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

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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, or to engage in programs, services, or activities that the local government could have undertaken in directly.

For example, a local unit may contract with 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 local 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. Instead of paying dues, the local unit should enter into a contract with the organization to fund 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 contract with and 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 payments to private entities fall within the contours of the unit’s constitutional and statutory authority. Before making entering into contracts with 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. 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 contracts with a private entity for a particular purpose, does the local government have any obligation to make sure that the public 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 disbursed 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 that it fully performed its



contract obligations. (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

- canons.sog.unc.edu/?p=6837
- www.ncga.state.nc.us/Legislation/constitution/article5.html
- 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