
Coates' Canons Blog: Required Municipal Services

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If you live in a North Carolina municipality (city, town, village), what services is your municipal government required to provide or what functions is it required to serve? Is your municipality required to collect your garbage? Must it establish zoning regulations? How about maintain streets or provide street lighting? Abate nuisances? Provide recreation services? Is it mandated to provide social services or ensure the availability of affordable housing? Are water and sewer services required? Fire protection? What about law enforcement?

Mandated Municipal Services

It may come as a surprise, but under general state law, there is only one mandated service for municipalities—enforcement of the State Building Code. Although municipalities are authorized to provide a broad array of services (including most of the services listed above) they are not required by state law to do anything but perform building code inspections. And even then, municipal personnel do not have to actually conduct the inspections; this function can be, and often is, contracted out to counties. See **G.S. 160A-411 & GS 160A-412**.

As a practical matter, most municipalities provide at least some additional services. In fact, many municipalities provide high levels of some services that are needed in more congested or urban areas, such as fire protection, law enforcement, solid waste collection, water and sewer services, and street maintenance. Other municipalities provide a mix of services that reflect their unique geographical, cultural, and socio-economic nature. And most municipalities take an active role in regulating and directing land use and development. (Note, also, that some municipalities may be subject to federal law requirements to perform particular tasks, such as stormwater management.)

Mandated Municipal Revenue

What about raising revenue? Does a municipality have to impose a minimum property tax rate? The answer is no. A municipality is under no legal obligation to levy a property tax or to implement any other revenue-raising mechanism.

Incentives to Provide Services and Levy Taxes

State law does create an incentive for a municipality (at least one incorporated after January 1, 1945) to provide at least two (out of a statutory list of eight) services and to levy a property tax rate of at least \$0.05 per \$100 valuation, though. That is because providing the two services, adopting the minimum property tax rate, and collecting at least 50 percent of the prior year's tax levy, are among the eligibility requirements for a municipality incorporated between January 1, 1945 and December 31, 1999, to receive state Powell Bill funds. See **G.S. 136-41.2**. (Powell Bill funds are the share of state motor fuel taxes distributed to eligible municipalities to maintain, repair, and construct municipal streets or thoroughfares, and other necessary appurtenances of public streets, including sidewalks.) The eight possible services are water distribution; sewage collection or disposal; garbage and refuse collection or disposal; fire protection; police protection; street maintenance, construction, or right-of-way acquisition; or street lighting.

A municipality also may be eligible to receive state and federal grant moneys if it performs particular functions or provides particular services—for example, community development programs, law enforcement services, recreation services, or water and sewer services. And at least some of these grant programs require a municipality to generate matching funds through local revenue sources.

Special Requirements for Newly Incorporated Municipalities

What about newly incorporated municipalities—specifically, municipalities incorporated on or after January 1, 2000? Are they required to provide certain services or levy property taxes? The answer is the same as above. There is only one mandated service that state law requires each municipality to provide (or arrange for some other government to provide)—enforcement of the State Building Code. And state law does not impose a minimum property tax rate requirement on a newly incorporated municipality. There is considerable confusion about this issue that warrants further discussion.

When a community seeks to incorporate, it typically first must submit a proposal to the Joint Legislative Commission on Municipal Incorporations (Joint Commission) for review. The Joint Commission may not make a positive recommendation to the General Assembly to incorporate the territory unless community members submit a plan for (1) offering at least four municipal services, from a list of eight, by the third year of incorporation and (2) levying a property tax of at least \$0.05 per \$100 valuation. **G.S. 120-163(c)** & **G.S. 120-169.1(b)**. The eight services from which community members may choose are police protection; fire protection; solid waste collection or disposal; water distribution; street maintenance; street construction or right-of-way acquisition; street lighting; and zoning. The General Assembly may incorporate a community even if it does not receive a positive recommendation from the Joint Commission. More importantly, if the community is incorporated by the General Assembly, the plan submitted to the Joint Commission is not legally binding on the newly formed municipality regardless of whether or not it received a positive recommendation. Thus, a newly incorporated municipality is under no obligation to provide any of the listed services or levy the \$0.05 per \$100 valuation property tax rate. The plan submitted to the Joint Commission simply satisfies a condition that must be met to achieve the commission's positive recommendation.

There are special conditions imposed on municipalities incorporated on or after January 1, 2000, in order to receive certain state-shared revenues, though. To receive Powell Bill funds, among other requirements, a newly incorporated municipality must levy a property tax rate of at least \$0.05 per \$100 valuation, and collect at least 50 percent of the prior year's levy (except the first year, of course). It also must appropriate funds for at least four out of this list of eight services: police protection; fire protection; solid waste collection or disposal; water distribution; street maintenance; street construction or right-of-way acquisition; street lighting; and zoning. **G.S. 136-41.2**.

These eligibility requirements also are among those required for a newly incorporated municipality to receive other county- and state-shared revenues, including local sales and use taxes; the electric franchise tax; video programming services taxes; beer and wine taxes; and the telecommunications tax. The local sales and use tax is a particularly large source of potential revenue that a newly incorporated municipality forgoes if it does not fund the requisite number of services or levy the minimum tax rate.

Links

- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_160A/GS_160A-411.html
- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_160A/GS_160A-412.html
- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_136/GS_136-41.2.html
- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_120/GS_120-163.html
- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_120/GS_120-169.1.html