

Jim Palenick

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ent: Friday, June 06, 2014 4:36 PM
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Subject: Town Manager's Weekly Report (#79)
Attachments: Public \$ for Private.pdf; Utility Activation Policy.docx

Mayor & Board of Aldermen(Women):

Please accept the following as the **Town Manager's Weekly Report for the Week-ended, Friday, June 6, 2014.**

- The Town has continued to get multiple inquiries and demands from advocacy groups and others to get certain Oak Grove trailer park residents connected to Town utility services. As a result of these and the recent lawsuit, I have been researching our policy on utility service activation and found it to be made up of a number of disparate actions taken over time which were never comprehensively written into a single, over-arching policy. To that end, I have drafted such a policy (Copy attached) which is being reviewed by our Town Attorney, and upon finalization will be enacted. In the mean time, I expect a number of individuals to be in attendance at the June Board Meeting to address this matter – one of which is already listed on the Agenda under citizen participation.
- Also listed under citizen participation for the June Board meeting is Mr. Daniel Britton with his follow-up request for public funding for his proposed “pep rally” event approved by the Board. As an aid to your deliberation on this matter, I have attached a summary review of North Carolina law as it relates to the possible appropriation of Public Monies to private entities. Hopefully this article, which has been authored by a prominent government law faculty member of the UNC School of Government proves helpful.
- There has been a slight delay in the delivery of the Town's new fire engine, putting its new delivery date as sometime in Mid-August. All other costs, specifications, and expectations remain unchanged.
- The new Trash collection truck has now received final application of its decorative side logo panels and will now be put into service. Expect to begin to see it on Town streets beginning next week.
- The asphalt re-surfacing work for this fiscal-year is now complete and we will await the commencement of the new fiscal-year in July before those same paving crews will be back to complete the remaining 60% of the combined, two-year re=paving program.
- We submitted our first draw-down of funds under the CDBG, Phase IV, Waterline Grant project this week, seeking just over \$117,000 of the total \$750,000 in Grant Funds awarded. So far, those monies will cover invoices already paid for Grant administration, surveying, and engineering design. Also, this week, we placed ads for the solicitation of bids for the Phase IV project allowing prospective bidders until late June to submit sealed bids. In turn, we will look to make a contract award to the low responsive bidder at the July Board Meeting, with actual construction to begin near the end of July or the beginning of August.

Thank You,

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Coates' Canons Blog: Local Government Appropriations/Grants to Private Entities

By Kara Millonzi

Article: <http://canons.sog.unc.edu/?p=2632>

This entry was posted on June 17, 2010 and is filed under Budgeting & Appropriations, Finance & Tax

UPDATE August 2013: In 2012 the General Assembly imposed additional accountability requirements on nonprofit corporations that receive over \$5000 of public funds within a fiscal year from grants, loans, or in-kind contributions. [Click here](#) to learn more about the requirements.

At the local government's budget hearing, representatives from several private entities make requests for grants from the unit. A religious organization wants funds to organize a community festival. A local non-profit agency, trying to survive in the tough economic climate, seeks funds to finance its general operations. The local Rotary Club asks that the local government become a dues paying member. A homeowners' association requests money to improve its privately owned and maintained water system. A small company asks the unit to subsidize the company's capital expansion.

These requests may sound familiar. Local government officials typically field a myriad of similar requests around budget time. The requests often come from local non-profit agencies, some with religious affiliations. Requests also come from a variety of other sources, though, including corporations, loosely affiliated community groups, and even individuals. And, the purposes for the requests vary greatly—from seeking limited funding for a specific activity, to requesting funding to support the general operations of an organization, to asking for funding for major capital projects. May a county or city appropriate moneys to these private entities?

Grants to Private Entities

The short answer to this question is "it depends." But on what exactly does it depend? Local government officials often believe that it depends on who is asking for the funds. For example, many officials think that it likely is appropriate for a unit to give funds to a local non-profit agency or local Rotary Club, but that it is not appropriate for the unit to provide funds to a religious organization or corporation. In fact, this is not the case. Whether or not a local government may give a grant to a private entity does not depend on the type of private entity asking for the funds; instead the answer to the question depends on the purpose for which the funds ultimately will be spent.

Constitutional Authority and Requirements. Article V, Section 2(7) of the North Carolina Constitution permits the General Assembly to authorize local governments to "contract with and appropriate money to any person, association, or corporation for accomplishment of public purposes only." And, in fact, all expenditures of public funds must satisfy the North Carolina Constitution's public purpose requirement. See N.C. Const. Art. V, Sect. 2(1). I discussed the contours of this requirement in a previous [post](#), but generally the provision requires that all public funds, no matter what their source, be expended for the benefit of the citizens of a unit generally, and not solely for the benefit of particular persons or interests.

Statutory Authority and Requirements. Furthermore, satisfying the public purpose requirement is necessary but not sufficient. A local government also must have statutory authority to expend public funds for a particular purpose. See *Hughey v. Cloninger*, 297 N.C. 86 (1979). The General Assembly has authorized both counties and municipalities to "appropriate money to any person, association, or corporation . . ." G.S. 160A-20.1 (municipalities); G.S. 153A-449 (counties). There is an important limitation on this authority, though. The appropriations ultimately must be used to "carry out any public purpose that the [local governments are] authorized by law to engage in." *Id.*

Thus, the statutory authorization incorporates the constitutional public purpose requirement. It also places a further limitation on the appropriation of public funds to private entities—the private entity that receives the public funds is limited to expending those funds only on projects, services, or activities that the local government could have supported directly. In other words, if a municipality or county has statutory authority to finance a particular program, service or activity, then it may give public monies to a private entity to fund that program, service, or activity. But, a municipality or county may



not grant public monies to any private entity, including non-profit agencies or other community or civic organizations, if the monies ultimately will be spent on a program, service, or activity that the government could not fund directly. This authority allows local governments to contract with private entities to operate government programs or provide government services. It also allows local governments to support private entities, at least to the extent that those private entities seek to provide programs, services, or activities that a local unit could provide directly.

For example, a local unit may appropriate funds to a religious organization to fund a community festival that is open to all citizens of the unit because the local unit may support such an activity directly. A unit may not appropriate funds to that same religious organization, however, to finance the installation of a new roof on a church, synagogue, mosque, or other religious structure because the unit does not have authority to spend monies directly on this type of project. Perhaps a more common example arises when a local unit is asked to become a dues paying member of a civic or community organization, such as a chamber of commerce or rotary club. The local government must be very careful to ensure that its dues are expended only for purposes that the government could have funded directly. A safer approach is to ask the organization to make a request for funds for a specific project, service, or activity.

Loans to Private Entities

What about loans to private entities? The statutes cited above specifically authorize "appropriations" to private entities under certain circumstances but are silent with respect to the authority to loan public funds. The authority to appropriate monies to a private entity likely also includes the authority to loan monies to that entity. Thus, to the extent that a local government has authority to appropriate monies to a private entity for a particular purpose, it also has authority to loan monies to the private entity for that same purpose.

Non-legal Considerations

As a threshold matter, a local government must ensure that any appropriations or loans to private entities fall within the contours of the unit's constitutional and statutory authority. Before making grants or loans to private entities, local government officials also should consider a number of practical and strategic considerations, including how the governing board will choose among a number of competing requests for limited public funds, and whether only certain types of entities are eligible to receive government grants or loans. Local governments often benefit from developing detailed policy guidelines governing both the process for requesting and the process for granting requests for public funds by private entities.

Ensuring Appropriate Expenditures by Private Entities

Finally, once a local government gives or loans public monies to a private entity for a particular purpose, does the local government have any obligation to make sure that the monies are appropriately spent? The answer to this question is "yes." A unit's governing board is responsible for ensuring that public funds ultimately are spent for a statutorily authorized public purpose, even after those funds are appropriated to a private entity. There are a number of ways that a local government may go about monitoring the expenditures of public funds by a private entity—and the methods likely will vary depending on the size of the unit and the types of expenditures at issue.

The North Carolina Supreme Court has provided some guidance to local governments on this issue—sanctioning a particular oversight method in *Dennis v. Raleigh*, 253 N.C. 400 (1960). That case involved a challenge to an appropriation of funds by the City of Raleigh to a local chamber of commerce, to be spent on advertising the city. The chamber of commerce engaged in a variety of activities, some of which were unlikely to be considered public purposes. Thus, the city sought to ensure that the public funds it appropriated to the chamber of commerce were spent appropriately. The city put in place three separate "controls." First, the appropriation to the chamber of commerce was specific—it stated that the monies were to be used "exclusively for . . . advertising the advantages of the City of Raleigh in an effort to secure the location of new industry." Second, the city council reserved the right to approve each specific piece of advertising. Third, the chamber of commerce had to account for the funds at the end of the fiscal year. On the basis of the control exercised by the city over the expenditure of the public funds, the court upheld the appropriation.

Note that the first and third "controls" placed on the chamber of commerce by the City of Raleigh in *Dennis* likely are particularly instructive. These controls parallel the appropriation and annual audit requirements placed by the Local Government Budget and Fiscal Control Act on moneys spent directly by a municipality or county. At a minimum, a local government should provide clear guidelines and directives to the private entity as to how and for what purposes public



monies may be spent, and the unit should require some sort of accounting from the private entity once the funds are spent. (Note that the accounting does not have to rise to the level of an official audit, although **G.S. 159-40** authorizes local governments to require non-profit agencies that receive \$1,000 or more in any fiscal year (with certain exceptions) to have an audit performed for the fiscal year in which the funds are received and to file a copy of the report with the local government.)

Links

- www.ncga.state.nc.us/Legislation/constitution/article5.html
- sogweb.sog.unc.edu/blogs/localgovt/?p=1608
- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_160A/GS_160A-20.1.html
- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_153A/GS_153A-449.html
- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/ByArticle/Chapter_159/Article_3.html
- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_159/GS_159-40.html

TOWN OF DALLAS

Policy on the Hook-up of Utility Service(s)

Water, Sewer, Electric:

- Persons requesting the activation and/or hook-up of one or more of the above-listed utility services from the Town of Dallas shall be subject to, and be required to remit, in advance, deposits consistent with the schedule provided below.
- In addition, before service(s) can be activated, the individual(s) assuming liability for the cost of said service(s) shall produce the following documentation:
 - 1.) A government-issued (U.S. federal, state, county, or municipal; or country of origin) unexpired, photo identification card documenting identity. And;
 - 2.) A valid document (deed, lease, etc.) indicating that the property for which service is being activated is either owned, or being occupied with the express written consent of the owner, by the individual seeking such activation and assuming liability for service charges. And;
 - 3.) Documentation that, the individual(s) subject to 1.) & 2.) above, is or can be identified by the State of North Carolina for the purpose of tax, license, and fee payments and/or withholding from payroll (i.e. Social security number, federal tax ID number, etc.) The Town of Dallas does not specifically require that a social security number be produced, but will accept one for this purpose if voluntarily offered.
- For Electric and/or Water Service(s) being activated for the first time (Newly-constructed residential or commercial property), any individual(s) requesting service must also produce a copy of the valid "Certificate of Occupancy" as generated and produced by Gaston County for attachment to the Town's work-ticket and file.
- The utility "deposit" schedule shall be as follows:

In-Town-Limit Water Users:	\$75.00
Out-of-Town-Limit Water Users:	\$150.00
Electric Users:	\$150.00

Issued this _____ day of _____, 2014 By: _____

Town Manager