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# Sheriff's Office Finance Reference Manual 2024

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# 1. Budgeting

## 1.1 Local Government Budget and Fiscal Control Act (LGBFCA)

G.S. §§ 159-8, 159-28, 159-32, and 159-34

The sheriff is subject to the provisions of Chapter 159 of the General Statutes of North Carolina, the Local Government Budget and Fiscal Control Act (LGBFCA). The LGBFCA requires the county's annual budget ordinance to be balanced and money to be budgeted before being spent. G.S. § 159-8. Specifically, as an official of county government, the sheriff is subject to the provisions of G.S. § 159-28, § 159-32, and § 159-34. See **Attachment 1**, which is a letter from Assistant Attorney General Douglas Johnston to Joseph C. Ward, Jr., dated July 21, 1989, addressing the actions that sheriffs should take upon receipt of funds from seizures, fines, and forfeitures dispersed by federal courts.

Generally speaking, G.S. § 159-28 requires that there be an appropriation in the budget ordinance with respect to any obligation, (i.e., required payment of money) and that the sheriff obtain a preaudit certificate before "incurring" (agreeing to) that obligation. G.S. § 159-28 further requires that the preaudit certificate be signed by the county finance officer or any deputy finance officer approved for this purpose by the local governing board, however, the statute has been amended to allow the use of an automated financial computer system to complete the preaudit, subject to several system requirements as specified in the statute. G.S. § 159-28 also specifies that payments must be made only in specific formats (i.e., check, bank wire transfer, etc.). Any local officer may be held liable for any sums incurred in violation of the statute and obligations that are incurred in violation of G.S. § 159-28 are invalid and unenforceable.

G.S. § 159-34, in summary, requires "[e]ach unit of local government" to have its accounts audited as soon as possible after the close of each fiscal year by a certified public accountant or other accountant certified by the Local Government Commission (Commission).

G.S. § 159-32 is discussed more extensively in Section 4.2. below.

## 1.2 Annual Budget Process/Calendar

G.S. §§ 153A-101, 159-8, 159-9, 159-11, 159-13, 159-32, and 159-34

The board of county commissioners directs the fiscal policy of the county pursuant to G.S. § 153A-101. The budget for the sheriff's office is appropriated by the board of county commissioners through the county's budget process and this process is governed by the Local Government Budget and Fiscal Control Act (LGBFCA).

G.S. § 159-8 dictates that each local government and public authority shall operate under an annual balanced budget. The budget is balanced when the sum of estimated net revenues and appropriated fund balances is equal to appropriations. The budget ordinance for a unit of local government must cover a fiscal year beginning July 1 and ending June 30.

The proposed budget for the following fiscal year, together with a budget message providing an explanation of the various provisions, must be submitted to the governing board by the county's budget officer no later than June 1. G.S. § 159-11. The budget message should contain a short explanation of the governmental goals fixed by the budget for the budget year, should explain important features of the activities of the budget, and should set forth reasoning for changes made from the previous year. No earlier than 10 days after the day the budget is presented to the board and no later than July 1, the governing board must adopt a budget ordinance. G.S. § 159-13.

The governing board may only make appropriations in the budget ordinance by department, function, or project. G.S. § 159-13(a). Any appropriations in the budget ordinance at a more specific level than by department, function, or project (i.e. “line-items”) are simply an accounting measure to keep track of monies and have no legal significance. Neither the board of county commissioners, nor the county budget officer or county finance office can direct the sheriff as to how to spend appropriated money if there is a balance left at the department or function level at which the board appropriated the funds.

The board of county commissioners may not direct the sheriff as to how to implement budget changes at the line-item level.

Each local government must appoint a budget officer to serve under the governing board. In counties having the manager form of government, the county manager is the budget officer pursuant to G.S. § 159-9. Counties not having the manager form of government may impose the duties of budget officer on the county finance officer or any other county officer or employee, **except the sheriff who cannot serve as county budget officer**. G.S. § 159-9. The budget officer is the individual responsible for preparing the budget for consideration by the governing board. G.S. § 159-11.

The sheriff should request that the board of county commissioners designate a sheriff’s staff member to be authorized by the governing board, per G.S. § 159-28(a1), as the assistant/deputy county finance officer to have the authority to sign documents such as purchase orders, travel vouchers, etc. See also G.S. § 159-25(b).

Each unit of local government must have its accounts audited as soon as possible after the close of each fiscal year per G.S. § 159-34. The audit must be performed by a certified public accountant, or an accountant certified by the Local Government Commission (Commission) as qualified to audit local government accounts. The auditor is selected by and reports directly to the governing board of the unit of local government. The purpose of the audit is to evaluate compliance with the LGBFCA and to ensure that the financial statements are in compliance with generally accepted accounting principles. This audit includes the financial transactions of a sheriff’s office.

**Attachment 2** is an email exchange with Kara Millonzi, Robert W. Bradshaw Jr. Distinguished Professor of Public Law and Government at The University of North Carolina at Chapel Hill School of Government, which provides a practical overview of the budget process. Although it addresses a specific situation, the expenditure of drug seizure monies to purchase a piece of equipment, it still provides helpful insight into the budget process with which sheriffs must comply.

**Attachment 3** is the 2023-2024 calendar of important financial duties for city and county officials published by The University of North Carolina at Chapel Hill School of Government.

**Attachment 4** is a Coates’ Canons blog post from Kara Millonzi, Robert W. Bradshaw Jr. Distinguished Professor of Public Law and Government at The University of North Carolina at Chapel Hill School of Government, which discusses amending a newly adopted budget ordinance prior to July 1.

**Attachment 5** is Section 10 of the North Carolina Department of State Treasurer’s Policy Manual for Local Governments which contains a wealth of information on the budgeting process.

### 1.2.1 Budget Requests G.S. § 159-10

Requests from county offices and departments should be submitted to the budget officer before April 30<sup>th</sup> (includes both budget requests and revenue estimates) with such supporting information and justification

as the budget officer may prescribe. The elected official or the department head is responsible for transmitting budget requests. Therefore, the sheriff is responsible for preparing the sheriff's office budget request under the guidelines prescribed by the budget officer. Following the county guidelines on budget requests applies even though the sheriff's office is not a county department.

Practical Tip: For new initiatives, requesting budget adjustments outside the normal budget process tends to yield more positive outcomes. For instance, approaching your county commissioners and county finance director and explaining to them, outside of the submitted formal paperwork, the need for the new budget request(s) and how the new funds will benefit your office, and in turn the county, can help ensure that the new budget request is carefully considered during the budgeting process.

### 1.3 Budget Ordinance Applicability to the Sheriff's Office

G.S. §§ 159-8(a), 159-13.1, 159-13.2

No local government or public authority may expend any moneys, regardless of their source (including moneys derived from bond proceeds, federal, state, or private grants or loans, or special assessments), except in accordance with a budget ordinance or project ordinance adopted under G.S. § 159-13.2, through an intragovernmental service fund or trust under G.S. § 159-13.1, or through a custodial fund properly excluded from the budget ordinance.

All money spent by the sheriff's office, even if earmarked for law enforcement, must be budgeted and approved by a budget ordinance before being spent. Any restrictions the county wishes to place on a budgeted item must be contained within the budget ordinance enacted by the county. For example, the sheriff may establish policy on how budgeted travel expenses or training expenses are to be used (such as limits on meal expenses per day or training classes per employee per year) unless the enacted budget ordinance includes specific limitations on a budgeted item.

A local government may authorize and budget for a capital project (i.e. jail renovation) or a grant (i.e. homeland security) project either in its annual budget ordinance or in a project ordinance pursuant to G.S. § 159-13.2. Project ordinances can be advantageous for a number of reasons: 1) they cover the life of the project rather than the fiscal year of operation; 2) they can be adopted at any governing board meeting without public hearing; and 3) they provide flexibility for unexpected sources of revenue, such as federal forfeitures for example.

**Attachment 6** is a Coates' Canons blog post from Kara Millonzi, Robert W. Bradshaw Jr. Distinguished Professor of Public Law and Government at The University of North Carolina at Chapel Hill School of Government, which provides details on and answers to frequently asked questions regarding adopting the budget ordinance.

### 1.4 Budget Surplus

If there are unexpended funds remaining at the end of a fiscal year, they revert to the county's general fund balance. Only the board of county commissioners can authorize their expenditure in the new fiscal year.

### 1.5 Mid-Year Budget Cut

G.S. §§ 153A-92(b)(3), 153A-103

The board of county commissioners is authorized to cut budget appropriations during the fiscal year only by enacting an amended budget ordinance. However, the board of county commissioners: 1) must still honor any contractual financial commitments; 2) cannot reduce the sheriff's salary during the sheriff's

current term of office (unless the sheriff agrees to the reduction or unless the Local Government Commission orders a reduction); and 3) cannot fund less than two deputy sheriff positions per G.S. § 153A-103.

Once a board of county commissioners enacts a budget ordinance, the county is obligated to abide by the ordinance and distribute monies as appropriated through the budget. See **Attachment 7**, *Hubbard v. County of Cumberland*, 143 N.C. App. 149, 154 (2001).

In *Hubbard*, the North Carolina Court of Appeals held: "Defendant County clearly has a statutory duty to abide by the terms of the budget ordinance, which it approves. The Board of Commissioners is not obligated to accept a submitted budget proposal from a sheriff, of course, but once it approves a budget...and enacts...the budget ordinance, the County is obligated to abide by the budget ordinance and pay out monies appropriated therefor."

Therefore, ordinarily, for mid-year budget reductions to become effective, the board of county commissioners are required to pass an amended budget ordinance pursuant to G.S. § 159-15.

However, there is one exception to the above rule: if the board of county commissioners chooses, the board can, by ordinance or resolution, authorize the budget officer (i.e. the county manager) to transfer money from one appropriation to another within the same fund. G.S. § 159-15. If the board makes this authorization and the county budget officer exercises the authority to transfer funds without prior board approval, the county budget officer must report any transfers to the board at its next regular meeting. The board can prescribe whatever limitations and procedures for this authority it deems necessary and usually the board places a cap on the dollar amount that the budget officer can transfer without prior board approval.

For example, if the county department of social services, county department of elections, county emergency management, etc. have their budgets in the county general fund along with the sheriff's budget (and likely others), the county budget officer could, with the authorization noted above, transfer funds from the sheriff's budget to the department of social services budget, and vice versa.

Note: Such a transfer from one appropriation to another within the same funds may not be made to keep the budget balanced due to decreased revenues. Even if the board of county commissioners authorizes the budget officer to transfer monies within a fund (like the county general fund), the county budget officer may not reduce appropriations or appropriated fund balances to account for a decrease in estimated net revenues to keep the budget balanced. This action is not just a transfer between appropriations in the same fund and must be done by the board of county commissioners.

Additionally, G.S. § 153A-92(b)(3) provides that reductions in salaries and benefits that apply to the employees of a county elected official like the sheriff must also apply equally to all county employees unless the sheriff agrees to the reduction or the board of commissioners pursues the change through arbitration, pursuant to the statute.

## 1.6 Line Item, Performance, Program, Zero Based Budgets

A line-item budget focuses on dollars budgeted in relation to resources required to provide services.

A performance budget focuses on dollars budgeted in relation to services to provide, objectives to achieve, or needs to be met. It is becoming common practice in local government to justify budget requests with performance measures, especially to fund new or expanded services.

A program-based budget is a budget whose appropriations are general in nature and are to be used to accomplish a specific project or mission.

Zero-based budgeting is a budgeting technique that uses what is called a “zero” base. In other words, the budget is developed each year without regard for current year expenditures or programs. Each year, every program or department must adequately justify every expenditure it makes in order to obtain funding. In theory, all program funding requests stand an equal chance of being approved, whether they are for expansions of current programs, maintenance of current programs, or new programs.

For additional information on these various approaches to budgeting, see page 43 of [Attachment 5](#).

## 1.7 Amendments to the Budget Ordinance

### G.S. § 159-15

G.S. § 159-15 allows the board of county commissioners to amend the budget ordinance during the fiscal year as long as it remains in balance and is not otherwise restricted by the law.

The county may give the budget officer authority to move money within a fund. G.S. § 159-15.

If the board of county commissioners or the county budget officer reduce an appropriation, that reduction is at the department or function level at which the board appropriated, not at the line-item level. It is up to the agency head (usually in consultation with the county budget officer and/or county finance officer) to determine how to adjust line-item expenditures to reflect the reduced appropriation.

[Attachment 8](#) is a Coates’ Canons blog post from Kara Millonzi, Robert W. Bradshaw Jr. Distinguished Professor of Public Law and Government at The University of North Carolina at Chapel Hill School of Government, which provides details on what rules govern if and when a county can amend its budget ordinance.

## 1.8 Budget Roles

### G.S. §§ 153A-82, 153-101, 159-24, and 159-25(a)

#### County Commissioners

The board of county commissioners directs the fiscal policy of the county. G.S. § 153-101. The budget for the sheriff’s office is appropriated by the board of county commissioners through the county’s budget process.

#### County Manager

Typically, in those counties who choose to employ one, the county manager serves as the budget officer and is responsible for preparing the proposed budget and executing the adopted budget. G.S. § 159-9.

#### County Finance Officer

G.S. § 159-24 requires that each county and city government have a finance officer who is legally responsible for establishing the accounting system, controlling expenditures, managing cash and other assets, and preparing financial reports. In many counties, the county manager appoints the finance officer per G.S. § 153A-82. In counties that do not have a county manager, the governing body typically makes the appointment. Pursuant to G.S. § 159-24, the finance officer serves at the pleasure of whoever makes the



appointment.

The finance officer's duties are summarized in G.S. § 159-25. They include the duty to (1) establish an accounting system; (2) manage cash and other local government assets; (3) prepare financial reports; and (4) to disburse all funds of the local government or public authority in compliance with the Local Government Budget and Fiscal Control Act, the budget ordinance and each project ordinance.

G.S. § 159-28 also provides that the county finance officer is required to carry out preaudit obligations and disbursements. This means that the county finance officer only confirms that: (1) the purchase is a line item from the enacted budget ordinance; and (2) there is an unencumbered balance of funds for the current fiscal year available to complete the purchase.

Practical Tip: While the board of county commissioners and the county finance officer may require an agency to follow county procedures to receive budgeted funds, such as by the submission of required accounting forms, neither the board of county commissioners nor the county finance officer have the legal authority to make a judgment call as to how funds that are already budgeted through the budget ordinance are to be spent by the sheriff.

## 2. Transactions/Revenues/Funds

### 2.1 Internal Controls

It is vital to the integrity of a sheriff's office that internal fiscal controls are established to protect the sheriff, the sheriff's personnel, and the taxpayers. Examples of internal controls are segregation of duties when handling financial transactions (for example, the same person that receives funds should not deposit and/or reconcile the bank statements), use of prenumbered documents, clearly defined lines of authority for approving cash-related transactions, dual signatures on checks, monthly reconciliation of all accounts, monthly financial reports, etc.

The county finance officer has the authority to prescribe internal controls regarding the receipt and expenditure of money. Additional internal controls developed by the sheriff's office should be reviewed by the county finance officer for recommendations on improvements.

Practical Tip: Don't assume everyone is doing their job correctly no matter how long they've been doing it. "Trust but verify."

**Attachment 9** is a copy of the internal fiscal controls Mecklenburg County utilizes in cash handling, receipts, and deposits as well as in petty cash and change funds.

### 2.2 Accounting for Fees Collected by or Paid to the Sheriff

With a few exceptions, fees charged by the sheriff's office are recorded as general fund revenue and used to finance all activities accounted for in the general fund.

**Attachment 10** is a letter from Attorney General Rufus L. Edmisten to David Huskins, dated May 31, 1979, that discusses the appropriate method of accounting for certain fees collected by or paid to the sheriff.

## 2.3 Funds of Sheriff's Offices

### G.S. § 159-32

The sheriff will receive funds from many sources. All funds collected or received must be deposited into accounts established by the county finance officer or his designee under G.S. § 159-32. The county finance office has pre-established checks and balances necessary to receive and disburse funds effectively and efficiently. The disbursement of these funds may be dictated by the source of the funds, along with state and federal law. No funds are the property of the sheriff.

**Attachment 11** and **Attachment 12** are two examples of ordinances regarding sheriff's office funds - one regarding funds authorized to be placed in a special revenue fund and the other regarding funds to be placed into an agency fund.

Practical Tip: Ask the clerk to the board of county commissioners to provide you with copies for the last several years of any budget ordinance provisions that are specific to the sheriff's office and any requests for board action in the last several years that are specific to the sheriff's office.

### 2.3.1 Civil Process Fees

#### G.S. § 162-14

“Civil process” is a term used to refer to official legal documents connected to a lawsuit which directs action on the part of an individual. Examples include subpoenas, summons, orders for eviction, and writs of execution. Under G.S. § 162-14, the sheriff and the sheriff's deputies are responsible for formally serving or carrying out the orders contained in these documents, within the time specified by law anywhere within the county or upon any river, bay or creek adjoining the county.

#### 2.3.1.1 Civil Process Fees

##### G.S. § 7A-311(a)

For each item of civil process served, including summons, subpoenas, notices, motions, orders, writs and pleadings, the sum of thirty dollars (\$30.00) shall be assessed, collected, and remitted to the county. When two or more items of civil process are served simultaneously on one party, only one thirty-dollar (\$30.00) fee shall be charged.

When one item of civil process is served on two or more persons or organizations, a separate service charge is charged for each person or organization. G.S. § 7A-311(a)(1)(b).

Practical Tip: If the civil process fees are collected by the sheriff's office, the fees must be deposited daily to the county bank account in accordance with deposit requirements. In some counties, these civil process fees are collected by the clerk of court, in which case the clerk of court's office will be responsible for safeguarding and depositing the monies.

#### 2.3.1.2 Use of Civil Process Fees

##### G.S. § 7A-311(a)(1)(c)

At least fifty percent (50%) of the civil process fees collected are to be used by the county to ensure the timely service of process within the county, which may include the hiring of additional law enforcement personnel upon the recommendation of the sheriff. These fees still must be remitted to the county upon collection. G.S. § 7A-311(a).

Practical Tip: Review the amount of fees collected annually for increases in collections. The sheriff may need to request a budget adjustment during the next budget cycle to meet the demands of increased service of civil process.

### 2.3.2 Collection Assistance Fee on Court Costs G.S. § 7A-321(d)

The court retains a collection assistance fee in the amount of ten percent (10%) of any cost or fee collected by the North Carolina Judicial Department pursuant to Article 28 of Chapter 7A or Chapter 20 of the General Statutes that is remitted to an agency of the State or any of its political subdivisions, other than:

1. Costs and fees designated by law for remission to or use by an agency or program of the Judicial Department or for support of the General Court of Justice;
2. Costs and fees designated by law for remission to the General Fund; and
3. Costs and fees designated by law for remission to the Statewide Misdemeanant Confinement Fund.

The court remits the collection assistance fee to the State Treasurer for the support of the General Court of Justice.

Practical Tip: If fees are remitted directly to the sheriff and not to the clerk of court, the 10% collection assistance fee does not apply. In some counties, fees for civil process are collected by the clerk of court at the time the process is issued by the clerk for service. In other counties, the clerk of court does not collect the fee; instead, the fee is collected by the sheriff when the party presents the items to the sheriff's office for service. In this latter scenario, the 10% collection assistance fee discussed above does not apply.

### 2.3.3 Vending Revenue G.S. § 159-17.1

Money received by a public authority, special district, or unit of local government on account of operation of vending facilities must be deposited, budgeted, appropriated, and expended in accordance with the Local Government Budget and Fiscal Control Act.

**Attachment 13** is a memorandum from the North Carolina Department of the State Treasurer, dated October 1, 1984, that addresses the operation of vending facilities by local governments.

There is also a small section on this topic found on page 27 of **Attachment 5**, the North Carolina Department of State Treasurer Policy Manual for Local Governments chapter on Budgeting.

**Attachment 14** is a letter from the Attorney General's Office to James E. Hill, Jr., dated Nov. 19, 1984, which discusses whether a sheriff can contract with a vending company to operate vending machines without being compensated.

Practical Tip: Vending fund revenue is treated as general fund revenue unless you receive approval from the board of county commissioners to handle it differently. For example, if most of your vending machines are in areas that are not accessible to the public and therefore are only utilized by employees, you could request special treatment from the governing board for those revenues for an employee specific recognition program.

**Attachment 15** is an example of a budget amendment to increase the revenue allotted to the sheriff’s office from vending funds received to utilize these funds for employee recognition and other employee activities.

### 2.3.4 Executions G.S. § 162-18

In all cases where a sheriff has collected money upon an execution, if there is no bona fide contest over enforcement of the execution, the sheriff must immediately pay the into the office of the clerk of the court the money collected from which the execution issued.

**Attachment 16** is a memorandum from Special Deputy Attorney General David S. Crump to Sheriff Ernest T. Dixon, dated Oct. 4, 1985, which deals specifically with the treatment of monies collected on execution.

**Attachment 17** is a collection of sample forms to be used in proceedings under executions developed by attorney Susan D. Moore, widely recognized throughout North Carolina as an expert in the field of civil process.

Practical Tip: Only accept certified funds for payment of an execution.

### 2.3.5 Concealed Handgun Permit Fees G.S. § 14-415.19

The concealed handgun permit fees assessed by the General Statutes are payable to the sheriff. The sheriff must transmit the proceeds of these fees daily to the county finance officer to be deposited by the county finance officer. The permit fees are as follows:

Application fee .....	\$80.00
Renewal fee .....	\$75.00
Duplicate permit fee. ....	\$15.00

The county finance officer remits forty-five dollars (\$45.00) of each new application fee and forty dollars (\$40.00) of each renewal fee to the North Carolina Department of Public Safety for the costs of State and federal criminal record checks performed in connection with processing applications and for the implementation of concealed handgun permitting laws.

The remaining thirty-five dollars (\$35.00) of each application or renewal fee for a concealed handgun permit **shall be used by the sheriff to pay the costs of administering concealed handgun permitting and for other law enforcement purposes.** The county **shall** expend the restricted funds for these purposes **only**. There is no law that authorizes a county to determine for the sheriff how these funds will be allocated for any particular law enforcement purpose. However, the funds must still be budgeted within the budget ordinance before the sheriff can expend these funds. Finally, there is no law that authorizes these funds to revert to the county general fund if the sheriff is unable to use the funds to pay for the costs of administering concealed handgun permitting or for other law enforcement purposes within any specific period of time.

The permit fees for a retired sworn law enforcement officer who provides the information required in items (1) and (2) below to the sheriff, in addition to any other information required, are as follows:

Application fee .....	\$45.00
Renewal fee .....	\$40.00

1. A copy of the officer's letter of retirement from either the North Carolina Teachers' and State

Employees' Retirement System or the North Carolina Local Governmental Employees' Retirement System is required.

2. Written documentation from the head of the agency where the person was previously employed indicating that the person was neither involuntarily terminated nor under administrative or criminal investigation within six months of retirement is required.

Practical Tip: Special Revenue Funds are a practical approach to handling the sheriff's portion of these fees. Since \$35 of each application fee can only be used to pay for the cost administering concealed handgun permits and for other law enforcement purposes, it may be prudent for the county to deposit these revenues in a special revenue fund instead of being commingled with other revenues in the county's general fund. Keeping these revenues in a special separate revenue fund will make it easier to track the accumulation of these revenues and help ensure they are not unintentionally expended for purposes not authorized in the General Statutes.

### 2.3.6 Pistol Purchase Permit Fees Are No Longer Collected G.S. § 14-404 (repealed)

Effective March 29, 2023, all pistol purchase permitting laws were repealed by the North Carolina General Assembly. *See* Session Law 2023-8. Therefore, sheriffs no longer process pistol purchase permit applications and no longer collect pistol purchase permit fees.

### 2.3.7 Local Governments Now Allowed to Charge Customers Fees for Using a Charge Card, Credit Card, Debit Card, or Electronic Funds Transfer G.S. §§ 147-86.20, 159-32.1

A unit of local government, public hospital, or public authority may impose the processing or transaction fee or charge assessed against the unit as a surcharge on the amount paid by a person using "electronic payment," which is defined by G.S. § 147-86.20(2a) as "payment by charge card, credit card, debit card, or by electronic funds transfer."

**Attachment 18** is a Coates' Canons blog post by Kara Millonzi, Robert W. Bradshaw Jr. Distinguished Professor of Public Law and Government at The University of North Carolina at Chapel Hill School of Government, detailing a change in credit card procedures that now makes it easier for local governments, including counties and sheriffs, to accept credit cards for payment of fees by citizens.

### 2.3.8 Fingerprinting Fees G.S. § 14-415.19(b)

An additional fee, not to exceed ten dollars (\$10.00), must be collected by the sheriff from an applicant for a concealed handgun permit to pay for the costs of processing the applicant's fingerprints, if fingerprints are required to be taken. All funds must be deposited daily, as discussed in Section 3.2 of this publication. This fee shall be retained by the sheriff; however, the money collected must still flow through the county budget process (meaning the sheriff must submit a budget proposal and the authority to expend the funds must be contained in an enacted budget ordinance). Although the money collected must flow through the county budget process, there is no law that authorizes a county to determine for the sheriff how these fingerprinting fees collected for concealed handgun permits will be allocated by the sheriff to cover the costs associated with concealed handgun permit fingerprinting.

In addition to fingerprinting for a concealed handgun permit, other fingerprinting services are offered for

various reasons, including as a requirement for employment in certain areas such as child-care. All of these moneys collected for other fingerprinting services offered by the sheriff must also flow through the budget process (meaning the sheriff must submit a budget proposal and the authority to expend the funds must be contained in an enacted budget ordinance). Like any other revenue collected by the sheriff's office, any fee collected for providing these fingerprinting services must be deposited daily with the county finance officer or in an official depository. G.S. § 159-32. The board of county commissioners may set the fee for these fingerprinting services. G.S. § 153A-102. The sheriff may determine the fee to be charged if the board of county commissioners has not yet set the fee. However, unlike fingerprinting fees for concealed handgun permit applicants, the expenditure of the funds collected for fingerprinting services provided to other individuals is not restricted by statute or law to only the sheriff's office or only for specific purposes. Therefore, these monies will flow into the county's general fund and will be expended in the discretion of the board of county commissioners as specified in the budget ordinance.

**Practical Tip:** In some counties, revenue is accounted for in the general fund, while in other counties special revenue funds are utilized. Check with your county finance officer to see how these fees are handled. Like \$35 of each application fee for a concealed handgun permit, the entire fingerprinting fee for a concealed handgun permit applicant can only be expended by the sheriff. Depositing the fingerprinting fees into a special separate revenue fund will make it easier to track the accumulation of these revenues and help ensure they are not unintentionally expended for a purpose not authorized in the General Statutes.

### 2.3.9 Informant Funds

**Attachment 19** is a memorandum from Robert High, Director of the Fiscal Management Section of the North Carolina Department of State Treasurer, dated May 7, 1985, that suggests the use of an "imprest" fund, which is a fund that closely resembles a petty cash fund, for the handling of informant funds.

### 2.3.10 Equitable Sharing of Federally Forfeited Property; State Judicial Forfeitures

**Attachment 20** is a memorandum from W. Dale Talbert, Special Deputy Attorney General, dated July 28, 2008, which discusses the proper application of State and federal laws and regulations governing the fiscal control and permitted use of money and tangible property received by sheriffs' offices and local law enforcement agencies from equitable sharing of federally forfeited property, State unauthorized substances tax collections and State judicial forfeitures.

**Attachment 21** is the 2018 "Guide to Equitable Sharing for State, Local, and Tribal Law Enforcement Agencies," published by the United States Department of Justice which provides details to assist law enforcement agencies participating in the program by clarifying the directives they must follow to obtain and use equitably shared funds. [Note: Sheriffs should always refer to the most current version of the Guide, which is now the March, 2024 edition.]

### 2.3.11 Seized Weapons G.S. § 50B-3.1

Upon the issuance of an emergency or *ex parte* domestic violence protection order, the court must order the defendant to surrender to the sheriff all firearms, machine guns, ammunition, and permits to carry concealed firearms that are in the care, custody, possession, ownership, or control of the defendant if the court finds that any of the following have occurred:

1. The defendant has used or threatened the use of a deadly weapon or exhibited a pattern of prior conduct involving the use or threatened use of violence with a firearm against persons;

2. the defendant threatened to seriously injure or kill the aggrieved party or minor child by the defendant;
3. defendant threatened to commit suicide; or
4. the defendant has inflicted serious injuries upon the aggrieved party or minor child by the defendant.

Upon seizing the firearms and any affiliated items, the sheriff must store the firearms or contract with a licensed firearms dealer to provide storage. The sheriff may charge the defendant a reasonable fee for the storage of any firearms and ammunition taken pursuant to a protective order. The fees are payable to the sheriff. The sheriff must transmit the proceeds of these fees to the county finance officer, however the fees must be used by the sheriff and expended only to pay the costs of seizing and storing weapons pursuant to a protective order and “for other law enforcement purposes.” G.S. § 50B-3.1. These funds collected by a sheriff must still flow through the county budget process, meaning the sheriff must submit a budget proposal and the authority to expend the funds must be contained in an enacted budget ordinance.

**Attachment 22** is an example of an actual procedure utilized by a sheriff’s office for the seizure of firearms and related items pursuant to a 50B Domestic Violence Protection Order (DVPO).

### 2.3.12 Unauthorized Substances Tax Collection

G.S. §§ 105-113.105 – 105-113.113

Law enforcement officers often seize illegally possessed controlled substances or illicit alcoholic beverages which are possessed along with the fruits or instrumentalities of a crime, such as money or vehicles. Pursuant to Article 2D of Chapter 105 of the North Carolina General Statutes, an excise tax is levied on controlled substances or illicit alcoholic beverages possessed by dealers, either actually or constructively.

The Department of Revenue must remit 75% of the part of the unencumbered tax proceeds that were collected by assessment to the State or local law enforcement agency or agencies that conducted the investigation of the dealer that led to the assessment, with the remainder of the unencumbered tax proceeds credited to the State’s General Fund. If more than one law enforcement agency conducted the investigation, then each agency shall receive an equitable share based upon its contribution to the investigation. G.S. § 105-113.113.

**Attachment 23** is a memorandum from Sharon Edmundson, Director of the Fiscal Management Section of the North Carolina Department of State Treasurer’s Office, dated June 25, 2010, which provides additional information on how a local government can collect its share of unauthorized substance tax revenue.

**Attachment 24** is a Memorandum of Understanding between a sheriff’s office and a police department which facilitates sharing equal portions of the distribution of the tax proceeds.

For additional information on unauthorized substances tax collection see **Attachment 20**.

### 2.3.13 Public Records Request Copying Fees

G.S. § 132-6.2

Persons requesting copies of public records may elect to obtain them in any and all media in which the public agency is capable of providing. However, the public agency may assess different fees for different media as prescribed by law.

No public agency may charge a fee for an uncertified copy of a public record that exceeds the “actual cost” to the public agency of making the copy. “Actual cost” is limited to direct, chargeable costs related to the reproduction of a public record and does not include costs that would have been incurred by the public agency if a request to reproduce a public record had not been made.

However, if the request is such as to require extensive use of information technology resources or extensive clerical or supervisory assistance by personnel of the agency involved, then the agency may charge, in addition to the actual cost of duplication, a special service charge, which shall be reasonable and based upon the actual cost incurred.

### 2.3.14 Transportation Fees for Involuntary Commitments G.S. § 122C-251

The cost and expenses of custody and transportation of a respondent as required by the involuntary commitment procedures under State law, to the extent they are not reimbursed by a third-party insurer, are the responsibility of the county of residence of the respondent. G.S. § 122C-251(h).

The State, a city, or a county is entitled to recover the reasonable cost of transportation from the county of residence of the respondent. G.S. § 122C-251(h).

The county of residence is entitled to recover the reasonable cost of transportation it has paid to the State, a city, or a county from:

1. The respondent, if the respondent is not indigent;
2. any person or entity that is legally liable for the resident’s support and maintenance provided there is sufficient property to pay the cost;
3. any person or entity that is contractually responsible for the cost; or
4. any person or entity that otherwise is liable under federal, State, or local law for the cost.

**Attachment 25** is a memorandum from the North Carolina Sheriffs’ Association, dated Sept. 3, 2013, which explains the statutory provision that allows for the recovery of the cost and expenses associated with transporting out of county respondents pursuant to an involuntary commitment order.

### 2.3.15 Transportation of Juvenile to and from Juvenile Detention Facility G.S. § 143B-821

G.S. § 143B-821 authorizes the State to reimburse law enforcement officers for the costs of the transportation of a juvenile to and from any juvenile detention facility.

### 2.3.16 Social Security Administration Incentive Payments for Benefit Suspension 42 U.S.C. § 402(x)

Social Security benefits are suspended if an otherwise eligible person is confined in a jail, prison, or other penal institution for more than 30 continuous days due to conviction of a crime. The Social Security Administration provides incentive payments to correctional facilities for information that leads to a Retirement/Survivor/Disability (RSDI) benefit suspension. Note: This does not apply to pretrial detainees.



**Attachment 26** is a memorandum from Carolyn Colvin, Deputy Commissioner of Operations for the Social Security Administration, to the Mecklenburg County Sheriff's Office, dated March 28, 2000, on changes in the law regarding reporting inmates to the Social Security Administration.

**Attachment 27** is a copy of the Incentive Payment Memorandum of Understanding between the Mecklenburg County Sheriff's Office and the Social Security Administration.

Note: The suspension of Social Security benefits to post-conviction incarcerated individuals and incentive payment agreements between confinement facilities and the Social Security Administration referenced in **Attachment 26** and **Attachment 27** are reflective of current law, pursuant to 42 U.S.C. § 402(x).

### 2.3.17 Criminal Appearance Bond Forfeiture Judgment G.S. § 7A-311

For every execution sale, the sheriff collects 5% on the first \$500 and 2½% on all sums over \$500, plus the necessary expenses of sale. For criminal appearance bond forfeitures, if an execution has been issued against the defendant for the forfeiture pursuant to G.S. § 15A-544.7 but has not been issued against any surety on the appearance bond and a surety pays the judgement voluntarily, the sheriff is not entitled to the above commission. See **Attachment 28**, which is a letter from Thomas Andrews of the North Carolina Administrative Office of the Courts, dated May 20, 2003, which addresses an inquiry regarding commissions on a criminal appearance bond forfeiture judgment. If an execution has been issued against a surety on the appearance bond, the sheriff of the county where the execution was issued and attempted to be served would be entitled to the above commission.

### 2.3.18 State Criminal Alien Assistance Program (SCAAP)

The United States Bureau of Justice Assistance administers the State Criminal Alien Assistance Program (SCAAP) in conjunction with the Bureau of Immigration and Customs Enforcement (ICE) and Citizenship and Immigration Services, Department of Homeland Security (DHS). SCAAP provides federal payments to states and localities that incur correctional officer (including jail detention officers) salary costs for incarcerating undocumented criminal aliens with at least one felony or two misdemeanor convictions for violations of state or local law, and who are incarcerated for at least 4 consecutive days during the reporting period.

**Attachment 29** is a copy of the Bureau of Justice Assistance publication, *State Criminal Alien Assistance Program Guidelines (SCAAP)*. [Note: Sheriffs should always refer to the most current version of the Guidelines, which is now the May, 2024 edition.]

### 2.3.19 Cash Gifts from Criminal Defendants

**Attachment 30** is a letter from Edwin M. Speas, Jr., Senior Deputy Attorney General, to Sheriff Edward Gwyn, dated April 29, 1993, which discusses the impropriety of a law enforcement agency accepting money outside the judicial process from persons its officers have arrested.

### 2.3.20 Charitable Contributions from the Public 26 U.S.C. § 170(c)(1)

Under 26 U.S.C. § 170(c)(1), State and political subdivisions are eligible to receive charitable contributions as a tax-exempt organization as long as the contribution is made for exclusively public purposes.

**Attachment 31** is a memorandum written by Dena R. Diorio, Director of Finance for Mecklenburg County, which discusses how State and political subdivisions are eligible to receive charitable contributions as a tax-exempt organization.

### 2.3.21 Funds Related to Detention Center Operations (Commissary/Canteen/Inmate/Telephone Use, etc.)

These funds are discussed in detail in Section 9 – Detention Operations.

### 2.3.22 Funds Received for School Resource Officers in Nonpublic Schools

G.S. § 162-26.5(b) authorizes the sheriff to enter into an agreement with a nonpublic school for the provision of school resource officers. The law requires the nonpublic school to provide funds at least equal to the compensation, benefits, and related expenses of any school resource officer assigned to the school. If a sheriff enters into such an agreement with a nonpublic school, the board of county commissioners may not reduce the funds received for the provision of school resource officers under the agreement and the funds must be appropriated for that purpose.

## 3. Banking

### 3.1 Who is Authorized to Open a Bank Account and to Deposit and Disburse Public Funds?

G.S. § 159-31, G.S. § 159-25

Only the governing board of the unit of local government, which, in the case of counties is the board of county commissioners, has the authority to designate the official depository (bank, savings & loan, or trust company) of the unit of local government. G.S. § 159-31. The official depository of the unit of local government must be located within the State, unless the Secretary of the Local Government Commission gives the unit written permission to designate an out-of-state entity as the official depository. G.S. § 159-31. It is unlawful for any public moneys to be deposited in any place, bank, or trust company other than the official depository. G.S. § 159-31.

The county finance officer is the official who has the authority to deposit and disburse public funds. G.S. § 159-25; *see also* **Attachment 32**, which is a Coates’ Canons blog by Kara Millonzi, Robert W. Bradshaw Jr. Distinguished Professor of Public Law and Government at The University of North Carolina at Chapel Hill School of Government, entitled *Internal Controls: Who is Authorized to Open a Bank Account and to Deposit and Disburse Public Funds?*, which explains who can open bank accounts on behalf of local governments in North Carolina.

“The finance officer shall have the following powers and duties: . . . [r]eceive and deposit all moneys accruing to the local government . . . [d]isburse all funds of the local government or public authority in strict compliance with [Chapter 159], the budget ordinance, and each project ordinance . . .” G.S. § 159-25.

A department head or other official (i.e. sheriff) or employee may not establish a bank account at an official depository because the finance officer is charged with keeping the accounts of the unit of local government. G.S. § 159-25; *see also* **Attachment 32** – *Internal Controls*. “The finance officer may set up separate accounts within an official depository for each department or each project or she may choose to pool monies together in a single account.”

Furthermore, “all checks or drafts on an official depository shall be signed by the finance officer or a properly designated deputy finance officer and countersigned by another official of the local government or public authority designated for this purpose by the governing board.” G.S. § 159-25.

Practical Tip: Check with your county finance officer to determine whether your county’s banking contract includes a check verification service, e.g., Positive Pay. This service prevents unauthorized disbursements from your account.

## 3.2 Bank Deposits G.S. § 159-32

Except as otherwise provided by law, all taxes and other moneys collected or received by an officer or employee of a local government or public authority shall be deposited in accordance with G.S. § 159-32. Each officer (including the sheriff) and employee of a local government or public authority whose duty it is to collect or receive any taxes or other money shall deposit collections and receipts daily. G.S. § 159-32.

However, if the governing board gives approval, deposits can be kept on hand until they amount to \$500.00 or greater, at which time they must be deposited with a cash collection service (ex. a banking institution or company such as Loomis, etc.).

All deposits must be made to the finance officer *or* in an official depository. G.S. § 159-32. However, any deposits made directly to the official depository must be immediately reported to the finance officer by means of a duplicate deposit ticket. G.S. § 159-32.

*See also [Attachment 33](#)*, which is a Coates’ Canons blog by Kara Millonzi, Robert W. Bradshaw Jr. Distinguished Professor of Public Law and Government at The University of North Carolina at Chapel Hill School of Government, which discusses daily deposit requirements for local governments in North Carolina.

## 4. Contracting/Purchasing

### 4.1 Appropriate Contracting/Purchasing Methods and Practices G.S. § 159-28, G.S. § 143-129, G.S. § 143-131

The sheriff does not have independent statutory authority to contract on behalf of or bind the resources of the county. Therefore, the sheriff cannot bind the county to a contract unless this authority has been delegated to the sheriff by the board of county commissioners.

No obligation may be incurred in a program, function, or activity accounted for in a fund included in the budget ordinance unless the budget ordinance includes an appropriation authorizing the obligation and an unencumbered balance remains in the appropriation sufficient to pay in the current fiscal year the sums obligated by the transaction for the current fiscal year. G.S. § 159-28(a).

If the sheriff incurs an obligation or pays out or causes to be paid out any funds without authorization to do so, the sheriff is “liable for any sums so committed or disbursed” pursuant to N.C. Gen. Stat. § 159-28(e).

Sheriffs are subject to the same bidding, purchasing, and contracting laws discussed below as other units

of local government, such as the finance officer’s preaudit certification requirement for contracts and checks. G.S. § 143-129(a); G.S. § 143-131.

No construction or repair contract equal to or more than \$500,000 or contracts for the purchase of apparatuses, supplies, materials, or equipment equal to or more than \$90,000 may be awarded by “any political subdivision of the State” without going through the formal bidding process contained within G.S. § 143-129. This formal bidding process requires, among other things, advertisement of an invitation to bid, the submission of sealed bids, submission of a bid bond or certified check in the amount of 5% of the proposal, and an award of the contract to the “lowest responsible bidder.” G.S. § 143-129. There are also various exceptions to the formal bidding process contained within G.S. § 143-129(e).

Construction and repair contracts and contracts for the purchase of apparatuses, supplies, materials, or equipment equal to or more than \$30,000 but less than the limits discussed above must be let through an informal bidding process. G.S. § 143-131. Once again, the contract must be let to the lowest responsible bidder. G.S. § 143-131.

**Attachment 34**, which is an excerpt from Chapter 23 of *County and Municipal Government in North Carolina*, a publication from The University of North Carolina at Chapel Hill School of Government, outlines the general public contracting requirements discussed above.

**Attachment 35** is Section 35 of the North Carolina Department of State Treasurer’s Policy Manual for Local Government which contains information on local government purchasing and contracting.

## 4.2 Vendors and Service Contracts

Contracts for services fall outside the scope of the competitive bidding statutes. See **Attachment 34 – Public Contracts**, pg. 6 (2014). However, it is common for counties and cities to seek competitive bids on contracts even when state law does not require it.

Major contracts may include:

1. inmate food services;
2. inmate medical services;
3. janitorial services;
4. towing;
5. offsite data storage;
6. lease of property;
7. inmate commissary;
8. business machine servicing (copiers, computers, etc.);
9. building maintenance fees;
10. credit/debit cards;

11. fleet maintenance;
12. inmate telephone service;
13. pagers/cell phones;
14. detention laundry;
15. housing federal inmates;
16. housing other county's inmates;
17. provision of law enforcement services for another governmental entity, i.e. a local town;
18. employee medical/drug screening;
19. inmate labor;
20. translators; or
21. internet access.

Always be aware of all present contractual agreements affecting the Office of Sheriff including termination clauses and expiration dates. Any contracts for service that do not obligate county funds are unique to the sheriff signing the contract and therefore may be discontinued or re-executed by an incoming sheriff without county approval. Therefore, a new sheriff should review these contracts and decide whether they should be discontinued or re-executed.

However, contracts for the provision of services that obligate county funds cannot be unilaterally discontinued by an incoming sheriff, unless allowed by the terms of the contract itself.

Practical Tip: For service contracts, a Request for Proposal (RFP) is a highly effective tool to ensure fairness if constructed properly. *See **Attachment 36*** – Mecklenburg County Request for Proposal & Sample Contract – Inmate Health Care Service.

### 4.3 Preaudit Requirement G.S. § 159-28

G.S. § 159-28(a) requires that all contractual agreements that obligate a local government or a public authority to pay money include a preaudit certificate.

**There is no minimum amount necessary to trigger the preaudit requirement.** The preaudit applies to purchase orders, purchases below the purchase order threshold, service contracts, phone/internet orders, credit/procurement/fuel card payments, employment agreements, online purchases, etc., obligating a unit of local government (ex. the county) to pay money in the current fiscal year.

The finance officer or deputy finance officer (if one has been officially designated by the board of county commissioners) must do the following:

1. check to see if there is an appropriation in the budget ordinance or project ordinance for the amount due this fiscal year;
2. check to see if sufficient funds remain in the appropriation to cover the amount that will come due this fiscal year;
3. reduce the contract to writing (if not already in writing); and
4. affix a pre-audit certificate to the written contract.

An obligation incurred in violation of the pre-audit requirement is invalid and may not be enforced. G.S. § 159-28(a2). Note: These requirements, including the issuance and attachment of a pre-audit certificate to a writing, will apply even in the context of online orders, unless the county adopts a resolution and policy allowing the use of electronic payments by debit cards, procurement cards (P-cards), etc., as discussed below. G.S. § 159-28(d2). If the county has not authorized the use of electronic payments and complied with the Local Government Commission rules regarding the use of electronic payments, then a pre-audit certificate will be required to be affixed before the sheriff's office incurs the obligation (i.e. pressing the "purchase" or "submit order" button on the website). In this case, the order and price summary page on the website will need to be printed out and the pre-audit certificate affixed to that printout before the order is submitted).

Although the pre-audit statute, G.S. § 159-28, does not require contracts to be in writing and, in fact, now explicitly states that "[n]othing in this section shall require a contract to be reduced to writing," several North Carolina Court of Appeals cases have taken the position that the pre-audit certificate must be affixed to any obligation in order for that contract to be valid and enforceable and, since it is impossible to affix a pre-audit certificate to an oral contract, all contracts must be in writing. See **Attachment 37** and **Attachment 38** for a summary of these cases written by Kara Millonzi, Robert Bradshaw Jr. Distinguished Professor of Public Law and Government at The University of North Carolina at Chapel Hill School of Government. Therefore, all contracts obligating a unit of local government to pay money should be in writing, unless covered by the unit's electronic payments policy discussed next.

The preaudit statute allows for the Local Government Commission ("Commission") to promulgate rules for pre-auditing electronic payments. G.S. § 159-28(d2). The Commission has promulgated those rules and they are contained within the North Carolina Administrative Code, specifically 20 N.C.A.C. 03 .0409 and 20 N.C.A.C. 03 .0410. See **Attachment 39**, which is a Coates' Canons blog post by Kara Millonzi, Robert Bradshaw Jr. Distinguished Professor of Public Law and Government at The University of North Carolina at Chapel Hill School of Government, on changes to the preaudit process for electronic transactions. As discussed in the attachment, the Local Government Commission rule on electronic payments requires a unit of local government to adopt a resolution and policy governing the use of electronic payments for the unit, to adopt an "encumbrance system" to track obligations, and to provide training to personnel on the use of electronic payments, among other requirements.

There is no requirement for a pre-audit certificate if a unit of local government has adopted a resolution and policy authorizing the use of electronic payments that complies with 20 N.C.A.C. 03 .0409 and if the electronic payment is made using a charge card, credit card, debit card, or an electronic funds transfer. G.S. § 19-28(f).

The pre-audit requirement also applies to contracts that obligate a unit of government to pay money to settle a legal claim. See **Attachment 38**, summary of *Howard v. County of Durham*, 227 N.C. App. 46 (2013).

While employee salaries and wages must be pre-audited like any other obligation, there is no requirement

that a pre-audit certificate and disbursement certificate be issued. G.S. § 159-28(f).

As an example of how a county endeavors to comply with the preaudit requirement, see **Attachment 40** – Memorandum from Office of the Yadkin County Deputy Manager to the Yadkin County Sheriff’s Office, Register of Deeds, Department Heads, and Board of Commissioners, “Yadkin County – Contract Control Form” (Apr. 23, 2010).

#### 4.4 Conflicts of Interest G.S. § 14-234, G.S. § 133-32

The conduct of a sheriff has a profound effect on public perception and trust in the Office of Sheriff. The citizens of North Carolina expect the sheriff to act in the best interest of the public and not to use the Office of Sheriff for personal benefit.

It is incumbent upon every sheriff to ensure that contracts with the office are not subject to any conflicts of interest. See **Attachment 41**, which is an excerpt from Chapter 7 of *County and Municipal Government in North Carolina*, a publication from The University of North Carolina at Chapel Hill School of Government, which addresses ethical issues and conflicts of interests that arise in the contracting process.

G.S. § 14-234 makes it a Class 1 misdemeanor for a public officer administering or making a contract on behalf of a public agency to derive a “direct benefit” from the contract. A public officer derives a “direct benefit” if that officer or their spouse: (1) has more than a 10% ownership or other interest in an entity that is a party to the contract, (2) derives any commission or income directly from the contract, or (3) acquires property under the contract. G.S. § 14-234(a1)(4). There are several exceptions and limitations to the statute.

Also, G.S. § 133-32 makes it a Class 1 misdemeanor for an officer or employee of a government agency who is charged with awarding or administering public contracts, inspecting or supervising construction, or preparing estimates or plans for a public contract to receive or accept any gift or favor from any contractor, subcontractor, or supplier who is performing under an existing contract with the agency or anticipates bidding on a future contract with the agency.

## 5. Resource Management/Surplus Property

### 5.1 Disposition of Property G.S. § 153A-176, G.S. § 160A-266, G.S. § 15-15

A county may dispose of any real or personal property belonging to it according to the procedures which govern how cities dispose of real or personal property described in Chapter 160A, Article 12 (G.S. §§ 160A-265 through 160A-280) of the General Statutes. G.S. § 153A-176.

G.S. § 160A-266 allows for sale of one item or group of items of public *personal property* (property belonging to the unit of government) valued at less than \$30,000 through private negotiation and sale. G.S. § 160A-266; see also **Attachment 42**, which is a Coates’ Canons blog post by Norma Houston, Lecturer in Public Law and Government at The University of North Carolina at Chapel Hill School of Government, addressing disposition of small surplus items.

Generally, real property (land) of any value and public personal property valued at more \$30,000 can only be exchanged or sold through advertisement for sealed bids, negotiated offer, advertisement and upset bid,

or by public auction. The State statute explicitly forbids private negotiation and sale. G.S. § 160A-266.

The foregoing provisions are for property belonging to the unit of local government that has been acquired by purchase, exchange, or donation. Items that are in an agency's possession that are evidence or found property can only be disposed pursuant to other statutory provisions, most of which are contained within G.S. § 15-11 through G.S. § 15-17. Most of the requirements for disposition of evidence and found property require obtaining the District Attorney's permission to dispose of the property, or obtaining an order of court in the case of certain property (i.e. seized firearms), and selling such items by means of an advertised public sale. Any proceeds derived from the sale of these items goes to the county board of education. G.S. § 15-15.

## 5.2 Transferring Property to Another County G.S. § 160A-274, G.S. § 160A-280

G.S. § 160A-274 allows for real or personal property to be exchanged, leased, sold, purchased, or otherwise transferred to any other governmental unit with or without the exchange of money. Action under G.S. § 160A-274 can be only taken through the governing body of the governmental unit, which, in the case of the county, means the board of county commissioners. See **Attachment 43**, which is a memorandum from Eddie Caldwell, Executive Vice President and General Counsel of the North Carolina Sheriffs' Association, to all sheriffs, *Sheriffs' Offices Conveying Property to Other Sheriffs' Offices* (March 3, 2000 – updated March 2, 2007), on conveying property from one sheriff's office to another.

G.S. § 160A-280 allows for donations to other governmental units of any personal property deemed to be surplus, obsolete, or unused. Donation under G.S. § 160A-280 must be done by resolution of the governing board of the governmental unit. Public notice of the proposed donation must be posted at least 5 days prior to the adoption of the resolution. See **Attachment 42**.

If a unit of local government is donating personal property under G.S. § 160A-280 to a nonprofit organization, there may also be a concern as to whether the donation complies with Emoluments Clause of the North Carolina Constitution. See **Attachment 44**, which is a Coates' Canons blog post by Frayda Bluestein, Professor of Public Law and Government at The University of North Carolina at Chapel Hill School of Government, on the possible constitutional concerns of donating property to non-profits.

## 5.3 1033 Law Enforcement Support Office (LESO) Program

The Department of Defense Excess Property Program (1033 Program) is authorized under federal law and managed through the Defense Logistics Agency's Law Enforcement Support Office (LESO). The 1033 Program provides surplus Department of Defense military equipment to state and local civilian law enforcement agencies for use in counter-narcotics and counter-terrorism operations, and to enhance officer safety. More information on the program can be found at: <https://www.dla.mil/Disposition-Services/Offers/Law-Enforcement/Join-The-Program/>

Information may also be obtained by calling North Carolina's State Coordinator of the 1033 Program at (919) 324-6227.

## 6. Records Retention G.S. § 121-5; G.S. §132-3

Under G.S. § 121-5, records cannot be destroyed without the consent of the North Carolina Department of



Natural and Cultural Resources (DNCR), Division of Archives and Records. “No person may destroy, sell, loan, or otherwise dispose of any public record without the consent of the Department of Natural and Cultural Resources . . .” G.S. § 121-5. Any person who unlawfully destroys a public record is guilty of a Class 3 Misdemeanor. G.S. §§ 121-5; 132-3.

The primary way that the Department gives its consent is provided by the Records Retention Schedule. A detailed records retention schedule for county sheriff’s offices, classifying the various records the office deals with and prescribing a retention duration for each can be found at: <https://archives.ncdcr.gov/government/local-government-agencies/county-sheriffs-office-schedule>

When the prescribed retention period is over, public records may only be destroyed by: burning, shredding, placing in acid vats, or sold as waste paper provided the purchaser agrees the document will not be resold without first pulverizing or shredding them. 07 N.C.A.C. 04M .0510.

**Attachment 45** is the North Carolina Department of Natural and Cultural Resources’ General Records Retention Schedule for Local Government Agencies, dated Oct. 1, 2021.

**Attachment 46** is the North Carolina Department of Natural and Cultural Resources’ Records Retention Schedule specific to County Sheriffs’ Offices, dated Nov. 15, 2015, and the amendment thereto, dated Oct. 1, 2016.

## 7. Personnel

### 7.1 Number of Employees

G.S. § 153A-103

Subject to limitations, the board of county commissioners may fix the number of salaried employees in the sheriff’s office. G.S. § 153A-103.

“Each sheriff . . . has the exclusive right to hire, discharge, and supervise the employees in his/her office.” G.S. § 153A-103. One exception to this right is that the sheriff must get the approval of the board of county commissioners if the sheriff wishes to appoint a relative by blood or marriage of nearer kinship than first cousin or a person convicted of a crime involving moral turpitude. G.S. § 153A-103.

Each sheriff is entitled to at least two deputies who shall be reasonably compensated by the county and each deputy appointed serves at the pleasure of the sheriff. G.S. § 153A-103.

### 7.2 Compensation

G.S. § 153A-92

The board of county commissioners fixes or approves the schedule of pay, expense allowances, and other compensation of all county officers and employees, whether elected or appointed, and may adopt position classification plans. G.S. § 153A-92.

The board of county commissioners may not reduce just the sheriff’s office employees’ compensation without the sheriff’s consent. If the sheriff refuses the reduction, the sheriff and the board of county commissioners must meet and attempt to reach an agreement. If an agreement cannot be reached the dispute is to be settled in arbitration by a superior court judge. G.S. § 153A-92(b)(3).

The board of county commissioners also cannot reduce the sheriff's salary during the sheriff's current term of office unless the sheriff agrees to the reduction or unless the Local Government Commission orders a reduction. G.S. § 153A-92(b)(1).

Practical Tip: The sheriff must work collaboratively with the human resources director, the county manager, and the board of county commissioners in order to adjust salary classifications and wages for the employees of the sheriff's office.

Practical Tip: For specific questions on wage and hour issues, contact Diane Juffras, Professor of Public Law and Government at The University of North Carolina at Chapel Hill School of Government, at (919) 843-4926 or [juffras@sog.unc.edu](mailto:juffras@sog.unc.edu).

## 7.3 Reclassification of Positions

Although the board of county commissioners has authority over the budget of the sheriff's office and specifically may fix the number of salaried employees within the sheriff's office and adopt position classification plans, the sheriff is the best person to make decisions regarding the reclassification of positions within the sheriff's office.

As stated above, the sheriff has the exclusive right to hire, discharge, and supervise the employees of the sheriff's office, so any reclassification of positions in the office that simply entail a shifting of duties or roles within the office is entirely within the sheriff's control and can be done unilaterally by the sheriff. However, any reclassification of positions that involve changes in title, salary, or wages will need the approval of the board of county commissioners to fund the reclassification.

The board of county commissioners has the authority to cease funding for a particular position, but the sheriff retains authority to determine who occupies a funded position. See **Attachment 47**, which is a letter from Assistant Attorney General Joy Strickland to Sheriff Tim L. Daugherty, dated Sept. 9, 2009, concerning reclassifying positions within the sheriff's office.

## 7.4 Filling Vacant Positions/Hiring Freeze G.S. § 153A-103

If the budget resolution adopted by the board of county commissioners provides funding for full staffing, then the sheriff has the authority to hire and keep the staff full unless the board, during the year, enacts an amended budget ordinance that reduces the sheriff's office budget.

A hiring freeze for the sheriff's office can only be implemented by the sheriff; the sheriff does not report to the county manager and therefore does not have to gain the county manager's approval for hiring.

There may be practical reasons why a sheriff may want to agree to implement a hiring freeze adopted by the county because the county is responsible for paying employee salaries. For example, there may be money in the budget for the current fiscal year to pay any new employee hired, but there is no guarantee that that money will be there in the next budget ordinance for the next fiscal year to continue paying the new employee. However, legally the sheriff has the exclusive right to hire employees for the sheriff's office as long as funds are available.

## 7.5 Use of County Vehicle

### G.S. § 14-247

The sheriff has exclusive authority to supervise the employees of the sheriff's office, to include creating policies regarding vehicles driven by those employees. This premise is supported by a September 9, 2009 letter from the Attorney General's Office which discussed the topic of reclassification of positions above. See **Attachment 47**. The letter goes on to explain that the board of county commissioners cannot adopt a resolution forcing a policy on the personnel of the sheriff's office dealing with county vehicles; however, the board of county commissioners has the authority to decrease the funding to the sheriff's office for county-owned vehicles.

G.S. § 14-247 makes it unlawful to use a county-owned vehicle for private use, however "[i]t is not a private purpose to drive a permanently assigned state-owned motor vehicle between one's official work station and one's home . . ." G.S. § 14-247(a).

Furthermore, unmarked and clearly marked public safety officer vehicles may constitute qualified nonpersonal use vehicles under tax regulations; if such is the case, the employee given the qualified nonpersonal use vehicle does not need to keep records of how the vehicle is used (for tax purposes) and the business use of the vehicle is excluded from the employee's income as a working condition fringe benefit.

See **Attachment 48**, which is page 27934 of Volume 75 of the Federal Register concerning the United States Internal Revenue Services' treatment of "qualified nonpersonal use vehicles." See also **Attachment 49**, which is an email from Eddie Caldwell, Executive Vice President and General Counsel of the North Carolina Sheriffs' Association, dated December 2, 2010, concerning IRS analysis of "take-home" cars for law enforcement officers.

## 7.6 Payroll

For an overview of the payroll process, see **Attachment 50**, which is Section 40, Payroll, of the North Carolina Department of State Treasurer Policies Manual.

Practical Tip: If the county handles payroll for the sheriff, it is good practice to consult with the payroll officer for the county to become familiar with how the county is administering payroll.

## 7.7 Secondary Employment

The sheriff can allow deputies to engage in secondary employment and can prescribe the rules by and conditions under which deputies request and engage in such secondary employment, however there are tax implications for those deputies that choose secondary employment. See **Attachment 51**, which is an article from the 2nd Quarter 2014 North Carolina Law Enforcement Officers' Association Journal by Eddie Caldwell, Executive Vice President and General Counsel of the North Carolina Sheriffs' Association, covering secondary employment for law enforcement officers.

## 7.8 Giving and Receiving Gifts

### G.S. § 153A-94, G.S. § 14-234, G.S. § 133-32

Units of local government are authorized to use public funds to recognize and motivate employees. "The board of commissioners may adopt or provide for rules and regulations or ordinances concerning . . . service award and incentive award programs . . ." G.S. § 153A-94; see also G.S. § 160A-164. However, when it

comes to using public funds for gifts, there are not only legal concerns, but also concerns with how the public will view such a gift and concerns with how such gifts may affect intra-agency relationships. See **Attachment 52**, which is a Coates' Canons blog post by Frayda Bluestein, Professor of Public Law and Government at The University of North Carolina at Chapel Hill School of Government, on gifts and receipt of gifts in the context of local government.

When it comes to giving and receiving gifts from vendors and current and potential contractors, G.S. § 14-234 and G.S. § 133-32, mentioned above in Section 4.4, prohibits such a practice in most circumstances.

Also, N.C Const. Art. 1, § 32, prohibits any person or entity from receiving exclusive emoluments or privileges from the community (government), “but in consideration of public services.”

## **8. Detention Operations**

### **8.1 Custody of Jail** G.S. § 162-22

The sheriff is required by statute to maintain custody of the jail. “The sheriff has the care and custody of the jail in his county; and shall be, or appoint, the keeper thereof. No law enforcement officer or jailer who shall have the care and custody of any jail shall receive any portion of any jail fee or charge paid by or for any person confined in such jail, nor shall the compensation or remuneration of such officer be affected to any extent by the costs of goods or services furnished to any person confined in such jail.” G.S. § 162-22.

Except for the fees discussed below in section 8, the sheriff may not charge fees for products and services required by law to be provided to inmates, such as basic hygiene and shaving kits. See G.S § 153A-221; 10A N.C.A.C. 14J .0705; 10A N.C.A.C. 14J .0703. In addition, for the products and services the sheriff is allowed to make available to inmates for purchase, the sheriff cannot charge a fee that exceeds the maximum amount allowed by statute. See G.S. § 153A-225 (as in the case of nonemergency medical care and medical prescriptions). This is discussed in **Attachment 53**, which is a letter from Assistant Attorney General Derek Hunter to Steven Lewis of the Division of Health Service Regulation of the North Carolina Department of Health and Human Services dated August 8, 2011.

### **8.2 Uniform Jail Fees** G.S. § 7A-313

Persons who are lawfully confined in jail awaiting trial and who are ultimately found guilty and incarcerated are liable to the county or municipality maintaining the jail in the sum of ten dollars (\$10.00) for each 24 hours' confinement, or fraction thereof. G.S. § 7A-313. An individual is not liable for this fee if the case or proceeding against him or her is dismissed, or if they are acquitted, judgment is arrested, probable cause is not found, or the grand jury fails to indict. G.S. § 7A-313.

However, if an individual pleads or is found guilty and is given probation for the offense and ordered to pay jail fees as part of the probationary sentence, they are liable to the county or municipality maintaining the jail at the same per diem rate paid by the Department of Adult Correction to local jails for maintaining a prisoner. G.S. § 7A-313. Currently (2023), this rate is \$40.00.

### 8.3 Reimbursement for Transfer of Prisoners G.S. § 162-40.1

The county receiving prisoners pursuant to G.S. § 162-38 (where jail unfit or insecure), 162-39 (when necessary for safety and security) and 162-40 (when jail destroyed) shall be reimbursed at the usual jail fee rate (\$10.00) for each 24 hours of confinement or portion thereof by the county from which the prisoner is transferred. G.S. § 162-40.1.

### 8.4 Statewide Misdemeanant Confinement Program (SMCP) G.S. § 148-32.1

The Statewide Misdemeanant Confinement Program is a program through which counties may volunteer to house certain misdemeanor inmates. Counties contract with the Department of Public Safety to house SMCP inmates under N. C. Gen. Stat. § 148-32.1.

The current reimbursement rates for the SMCP are as follows:

Housing: \$40.00/day (includes in-jail medical services)  
Personnel: \$25.00/hour (ex. supervision during travel)  
Mileage: Current IRS rate

As of 2021, sheriffs that utilize their SMCP inmates to perform a total of 500 or more hours of roadway cleanup in one month are entitled to an increased housing reimbursement rate of \$60.00/day for all of the SMCP inmates the sheriff held during that month, instead of the default SMCP housing rate of \$40.00/day. Sheriffs interested in participating in this program can contact the North Carolina Sheriffs' Association at (919) 743-7433 and request to speak with the SMCP Coordinator.

### 8.5 Inmate Medical Care G.S. § 153A-224, G.S. § 153A-225.2

The unit of local government operating the local confinement facility must pay the cost of requested or emergency medical care provided to inmates by medical providers who are outside of the facility. G.S. §§ 153A-224; 153A-225.2. "Counties shall reimburse those providers and facilities providing requested or emergency medical care outside of the local confinement facility . . ." G.S. § 153A-225.2.

"In a medical emergency, the custodial personnel shall secure emergency medical care from a licensed physician according to the unit's plan for medical care . . . The unit operating the facility shall pay the cost of emergency medical services unless the inmate has third-party insurance, in which case the third-party insurer shall be the initial payor and the medical provider shall bill the third-party insurer." G.S. § 153A-224(a).

The county shall only be liable for costs not reimbursed by the third-party insurer in which event the county can recover the cost from the inmate. G.S. § 153A-224. A county cannot avoid the obligation to pay for an unconscious inmate's emergency medical care by seeking his or her release solely for that purpose. *University of North Carolina v. Hill*, 967 N.C. App. 673 (1990).

## 8.6 Inmate Medical and Prescription Co-Pay

G.S. § 153A-225

Per G.S. § 153A-225(a), jails may charge an inmate a fee of:

1. Not more than twenty dollars (\$20.00) per incident for the provision of nonemergency medical care to prisoners; and
2. not more than ten dollars (\$10.00) for a 30-day supply or less of a prescription drug.

## 8.7 Income from Contracts for Inmate Telephone Use

Some sheriffs enter into contracts with private telephone providers that allow inmates and their family and friends to purchase telephone time to speak with the inmate. This can be accomplished by the inmate purchasing prepaid phone cards with funds held in their inmate account, or by a family members or friends establishing a prepaid account through the telephone service provider used by the sheriff. Like commissary funds discussed below, any revenue generated by telephone service contracts must be deposited, budgeted, appropriated, and expended in accordance with the Local Government Budget and Fiscal Control Act. G.S. § 159-17.1

Practical Tip: Treatment varies between counties on how income from telephone use contracts are handled. In some counties, it is part of the General Fund while in other counties it is treated as a Special Revenue Fund. As a Special Revenue Fund, revenue and expenses are still budgeted but are not restricted to a fiscal year which allows remaining funds to be spent later.

## 8.8 Commissary/Canteen Funds

G.S. § 159-17.1

10A NCAC 14J .0801 provides that each jail shall make commissary or canteen items, including snacks and personal care products, available for purchase by inmates. The items shall be available either directly from officers or through contract vending. The price of these items shall be no higher than local retail prices. Snacks and personal care products do not have to be made available for purchase if they are provided without charge.

Money received from the purchase and resale of various items to inmates in the county jail is subject to the “vending facilities” law. This law requires that money received as a result of the operation of vending facilities be deposited, budgeted, appropriated, and expended in accordance with the Local Government Budget and Fiscal Control Act. G.S. § 159-17.1; *see also* **Attachment 54**, which is a Memorandum to Sheriffs and County Finance Officers from Robert M. High, Director of the Fiscal Management Section, dated May 6, 1985, entitled *Funds in Sheriffs’ Departments*.

Practical Tip: Treatment varies between counties on Commissary Revenue. In some counties, it is part of the General Fund while in other counties it is treated as a Special Revenue Fund. As a Special Revenue Fund, revenue and expenses are still budgeted but are not restricted to a fiscal year which allows remaining funds to be spent later.

## 8.9 Inmate Trust Accounts/Inmate Welfare Accounts

The sheriff is obligated to safeguard all assets of an inmate while in the custody of the sheriff.

“Inmate Welfare Funds” (funds containing revenue or monies earned by inmates) qualify as “trust or custodial funds” under N.C. Gen. Stat. § 159-13(a)(3) and therefore do not need to be in the budget ordinance, however the monies in these funds must be monitored and properly accounted for pursuant to N.C. Gen. Stat. § 159-26. See **Attachment 55**, which is a letter from Chief Deputy Attorney General Andrew A. Vanore, Jr. to George J. Franks, dated May 16, 1991, regarding the treatment of inmate trust accounts.

Practical Tip: Only accept certified checks or money orders to ensure funds are available for deposit. In addition, it is beneficial to accept payment only via mail, or if possible via online debit/credit card payment, to minimize the number of people coming to the jail for the purpose of depositing money into an inmate account.

## 8.10 Safekeepers

G.S. §§ 162-39, 148-29, S.L. 2021-180.

“Safekeepers” are inmates transferred from local jails to the State prison system under N.C. Gen. Stat. § 162-39, and are subject to a \$40 per inmate, per day fee payable by the transferring county to the Department of Public Safety. This fee is tied to the \$40 fee paid to counties for state prisoners held in the county jail on “jail backlog.”

A safekeeper is a prisoner held in any county jail who: poses a serious escape risk; exhibits violently aggressive behavior that cannot be contained and warrants a higher level of supervision; needs to be protected from other inmates and the county jail facility cannot provide such protection; is a female or a person 18 years of age or younger and the county jail facility does not have adequate housing for such prisoners; is in custody at a time when a fire or other catastrophic event has caused the county jail facility to cease or curtail operations; otherwise poses an imminent danger to the staff of the county jail facility or to other prisoners in the facility; or requires medical or mental health treatment.

See **Attachment 56**, which is an email from Eddie Caldwell, Executive Vice President and General Counsel of the North Carolina Sheriffs’ Association, to all Sheriffs, dated Sept. 28, 2011, that discusses a Department of Correction memorandum on the increase in *per diem* costs for “safekeeper” inmates.

## 8.11 Housing Federal Inmates

18 U.S.C. § 4002, 18 U.S.C. § 4013(a)

Some jail inmates may be federal prisoners. Some sheriffs agree for their county to negotiate contracts with the United States Marshal Service, the Federal Bureau of Prisons, or Immigration and Customs Enforcement to house inmates as authorized by 18 U.S.C. §§ 4002; 4013(a).

## 8.12 Private Operation of County Jails

Under existing North Carolina law, an essential governmental function like the care and custody of the county jail cannot be privatized by utilizing the services of a non-governmental private company. A sheriff cannot be forced to privatize the county jail nor can the sheriff and the county agree to privatize the county jail. See **Attachment 57**, which is an advisory opinion from John R. McArthur, Chief Counsel of the Office of the Attorney General, to Sheriffs John H. Baker, Jr. and Worth L. Hill, dated June 23, 1995, regarding private operation of county jails.

## 8.13 Regional Jails

G.S. § 153A-219

Two or more units of local government may enter into and carry out an agreement to establish, finance, and operate a district confinement facility. G.S. § 153A-219.

# 9. Miscellaneous

## 9.1 Sheriff's Bond

G.S. § 162-8, G.S. § 162-9, G.S. § 162-10

The sheriff shall furnish a bond payable to the State of North Carolina for the due execution and return of process, the payment of fees and moneys collected, and the faithful execution of his office as sheriff.

The amount of the bond is determined by the board of county commissioners but cannot exceed \$25,000. G.S. § 162-8.

The board of county commissioners:

1. "Shall take and approve" the bond;
2. shall cause the bond to be registered with the county register of deeds;
3. shall deposit the original bond with the clerk of superior court for safekeeping; and
4. shall take the bond on or before the first Monday of December next after the election for sheriff.

G.S. § 162-9.

If a sheriff fails to provide the bond prescribed by the board of county commissioners, "the board shall give written notice to the sheriff to appear before the board within 10 days and provide a sufficient bond." G.S. § 162-10.

If the sheriff fails to provide a bond after this notice, "the sheriff shall forfeit his office, and the commissioners shall elect a suitable person in the county as sheriff for the unexpired term..." G.S. § 162-10.

## 9.2 Dues to the North Carolina Sheriffs' Association

Due to the fact that elected officials are exempt from registration for lobbying pursuant to G.S. § 120C-700(3), this implies that lobbying by them is recognized and authorized.

Lobbying activities are allowed to be paid for by county money if they are for a public purpose, which arguably the North Carolina Sheriffs' Association is. See **Attachment 58** which is an e-mail from High Point City Attorney Fred Baggett and the case of *Horne v. Chafin* discussing the matter.

Note: County money is used to pay dues to the North Carolina Association of County Commissioners and the North Carolina School Boards Association. City money is used to pay dues to the North Carolina League of Municipalities.