, not other obligations that can be collected as property taxes such as special assessments or nuisance abatement costs or demolition liens.

Of these, the promise-to-pay issue is by the far the most pressing concern. I hear from plenty of counties in which attorneys routinely make these promises and then never produce the cash. Unfortunately, neither NCGS 131-61 nor the Machinery Act specifies what remedies, if any, the county has against these offending attorneys. As much as I'd like to conclude that these attorneys become personally liable for the unpaid taxes, I can't find any statutory authority for that position. I think the best approach is for counties to be aware of repeat offenders and be ready to hand those attorneys notices of attachment for the closing funds. If an attorney ignores an attachment notice, then the county can hold that



---

attorney personally responsible for the unpaid taxes.

Another regulatory approach to property tax collection is to refuse to issue building permits if taxes are owed on the subject property under G.S. 153A-357(c). But as with the deed certification requirement, specific authorization from the General Assembly is required. As of the 2010 legislative session, these twenty local governments have such authorization: Alexander, Alleghany, Anson, Bertie, Catawba, Chowan, Currituck, Davie, Gates, Greene, Lenoir, Lincoln, Iredell, Stokes, Surry, Tyrrell, Wayne, and Yadkin counties and the towns of Columbia and Edenton. Currituck County is the only local government authorized to withhold the issuance of a special use permit or conditional use permit under its zoning regulations if the applicant owes delinquent property taxes. See S.L. 2010-30.

What about suing delinquent taxpayers in state court? I think local governments can do so, but I'm not certain this approach would give them any better collection remedies for property taxes than they already have under the Machinery Act. Civil litigation, likely in small claims court, seems most helpful for fees and taxes that aren't covered by the Machinery Act. See this bulletin for details on those debts.

I'd love to hear of other creative collection efforts being used across the state. If you know of any, please use the comment button below to share them with me and your tax colleagues.

## Links

- [canons.sog.unc.edu/wp-content/uploads/2011/04/pillory.gif](https://canons.sog.unc.edu/wp-content/uploads/2011/04/pillory.gif)
- [www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=161-31](http://www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=161-31)
- [www.ncga.state.nc.us/EnactedLegislation/SessionLaws/HTML/2011-2012/SL2011-45.html](http://www.ncga.state.nc.us/EnactedLegislation/SessionLaws/HTML/2011-2012/SL2011-45.html)
- [www.ncga.state.nc.us/EnactedLegislation/SessionLaws/HTML/2009-2010/SL2010-24.html](http://www.ncga.state.nc.us/EnactedLegislation/SessionLaws/HTML/2009-2010/SL2010-24.html)
- [www.sog.unc.edu/pubs/electronicversions/pdfs/ptb152.pdf](http://www.sog.unc.edu/pubs/electronicversions/pdfs/ptb152.pdf)
- [www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=153a-357](http://www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=153a-357)
- [www.ncga.state.nc.us/EnactedLegislation/SessionLaws/HTML/2009-2010/SL2010-30.html](http://www.ncga.state.nc.us/EnactedLegislation/SessionLaws/HTML/2009-2010/SL2010-30.html)
- [www.sog.unc.edu/pubs/electronicversions/pdfs/ptb162.pdf](http://www.sog.unc.edu/pubs/electronicversions/pdfs/ptb162.pdf)