
Coates' Canons Blog: Selecting and Appointing a New City or County Attorney: Answers to Frequently Asked Questions

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Each city and county in North Carolina is required to appoint an attorney “to serve at its pleasure and be its legal advisor.” See G.S. 160A-173 (cities) and 153A-114 (counties). Some cities and counties -typically larger jurisdictions – have in-house attorneys who are employees of the unit. Most local governments contract with attorneys who are in private practice. The statutes do not establish any specific requirements for the selection process or standards for selecting a city or county attorney. Here are some answers to questions about selecting and appointing a new city or county attorney.

We’re a really small town with a small budget. We would prefer to just contract for specific services as we need them. Can we do that?

No. Cities and counties are required to appoint a specific person or firm to serve as the official attorney to represent them.

Does that mean we can only have one attorney and that person must provide all of our legal services?

No. The unit is free to hire or contract with additional attorneys or firms to provide particular services as needed.

Do we have to advertise, solicit bids, or request proposals for this position?

No. There is no requirement for advertisement or bidding, regardless of whether the attorney will be an employee or an independent contractor. This means that the unit can structure the process as it sees fit. Options include simply choosing someone, negotiating with several people, or soliciting applications or proposals. If the attorney will be an employee of the unit, then local policies and ordinances for hiring employees may apply. The governing board is also free, however, to modify or waive those policies should it conclude that a different process is warranted for hiring an attorney.

If we solicit applications or proposals, are those records subject to public access?

If the attorney will be an employee of the unit, then the records will be confidential under the applicable personnel privacy statute – G.S. 160A-168 (cities), 153A-98 (counties). Proposal or bids of potential contract attorneys will be public records.

What about records pertaining to our current attorney or past attorneys, such as their contracts, billing, and payment records? Do prospective applicants and other members of the public have a right of access to those records?

For contract attorneys, the answer is yes. All of these types of records will be public, but some records may contain confidential information that must be redacted. It’s unlikely that the contract or payment records will contain any confidential information, but bills sometimes contain detail about time spent on particular matters. If a record includes, for example, information about specific personnel matters, it may be necessary to redact that information.

For in-house employee attorneys, the public will have access only to the limited set of information that is public under the city and county personnel privacy statutes. This includes the terms of a contract (if any), current salary and salary history, and information about promotions, certain types of position classification changes, and disciplinary actions.

Are there any minimum requirements or qualifications that a person must have in order to serve as city or county attorney?

The only requirement is that the person must be licensed to practice law in North Carolina. There are no special requirements for representing a local government as a client.

Are we required to hire or contract with someone who has experience or training in local government law?

No, it's not required, but I strongly recommend it. An attorney who represents a local government must know many aspects of general law, including torts, contracts, employment law, and criminal law, but must also be aware of how the law applies in the context of a legal framework that is unique to local governments. In addition, local government law includes areas of law that simply don't apply to private entities, such as public finance, public records, competitive bidding, open meetings, ethics and conflicts of interest.

Can the board discuss attorney candidates in closed session?

Yes, if the attorney will be an employee of the city or county. In that case, the discussion will be authorized under G.S. 143-318.11(a)(6) (the personnel exception).

Maybe, if the attorney will be an independent contractor. The personnel exception generally does not apply to independent contractors. But it does allow closed-session discussion of public officers. Is a city or county attorney a public officer? As described in David Lawrence's blog posts here and here, there are arguments in favor and against the notion that a city or county attorney is a public officer. If they are public officers, their appointment may be discussed in closed session. For those contract attorneys who represent multiple jurisdictions, however, their designation as a public officer could create problems under the dual office holding statute.

Must the board formally vote to appoint the attorney, or may this be done by consensus or by delegation to the manager?

The statutes specifically require the governing board to appoint the attorney, so this action must be taken in a properly noticed meeting, a quorum being present, by majority vote in open session. This is true whether the unit is hiring an employee or contracting with a private attorney.

Following an election, if the new board wishes to retain the same attorney, must that person be reappointed?

No, but there is no harm in doing so. The board is considered to be a continuous body. The appointment continues even when the board members change. The current attorney will continue in office unless the appointment is terminated by the board or has ended under the terms of the existing contract or employment.

Must the city or county attorney take an oath of office?

As noted earlier, it is not entirely clear whether city and county attorneys are "public offices" under state law such that an oath is required. There is some case law suggesting that a city attorney is a public officer, and due to some of the powers county attorneys have, a court may well consider them public officers. You can read more about what constitutes a public office, and the upsides and downsides of swearing in the attorney here, and here and here.

Are there any training programs for new city and county attorneys?

The North Carolina Association of Municipal Attorneys, the North Carolina Association of County Attorneys, and the School of Government collaborate in offering two conferences per year for city attorneys and two conferences per year for county attorneys. The municipal attorneys conferences occur every year in March at the School of Government in Chapel Hill and in early August at different venues within the state. The county attorneys conferences occur every February at the School of Government and in July at different venues within the state. Each of these conferences offers training in various topics, which change every year, and always include one hour of ethics.

The School of Government has previously offered a course for new city and county attorneys but we have replaced that

course with a new approach. A 1/2-day “fundamentals” course will now be offered as a separate program on the morning of the February conference for the county attorneys, and on the morning of the March conference for municipal attorneys.

New city and county attorneys are also encouraged to attend introductory programs offered by the School of Government in core subjects, such as local government finance, planning and development regulation, public employment law, economic development, and construction contracting. Finally, for those attorneys who can commit the time for it, the School’s flagship course, Municipal and County Administration, provides a broad overview of local government law, finance and administration. This course extends over 8 weeks from September to April each year and provides valuable information, as well as an opportunity learn from and interact with local government officials in various roles from across the state.

What publications, and other resources are recommended for new city and county attorneys?

Books

- County and Municipal Government in North Carolina
- Introduction to Local Government Finance
- Public Records Law for North Carolina Local Governments
- Open Meetings & Local Governments
- Local Government Property Transactions
- Ethics, Conflicts, and Offices: A Guide for Local Officials
- Land Use Law in North Carolina
- Legal Guide to Purchasing and Contracting for North Carolina Local Governments
- Construction Contracts with North Carolina Local Governments
- Fundamentals of Property Tax Collection Law

Bulletins and E-Books

- County and Municipal Government in North Carolina
- Local Government Law Bulletin
- Health Law Bulletin
- Property Tax Bulletin
- Local Finance Bulletin
- Public Employment Law Bulletin
- Planning and Zoning Law Bulletin
- Community and Economic Development Bulletin

Blogs

- Coates' Canons Local Government Law Blog
- Community and Economic Development Blog
- North Carolina Criminal Law Blog

Links

- www.ncga.state.nc.us/enactedlegislation/statutes/html/bysection/chapter_160a/ga_160a-173.html
- www.ncga.state.nc.us/enactedlegislation/statutes/html/bysection/chapter_153a/ga_153a-114.html
- www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=160A-168
- www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=153A-98
- www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=143-318.11
- canons.sog.unc.edu/?p=537
- canons.sog.unc.edu/?p=478
- canons.sog.unc.edu/?p=1872
- www.sog.unc.edu/courses/introduction-local-government-finance
- www.sog.unc.edu/courses/foundations-planning-and-development-regulation



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- www.sog.unc.edu/courses/introduction-public-employment-law
 - www.sog.unc.edu/courses/essentials-economic-development
 - www.sog.unc.edu/courses/contracting-construction-and-design-services
 - www.sog.unc.edu/courses/municipal-and-county-administration
 - www.sog.unc.edu/publications/books/introduction-local-government-finance-third-edition
 - www.sog.unc.edu/publications/books/public-records-law-north-carolina-local-governments-second-edition
 - www.sog.unc.edu/publications/books/open-meetings-and-local-governments-north-carolina-some-questions-and-answers-eighth-edition-2017
 - www.sog.unc.edu/publications/books/local-government-property-transactions-north-carolina
 - www.sog.unc.edu/publications/books/ethics-conflicts-and-offices-guide-local-officials-second-edition
 - www.sog.unc.edu/publications/books/land-use-law-north-carolina-second-edition
 - www.sog.unc.edu/publications/books/legal-guide-construction-contracting-north-carolina-local-governments-fifth-edition-2014
 - www.sog.unc.edu/publications/books/fundamentals-property-tax-collection-law-north-carolina
 - www.sog.unc.edu/publications/books/county-and-municipal-government-north-carolina-second-edition-2014-hard-copy-format
 - www.sog.unc.edu/publications/bulletin-series/local-government-law-bulletin
 - www.sog.unc.edu/publications/bulletin-series/health-law-bulletin
 - www.sog.unc.edu/publications/bulletin-series/property-tax-bulletin
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