
Coates' Canons Blog: When to Hold a Referendum: Restrictions and Limitations

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The 2013 North Carolina General Assembly enacted numerous major election law changes—the introduction of a photo ID requirement to vote, the elimination of same-day registration and voting, the end of straight-ticket voting, and many others. There was a lot to talk about, and a lot of people did talk, including me [here](#).

One 2013 change, however, got little attention at the time. It is a significant limitation on when units of government may hold special elections, commonly referred to as referendums. And a further refinement added by the 2014 General Assembly will cause counties to feel a special bite.

Referendums

In North Carolina, we vote in two kinds of elections. The most common kind, of course, is the election of candidates to office. As I discussed [here](#), we elect candidates to about 5000 federal, state, and local offices. The other kind is the special election—that is, any kind of election that does not involve filling offices. In North Carolina we rely on our legislative bodies—the General Assembly, boards of county commissioners, and city councils—to enact the laws by which we live, charging those elected officials with the responsibility to act wisely on our behalf and voting them out if they do not. Many states, particularly those out west, put the power to create laws directly in the hands of the voters, through referendums, much more than North Carolina does.

But, as I discussed [here](#), North Carolina voters nonetheless go to the polls to vote in referendums on many kinds of issues—alcoholic beverage sales, the issuance of general obligation bonds, changing the structure of city or county government, municipal incorporations, the creation of special governmental districts (like airport districts, for example), all kinds of tax questions, and others.

When to Hold an Election of Candidates to Office

For the first kind of election—voting candidates into office—the question of when to hold the election is answered by statute and is fully predictable election-to-election.

Federal, state, and county offices are filled by elections in even-numbered years, with primaries in May and general elections in November. Most of these elections are conducted on a partisan basis—the May primary pits Republicans against Republicans and Democrats against Democrats with the winners to face each other in November. But even in elections conducted on a non-partisan basis, such as elections for judges, there is still a May primary and a November general election.

The question of when to hold elections for city council and mayor is a little less straightforward, but still is answered by a schedule set by the statutes. These elections (with a couple of exceptions) are all held in odd-numbered years, but beyond that commonality, they come in different shapes, depending largely on the size of the municipality. As I discussed [here](#), while almost all cities will have a general election in November of the odd-numbered years, in some cities the primary election will be in October, while in other cities it will be in May, and in still others there will be no primary at all.

So, it is fully knowable now that in 2016 and 2018 and all other even-numbered years, every voter of the state will have the opportunity to vote in a primary in May and a general election in November (for the U.S. House of Representatives and both houses of the General Assembly, if no others). That will be true whether the voter lives within a municipality or out in the county outside any municipality.

In odd-numbered years, however, when only municipal elections are scheduled, voters out in the county will not have a chance to vote. They can't vote for mayor or city council in a nearby city. They will not go to the polls at all.

When to Hold a Referendum

Unlike the election of candidates to office, referendums, by their very nature, do not occur on a regular schedule. You cannot know right now that next year the need will arise for a special election on a tax issue or a bond issuance or a municipal incorporation or a change in the structure of city government. That means that when the need for a referendum arises, a decision must be made as to when to hold it.

The controlling statute, GS 163-287, provides that the governing body of the county, city, or other unit of government (like a special district) that is calling the referendum sets the date of the referendum. Before the 2013 legislation, the governing body had lots of choices as to when to set the date. It could set the referendum for the same date as a primary or general election coming up in the near future. That would be convenient for the board of elections that was conducting the election. Or it could set the date at a time when no other election was being held. In that case, the elections board would have to set up for an election for the sole purpose of the referendum. Clearly, extra expense would be involved. And sometimes there may have been a strategic reason for setting the referendum off by itself, a calculation that the referendum was more likely to pass standing out on its own.

If the referendum was to be held on a day other than a primary or election, the statute said before 2013, it could not be held within 30 days before or after any other election. Further restrictions were set out in statutes concerning particular kinds of referendums. For instance, the statute governing alcoholic beverage elections provided that a referendum could not be held between 60 days before or 120 days after a primary or election. The statute governing changes in the structure of county government specified that a referendum could not be held between 60 days before or after a primary or election. There were many other such specialized provisions.

The 2013 and 2014 Restrictions

The 2013 legislation brought a new uniformity to the question of when a referendum may be held. It provided that (with exceptions discussed below), all referendums must be held on the day of a regular primary or election. No more special elections standing on their own. From now on, referendums would not involve the extra expense of opening polling places that would otherwise have stayed closed.

But the 2013 legislation did not cover one particular situation. Suppose a county wished to have a referendum in an odd-numbered year. In odd-numbered years, only municipal elections are held. People out in the county don't vote, and precincts with polling places that are out in the county do not open. If a county referendum was scheduled on the November election day of that odd-numbered year, all city dwellers (who are, of course, also county residents) could vote on the referendum at their regular polling place, but polling places out in the county that would otherwise have stayed closed would have to open just so the county voters could vote in the referendum.

In response, the 2014 General Assembly **amended** GS 163-287 so it now provides that referendums may be held only at the time of even-year primary and general elections. There are two exceptions to this general rule. The first is that where the referendum affects a municipality only it may be held at the time of the odd-year municipal general election. The second is discussed in the last section of this blog post.

For municipalities, that means that referendums may be held at the time of primary or general elections in even-numbered years or at the time of that municipality's general elections in odd-numbered years.

But for counties, the 2014 change means that referendums may be held only at the time of primary or general elections in even-numbered years. In odd-numbered years, when there are municipal elections only, county referendums are barred.

So, if a county decides late in 2014 that it needs a referendum, too late to get on the November 2014 ballot, its next shot will be in May 2016.

No more may anyone strategically schedule a referendum standing on its own, and no more may counties conduct referendums in odd-numbered years.

The 2013 legislation (as refined in 2014) contains exceptions for a few kinds of referendums. The requirement that referendums must be held at the same time as a primary or general election does not apply to “any special election related to the public health or safety, including a vacancy in the office of sheriff or a bond referendum for financing of health and sanitation systems,” nor to municipal incorporation referendums, recall elections, and certain elections to fill vacancies in municipal offices.

A Special Exception

Now, the general rule, described just above, that referendums may be held only at the time of even-year primary and general elections, is subject to two exceptions. The first, as described above, is for referendums solely within a municipality. The second exception states that referendums—including county referendums—may be held “at the same time as any other election requiring all the precincts in the county to be open.” When might that exception come into play? For two counties, it might come into play because of their unusual position of holding countywide school board elections in odd numbered years. Almost all county school boards are elected in even numbered years, but in Burke and Mecklenburg counties, school board elections are in odd-numbered years. In those two counties, odd-year school board elections appear to require that all precincts in the county must be open. It would appear, therefore, that for those two counties odd-year referendums may be permitted, at the time of the school board elections. Wake County also has odd-year school board elections, but it appears that because of the district nature of its elections, not all precincts are required to be open and the exception, therefore, does not appear to apply.

I would welcome any ideas anyone has about other kinds of elections in odd-numbered years that would require all precincts in the county to be open.

Links

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- canons.sog.unc.edu/?p=6426
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- www.ncga.state.nc.us/Sessions/2013/Bills/Senate/PDF/S403v7.pdf