

## County Commissioners <sup>[1]</sup>



Average: 3.8 (19 votes)

### The Board of County Commissioners

North Carolina counties are legal entities capable of holding and managing property and possessed of many powers conferred on by law. Through its board of commissioners, the county exercises its powers and discharges its responsibilities. North Carolina General Statute [153A-12](#) <sup>[2]</sup> states that "except as otherwise directed by law, each power, right, duty, function, privilege and immunity of the corporation [i.e., the county] shall be exercised by the board of commissioners." This statute goes on to say that if a power is "conferred or imposed by law without direction or restriction as to how it is to be exercised or performed," the power or responsibility "shall be carried into execution as provided by ordinance or resolution of the board of commissioners."

#### Electing Board Members

By law, each county in North Carolina has a board of commissioners. These boards vary in size, term of office, method of election, method of selecting the chairperson, and administrative structure. These variations bear no correlation to the population of the county or any other objective criteria.

Different counties have [different methods](#) <sup>[3]</sup> for electing their county commissioners. Some commissioners are elected at large, some are elected at large with residence requirements, while some are nominated and elected by district. All county commissioners are elected at the same time as members of the General Assembly and other state officers, in elections held in the month of November in even-numbered years. Because boards have staggered four-year terms and two-year terms, about half of the state's county commissioners are elected at each general election. Newly elected commissioners take office on the first Monday in December following their election. There is no requirement that a person be nominated as the candidate of a political party in order to run for the office of county commissioner.

#### Vacancies on the Board

Members of the board of commissioners fill mid-term vacancies in the board by appointment. If the member who is leaving the board was originally elected as the nominee of a political party, the person appointed to fill the vacancy must be a member of the same political party. If the vacancy occurs in a two-year term or in the last two years of a four-year term, the appointment is for the remainder of the unexpired term. If the vacancy occurs in the first two years of a four-year term, the appointment runs only until the next general election when an election is held to fill the office for the remainder of the unexpired term.

Occasionally, a board of commissioners finds itself deadlocked and unable to fill a vacancy. When a board of commissioners fails to fill a vacancy in its membership for 60 days, the clerk to the board of commissioners must report the vacancy to the clerk of superior court, who must fill the vacancy within 10 days after the day the vacancy is reported.

A newly elected or appointed county commissioner assumes the powers and duties of the office by taking the oath prescribed by the Constitution of North Carolina as follows:

I, [name] do solemnly swear (or affirm) that I will support and maintain the Constitution and laws of the United States, and the Constitution and laws of North Carolina not inconsistent therewith, and that I will faithfully discharge the duties of my office[as County Commissioner of (county name) County], so help me God. [\[N.C. Const. art. VI, § 7](#) <sup>[4]</sup>

The Constitution provides that public officers continue to hold office until their successors are chosen and qualified. Thus, a member of the board of commissioners who was defeated in the election or who chose not to seek reelection retains the office until the successor takes the oath.

#### Chairman of the Board

In all but a few counties, the chairman of the board of commissioners is selected by the board itself. The board also choose a vice-chairman to act in the absence or disability of the chairman. In most counties, the chairman serves as long as he or she is reelected and retains the confidence of his or her colleagues. In others, the member who receives the most votes during the elction is designated the chairman. In still others, the chairmanship rotates among the members.

The chairman of the board presides at all meetings. By law, this official has the right and the duty to vote on all questions before the board unless excused by a standing rule of the board or by consent of the other board members. The chair is generally recognized by law as the chief executive officer of the county. He or she can call special meetings of the board,

and can also declare states of emergency under the state laws governing riots and civil disorders.

### **Clerk of the Board and the County Attorney**

The clerk of the board of commissioners keeps the minute and ordinance books, and has a wide variety of miscellaneous duties directly related to official actions of the board. Most boards designate a county official or employee to act as clerk to the board. The clerk is appointed directly by the board and serves at its pleasure.

The board of commissioners also appoint a county attorney, who serves as the board's legal adviser. The exact nature of the county attorney's duties varies from county to county, as does the amount and method of her or his compensation. A few counties have established a full-time position of county attorney, and in those counties the county attorney may provide legal services to nearly all county agencies (except the board of education, which always employs its own attorney). The county attorney is not appointed to a definite term, but rather serves at the pleasure of the board.

### **Records of the Board**

The clerk of the board of commissioners keeps full and accurate minutes of the board's proceedings, including the results of each vote taken by the board. The clerk also keeps the ordinance book, which contains details on adopted ordinances. Both the minutes book and the ordinance book must be open to public inspection.

### **Meetings of the Board**

The board is required by law to hold at least one meeting each month, on any day of the month and at any public place within the county. Special board meetings may be called by the chairman or by a majority of the other board members. A special meeting must be called by written notice stating time, place, and subjects to be considered. Unless all members attend or sign a written waiver, only business related to the subjects stated in the notice may be transacted at a special meeting.

The board of commissioners is subject to the [Open Meetings Statute](#) <sup>[5]</sup>, enacted in 1971. This law forbids most public bodies, both state and local, to hold meetings that are not open to the public. In general, the law prohibits a majority of the members of a board of commissioners from gathering together in closed or secret session for the purpose of "conducting hearings, participating in deliberations or voting upon or otherwise transacting public business," except when the subject of discussion falls within one of the exceptions set out in the statute.

The law leaves most procedural matters to the discretion of the board, but it does set out a few rules regarding quorum. Quorum is a majority of the full membership of the board without regard to vacancies. For example, a quorum of a five-member board is always three members even though there may be two vacancies. The board of commissioners may take no action unless a quorum is present.

### **Orders, Resolutions, and ordinances**

Except for the few special powers held by the chairman of the board, the county commissioners act as a body; an individual commissioner has no power to act in lieu of the board. The board takes formal action in one of three ways: *orders*, *resolutions*, and *ordinances*. Although these terms are often used interchangeably, their definitions may be useful to illustrate how the board acts.

- An *order* is usually a directive to a county administrative officer to take or refrain from taking a specified action. For example, a board of commissioners may enter an order directing the county manager to advertise for bids for a new office building. An order may also declare the existence of a given fact, such as an order declaring the results of an election. Finally, an order may sometimes be used to decide a question before the board, such as an order awarding a construction contract to the lowest responsible bidder.
- A *resolution* usually expresses the sense of the board on a question before it. For example, the board may resolve to petition the State Department of Transportation to pave a rural road.
- An *ordinance* is an action of the board taken in its capacity as the county's legislative body. As such, an ordinance is analogous to an act of the General Assembly. The board of commissioners may adopt ordinances relating to such varied matters as [zoning](#) <sup>[6]</sup>, dogs running at large, or use of the county landfill.

The law does not regulate the manner in which orders and resolutions are adopted by a board of commissioners, beyond the minimum requirements of a meeting at which a quorum is present. There are several laws governing the adoption of ordinances. An ordinance may be adopted at the meeting in which it is introduced only if it receives a unanimous affirmative vote by all members of the board. If it does not receive this type of support, it may be passed by a majority vote at any time within 100 days after its introduction. Exceptions to this rule are the budget ordinance, a bond ordinance, or any ordinance required by law to have a public hearing before adoption.

### **Relation to County Government**

The law dictates many features of how the county's government will be organized. However, there are some county positions that are appointed directly by the board, including the tax supervisor, tax collector, county attorney, and clerk to

the board of commissioners. Except in counties in which the chairman of the board is a full-time administrative officer, each board of commissioners may also appoint a county manager. The board also has administrative jurisdiction over a number of county departments, agencies, or offices.

**References and resources for additional information:**

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/> [7].

North Carolina Association of County Commissioners [8]

Links to resources from the North Carolina Association of County Commissioners.<http://www.ncacc.org/QuickLinks.aspx>

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