
Coates' Canons Blog: Who Appoints City and County Clerks?

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State law requires every city and every board of county commissioners to designate a clerk. The law is clear with respect to who appoints the clerk to the board of county commissioners. When it comes to appointment of city clerks, the law is less straightforward.

Role of the Clerk

The clerk plays a vital role in city and county government. (I'm using the term "city" as shorthand for city, town, or village.) The clerk's most significant statutory duties concern the preparation, filing, and safeguarding of important local government records. For example, the clerk keeps full and accurate minutes of meetings of the city council or board of county commissioners. G.S. 153A-42, -72, 160A-171. The clerk also organizes and maintains city or county ordinances. G.S. 153A-48; 160A-78. The clerk keeps the official city or county map book (except where the map book is stored in another office generally accessible to the public). G.S. 153A-49; 160A-77(b). City clerks are expressly charged with providing notice of city council meetings, and county clerks do the same for boards of county commissioners. G.S. 160A-171. The city clerk is by law the "custodian of all city records[.]" *Id.* (This last responsibility is discussed in the blog post found here.) A variety of other statutory provisions impose ancillary duties on the clerk. *E.g.*, G.S. 143-157.1 (city or county clerk must annually submit report to Secretary of State showing number of appointments by gender to specified city or county boards).

The clerk's statutory duties constitute only a fraction of what clerks actually do. See G.S. 153A-111 (county clerk's responsibilities include "any duties that may be required by the board of commissioners"); 160A-171 (city clerk must "perform any other duties that may be required by . . . the council"). Clerks typically spend long hours preparing for meetings of their respective elected boards. They draft meeting agendas, schedule and provide notice of public hearings, and compile the often voluminous supporting materials that council members and county commissioners must consider. Many clerks do much the same for meetings of appointed boards. Additionally, especially in smaller cities, the clerk often holds a collateral position, such as tax collector, human resources director, planner, or finance officer.

Appointment of the Clerk

Clerks to Boards of County Commissioners

The board of county commissioners appoints the county clerk. G.S. 153A-111. This decision can't be delegated to the county manager or anyone else. See *id.* ("The *board of commissioners* shall appoint or designate a clerk to the board." (emphasis added)). The clerk continues in that position "at the pleasure of the board." *Id.*

Some county clerks perform clerk-related duties full-time. Others, particularly in less populous counties, take on additional positions, such as assistant to the county manager. State law explicitly permits this kind of dual-role arrangement. *Id.* ("The board may designate the register of deeds or any other county officer or employee as clerk.")

An awkward situation can arise if the board decides to remove a dual-role clerk but the manager allows the person to remain a county employee in the other capacity. The board has the discretion to remove or replace the clerk at any time, but the authority to discharge most other county employees – including the assistant to the manager – lies with the manager in any county with a county-manager form of government. G.S. 153A-82(1). (Currently every county in the state has a county-manager form of government, even though it isn't mandatory. See G.S. 153A-81 (“The board of commissioners may by resolution adopt or discontinue the county-manager plan.”). In a county without a county-manager form of government, the board could make most of the hiring and firing decisions. G.S. 153A-87.)

City Clerks

The city clerk statute doesn't specify who does the appointing. G.S. 160A-171 (“There shall be a city clerk . . .”). Who appoints the clerk can depend on the city's form of government or on the city's charter.

Mayor-Council Cities

Cities that operate without managers have what's referred to as a “mayor-council” form of government. In a mayor-council city, the default rule is that the council appoints the clerk. G.S. 160A-155 (“The council shall appoint, suspend, and remove the heads of all city departments, and all other city employees[.]”). The council probably has the option of delegating this power to the city administrator, if the city has one, provided the administrator supervises the clerk. *Id.* (“[T]he council may delegate to any administrative official or department head the power to appoint, suspend, and remove city employees assigned to his department.”).

Council-Manager Cities

In cities with a manager, one of the manager's statutory powers is to appoint “all city officers and employees not elected by the people . . . whose appointment . . . is not otherwise provided for by law[.]” G.S. 160A-148(1) (emphasis added). Because the city clerk statute says nothing about who appoints the clerk, this means that ordinarily the manager will make the appointment.

What if the city charter expressly designates the council as the appointing authority? As an enactment of the General Assembly, the charter constitutes state law. Since the manager's appointment authority extends only to city officers and employees whose appointments aren't otherwise provided for by law, it follows that the manager may not appoint the clerk if the charter invests the council with that power. Thus, although the City of Asheville has a council-manager form of government, the city council appoints the city clerk in accordance with section 11 of its charter. The same situation pertains in Holly Springs, where section 4.3 of the town charter declares that the council – not the manager – appoints the clerk.

When the council appoints the clerk in a city with a council-manager form of government, the council's dismissal of the clerk won't necessarily bring the person's employment to an end. It's at least theoretically possible for the manager to allow the individual to continue working for the city in a different role. See G.S. 160A-148(1) (city manager “remove[s] all city officers and employees . . . whose . . . removal is not otherwise provided for by law”).

May a city, without involving the General Assembly, amend its charter to change who appoints the clerk? No. Because their charters are enactments of the state legislature, cities are powerless to modify them without legislative approval. The General Assembly has granted cities the ability to change designated charter provisions. G.S. 160A-101. A city may, for instance, amend its charter to increase or decrease the number of council members or to change its form of government from mayor-council to council-manager or vice versa. *Id.* Clerk appointment provisions aren't among the charter provisions that cities may alter on their own, however. For this reason, a city that wishes to modify such a provision will usually have to request a local act from the General Assembly. Last year the legislature passed local acts that amended the charters of Bessemer City and the Town of Zebulon to say that the manager – not the council – appoints the clerk. S.L. 2018-6 (Bessemer City); S.L. 2018-60 (Zebulon).

Confusion over the clerk's appointment can arise when a city amends its charter to go from a mayor-council to a council-manager form of government. In that situation, if the charter is silent regarding the clerk's appointment, G.S. 160A-148(a)(1) authorizes the manager to appoint the clerk because the clerk's appointment isn't otherwise provided for by law.

On the other hand, if the charter grants the council the power to appoint the clerk, that provision remains in force notwithstanding the city's adoption of a council-manager government. The provision simply isn't something the council can change on its own.

Appointment of Deputy Clerks

State law expressly authorizes the city council to "provide for a deputy clerk," but it doesn't directly address the deputy clerk's appointment. G.S. 160A-172. Consistent with principles explained above, the presumption in mayor-council cities is that the council appoints the deputy clerk. In council-manager cities, this appointment power likely rests with the manager unless the charter provides otherwise.

Many counties also have deputy clerks, though the county statutes don't mention the position. In any county with a manager – which is all of them – the county manager appoints the deputy clerk, subject to the approval of the board of county commissioners. G.S. 153A-82(1) (county manager "appoint[s] with the approval of the board of commissioners . . . all county officers, employees, and agents except those who are elected by the people or whose appointment is otherwise provided for by law").

Links

- www.ncleg.gov/EnactedLegislation/Statutes/HTML/BySection/Chapter_153a/GS_153a-42.html
- www.ncleg.gov/EnactedLegislation/Statutes/HTML/BySection/Chapter_160a/GS_160a-72.html
- www.ncleg.gov/EnactedLegislation/Statutes/HTML/BySection/Chapter_160a/GS_160a-171.html
- www.ncleg.gov/EnactedLegislation/Statutes/HTML/BySection/Chapter_153a/GS_153a-48.html
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- www.ncleg.gov/EnactedLegislation/Statutes/HTML/BySection/Chapter_153a/GS_153a-111.html
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