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Coates' Canons NC Local Government Law

Donations to Local Governments

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For many this is the season of giving. In that spirit, this post addresses frequently asked questions about donations to local governments.

May a local government or public authority (collectively referred to as “local unit”) accept donations of real or personal property (including money and gift cards)?

Yes. A local unit may “acquire and hold any property and rights of property, real and personal, that may be devised, sold, or in any manner conveyed, dedicated to, or otherwise acquired by the [local unit.]”

G.S. 153A-11 (counties); **G.S. 160A-11** (municipalities). (The boards of other local governments and public authorities have similar authority.) As discussed below, however, the unit must have statutory authority to use/spend the donation for the purpose(s) that it is intended.

Who may accept a donation on behalf of a local unit?

A local unit’s governing board exercises the corporate powers of the unit, including the authority to accept donations of real or personal property. *See, e.g., G.S. 153A-12* (counties); **G.S. 160A-12** (municipalities). The governing board may delegate the authority to receive donations to one or more staff members, though. Some boards authorize the manager/ administrator, or other staff members, to accept any donations of personal property (including money) to the unit. Other boards give a more limited delegation of authority to specific staff members. For example, a board may allow the manager/administrator, or a department head, to accept donations of personal property only up to a certain maximum monetary value (requiring that donations of property over this value be formally accepted by the board). Similarly, a board may allow employees to accept donations for general purposes but mandate board approval of certain earmarked donations. Although not legally required,

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most units require grants of real property to be formally accepted by the board. Dedications of real property interests, on the other hand, are often accepted informally, by the unit maintaining and/or otherwise exercising control over the property.

May a donor specify the particular program, project, or service to which the donation may be applied?

Yes, as long as the local unit has statutory authority to spend money for, or otherwise participate in, the purpose for which the donation is earmarked. A local unit may not receive a donation for a program, service, or project that the unit does not have authority engage in. For example, a city may accept a donation of cash, other personal property, or real property to support the city's senior center. Cities (and counties) have broad authority to establish programs "for the assistance and care of its senior citizens including but not limited to program for in-home services, food service, counseling, recreation and transportation, and may appropriate funds for such programs." **G.S. 160A-497**. A city, however, generally may not accept a donation (of any type) to support local public schools. That is because, with limited exception, cities do not have statutory authority to support public schools. A county could accept most donations for public school purposes because counties have broad statutory authority to support this function. Even a county, however, could not accept a donation to subsidize a particular school activity that the county does not have statutory authority to support.

Local units have to be particularly careful about accepting donations in a pass-through capacity. If the unit cannot support another entity directly, it may not do so indirectly by collecting donations on behalf of the entity.

Must a local unit accept a donation?

No. A local unit always has the right to reject an offered donation. It must reject the offer if the local unit does not have statutory authority to engage in the activity to which the donation is directed. A local unit may choose to reject a donation even if it has statutory authority to support the earmarked purpose. Some proposed donations come with too many "strings" attached. Other proposed donations might cause the local unit to deviate from its program or project priorities. Still others may impose significant administrative burdens. A unit may reject an offered donation for any of these reasons, or for no reason at all.

May a local government solicit donations for its own programs, projects, or services?

Yes. A local unit likely has inherent authority to spend public funds to help solicit broader contributions to support its programs and projects. Solicitations can take many forms – from a simple call-to-action by a staff member to a formalized marketing effort. Local units are increasingly using social media

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platforms to encourage crowdfunding of particular government programs and projects.

A local unit also has specific authority to conduct a fundraising raffle, as long as the raffle complies with the provisions in **G.S. 14-309.15**. Specifically, the raffle is lawful if: (1) the maximum cash prize value is limited to \$125,000, or the real property value is limited to \$500,000; (2) the raffle is not held in conjunction with bingo; (3) at least 90% of the net proceeds of the raffle are used for local government purposes; and (4) none of the raffle proceeds are used to pay any person to conduct the raffle or to rent the space where tickets are received or sold or the drawing is conducted.

Local units are generally exempt from the requirements and prohibitions imposed by the state solicitation law (**G.S. Ch. 131F**). It is up to the unit's governing board to set the appropriate scope and degree of the unit's solicitation activities, which likely will vary on the nature of the program or project for which support is requested. A unit's employees are not empowered to solicit funds on behalf of the unit except as approved by the board.

Is a donation to a local unit tax deductible?

Maybe. The answer to this question depends on the type of taxpayer, the taxpayer's filing status, and whether or not the donation is used by the local unit for a public (governmental) purpose. In Publication 526, the IRS lists local governments as among the types of organizations that qualify to receive deductible contributions, but only if the contributions are used for a public purpose. That means that donations to a local unit generally will be tax deductible if the donations are used for a governmental purpose and if the taxpayer otherwise qualifies to take the deduction.

A local unit should never guarantee that a particular donation will be tax deductible, though. Instead the unit may provide a written receipt of the donation. At a minimum, the receipt should include the following information:

- Name of local unit and legal status under state law (county, municipality, etc.).
- Amount donated (if cash or cash equivalent) or description of the property donated.
- Purpose to which donation will be used. (This is important because only donations to local governments for public purposes qualify for tax deduction.)
- Date the donation was received.
- Either a statement that "no goods or services were received in return for the donation" or, if the donation was \$75 or more, a good faith estimate of the value of goods/services provided in exchange for the donation (if the goods/services were more than insubstantial benefit).
- A statement indicating that the donor should consult with a tax professional about the tax implications of the donation under both state and federal law.

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Are there restrictions on how monetary donations may be expended?

Yes. No monies may be expended by a local unit unless the unit has statutory authority to expend monies for the particular program, activity, or project. As indicated above, donors may place additional restrictions on how donated funds may be expended. A local unit must treat any donor restrictions in the same manner as it does statutory earmarks on the revenue.

It is also important to remember that the Local Government Budget and Fiscal Control Act (LGBFCA) applies to monetary donations to the same extent that applies to tax proceeds and other revenues. The daily deposit statute (**G.S. 159-32**) mandates that all monies, including any monetary donations, “collected or received by an officer or employee of a local government or public authority” be deposited daily “with the finance officer or in an official depository” or be submitted to a “properly licensed and recognized cash collection service.” Similarly, the budgeting statutes prohibit the expenditure of any funds by a local unit, unless those funds are first recognized as revenue in the annual budget ordinance (or a project/grant ordinance) and appropriated by the governing board to a particular department, function, or project for expenditure. *See G.S. 159-8; G.S. 159-13.* This requirement applies to all monetary donations, including those earmarked for specific departments, programs or projects. And, of course, the **disbursement process** applies to the use of donated monies for specific expenditure items. *See G.S. 159-28.*

Are there restrictions on how (non-monetary) personal and/or real property donations may be used?

Maybe. The answer to this question likely depends on how the property is used/treated by the local unit. As discussed by Frayda Bluestein [here](#), most local units are required to follow specific statutory procedures for disposing of surplus government property. (Norma Houston provides step-by-step procedures for disposing of most types of government property [here](#).) These procedures apply to personal and real property that is owned, but no longer needed, by the local entity.

Sometimes, however, a local unit receives donations of personal property to support a particular program. For example, a county social services department might receive donations of clothing or household items to help support its foster program, or other community outreach efforts. Must the county follow one of the disposal of property procedures noted above before distributing the donated items to community members? The practical answer to this question is no. The legal answer likely is no, too. If a local unit has authority to undertake a particular program, and donations are intended to support that program, a unit likely can treat the distribution of the donations to community members as

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a “use” of the donated items, instead of a disposal of surplus property. If a local official has any questions about whether or not a disposal of property statute applies to a particular distribution, he/she should consult with the unit’s attorney.

May a unit treat donations of gift cards the same as monetary donations for purposes of the Local Government Budget and Fiscal Control Act (LGBFCA)?

Sometimes. In recent years, local units have reported receiving donations of gift cards—some that are vendor specific (such as Walmart or Amazon cards) and some that are general bank gift cards. The LGBFCA does not directly address gift cards. There are a few relevant provisions (daily deposit, budgeting, and disbursement process), however, that may or may not apply, depending on how the unit treats/uses the gift card.

Daily Deposit Requirement

The daily deposit requirement applies to “monies” collected or received by a local unit. Gift cards generally are not included in the definition of money. Therefore, the daily deposit requirement does not apply, regardless of the type of gift card or how the unit uses it. This interpretation makes practical sense because it would be impossible to deposit most gift cards in an official depository account. Because of the nature of gift cards, though, a local unit should adopt internal control policies that include a clear chain of custody of the cards until they are used. And the cards should be kept in a safe or other locked space within the unit.

Budgeting Requirement

For purposes of the budgeting requirement, a local unit must handle a gift card that it treats as a cash equivalent differently than a gift card that it treats like other personal property.

If a local unit treats a gift card as a cash equivalent, such that the unit’s staff members use the gift card to purchase supplies or services, the unit must include the amount of the gift card as revenue in its budget ordinance. The governing board must then appropriate the amount of the gift card to a particular department, function, or project for expenditure. Note that the governing board may estimate the amount it expects to receive in donations, including “cash equivalent” gift card donations, and make commensurate appropriations to particular departments, functions, or projects, in the initial budget ordinance. If it did not do this, then the board will have to amend the budget ordinance at the time the gift cards (or other donations) are received.

If, instead, the unit treats a gift card as other personal property, such that it distributes the card, itself, to a program participant, the amount of the card does not have to be included in the budget ordinance.

This type of gift card should be handled the same way as a donation of clothing, food, or other

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program-specific personal property.

Disbursement Requirement

For disbursement purposes, again, a local unit must handle a gift card that it treats as a cash equivalent differently than a gift card that it treats like other personal property.

If a local unit treats a gift card as a cash equivalent, it should consider it part of its petty cash fund. The LGBFCA allows a local unit to maintain a petty cash policy if the unit's governing board adopts an ordinance authoring such a policy. Treating the gift cards as a form of petty cash allows the gift cards as to be used as a lawful means of payment under G.S. 159-28(d). Gift card expenditures should be documented in the same manner as other petty cash transactions.

If a local unit treats a gift card as other personal property, it may simply distribute the card according to the particular program guidelines and the unit's internal control procedures.

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Town of Woodfin

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Woodfin, NC 28804
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Resolution: 2022- ## (ex: 2021-03 / Year-Resolution #)

Passed _____

RESOLUTION AUTHORIZING THE TOWN MANAGER TO ACCEPT DONATIONS

WHEREAS, a unit of local government may acquire and hold any property and rights of property, real and personal, that may be devised, sold, or in any manner conveyed, dedicated to, or otherwise acquired by the municipality per NC G.S. 160A-11, and

WHEREAS, the Town's governing board exercises the corporate powers of the unit, including the authority to accept donations or real or personal property, NC G.S. 160A-12, and the governing board may delegate the authority to receive donations to one or more staff members.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE TOWN OF WOODFIN THAT:

Section 1: The Woodfin Town Council, pursuant to NC G.S. 160A-12, may delegate broad authority to the Town Manager, or designee, to accept donations including grant awards on behalf of the Town.

Section 2: The Town Manager, or designee, is hereby authorized to accept donations or grants for constructing, expanding, maintaining, and operating any project or facility, or performing any function, which the town may be authorized by general law or local act to provide or perform with the following exceptions:

- a. Any donation of Real Property must be approved by the Town Council prior to acceptance.
- b. Grant awards that include funding for full or part-time permanent staff positions not previously authorized as part of the Town's annual operating budget must be approved by the Town Council prior to acceptance.
- c. Any grant or donation designated for services not specifically authorized in NC G.S. 160A.

Section 3: Expenditure of any funds by a Town, unless those funds are first recognized as revenue in the annual budget ordinance (or a project/grant ordinance) and appropriated by the Town Council to a particular department, function, or project for expenditure, **G.S. 159-8; G.S. 159-13**, are prohibited. All expenditures related to the donation of real or personal property

including monetary donations must be budget for in advance in accordance with all provisions of the NC Budget and Fiscal Control Act, G.S. 159-3.

Section 4: This resolution shall become effective upon adoption.

Adopted: MM/DD/YYYY (date of adoption)

Effective: MM/DD/YYYY (date resolution effective)

Ayes _____

Nays _____

Abstains _____

M. Jerry VeHaun
Mayor

Attest: _____
Ryan Vinson
Town Clerk