Coates' Canons Blog: What is a County Advisory Committee on Health and Who Has to Have One?

By Jill Moore

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Last summer, the General Assembly adopted legislation that allows North Carolina counties to make significant changes to how local health and human services are organized and governed. In April, my colleague Aimee Wall wrote **a blog post** describing the three basic options that the new law allows and explaining key aspects of the processes for exercising them. Aimee's post is highly recommended reading for a county considering the options, or if you need a refresher on the law to put this post in context.

Today's post is narrowly focused on one portion of the new law: the requirement that commissioners who have assumed the powers and duties of a board of health must appoint an advisory committee on health. How does a board of commissioners find itself in that position? There are two ways:

- The commissioners may abolish the county board of health and directly assume its responsibilities, powers, and duties.
- The commissioners may create a consolidated human services agency (CHSA) that includes public health, and then directly assume the responsibilities, powers and duties of the consolidated human services board.[1]

At present, county commissioners exercise the powers and duties of boards of health in eight North Carolina counties: Bladen, Brunswick, Mecklenburg, Montgomery, Onslow, Pender, Stokes, and Yadkin. (See **here** for a map that shows the local public health agency type and governing board in all 100 counties, as of this posting.)

The Mecklenburg county commissioners assumed the powers and duties of the local board of health in the 1980s, and then formed a CHSA and assumed the consolidated board's powers and duties in 2008. When Mecklenburg took those actions, the law that allowed them applied only to counties with populations greater than 425,000. Legislation adopted last summer (**S.L. 2012-126**) removed the population threshold, thus authorizing any county to transfer board of health powers and duties to the commissioners, and seven counties have done just that. The Stokes county commissioners adopted a resolution assuming the powers and duties of the county board of health earlier this month. The other six counties have all acted within the last ten months to form CHSAs including public health and to assume the powers and duties of their governing boards.

The legislation also added the requirement for a health advisory committee, with a limited exception that applies only to Mecklenburg. Let's take a closer look at the advisory committee requirement.

When is an advisory committee on health required?

An advisory committee on health is required when a board of county commissioners directly assumes the powers and duties of a local board of health or a consolidated human services board that includes public health. **G.S. 153A-77(a).** However, the requirement applies only to counties that abolish their health boards after January 1, 2012. This amounts to an exception for Mecklenburg county, which abolished its boards (a county board of health and subsequently a consolidated human services board) before that date.

Since January 1, 2012, the commissioners of seven counties have assumed the powers and duties of either the health board or the consolidated human services board, triggering the requirement for an advisory committee on health in those counties (Bladen, Brunswick, Montgomery, Onslow, Pender, Stokes, and Yadkin).

In some of these counties, the advisory committee is referred to as an "advisory board." It's the same thing, just with a different name. The law uses the word "committee," so I tend to stick with that.

What are the membership requirements for an advisory committee on health?

The advisory committee must "be consistent with the membership described in **G.S. 130A-35**," the statute that establishes the membership requirements for a county board of health. The committee must include a physician, a dentist, an optometrist, a veterinarian, a registered nurse, a pharmacist, a county commissioner, a professional engineer, and three representatives of the general public. In addition, members should be residents of the county, as that is another membership requirement set out in G.S. 130A-35 (with a minor exception for counties that do not have a resident optometrist). If there is no county resident available to fill one of the licensed professional positions other than optometrist, it would be consistent with G.S. 130A-35 to fill the position with a member of the general public instead.

Some counties that have established CHSAs have appointed health and human services advisory committees that include additional members, usually to represent social services or another agency or department that has been included in the county's CHSA.

How is the advisory committee on health appointed?

G.S. 153A-77 requires the board of county commissioners to appoint the members, but it does not specify the procedure for identifying potential members or selecting among them. The board of health statute that prescribes the membership doesn't address selection of members either, and practices vary.

What is the role of the advisory committee?

The law does not describe the advisory committee's role or give it any particular powers and duties, but it seems clear that its purpose is to advise the commissioners when they carry out duties that would otherwise be performed by a local board of health.

May the board of county commissioners delegate the work of the board of health or consolidated human services board to the advisory committee?

This question needs unpacking. Let's start by taking a brief look at what the work of a local board of health is, and which legal powers and duties the board of commissioners acquires when it assumes the role of the board of health. For purposes of this discussion, I'm using the term "local board of health" to refer to either a traditional board of health or a consolidated human services board that includes public health.

A local board of health is charged with protecting and promoting the public health. The board has specific legal powers and duties, including the power to adopt local public health rules, the power to set fees for local services, and the duty to adjudicate certain disputes that local residents may have with the local health department. More information about board of health powers and duties is available **here** (see especially questions 10 through 15).

When a board of county commissioners decides to assume the powers and duties of a local board of health, it does so by adopting a resolution "assuming and conferring upon the board of county commissioners all powers, responsibilities, and duties of the board." G.S. 153A-77(a). I have **previously taken the position** that this language appears to be an all-or-nothing proposition that doesn't allow the commissioners to assume only some of the powers and duties of the board—the commissioners get them all. But once they have them, may they delegate the powers and duties to the advisory committee on health?

It's not entirely clear but I think the best answer is no, for a couple of reasons.

First, **G.S. 153A-76**—the state law that generally permits county commissioners to organize county government—specifically prohibits the commissioners from assigning elsewhere "a function or duty assigned by law to a particular office, position, department, *board*, commission, or agency" (emphasis added). This seems clear enough on its face, but it also makes sense to me that as a policy matter, when a board is assigned powers and duties with legal

effects—such as rule-making, or adjudication—the legislature would not intend for those powers and duties to be exercised by a separate advisory body.

Second, there is a public health statute that allows delegation of many public health responsibilities by the persons who carry them out, which states: “Whenever authority is granted by this Chapter upon *a public official*, the authority may be delegated to another person authorized by the public official.” **G.S. 130A-6** (emphasis added). Might G.S. 130A-6 mean that the board may delegate its statutory powers and duties to another body, such as the advisory committee? There may be room for argument here, but my conclusion is no. The statute appears to apply only to *individuals*, not to a group or body such as a board. It refers to authority granted to “*a* public official,” not a board, and it authorizes delegation to “another person,” not a committee. Further, nothing in the board of health statutes expressly permits the delegation of board of health powers and duties to another person or entity.

In practice, I believe the commissioners could use the advisory committee to inform their work in carrying out the statutory powers and duties of a board of health. That seems to be consistent with the rationale for having an advisory committee in the first place. But ultimate responsibility for carrying out board of health responsibilities and exercising board of health powers still appears to lie with the commissioners, when they have assumed those duties.

How does the advisory committee work in practice? How often should it meet? Must the committee have a chair or other officers? Who staffs the committee?

These are some of the many unanswered questions about advisory committees. The law requiring an advisory committee on health refers to G.S. 130A-35, but only in the context of membership requirements: “[the board of commissioners] shall appoint an advisory committee *consistent with the membership* described in G.S. 130A-35.” G.S. 153A-77(a) (emphasis added). G.S. 130A-35 answers some of these questions for *boards* of health, but I don’t think we can assume that the parts of the statute that don’t relate to membership apply to the advisory committee. I don’t see anything wrong with looking to G.S. 130A-35 for guidance on answers to these questions, but I don’t think it’s binding.

Do you have additional thoughts or questions about advisory committees on health?

I’d love to hear from you in the comment box below, or send me an email.

[1] A county that creates a CHSA is not *required* to include public health. However, it is *allowed* to include public health, and most CHSAs in North Carolina do. When a CHSA includes public health, the CHSA’s governing board acquires the powers and duties of a local board of health. When a CHSA is directly governed by the board of commissioners, the board of commissioners acquires those powers and duties.

Links

- canons.sog.unc.edu/?p=7090
- www.sog.unc.edu/sites/www.sog.unc.edu/files/Counties%20by%20option%20type%20-%20Sept%201%202015%20CORRECTED.pdf
- www.ncleg.net/EnactedLegislation/SessionLaws/PDF/2011-2012/SL2012-126.pdf
- www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=153A-77
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