

## County as Body Politic and Corporate <sup>[1]</sup>



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### **The County as a Body Politic and Corporate**

A county, as a defined geographic subdivision of the state, serves many purposes. Churches [civic clubs](#) <sup>[2]</sup>, and other societal institutions use counties as convenient subdivisions for their own purposes. The business world may assign sales territories and franchises to areas composed of one or more counties. The county may play a role in the psychology of people born and raised "in the country" - it serves to establish where they are from and who they are, thus becoming a part of their personal identity. But the county was created in the first instance by the state as a political unit, and this remains its primary purpose.

In 1928, the [North Carolina Supreme Court](#) <sup>[3]</sup> was called upon to define a county from a legal point of view (*O'Neal v. Wake County*, 196 NC 184). In the case, Wake County was a litigant and the court spoke in terms of that county, but what the Court had to say is equally true of the other ninety-nine counties:

Wake County is a body politic and corporate, created by the General Assembly of North Carolina for certain public and political purposes. Its powers as such, both express and implied, are conferred by statutes, enacted from time to time by the General Assembly, and are exercised by its Board of Commissioners .... In the exercise of ordinary government functions, [counties] are simply agencies of the State, constituted for the convenience of local administration in certain portions of the State's territory, and in the exercise of such functions they are subject to almost unlimited legislative control, except when the power is restricted by constitutional provisions.

The language used by the court is important as it established the definition of a county. A county, according to the court, is a "body politic and corporate." A body politic is a civil division of the state for purposes of governmental administration. A body corporate is a legal entity. In private law, a corporation is a legal person. A county is a legal entity or corporation of a special sort and with a public function. As such, it can buy and hold property, sue and be sued, and enter into contracts - all functions necessary to make its work as a body politic effective.

In *O'Berry, State Treasurer v. Mecklenburg County*, [198 N.C. 357 ( 1930)], the court stated that "the weight of authority is to effect that all the powers and functions of a county bear reference to the general policy of the State, and are in fact an integral portion of the general administration of State policy." Historically, the primary purpose for erecting a county was to serve state purposes and to perform state functions in a given area rather than to serve the purposes of a particular geographic community. (By way of contrast, a city was primarily formed at the request of the people within its jurisdiction to serve the needs of the inhabitants.)

For the Supreme Court to say that "all the powers and functions of a county bear reference to the general policy of the State and are in fact an integral portion of the general administration of State policy" is not as restrictive as might at first reading appear. "State policy" is a very broad frame of reference; it can touch any aspect of local government. Thus, the truly significant nugget in the Supreme Court's definition of the role of counties is its statement that in the exercise of their functions, counties "are subject to almost unlimited legislative control, except when the power is restricted by constitutional provisions." In effect, if the General Assembly can be persuaded to assign counties any given power or responsibility, and, if the Constitution does not prohibit it, that assignment becomes state policy for county administration.

The court's phrases should not be drained of meaning, but they must be read in the light of the freedom the General Assembly has in withholding, assigning, withdrawing, and supervising the specific powers of any agency of government - state, county, municipality, or special district. The development of "state policy" with regard to the allocation of functions among governmental units and agencies is necessarily determined by successive legislatures' changing ideas of what is best calculated to achieve desired results.

Experience plays a major role in the determination of state policy. Frequently financial emergency and stress have produced a climate favorable to reexamination of the allocation of governmental responsibilities. Until [Governor McLean's administration](#) <sup>[4]</sup> (1925-1929), the state allowed counties, cities, and other local units almost unlimited freedom in borrowing money and issuing bonds. With no one to advise or warn them in marketing their securities, many counties overextended their obligations and saw their credit ratings drop to the point where they had to pay crippling rates of interest. Eventually, some faced bankruptcy. In 1927, on the basis of this experience, and recognizing a statewide concern, the legislature established the County Government Advisory Commission and gave it the supervisory powers necessary to correct the situation. This commission effected a reversal in local government financing, and its successor, the Local Government Commission remains one of the bulwarks of North Carolina government today.

Experience with various local arrangements for road building and maintenance had a comparable effect on state policy. It is not accidental that North Carolina counties are no longer responsible for this work. Reflecting the concern of the people

of the state, the legislature recognized a community of interest in roads wider than the single county and defined state policy on roads accordingly. Comparable re-definitions of the area of concern have affected governmental responsibility for operating schools, conducting elections, housing the state's system of lower courts and their records, maintaining property ownership and mortgage records, enforcing much of the state's criminal law, administering public health and public welfare programs, and carrying on state programs designed to promote the development of agriculture. Some of these functions are the responsibility of the boards of county commissioners, and some are assigned to other boards with varying relationships to the board of county commissioners. Thus, apart from the role played by the commissioners in any of these fields, it is the policy of the state to make extensive use of its counties in carrying out a large number of essential governmental operations.

From the beginning, the county has been used as the basic local unit in the judicial system and for law enforcement - there one finds the court, the courthouse, the sheriff, the jail, the clerk, and the court records. But the court is not a county court; it is a unit of the state's judicial system. The judge, the solicitor, the clerk, and the magistrates are state officials who administer state law, not county law.

The General Assembly expresses and codifies its state policy decisions by enacting statutes. In assigning duties and powers to counties, the legislature sometimes speaks in terms of mandate or command and sometimes in terms of permission and discretion. Thus, for example, counties are required to provide adequate housing for public schools, while they are given discretionary authority to exercise planning and zoning [5] powers.

The General Assembly makes two kinds of laws--it enacts general statutes that apply statewide, but it also enacts local or special laws that apply exclusively within named counties or cities. Our State Constitution [6] contains limitations on legislative authority to enact local laws dealing with a substantial list of topics, but in the absence of constitutional restriction, the legislature is free to permit local variety and experiment, a freedom once denounced by students of government but now seen as a useful device for demonstrating new ideas and approaches to governmental problems. Given this legislative freedom, any discussion of county powers and responsibilities must always be prefaced with a caution that what is being said about counties in general may not be true for a particular county.

#### References and additional resources:

Government & Heritage Library and State Archives digital collections[7]

Lawrence, David M. 2007. County and Municipal Government in North Carolina. Chapel Hill, NC: UNC School of Government. <http://www.sog.unc.edu/pubs/cmgl/> [8].

WorldCat [9] (Searches numerous library catalogs)

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