



## **NC Supreme Court Clarifies General Assembly's Power to Grant and Withdraw Jurisdiction to Municipalities, February 2017**

In two recent decisions, the North Carolina Supreme Court clarified that, while the General Assembly has broad power to define local boundaries, it cannot prohibit local actions related to health and sanitation which are protected under Article II, section 24(a)(1) of the North Carolina Constitution. Summaries of both cases follow:

***Town of Boone v. State of North Carolina: "Boone Act" Upheld Against Constitutional Challenge.*** In a 4–2–1 ruling, a majority of the North Carolina Supreme Court concluded that the General Assembly may withdraw a previous grant of "extraterritorial jurisdiction" to the Town of Boone (i.e., extending town authority beyond corporate limits generally or for specified purposes). Accordingly, the Court reversed the decision of a three-judge panel of the Superior Court of Wake County and held that the General Assembly could return governance over this area to Watauga County. The Court's holding indicates that grants of extraterritorial jurisdiction from the General Assembly to towns and cities are connected to the legislature's power to organize local government and define the boundaries of political subdivisions. The Court held that the General Assembly's power under Article VII, section 1 of the North Carolina Constitution to define local boundaries and organize local government is extremely broad.

The facts of the case go back to 1961 when the General Assembly granted the Town extraterritorial jurisdiction over an area not to exceed one mile beyond its corporate limits in Watauga County. This was a general grant of authority and not limited to specified purposes (e.g., for sanitation only). The Town subsequently adopted an ordinance for specified locations within the one-mile perimeter. But in 2014, the General Assembly passed legislation that completely withdrew extraterritorial jurisdiction from the Town (the "Boone Act").

The Town filed a challenge to the Boone Act, arguing that it violated Article II, Section 24 of the North Carolina Constitution, which prohibits "local acts" that relate to various topics, including health, sanitation, and the abatement of nuisances; non-navigable streams; and labor, trade, mining, or manufacturing. The state, defending the General Assembly's action, argued that Article VII, Section 1 gives the General Assembly the power to modify the governance of territory within the state.

Siding with the state, the majority reasoned that the General Assembly's power to organize government and define, limit, and expand the boundaries of counties, cities and towns, and other political subdivisions under Article VII, Section 1 was unlimited by the constitution. Moreover, it found that the Boone Act did not implicate the limitation, also found in Article VII, Section 1, on the General Assembly's authority to give powers and duties to political subdivisions. Reasoning that "extraterritorial jurisdiction is inextricably tied to a municipality's authority to enforce its . . . ordinances within certain geographic boundaries," the majority concluded that "local jurisdictional reorganization" is the sort of "organization and government and fixing of boundaries" contemplated by the constitution.

Two concurring justices and one dissenting justice would have found that the Boone Act implicated the second clause of Article VII, Section 1, defining the power of the General Assembly to give powers and duties to political subdivisions. These justices reasoned that “extraterritorial jurisdiction relates to regulatory power or authority rather than the establishment of municipal boundaries.” But whereas the dissent found that the Boone Act had a material connection to the topics listed under Article II, Section 24, the concurring justices concluded otherwise.

***Asheville v. State of North Carolina: Court Invalidates Legislation Requiring Asheville to Transfer Water System Assets.*** Here, the Court drew a distinction between the General Assembly’s broad authority to organize local government from the authority to specifically influence the provision of water and sewer services in a locality. As to the second situation, the Court has signaled such acts will be subject to closer review.

In a 5-2 decision, the Court held that legislation requiring the City of Asheville to transfer its water system assets to the Metropolitan Sewerage District of Buncombe County was an unconstitutional local act, thereby reversing a ruling by the North Carolina Court of Appeals. The City’s water system serves approximately 124,000 customers, including 48,000 customers outside city limits who live in Buncombe and Henderson Counties. By law, Asheville is required to extend water service to new noncity customers upon request at the same rates charged to city customers.

In 2013, the General Assembly passed an act (the “Act”) which required certain public water systems to transfer their assets and debts to a metropolitan sewerage district if (1) the public water system was owned and operated by a municipality located in a county with a metropolitan sewerage district, and (2) the public water system served a population of 120,000 or more. In other sections, the Act authorized two or more political subdivisions to voluntarily establish a “metropolitan water and sewage district” while preventing the formation of metropolitan sewerage districts in any county currently lacking such an entity without the consent of all affected political subdivisions. Not surprisingly, only Asheville qualifies for the involuntary transfer provisions of the Act.

Asheville argued that the Act was a local act related to health and sanitation, and therefore, prohibited by Article II, Section 24(1)(a) of the North Carolina Constitution. Meanwhile, the state argued that (1) the Act was a general law based on a reasonable classification, and (2) the stated purpose of the Act revealed that it was related to “customer service” and governance as opposed to health or sanitation.

In its analysis of whether the Act was “local” or “general,” the majority relied on what it perceived as a disconnect between the Act’s stated purpose and its application. Although the Act “recognize[d] the value of regional solutions for public water and sewer for large public systems,” only Asheville would ever be required to involuntarily transfer control of its water system to a regional entity — even though other municipalities could conceivably have been subject to the requirement in the future. Similarly, the majority observed that none of the smaller public water systems operated by municipalities in Buncombe County would be required to transfer control of their systems to a regional entity even though this conceivably would have also furthered the Act’s stated purpose. Finding no factual basis or justification in the Act for distinguishing between Asheville and other municipalities, the majority concluded that the Act was local and turned to whether it related to health or sanitation.

Reasoning that legislation need not directly regulate a topic to be related to it, the majority concluded that the Act “related” to health and sanitation. First, the majority found that the stated purpose of the Act demonstrated a material relationship between it and issues of health and sanitation, emphasizing that the quality of water supplied is materially related to the quality of service provided.

Second, the majority looked at the practical effect of the legislation, which would be to shift responsibility for various health- and sanitation-related laws, and it concluded that the Act had material effects within the field of health and sanitation. Because of this, the Act was held unconstitutional.

Two dissenting justices argued that the General Assembly possessed unqualified authority to create and organize political subdivisions within the state under Article VII, section 1 of the North Carolina Constitution. They contended that the Act created a new political subdivision to govern water and sewer services within Buncombe and Henderson Counties, and therefore, the Act was not subject to the prohibition of “local acts” in Article II, section 24. In their view, assuming the Act was a “local act,” the majority’s ruling makes uncertain the constitutionality of similar, past local legislation creating water and sewer districts. However, it seems unlikely that the slippery slope predicted by the dissent will have significant practical impact.

**Going forward.** The *Boone* decision suggests that, if the local act broadly relates to general organization and government and fixing of boundaries, it will be found constitutional. Alternatively, if the stated purpose and practical effect of the legislation has a material connection to issues involving health, sanitation and the abatement of nuisances, it is likely to be held unconstitutional. However, these cases also highlight the subjective nature of this determination, making it difficult to predict how the courts will address future cases.