

ARTICLE 7

The Attorney and the Clerk

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THE ATTORNEY AND the clerk are mainstays of the governing board as it attempts to govern wisely and well. Together city and county attorneys and city clerks and clerks to the board of county commissioners help to ensure that local government activities are carried out in a legally correct manner. The documents created and maintained by the attorney and the clerk provide the written record needed to ensure that the board is accountable to the city's or county's citizens and to other public and private officials. Ideally the attorney and the clerk work as partners with the manager and the board, the attorney advising on the legal consequences of board actions, the clerk keeping a record of those actions, and both officials ensuring that proper procedures are followed to enable the corporate entity, the city or county, to "speak" and "act" clearly and effectively.

The Attorney

Every city council and board of county commissioners in North Carolina must appoint an attorney to be its legal adviser (G.S. 153A-114—counties; 160A-173—cities), although a number of very small towns nevertheless do not appoint one. The diversity of arrangements that cities and counties have made for legal representation is notable; it reflects

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the varied legal needs of the over 550 cities and 100 counties in the state. The typical city or county attorney in North Carolina is an independent practitioner or a member of a law firm who works for the city or county on a contractual basis. A small but significant number of cities and counties, however, have at least one full-time attorney—the city or county attorney or an assistant or staff attorney—who is an employee of the unit, is paid a salary, and works only on the local government’s legal matters. The number of full-time attorneys has increased slowly but steadily in recent decades. This section reviews some of the issues that a city council or board of county commissioners might consider in deciding what sort of legal representation it needs.

Typical Arrangements

The typical¹ city or county attorney is an independent contractor. In many jurisdictions, the attorney is paid a yearly retainer to provide agreed-on basic services. In some other local governments, a retainer is not used, so all legal work is “fee for service.” The retainer usually covers such services as the following:

- attending all meetings of the city council or board of commissioners
- being available for routine consultation with board members and department heads
- drafting ordinances and resolutions
- preparing routine legal documents like deeds and simple contracts
- preparing legal advertisements

In some cities or counties, the retained attorney’s performance of agreed-on retainer services is charged against the retainer on a per-hour basis; the retainer then is a minimum annual fee for legal representation. If the attorney exceeds the number of hours covered by the retainer for these established services or does work not included in the retainer arrangement, he or she is reimbursed on a per-hour or other fee basis. As independent contractors, attorneys are responsible for providing their own health and hospitalization insurance, disability insurance, life insurance, and pension plan. Their retainer and hourly charges also pay for office and secretarial expenses.

As noted earlier, some jurisdictions have at least one full-time salaried attorney, with the larger cities and counties having legal staffs of varying sizes. In addition to a salary, the city or county provides fringe benefits, office space and supplies, and secretarial and other assistance.

A number of jurisdictions have “hybrid” arrangements for legal representation. Several, for instance, retain as city or county attorney a law firm or attorney who is an independent contractor, even though the attorney spends upward of 80 percent of his or her time exclusively on the local government’s legal matters. The advantage of this arrangement for attorneys is that quite often they can remain partners in their law firms and thus share in the firms’ overall economic success. The advantage to the city or county is the knowledge that one person brings to his or her legal service who has represented the local government’s affairs over a period of time and knows its personalities, issues, and operations. Still other cities and counties classify their attorney as an employee even though the attorney may devote less than half of his or her time to city or county matters. This arrangement may be advantageous to the attorney in the area of fringe benefits such as insurance and pension provisions. However, the local government and the attorney should make sure that the local government’s insurance, pension, or other benefit programs do in fact apply to the attorney under this type of arrangement. The experience of some attorneys suggests that there is some uncertainty about the extent to which they do.

Some local governments retain a member of a law firm but also employ a full-time staff attorney as an assistant. This arrangement gives the city or county the benefit of a valued legal counselor while maintaining a full-time lawyer on hand for day-to-day legal matters.

Governing boards also need to consider the need for additional, specialized attorneys to work with particular local government officials or departments on a regular basis. For example, counties often have separate attorneys—retained or full-time—for social services work, and both counties and cities frequently have separate attorneys to deal with the unique issues faced by the sheriff’s office or the police department.

1. See *County Salaries in North Carolina*, compiled by the MAPS Group for the School of Government, for information about each county’s arrangements for legal services, including salaries, retainer fees, and departments served. *County Salaries* is an annual survey that is available exclusively online from the School of Government at <http://sog.unc.edu/pubs/electronicversions/csaindex.htm>.

Considerations in Providing Legal Services

The best way to provide legal services for a particular local government depends on its legal needs. The legal matters affecting even the smallest jurisdictions have become steadily more complex and costly to handle over the last few decades. The proliferation of state and federal laws and programs and their consequent demands on local governments suggest that the trend will not reverse itself in the foreseeable future. City councils and boards of county commissioners should regularly assess what sorts of legal representation will be best for a local government as it changes over the years. They should not be afraid to ask hard questions and to expect clear answers as they conduct this evaluation.

Take the issue of “better service,” for example. The quality of service a city or county attorney provides depends primarily on his or her professional capability and personality. Whether the attorney is an independent contractor or an employee, the city or county is best served by a capable lawyer who is well versed in a variety of general legal subjects and also is familiar with the specific legal principles and statutes that apply to local governments. Thus ideally a city or county attorney should be both a generalist and a specialist. He or she should be knowledgeable in such general legal areas as contracts, civil procedure and litigation, torts, and constitutional law and should also feel at home with such local government legal matters as governing board procedures, open meetings, public records, purchasing, property tax assessment and collection, budget and financial procedures, and federal civil rights, equal opportunity, and environmental regulations and laws.

A city or county attorney should be able to work and communicate effectively with public officials, local government employees, the press, and the public. Governing boards want to rely on the attorney’s judgment and his or her ability to articulate ideas clearly when asked an unanticipated question during a public meeting. Also, the attorney must represent the board effectively even when the board members do not agree among themselves. The attorney must be able to understand the job requirements of administrators and department heads and give them accurate and practical legal advice. County attorneys must develop relationships with separately elected county officials such as the sheriff and the register of deeds. The attorney may also represent other local government boards and must be able to deal with them effectively even when they and the governing board do not see eye-to-eye. The attorney must be both forthright and discreet in dealing with representatives of the news media, who often assume a watchdog role over the affairs of the city or county. The attorney must maintain credibility while not disclosing his or her client’s confidences. Finally, he or she should be able to represent the local government to the public on occasion, even though it is not usually the attorney’s role to be a spokesperson for the city or county. All these criteria suggest that an ideal local government attorney should be talented and well-rounded.

The question of political affiliation and relationships may also arise when the governing board chooses the city or county attorney. While a board or a dominant faction on the board may feel comfortable with a political ally as city or county attorney, appointing an attorney mainly on the basis of political qualifications may be unwise. Governing board members may come and go with each election, but the board and the local government are best served by impartial advice that is not unduly influenced by close political affiliation or by fear of partisan retribution.

In addition to its regular attorney, a local government may sometimes employ expert counsel for specialized matters such as a title search for a major acquisition of real estate. A city or county may also retain outside counsel for unusually complex litigation. Certain civil rights, tax, or environmental cases might fall into this category. Litigation like this requires either professional specialization in the field or the full-time attention of the attorney, or both. In addition, many cities and counties have insurance policies to cover lawsuits involving tort matters, and in those cases the insurance company picks and compensates the attorney who is representing the local government. The city or county attorney, whether retained or full-time, will likely need assistance with complex or unusual litigation if he or she is to continue providing routine and day-to-day legal assistance to the local government in an effective manner. The governing board should be ready and willing to pay for the additional expertise that the city or county may need from time to time.

Retained or Full-Time Attorney

General Factors

Whether hiring a full-time attorney is appropriate for a particular city or county depends on the local government’s specific legal needs, its governing board, and other relatively subtle issues such as what *types* of litigation the city or county anticipates and whether a contract or full-time attorney will be more effective with government officials and personnel. Perhaps the most salient advantages of hiring a full-time attorney are his or her intimate knowledge of the city’s or county’s day-to-day affairs and ability to practice preventive law. Because of the econom-

ics of legal fees and the social environment within which local government law is practiced, one can expect a steady increase in the number of cities and counties employing full-time attorneys. But not all jurisdictions will need such an attorney—particularly those without continuous, recurring legal needs.

If the local government uses a retained attorney, however, it must be very careful not to be penny-wise and pound-foolish in employing his or her services. Even very small towns and smaller counties comprise complicated public corporations with substantial annual budgets, and it is wise to err on the side of caution, consulting the attorney whenever a legal question is raised. Regardless of the jurisdiction's size, the governing board members owe it to their citizens and themselves to be more concerned with insuring that competent legal advice is always readily available than with the immediate cost of that advice. The governing board and staff should not only seek the attorney's assistance with complex issues, but should also involve him or her in matters that to the layperson may seem routine, such as reviewing contracts, advising on potential agenda items for meetings and drafting or revising policies. Many cities and counties have avoided significant legal difficulties over the years by obtaining competent advice up front, rather than after a costly mistake had already been made.

In practice, most city or county attorneys who are retained as independent contractors place an emphasis on advising the council or board or commissioners and the manager, if any, and on attending their meetings. To minimize their retainer fee, some attorneys provide routine legal service to only those parties or, in many small towns, only attend meetings when specifically asked to do so. However, as noted just above, the governing board may want to consider long-term costs and not just immediate expense in deciding how much time the attorney should be encouraged to devote to the local government's issues.

A full-time city or county attorney, on the other hand, handles the full range of the local government's legal needs. This might be "better" service in the sense that a full-time attorney is available to consult with and provide advice to all governmental departments and offices (such as a purchasing or recreation department), to other local boards and commissions (such as a social services board or a board of adjustment), and, in the case of counties, to other elected county officials (such as the sheriff and the register of deeds).

Officials and employees in a city or county with a full-time attorney may also feel that legal consultation is more convenient when the attorney is available full time. Full-time attorneys may be more accessible simply because they have offices close to other local government offices. Or the officials and employees may not feel the constraint they might experience consulting with an independent-contractor attorney, which may involve escalating legal fees as the consultation becomes more complex or extensive. In a jurisdiction with a full-time attorney, the local government's personnel know that his or her client is the city or county and that they will not be interrupting the attorney while he or she is handling matters for other clients. Similarly, on occasion, retained city or county attorneys may not be readily available because they are entirely occupied with a major matter—perhaps a trial—for another client, or there may be a conflict of interest in a particular situation that involves both the local government and another of the attorney's clients, so that the attorney cannot ethically represent either side. A full-time attorney should be in closer touch with developments affecting the local government's business than retained counsel, because of his or her day-to-day presence and exposure. Full-time attorneys will not need to be briefed as extensively on certain matters because they are already somewhat familiar with the background. And, of course, because they are full-time salaried employees, no additional charges are associated with legal consultations.

Cost Concerns

Whether having a full-time city or county attorney will save the local government money depends on whether it has full-time legal needs. The answer to this question will in turn depend on at least two important factors.

First, the amount and the type of litigation in which the city or county is engaged are very important. If the city or county is frequently in court, a full-time attorney may be justified. Court cases tend to raise the cost of a local government's legal services sharply. A full-time attorney ordinarily can handle much of the jurisdiction's recurring litigation such as zoning disputes, tax foreclosures, and (for counties) social services child support suits. If the council members or commissioners are contemplating a full-time attorney, they should also keep in mind the nature of the city's or county's litigation as they decide what experience and capabilities that attorney should have.

Also very important to the decision about full-time legal representation are the number and complexity of the transactions in which the city or county is involved on a regular basis. For example, a local government with an active development program in which it has partnerships with private developers may need a great deal of legal work, even without litigation. Similarly, if land development is occurring rapidly in the city or county, local planning and zoning officials will frequently need an attorney's advice.

On the other hand, the city or county may incur significant additional costs if it hires a full-time attorney, costs that are ordinarily covered by the fees charged by a retained attorney. Paralegal and secretarial support, law books, subscriptions to legal research services, and computer equipment are among the overhead expense items that a local government must plan to absorb if it has full-time legal representation.

Other matters should also be considered. Will city or county departments and commissions need legal consultation frequently enough to keep an attorney busy throughout the year? A great advantage of in-house attorneys is that they can practice preventive law by counseling the local government's personnel regarding appropriate policies and practices, exploring legal considerations before disputes erupt into law suits, advising employees regarding courses of action when problems suddenly arise, and so on. The daily presence of an attorney can have an intangible value in avoiding legal expenses that might otherwise be incurred without timely legal advice.

Does the cost of the local government's litigation fluctuate sharply from year to year? If so, having a salaried attorney can give the city or county a more predictable measure of its annual legal expense, assuming that a full-time attorney is justifiable in other respects. A retainer, on the other hand, is more likely to represent a minimum cost of legal representation. Even if complex or time-consuming litigation is routed to specialized counsel, a full-time attorney may be better able to absorb much of the jurisdiction's unforeseen legal requirements without a large corresponding increase in legal fees. The local government can better anticipate and estimate its budget requirements for legal representation if a full-time city or county attorney can handle most of its routine legal affairs. The attorney and legal support staff's salaries and benefits, other overhead expenses, and a contingency reserve for outside counsel's representation in extraordinary litigation will be a fair measure of the city's or county's annual budget requirement for legal services.

Options for Full-Time Representation

If the local government decides that it needs full-time representation, it has at least three options with varying costs. It can hire either a less experienced and less expensive attorney or a more experienced but more costly attorney, or it can adopt a hybrid arrangement involving a younger staff attorney and a more experienced attorney on retainer. Several questions need to be asked concerning each arrangement.

Are the personalities in the local government and its legal needs such that the city or county can hire an unseasoned or inexperienced attorney? Inexperienced attorneys command lower salaries, but to some degree they will be training and acquiring experience on the job. Will the city council or board of county commissioners give due weight to an unseasoned attorney's legal advice? Will they respect his or her judgment and counsel? Will an unseasoned attorney become rattled in a public meeting when suddenly confronted with an unanticipated query? There are mature young attorneys in North Carolina who are very capable city and county attorneys, but character and potential should be more carefully evaluated for young candidates than when evaluating a seasoned attorney with years of experience summarized on a resume.

Other considerations emerge if a city or county decides to hire a more experienced lawyer as its full-time attorney. Since such a person's salary requirements will be substantially more than a less experienced attorney's, yearly cost-of-living adjustments will have more impact because they are made from a substantially larger base. A policy should be agreed on for merit increases. Pension arrangements may have to be examined closely. The shorter funding period for an older attorney in the Local Government Employees' Retirement System may result in less than optimum retirement payments if an inflationary environment follows retirement. If a more experienced attorney is taking a significant cut in remuneration to become the local government's attorney, the governing board should satisfy itself that he or she will devote an appropriate amount of energy and initiative to continuing employment on a public salary.

Hiring a younger full-time staff (or assistant) attorney when the city or county needs more legal services than a retained attorney can provide may be an appropriate arrangement for some jurisdictions. The local government that follows this plan continues to retain an outside attorney, at a reduced retainer. The city's or county's costs rise at first as it picks up the salary for a full-time younger attorney. The retained attorney can devote most of his or her time to private law practice, which is typically more remunerative than representing local government, while still being available to the council or commissioners to counsel them on policy questions. The retained attorney will also be available to the staff attorney when the staff attorney feels that guidance or supervision would be appropriate for certain issues. As the staff attorney gains experience, the governing board, manager, and department heads should come to rely on his or her advice in his or her areas of expertise. It is important for the two attorneys to be able to get along and work well together for this arrangement to be effective.

The position of city or county attorney is a very important and sensitive one. A wide range of factors should be considered as city councils and boards of county commissioners seek to determine what amount of legal representation, at what costs, will best serve the needs of the local government and the city's or county's citizens. The best

balance of cost, experience, and service level will vary from jurisdiction to jurisdiction and from year to year. City and county governing boards should review their legal representation on a regular basis, asking questions and making adjustments as needed to ensure that they are getting what they need and pay for from the local government's lawyers.

The Clerk

The position of clerk is one of the oldest in local government, dating at least to biblical times. For example, the book of Acts in the Christian New Testament records that when a conflict arose between the people of Ephesus and the missionary Paul and his companions, the town clerk quieted the crowd and prevented a riot.²

The term *clerk* has long been associated with the written word. Indeed, an archaic definition of a clerk is a person who can read, or read and write, or a learned person, scholar, or person of letters. "Clerk" can also mean cleric or clergyman; during the Middle Ages, the clergy were among the few literate people in many European communities.

Those who can read and write can keep records for their fellow citizens; so it is that modern-day clerks are official record keepers for their cities and counties. Each city and county in North Carolina must have a clerk (G.S. 153A-111—clerk to the board of county commissioners; G.S. 160A-171—city clerk), and the most important records maintained by the clerk, such as minutes of governing board meetings, must be kept permanently for the use of future generations.³ The city council or board of county commissioners may also provide for a *deputy clerk*, who may exercise any of the powers and perform any of the duties of the clerk that the governing board specifies (for cities, see G.S. 160A-172; boards of county commissioners may rely on their general authority under G.S. 153A-76 to create offices and positions of county government to create the position of deputy or assistant clerk).

Appointment

The city clerk generally works directly for the city council, keeping the city's records, giving notices of meetings, and performing various other functions as the council requires. In mayor-council cities the clerk is almost always appointed by the council. In council-manager cities, situations vary. Some city charters in such cities provide for appointment of the clerk by the council, although in recent years some charters have been revised to specify that the clerk is to be appointed by the manager.

In the absence of a charter provision in a council-manager city, the manager will probably appoint the clerk, although the clerk will still perform duties for the council. G.S. 160A-148(1) specifies that the manager is to appoint and suspend or remove, in accordance with any council-adopted general personnel rules, regulations, policies, or ordinances, all nonelected city officers and employees "whose appointment or removal is not otherwise provided for by law, except the city attorney." G.S. 160A-171 states, "There shall be a city clerk," but it does not specify how the clerk is to be appointed, so the provision for appointment by the manager probably applies. However, both G.S. 160A-171 and G.S. 160A-172, which deals with deputy clerks, state that these officials are to perform duties required (G.S. 160A-171) or specified (G.S. 160A-172) by the council.

Under G.S. 153A-111 the board of county commissioners appoints or designates the clerk to the board of commissioners, who serves as such at the board's pleasure. The clerk performs any duties required by the board or by law. Although any county officer or employee may be designated as clerk, most counties have created a separate position with these responsibilities.

City and county clerks and their deputies have a variety of duties relating to the creation and maintenance of records and other subjects. These diverse responsibilities of clerks are the focus of this section of the article. The detailed legal requirements of the public records law with respect to records retention and access are discussed primarily in Article 8.

2. Acts 19: 23–41.

3. North Carolina Department of Cultural Resources, Office of Archives and History, *Records and Disposition Schedules for Counties and Municipalities* (Raleigh, N.C.: Office of Archives and History, various dates). The schedules may be found online at <http://www.ah.dcr.state.nc.us/records/local/default.htm>.

Record Keeping

Minutes

General rules and practices. One of the clerk's most important statutory duties is to prepare the minutes of the governing board and to maintain them in a set of minute books.⁴ The legal powers of a city and many of the legal powers of a county are exercised by the city council or board of county commissioners, respectively, and the minutes of a board's meetings are the official record of what it does.

The minutes must be "full and accurate" [G.S. 153A-42; G.S. 160A-72; G.S. 143-318.10(e)], for they are the legal evidence of what the governing board has said and done. The board "speaks" only through its minutes, and their contents may not be altered nor their meaning explained by other evidence.⁵

"Full and accurate" does not generally mean, however, that the clerk must make a verbatim transcript of a meeting's proceedings. Rather, the minutes must record the results of each vote taken by the governing board (G.S. 153A-42; G.S. 160A-72), and they should also show the existence of any condition that is required before a particular action may validly be taken.⁶ The clerk should record the full text of each motion that is introduced, including the full text of all ordinances and resolutions passed by the board. This permanent, unchanging record of board actions can be extremely important in later years to supplement and back up information sources that may be frequently revised, such as ordinance books and codes of ordinances.

Other details are also important. The minutes should state that the meeting was legally convened and show that a quorum was present at all times during the meeting. They should note the late arrival and early departure of members (including whether someone leaving was excused by the remaining members). A list of the members who voted each way on a particular question (the "ayes and noes") must be included if any member so requests (G.S. 153A-42; G.S. 160A-72).

The minutes should also show that any other legally required conditions for taking action were met—for example, that a properly advertised public hearing was held on a proposed rezoning or that an ordinance received a sufficient number of votes to be adopted finally on first reading. As another example, if the board awards a formally bid contract, G.S. 143-129(b) requires the minutes to include a record of the successful bid.

As noted earlier, minutes generally do not need to include a verbatim transcript or even a summary of the discussion that took place at the council or board of commissioners meeting. Indeed, including a detailed record of comments may well be counterproductive; the governing board may find itself spending an excessive amount of time at its next meeting discussing the details of this record, which could have been omitted altogether.

A verbatim transcript of council or commissioner proceedings may be required in one limited instance. When the governing board is sitting as a quasi-judicial body—for example, when it is considering issuance of a special-use permit under a zoning ordinance—it must act somewhat like a court, and a full transcript of the proceedings must be provided if requested by one of the parties appearing before the board.

Council and commissioner meetings need not be audio or video recorded by the city or county. (Persons attending the meeting may make their own recordings if they desire.) If the clerk or another public official does make a tape, it may be disposed of after the minutes of that meeting are approved. Should the city or county attorney or the governing board wish that meeting tapes be retained for a longer period, the board should establish a clear, uniform policy for the clerk's guidance. The city's or county's tape of a meeting is a public record available for public inspection and copying, just like the minutes of quasi-judicial proceedings are sometimes retained indefinitely in lieu of a transcript, in case they are needed later by a court or one of the parties involved in the case.

4. See N.C. GEN. STAT. §§ 160A-171 (requiring the city clerk "to keep a journal of the proceedings of the council") (hereafter G.S.); G.S. 153A-42 (requiring the clerk to the board of commissioners "to keep full and accurate minutes of the proceedings of the board of commissioners"); and G.S. 143-318.10(e) (part of the open meetings law, requiring public bodies to keep "full and accurate minutes" of their official meetings but allowing the sealing of minutes and "general accounts" of closed sessions in certain instances).

5. See *Norfolk S. R.R. v. Reid*, 187 N.C. 320, 326, 121 S.E. 534, 537 (1924) (minutes of county commissioners).

6. For a discussion of the meaning of "full and accurate minutes," see *Maready v. City of Winston-Salem*, 342 N.C. 708, 732-34, 467 S.E.2d 615, 630-31 (1996).

Draft copies of council and commissioner minutes are generally sent by the clerk to the board members several days before the meeting at which they are to be considered for approval. The circulated draft minutes are a public record that must also be made available for public inspection. (Minutes and general accounts of closed sessions that the board intends to seal, may be handed out at the meeting and taken up again once they have been approved. See the discussion of the open meetings law in Article 8.)

Council members and commissioners should carefully review the minutes and bring their suggested changes and corrections to the meeting for consideration by the full board. Although the clerk records the draft minutes for the council or the board of commissioners, the governing board itself, acting as a body, must finally determine what the minutes will include. The minutes do not become the official record of the board's actions until it approves them.

The governing board may correct minutes that it has already approved if it later finds that they are incorrect.⁷ In such a case the correction should be noted in the minutes of the meeting at which the correction is made, with an appropriate notation and cross-reference at the place in the minutes book where the provision being corrected appears.

Minutes and general accounts of closed sessions. North Carolina's open meetings law, including the rules for closed sessions, is discussed in detail in Article 8. The minutes of these sessions, like other minutes, must be "full and accurate" [G.S. 143-318.10(e)], recording the motion to go into the session; the purpose of the closed session (the open meetings law specifies the purposes for which closed sessions may be held); any actions taken and the existence of the conditions needed to take particular actions; and the motion to return to open session. In addition to the minutes, G.S. 143-318.10(e) requires the board subject to the open meetings law also to keep a "general account of the closed session so that a person not in attendance would have a reasonable understanding of what transpired." The general account may be either a written narrative or audio or video recordings. If the clerk does not attend the closed session, he or she should designate someone who does attend to record the minutes and general account and should explain to that person the correct procedures for so doing.

Minutes of meetings of other public bodies. The open meetings law requires that "full and accurate" minutes also be kept of the meetings of other "public bodies" that are part of city or county government. Included are all boards, committees, and other bodies of the county that perform legislative, policy-making, quasi-judicial, administrative, or advisory functions, including appointed subcommittees of larger bodies such as the governing board. These public bodies must also keep minutes and general accounts of their closed sessions. The governing board, generally with the clerk's help, should establish procedures to ensure that the minutes of all public bodies under its direction are properly recorded and maintained. The minutes of these various public bodies may be kept either in written form or, at the option of the public body, in the form of sound or video-and-sound recordings [G.S. 143-318.10(e)]. Most minutes of local public bodies are considered permanent public records.

Ordinance Book and Code of Ordinances

Among the other records of the city council's or board of county commissioners' actions maintained by the clerk are the ordinance book (G.S. 153A-48; G.S. 160A-78) and the code of ordinances, if there is one (G.S. 153A-49; G.S. 160A-77). These books and codes are intended to make the city's or county's laws readily accessible to its citizens. Accordingly, ordinances may not be enforced or admitted into evidence in court unless they are properly filed and indexed or codified (see the requirements below). The law presumes, however, that a city or county has followed the proper procedure unless someone proves otherwise [G.S. 153A-50; G.S. 160A-79(d)].

Some of the city and county rules about maintaining ordinance books and codes differ. To avoid confusion, they are considered separately below.

City ordinance book. A true copy of each city ordinance must be filed in an appropriately indexed ordinance book. This book is separate from the minutes book and is maintained for public inspection in the clerk's office. If the city has adopted and issued a code of ordinances, its ordinances need to be filed and indexed in the ordinance book only until they are codified.

City code of ordinances. Every city with a population of 5,000 or more must adopt and issue a bound or loose-leaf code of ordinances. The code must be updated at least annually unless there have been no changes. Separate sections may be included for general ordinances and for technical ordinances, or the latter may be issued as separate books or pamphlets. Examples of technical ordinances are those pertaining to the following:

7. Norfolk S. R.R. v. Reid, 187 N.C. at 326-27, 121 S.E. at 537-38.

- building construction
- installation of plumbing
- electric wiring, or cooling and heating equipment
- zoning
- subdivision control
- privilege license taxes
- the use of public utilities, buildings, or facilities operated by the city

Also included are similar ordinances designated as technical by the city council.

The council may omit from the code classes of ordinances that it designates as having limited interest or transitory value (e.g., the annual budget ordinance), but the code should clearly describe what has been left out. The council may also provide that certain ordinances pertaining to zoning district boundaries and traffic regulations be maintained on official map books in the clerk's office or in some other city office generally accessible to the public.

The city is free to choose a code-preparation method that meets its needs. For example, the city attorney or a private code-publishing company may prepare the code in consultation with the clerk.

County ordinance book. The clerk to the board of commissioners must file each county ordinance in an appropriately indexed ordinance book, with the exception of certain kinds of ordinances discussed in the next paragraph. This book, kept separately from the minutes book, is maintained for public inspection in the clerk's office. If the county has adopted and issued a code of ordinances, it must index its ordinances and keep them in an ordinance book only until it codifies them.

The law provides that the ordinance book need not include transitory ordinances and certain technical regulations adopted in ordinances by reference, although the law does require a cross-reference to the minutes book (at least for transitory ordinances). If the board of commissioners adopts technical regulations in an ordinance by reference, the clerk must maintain an official copy of the adopted items in his or her office for public inspection (G.S. 153A-47).

County code of ordinances. A county may, but is not required to, adopt and issue a bound or loose-leaf code of its ordinances (G.S. 153A-49; G.S. 153A-50). It should update any such code annually unless there have been no changes. Counties may reproduce their codes by any method that gives legible and permanent copies. A county, like a city, is also free to select a code-preparation method that meets its needs. For example, a private code-publishing company or the county attorney may prepare the code in consultation with the clerk.

A county may include separate sections in a code for general ordinances and for technical ordinances or they may issue the latter as separate books or pamphlets. See the examples of technical ordinances in the preceding section. Also included are similar ordinances designated as technical by the board of commissioners.

The board may omit from the code classes of ordinances designated by it as having limited interest or transitory value (for example, the annual budget ordinance), but the code should clearly describe the classes of ordinances that have been left out. The board may also provide that certain ordinances pertaining to zoning area or district boundaries be maintained on official map books in the clerk's office or in some other county office generally accessible to the public.

Other Records

The city clerk is the official custodian of all other city records in addition to minutes and ordinances (G.S. 160A-171). Similarly, the clerk to the board of county commissioners and the board itself are the custodians of many other county records.⁸ Governing board resolutions; contracts; the correspondence of the governing board and the mayor or chair; signed oaths of office; copies of legal and other notices; financial and personnel records; and a variety of miscellaneous documents (for example, board members' travel records and applications from citizens to be appointed to various local government boards) are all to be maintained in the clerk's office or under the clerk's guidance.

8. See G.S. 132-2, which provides that the person in charge of an office having public records is the custodian of those records.

The clerk (in the case of cities) or the clerk and board of commissioners (in the case of counties) have primary responsibility for ensuring that local government records are kept safely, are accessible for use by the public and local officials (except as restricted by law), and are disposed of in accordance with the appropriate schedule for records retention and disposition promulgated by the North Carolina Department of Cultural Resources, Division of Archives and History.⁹

This is the case regardless of whether the records are under the clerk's immediate, day-to-day control, or are kept and used in another local government office. As noted earlier, records access and disposition are discussed in detail in Article 8.

Notice Giving

The clerk is usually responsible for giving notice of governing board meetings and for a variety of other public notices. Giving notice of all meetings of the city council is a statutory responsibility of the city clerk (G.S. 160A-171), and it is a common practice for county clerks to give notice of all commissioners' meetings. In addition, both city and county clerks are statutorily responsible for keeping on file up-to-date regular meeting schedules of all public bodies that are part of city or county government, respectively. By making these schedules available for public reference, the clerk gives the notice of regular meetings that the open meetings law requires [G.S. 143-318.12(a)]. Both city and county clerks often handle the posting and distribution of special-meeting notices for other city or county boards as well. Clerks frequently oversee the legal advertisements required for public hearings, bid solicitations, bond orders, and other matters.

Oaths of Office

The clerk is one of the few officials who may administer the oaths of office [G.S. 11-7.1(a)] that are required of elected and appointed city and county officers (G.S. 153A-26; G.S. 160A-61). The clerk should also take such an oath. Deputy clerks, when discharging the clerk's duties, are also permitted to administer oaths as long as they are themselves sworn officers (G.S. 11-8). The text of the required oath of office is found in Article VI, Section 7, of the state constitution. The oaths in G.S. 11-7 and 11-11 are sometimes administered in addition to the constitutional oath, although this is not required by law.¹⁰ A signed copy of all oaths administered to city or county officials must be filed with the clerk (G.S. 153A-26; G.S. 160A-61).

Closing-Out Sales (City Clerks) (G.S. 66-76 to 66-85)

The city clerk is responsible for enforcing within the city limits the state's law regulating all going-out-of-business and distress sales [G.S. 66-77(a)]. The clerk must deal both with the false advertising claims of merchants who are not really going out of business, and with the differing statutory rules that apply depending on whether a merchant is holding a "going-out-of-business sale" (the merchant is really closing its doors) and or a "distress sale" (going out of business is possible or anticipated or the seller is forced to conduct the sale because of difficult business conditions). Regardless of the type of sale, the clerk must ensure that unhappy failing merchants comply with what they may well regard as intrusive state requirements regarding inventories, length of sales, and the like. The clerk should generally seek the advice and cooperation of the city attorney, the city police department, and other city officials in performing his or her statutorily mandated duties in this area.

General Assistance to the Governing Board

Research and General Assistance

In addition to the responsibilities previously outlined, clerks must perform other duties "that may be required by law or the [governing board]" (G.S. 153A-111; G.S. 160A-171). Individual board members or the board as a whole frequently call on the clerk to find answers to questions. They may ask the clerk to learn how others have solved a

9. See the online publications cited in note 3.

10. For a discussion of the form of oath to be taken by North Carolina public officials, see Joseph S. Ferrell, "Questions I Am Frequently Asked: What Form of Oath Should a Public Officer Take?" *Popular Government* 62 (Fall 1996): 43.

particular problem, to find sample ordinances for the attorney, or to search the minutes for information about the actions of a previous board. Individual members also look to the clerk for help in arranging official appointments and making official travel plans.

The governing board can help the clerk and its other professional staff (the attorney and the manager or administrator) serve it more effectively by remembering the limits of these professionals' roles. For example, the clerk generally performs research and provides information for the benefit of the entire board, just as the attorney serves and provides legal advice for the entire board's benefit. In addition, board members can help their professional staff by remembering the limits of staff members' time and energy in making individual requests.

Agendas and Preparations for Meetings

One of the most important services that the clerk provides to the city council or board of county commissioners is assistance with preparations for meetings. The clerk is usually involved in preparing the tentative agenda for governing board meetings and in compiling background information for the board's agenda packet. He or she may also arrange for the recording of meetings and may set up other audiovisual equipment and the meeting room.

Clear procedures for handling these matters can serve both the governing board and the clerk. The board should establish and enforce a realistic schedule for placing items on the agenda that allows adequate time to compile and duplicate background materials, and it should clearly state any preferences concerning the order of items on the agenda. As part of his or her meeting-preparation and post-meeting procedures, the clerk is required by law to comply promptly with public and press requests for information about upcoming gatherings and for access to minutes (including draft minutes), tapes, and other records of prior meetings. (For more information, see the discussion of the laws governing access to public records in Article 8.)

Information Source

The clerk is sometimes described as "the hub of the wheel" in local government because of the central role that he or she plays in the government's communication network.¹¹ Clerks provide information daily to governing board members, city or county employees, other government officials, citizens, and the press. A clerk in a larger North Carolina county expressed the following thoughts about her role:

Your description of a clerk as the hub of the wheel is much the way I think of my position here. The clerk is the hub and serves as one of the major sources of information on board actions. I communicate daily with the commissioners, the county manager, and the county attorney. I interact frequently with the planning director, other department heads, other government employees, and the press. The clerk also serves as a link between citizens and government. One of my primary functions is to provide information.¹²

A clerk in a medium-sized North Carolina city had similar thoughts about her position.

Basically my office is an information office. I am in the center of things because as clerk I am usually more accessible than the mayor, council members, and other city officials. I have immediate access to information because I am on the front line in the city council meetings. I communicate daily with the mayor, the city manager, and various department heads, depending on what is going on. My office has quite a bit of contact with the newspapers, and we get anywhere from fifteen to twenty calls a day from the general public.¹³

Dealing with such a wide variety of information requests requires tact, judgment, empathy, organizational skills, energy, and a good sense of humor. Although clerks work *for the council* or *for the board of county commissioners*, they truly provide *public* service—helping the press understand the meaning of a complicated motion, assisting a citizen in finding the correct person to help with a complaint, keeping department heads advised of governing board

11. Carolyn Lloyd, "The Hub of the Wheel," *Popular Government* 55 (Spring 1990): 36–43.

12. Lloyd, "The Hub," 38.

13. *Id.*

actions, and keeping board members informed of administration proposals. As local government becomes larger and more complicated, the clerk's role as a professional, dispassionate provider of information to citizens, government officials, and the media becomes more and more important.

Combination of the Clerk's Position with Other Responsibilities

Many clerks perform still other tasks. City clerks are often tax collectors, and some serve as purchasing agents. City and county clerks may also be the personnel or finance director, manager, assistant manager, or assistant to the manager.¹⁴ In North Carolina's smallest towns the clerk may be the only administrative official and may have to function in every role, from substitute operator of the waste treatment plant to zoning administrator.

Wearing many hats can be both stressful and invigorating for clerks as well as other public servants. Governing boards can take two important steps to help insure that their cities and counties continue to attract highly competent clerks and other employees who can perform the varied duties of their offices well or can blend their primary position effectively with other roles. First, they can provide employees with adequate authority as well as responsibility. Second, they can offer sufficient financial rewards to make government service an attractive career choice.

Professionalism and Continuing Education

City and county clerks have two of the most active professional associations of public officials in North Carolina. The North Carolina Association of County Clerks to the Boards of County Commissioners and the North Carolina Association of Municipal Clerks are dedicated to improving the professional competency of clerks through regular regional and statewide educational opportunities. To quote from a brochure published by the county clerks' association, such professional groups provide clerks with "opportunities to exchange ideas and techniques relating to their jobs," making them "better able to create and improve efficiency in their individual offices."¹⁵

In cooperation with the Institute of Government and the International Institute of Municipal Clerks, the associations help to sponsor a nationally recognized, examination-based certification program that culminates in receipt of the designation of "Certified Municipal [or County] Clerk." They also provide opportunities for experienced clerks to obtain the continuing professional education needed to remain certified, or to go on to earn an advanced "Master Clerk" designation.

In addition to conducting educational programs, both associations also directly assist clerks on the job. For example, the associations operate mentoring programs to provide guidance for new clerks, and they publish reference guides to assist clerks in their day-to-day work.¹⁶ Clerks also exchange ideas through a very active listserv, Clerk-Net, maintained by the School of Government with the cooperation of the two clerks' groups.¹⁷

Clerks are also involved at the state level in potential legislation and other matters of interest. City clerks work with other municipal officials through permanent representation on the Board of Directors of the North Carolina League of Municipalities and through service on League committees. Similarly, county clerks serve on various committees of the North Carolina Association of County Commissioners.

14. A. Fleming Bell, II, "Facts about North Carolina's Clerks," *Popular Government* 55 (Spring 1990): 43, and *County Salaries in North Carolina 2005*, 8, compiled by the MAPS Group for the School of Government. The *Popular Government* article includes information about the percentages of clerks who were performing various other duties at the time that it was written. *County Salaries* is an annual survey that is available exclusively online from the School of Government at <http://sog.unc.edu/pubs/electronicversions/csalindex.htm>. It provides specific information about which county clerks also hold other positions.

15. North Carolina Association of County Clerks to the Boards of County Commissioners, Brochure for 1994 Clerks' Conference, Winston-Salem, N.C., March 24–26, 1994.

16. The city clerks' *Reference Guide* is available online through a link at <http://sog.unc.edu/organizations/clerks/ncamc/index.html>.

17. Clerk-Net, the clerk's listserv, can be found at <http://sog.unc.edu/organizations/clerks/listserv.html>.

Additional Resources

Lloyd, Carolyn. "The Hub of the Wheel," *Popular Government* 55 (Spring 1990): 36–43. Additional information about the role of county and city clerks may be found in this article, which is based on interviews with several clerks.

MAPS Group for the Institute of Government. *County Salaries in North Carolina 2005*. Chapel Hill: N.C.: Institute of Government, The University of North Carolina at Chapel Hill, 2005. This is an excellent source for information about retainer arrangements for county attorneys and the salaries of county attorneys and county clerks.

North Carolina Association of County Clerks to the Boards of County Commissioners, *Job Descriptions, Clerk and Deputy Clerk*, <http://www.nccountyclerks.org/jobdesc.htm>. This site provides detailed job descriptions for the positions of county clerk and deputy clerk. The clerk job description has been officially endorsed by the Board of Directors of the North Carolina Association of County Commissioners.

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The portion of this article on the attorney has been adapted from Grainger R. Barrett, "County Legal Representation: Retained or Full-Time County Attorney?" *Local Government Law Bulletin* 20 (October 1980), published by the Institute of Government. The materials on the clerk are based on "City and County Clerks: What They Do and How They Do It," *Popular Government* 61 (Summer 1996): 21–30, by A. Fleming Bell, II.

