

LEGAL AUTHORITY FOR LOCAL GOVERNMENT INCENTIVES

The following memorandum of law was prepared for a County in North Carolina which requested a memorandum outlining in some detail the legal and constitutional authority for local governments to provide incentives to recruit industrial facilities. The name of the County has been deleted for confidentiality purposes.

This is a changing area of the law with future appellate decisions being entirely possible. Also some legal challenges, such as a contention that recruitment incentives are tax abatements, have not been decided by the Courts in North Carolina. Consequently no entity should rely upon this memorandum of law as legal authority for any particular incentive arrangement, but legal counsel should be consulted as to the legal authority for any incentive agreement.

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MEMORANDUM

TO: _____ County, N.C. Board of Commissioners

FROM: Ernest C. Pearson

DATE: December 28, 2007

RE: **Local Government Authority to Implement Incentive
Policy for Industrial Recruitment**

As a part of our scope of work in reviewing _____ County's handling of business recruitment incentives, our law firm was to provide this memorandum of law concerning the authority of _____ County (the "County") to adopt an incentive policy and to provide incentives to assist in the recruitment efforts of the County.

FACTS

The County is an economically distressed county for reasons stated in its proposed incentive policy.

The only reasonable way to expect to improve these unacceptable economic conditions is to take all appropriate and fiducially sound measures possible to induce industries with significant tax bases and which will create a significant number of well paying jobs to locate their new and expanded facilities in the County.

The competitive environment in recruiting industrial facilities is heavily dependent upon providing limited, appropriate and fiducially sound financial assistance to companies considering business locations. States which are most often competing with North Carolina in recruiting industry have industrial recruitment incentives which far exceed similar programs in North Carolina. Counties in this State which are proximate to the County, as well as counties all across the State, have policies to allow for and in fact, frequently do make financial grants to companies locating facilities in those counties. Although no up-to-date and reliable statistics are currently maintained regarding these policies and practices, it is generally understood and accepted among economic development professionals that most counties and many cities in this State do offer some types of financial incentives to companies locating facilities in those counties and cities.

A recent study of the importance of site selection criteria, prepared by Area Development magazine and published in its December 2003 issue, lists state and local incentives as the number one factor companies now consider in choosing a site for a new facility. Other recent editions of this annual study have state and local incentives at differing levels of importance, but such

incentives are always one of the top criteria companies rely upon in making site selection decisions.

Consequently, it is abundantly clear that if the County is to improve its unacceptable economic situation by recruiting companies to the County, which will enhance its economic base, it must be reasonably competitive in all areas, including incentives to support business sitings.

ISSUES

The issues which I address are the following:

1. Pursuant to the terms of the incentive policy, does the County have statutory authority to make cash grants or to provide other incentives to a private Company to support locating its business facilities in the County?
2. Should there be a judicial determination in the future that any of the incentive grants from the County pursuant to its incentive program were made without sufficient statutory authority, what liability, if any, would the members of the County Board have personally?

LEGAL DISCUSSION

1. AUTHORITY FOR INCENTIVES

The first issue above could be considered to raise certain constitutional issues, as might any direct cash incentive or conveyance of land to support the location of a business facility in a local government's area. The statutory authority to provide recruitment incentives, pursuant to N.C.G.S. §158-7.1, is quite clear. The primary issues that have been raised in the past concerning the legal authority for incentives have dealt with perceived constitutional issues. The following analyzes the constitutional authority for incentives.

First, Article V, Sec. 2(1) of the North Carolina Constitution provides that "[t]he power of taxation shall be exercised in a just and equitable manner, for public purposes only..." This limitation applies to the power to appropriate money as well as the power to tax. Foster v. North Carolina Medical Care Comm'n, 283 N.C. 110, 195 S.E.2d 517 (1973)."

This raises the issue of whether utilizing public funds and assets for an incentive arrangement is a use which is not for a public purpose, but rather merely benefitting a private interest.

The determination of what can and cannot be done in furtherance of the public purpose has shifted with time. Particularly in the area of measures which support the public purpose of economic development (i.e., creation of jobs for the citizens and expansion of the tax base) there has been a broadening of this doctrine.

"A slide-rule definition to determine public purpose for all time cannot be formulated; the concept expands with the population, economy, scientific knowledge, and changing conditions. As people are brought closer together in congested areas, the public welfare requires governmental operation of facilities which were once considered exclusively private enterprise (citation omitted) and necessitates the expenditure of tax funds for purposes which, in an earlier day, were not classified as public. (Citation omitted). Often public and private interests are so co-mingled that it is difficult to determine which predominates. It is clear, however, that for a use to be public its benefits must be in common and not for particular person's interests, or estates; the ultimate net gain or advantage must be the public's as contra-distinguished from that of an individual or private entity."

Mitchell v. Financing Authority, 273 N.C. 137, 144, 159, S.E.2d 745, 750 (1968).

In determining whether or not particular legislation, such as N.C.G.S. 158-7.1 furthers a public purpose, the legal principles to be applied upon such review are: First, the presumption is in favor of constitutionality of an act, State v. Fumage, 250 N.C. 616, 109 S.E.2d 563 (1959), and all doubts must be resolved in favor of the act. Wells v. Housing Authority of Wilmington, 213 N.C. 744, 196 S.E.2d 326 (1938). Further, the Constitution is a restriction of powers and those powers not surrendered are reserved to the people to be exercised through their representatives in the General Assembly. Therefore, so long as an act is not forbidden, the wisdom and expediency of the enactment is a legislative, not a judicial decision. McIntyre v. Clarkson, 254 N.C. 510, 119 S.E.2d 888 (1961). Finally, the fact that public monies are paid to a private individual, corporation or entity does not affect the character of the expenditure, since the object of the expenditure and not to whom it is paid determines whether it is for public purpose. Green v. Kitchin, 229 N.C. 450, 50 S.E. 2d 545 (1948). So long as the "public purpose" doctrine is met, the General Assembly may appropriate public funds to private persons, associations or corporations. Hughey v. Cloninger, 297 N.C. 86, 95, 253 S.E.2d 898 (1979); Article V, Section 2(7), North Carolina Constitution.

The initial responsibility for determining what is and what is not a public purpose rests with the Legislature, (in this case the Board of Commissioners) and its findings with reference thereto are entitled to great weight. In Re Denial of Approval to Issue Housing Bonds, 307 N.C. 52, 296 S.E. 2d 281 (1982). However, a "legislative declaration which asserts in general terms that the statute under consideration is enacted for a public purpose, although entitled to great weight, is not conclusive. When the facts are determined, what is a public purpose is a question of law for the court." Martin v. Housing Corporation, 277 N.C. 29, 43, 175 S.E. 2d 665, 673 (1970).

It is clear, therefore, that although each and every appropriation made by a legislative body, such as the County Board, is presumed to be constitutional and for a public purpose, that presumption can be rebutted by contrary evidence.

In 1968 in the case of Mitchell v. Financing Authority, *supra*, the North Carolina Supreme Court held that the Industrial Development Financing Act was unconstitutional. This Act authorized a newly created Industrial Development Financing Authority to issue bonds to finance capital projects for industrial development. The facilities would be owned by the State, but leased to private entities until rental payment retired the bonds. The stated purpose of the Act was to promote industry and the natural resources of the State, increase gainful employment and purchasing power, improve living conditions, advance the general economy, and otherwise contribute to the prosperity and welfare of the State. The Court in Mitchell held that "[t]he financing of a private enterprise with public funds contravenes the fundamental concept of North Carolina's Constitution." Five years later, the Court reinforced the Mitchell holding in a similar case, Stanley v. Department of Conservation and Development, 284 N.C. 15, 199 S.E. 2d 641 (1985). In Stanley, the North Carolina Supreme Court stated the following:

An activity cannot be for a public purpose unless it is properly the 'business of government,' and it is not a function of government either to engage in private business itself or to aid particular business ventures. Aid to a private concern by the use of public money or by tax-exempt revenue-bond financing is not justified by the incidental advantage to the public which results from the promotion and prosperity of private enterprises.

284 N.C. at 33, 199 S.E.2d at 647.

Since the Supreme Court holding in Mitchell and Stanley, Article V, Sec. 9, has been added to the North Carolina Constitution to specifically authorize industrial development revenue bond financing. The fact that the citizens of North Carolina approved that constitutional amendment is a strong argument that the citizens of the State have endorsed public support for economic development projects. However, some might still persist in the argument that the general holding of both Mitchell and Stanley - financing of private business is not a public purpose - continues to remain the law in North Carolina, as to recruitment incentives. However, specifically, the issue of whether the use of public funds to provide assistance to industrial siting projects has now been decided by the NC Supreme Court.

On March 8, 1996, the NC Supreme Court filed its opinion in the case of William F. Maready v. The City of Winston Salem, et. al, 342 N.C. 708, 467 S.E.2d 615 (1996).

The Supreme Court's rationale on this issue is best expressed at page 724 of the Maready decision, and the pertinent portion follows:

"Moreover, an expenditure does not lose its public purpose merely because it involves a private actor. Generally, if an act will promote the welfare of a state or a local government and its citizens, it is for a public purpose.

Viewed in this light, section 158-7.1 clearly serves a public purpose. Its self-proclaimed end is to "increase the population, taxable property, agricultural

industries and business prospects of any city or county.” N.C.G.S. §158-7.1(a). However, it is the natural consequences flowing therefrom that ensure a net public benefit. The expenditures this statute authorizes should create a more stable local economy by providing displaced workers with continuing employment opportunities, attracting better paying and more highly skilled jobs, enlarging the tax base, and diversifying the economy. Careful planning pursuant to the statute should enable optimization of natural resources while concurrently preserving the local infrastructure. The strict procedural requirements the statute imposes provide safeguards that should suffice to prevent abuse.

The public advantages are not indirect, remote, or incidental; rather, they are directly aimed at furthering the general economic welfare of the people of the communities affected. While private actors will necessarily benefit from the expenditures authorized, such benefit is merely incidental. It results from the local government’s efforts to better serve the interests of its people. Each community has a distinct ambience, unique assets, and special needs best ascertained at the local level. Section 158-7.1 enables each to formulate its own definition of economic success and to draft a developmental plan leading to that goal. This aim is no less legitimate and no less for a public purpose than projects this Court has approved in the past.”

The holding of the Supreme Court on the public purpose issue is summarized as follows from page 727 of that opinion:

“The General Assembly thus could determine that legislation such as N.C.G.S. §158-7.1, which is intended to alleviate conditions of unemployment and fiscal distress and to increase the local tax base, serves the public interest. New and expanded industries in communities within North Carolina provide work and economic opportunity for those who otherwise might not have it. This, in turn, creates a broader tax base from which the State and its local governments can draw funding for other programs that benefit the general health, safety and welfare of their citizens. The potential impetus to economic development, which might otherwise be lost to other states, likewise serves the public interest. We therefore hold that N.C.G.S. §158-7.1, which permits the expenditure of public moneys for economic development incentive programs, does not violate the public purpose clause of the North Carolina Constitution. Accordingly, the decision of the trial court on this issue is reversed.”

Consequently, there is now no reasonable argument that such expenditures are not for a public purpose.

Some might raise another constitutional issue, where the conveyance of property below fair market value is utilized as a recruitment incentive. Article I, Section 32 of the North Carolina Constitution requires that a local government receive fair compensation for the sale or

conveyance of property. Redevelopment Commission v. Security National Bank, 252 N.C. 595, 114 S.E.2d 688 (1960).

As to this issue, the language of N.C.G.S. § 158-7.1, as amended effective July 23, 1993 by Section 24 of Senate Bill 1157, seems to clarify this point. Pursuant to this amendment, in establishing the consideration to be received, cities and counties may take into account prospective tax and other revenues to be generated by the Company being recruited, over the next 10 years, when it is determined that a real estate incentive will "stimulate the local economy, promote business, and result in the creation of a substantial number of jobs in the county or city," N.C.G.S. § 158-7.1(d2)(1). Appropriations and expenditures for incentives are limited to one-half of one percent (0.5%) of the city or county property tax value. These provisions were first enacted for certain cities and counties in 1991. Senate Bill 1157 (and House Bill 1109 which became effective on January 1, 1994) extends this to all cities and counties.

The requirement in the bill that a locality receive fair market value for any interest in the property conveyed to private business by way of future revenues from taxes and other sources over ten years would appear on its face to satisfy the constitutional requirement of adequate consideration. Tying the consideration to be received to the estimated revenues resulting from the conveyance over the next ten years may also provide an additional rational argument as to why such economic development expenditures are for a public purpose.

Thirdly, another constitutional issue as to cash grant incentives from local governments to support private industrial sitings is the question of whether such grants constitute a tax abatement. This issue was never raised or decided in the Maready case.

The most authoritative and exhaustive review of this issue is found in "Bulletin Number 84, June 1998," written by Mr. David M. Lawrence and published by the Institute of Government at the University of North Carolina at Chapel Hill. This issue was well framed by the following pertinent portions of that Bulletin:

"But neither G.S. 158-7.1 nor Maready are authority for linking economic development grants to property from the tax base. There is no indication that the city and county grants in Maready were linked in any way to the amount of property taxes paid, and the court dealt only with the validity of the grants under Article V, section 2(1), the public purpose provision. The concern here is the validity of property tax-linked grants under Article V sections 2(2) and 2(3).

Article V, section 2(2) reads:

Only the General Assembly shall have the power to classify property for taxation, which power shall be exercised only on a State wide basis and shall not be delegated. No class of property shall be taxed except by uniform rule, and every classification shall

be made by general law uniformly applicable in every county, city and town, and other unit of local government.

Article V, section 2(3) reads:

Property belonging to the State, counties, and municipal corporations shall be exempt from taxation. The General Assembly may exempt cemeteries and property held for educational, scientific, literary, cultural, charitable, or religious purposes, and, to a value not exceeding \$300, any personal property. The General Assembly may exempt from taxation not exceeding \$1,000 in value of property held and used as the place of residence of the owner. Every exemption shall be on a State-wide basis and shall be made by general law uniformly applicable in every county, city and town, and other unit of local government. No taxing authority other than the General Assembly may grant exemptions, and the General Assembly shall not delegate the powers accorded to it by this subsection.”

Until the Dell decision cited below, there was no appellate decision interpreting this issue in regard to incentives granted pursuant to N.C.G.S. §158-7.1. Clearly, what are commonly called tax abatements are generally unconstitutional. What then is the application of this general constitutional constraint to such grants?

The answer to this would likely be controlled by how such grants are structured. Clearly, an industrial recruitment incentive grant policy and grants pursuant to that policy which are denominated as a percentage rebate of ad valorem taxes collected, more likely raise this issue. This counsel could make a strong argument that even grants denominated as percentage tax rebates are constitutional. However, this structure certainly invites the tax abatement argument. The incentive policy under consideration by the County Board does not invite or give rise to this issue. In fact, that policy says nothing about how much money a particular industrial recruitment project will/should receive. Very importantly, it is structured in such a manner that grants from the County are not “linked in any way to the amount of property taxes paid. . .” “Bulletin 84,” Institute of Government.

The key to increasing the possibility of the success of defending against any challenge of the tax abatement issue will depend in significant part on how individual grants are structured pursuant to the incentive policy.

First, continuing implementation of this program should be based on sound public policy principles, which include:

Any business project locating in the County which receives financial support from the County must provide a very high return on investment for the public funds provided.

Any grant to support a company's location of a business facility in the County must be preceded by the execution of an agreement with the subject Company which binds that Company to minimum levels of capital investment and jobs created, at wages which are competitive in the County.

Funds invested by the County in business projects locating in the County should be in items which leave value in the County in the event of the Company curtailing or terminating its operations, such uses to include, but not limited to, land acquisition, site preparation, internal infrastructure and job training.

Any financial investments offered to support a new business siting in the County must also be available on the same or better terms to industries currently located in the County which are expanding existing facilities.

Second, grants should not be discussed or committed to by the County which are linked to ad valorem property taxes paid. Also, although Mr. Lawrence suggests in Bulletin 84 that percentage formulations can be based on ad valorem property tax valuations, it is the opinion of this Counsel that this also is too close (only one step removed) from the tax abatement issue and hence, this formulation is not recommended either.

Inevitably, the County Economic Developer, County Staff and County Board will reflect upon how much tax revenue will be realized from a new industrial facility, in deciding the amount of any grant(s). In fact this is required by N.C.G.S. §158-7.1 which provides that property conveyances below fair market value cannot be made when the amount of deferred fair market value compensation exceeds the amount of all tax revenues which could be realized by the County from the industrial facility for a period of ten years. However, in any event, in negotiations with a company over incentives agreements, the grants should be stated as lump sum dollar amounts, rather than percentages of ad valorem property taxes or valuations. This moves the structure as far away as possible from the tax abatement comparison.

Third, the County should contractually bind the company's performance to certain minimum expected levels of capital investment and numbers of jobs created at the very least. Such arrangement might also be tied to wage levels. Consequently, if the amounts of incentive grants are based, at least in part, on factors other than ad valorem property taxes collected, those grants would be qualitatively different from a pure tax abatement or percentage tax rebate. Also, this is a great public relations message, because the average citizen relates to quality jobs being created more than tax revenues.

Formulations can be worked out which measure the Company's performance requirements of capital investment, number of jobs created and wage levels by way of individual comparisons, unweighted averages of two or three performance requirements, or weighted averages which give more weight to one factor over another.

Fourth, if it can be negotiated with the company being recruited, it is desirable to have reductions in the amounts of future grants (or partial refunds of prior grants) proportionate to the percentage by which a company falls short on its goals, but which does not allow for an increase in such grants if the company exceeds its performance requirements (capital investment, number of jobs and wage levels). This truly makes the structure quite different from a tax abatement or percentage tax rebate.

Fifth, the County should have incentive agreements prepared by or in consultation with a law firm with public finance experience and some depth in regularly being involved in incentive transactions. The legal and economic development issues related to incentive grants presents a developing and shifting field of law, with very little case law or other secondary sources to interpret the situation. Consequently, only constant involvement in the field keeps one aware of developing legal issues and competitive demands among other cities, counties and states.

Since the Maready decision, one more case has been decided by the N.C. Court of Appeals which addresses a range of challenges against incentives used to recruit a Dell facility to Forsythe County, Blinson, et al. v. State of North Carolina, et. Al, 651 SE2d 268 (2007), (hereinafter referred to as the Dell decision). This case confirms the ruling in the Maready case and addresses a number of legal issues not raised in Maready. A summary of relevant portions of the Dell decision follows.

The Plaintiffs in the Dell case brought twenty two counts challenging the state and local incentives supporting the location of a Dell manufacturing facility in Forsythe County. The trial court dismissed all counts based upon motions to dismiss for lack of standing on the part of the plaintiffs, or failure of plaintiffs' complaint to state a claim upon which relief could be granted. On appeal to the N.C. Court of Appeals the plaintiffs abandoned most of their claims, and only appealed on five of the original claims. These claims contended that the incentives granted to Dell were not permissible in that they: (1) violated the "public purpose" doctrine contained in the N.C. Constitution; (2) were "exclusive emoluments" in violation of the N.C. Constitution; (3) were unauthorized local development under N.C.G.S. §158-7.1; (4) were not uniformly applicable as required by the N.C. Constitution; and (5) discriminated against interstate commerce in violation of the Dormant Commerce Clause as embodied in the U.S. Constitution. The question of whether the local government incentives were tax abatements was not pursued on appeal. Consequently the above discussion as to steps to avoid the tax abatement issue continues to apply to future incentive policies and agreements.

The N.C. Court of Appeals ruled solidly in favor of the defendants, supporting all of the incentives provided for the Dell project.

The portion of the decision which best summarizes the N.C. Court of Appeals decision reads as follows:

“Today, every state provides tax and other economic incentives as an inducement to local industrial location and expansion.” Walter Hellerstein & Dan T. Coenen, *Commerce Clause Restraints on State Business Development Incentives*, 81 Cornell L. Rev. 789, 790 (1996). In a reprise of *Maready v. City of Winston-Salem*, **342 N.C. 708, 467 S.E.2d 615** (1996), plaintiffs challenge incentives - provided by the General Assembly and defendants City of Winston-Salem and Forsyth County - that benefitted defendant Dell, Inc. when it constructed a computer manufacturing facility in Forsyth County.

Whether these incentives are lawful under the North Carolina Constitution was settled by *Maready* and this Court’s subsequent decision in *Peacock v. Shinn*, **139 N.C.App. 487, 533 S.E.2d 842**, *appeal dismissed and disc. review denied*, **353 N.C. 267**, 546 S.E.2d 110 (2000). We are not free to revisit the reasoning or holdings of those opinions. To the extent plaintiffs question the wisdom of the incentives and whether they will in fact provide the public benefit promised, they have sought relief in the wrong forum. Once the Supreme Court held in *Maready* that economic incentives to recruit business to North Carolina involve a proper public purpose, it became the role of the General Assembly and the Executive Branch - and not the courts - to determine whether such incentives are sound public policy. We are bound by *Maready* and *Peacock* and, therefore, affirm the trial court’s decision dismissing plaintiffs’ complaint.”

In short, structured correctly as outlined above, incentives can be provided for qualified recruitment projects in ways which significantly lessen the chance of a tax abatement or other challenge being brought, and if brought, being prosecuted successfully. The law is sparse in this area, so no lawyer can reasonably predict the result of any such litigation. However, the above described structure clearly makes the risks in this regard more remote.

2. PERSONAL LIABILITY OF OFFICIALS

The states are divided on the issue of when public officials should be held personally liable for the improper expenditure of public funds. The courts of some states seem to

follow a strict liability rule, and a public officer is held personally liable whenever he has permitted expenditures which are outside of the constitutional or statutory authority of that public body. Newport v. McLane, 256 Ky. 803, 77 S.W.2d 27; Latreille's Estate v. Road District of Vermillion Parish (La. App.) 13 So.2d 740.

The courts of other states take a more liberal view and hold that public officers who vote to authorize the expenditure of funds for purposes which are later found to be outside of constitutional or statutory authority incur no personal liability to the extent that they acted in good faith, believing that they had the authority to expend the money for the purposes for which the appropriation was made. Adams v. Bryant, 236 Ark. 859, 370 S.W.2d 432; McCarty v. St. Paul, 279 Minn. 62, 155 N.W.2d 459. North Carolina applies this standard. Old Fort v. Harmon, 219 N.C. 245, 13 S.E.2d 426 (1941).

In Old Fort v. Harmon, the North Carolina Supreme Court sustained the dismissal of a complaint against the mayor and members of the town board of aldermen, because it failed to allege sufficient grounds for personal liability. The Court stated:

"In the light of the fact that the strongest allegation against the defendants is that they authorized an "illegal expenditure," without any allegation of wrongful and wilful action, much less of corruption or malice, without any allegation of violation of any statute imposing personal liability, without any allegation of failure of adequate consideration moving to the municipality for the funds expended, and without any allegation of intent to evade the law, we are of the opinion, and so hold, that Noland Co. v. Board of Trustees, supra, Hipp v. Ferrall, supra, Templeton v. Beard, supra, and Town of Old Fort v. Harmon et. al., N.C. 13 S.E.2d 423, are applicable to the case at bar, and that the demurrers of the defendants were properly sustained."

This case is cited as authority by the Court in Thomas J. Hill, et. al. v. George L. Stansbury, et. al. 223 N.C.193 (1943), when it sustains a judgement of nonsuit in a similar case against the members of a board of county commissioners. The Court noted that "[t]he case as made out against the individual members of the board of county commissioners is wanting in sufficiency to show that they acted in bad faith, corruptly, or from motives of malice."

Consequently, it would seem that if each individual member of the County Board acts based upon the personal belief that approval of the expenditures called for in an incentive agreement is done under the express or implied authority of existing law and, if each member does so in good faith, free from any motives of corruption or malice, that there would be a meritorious defense against any claim for personal liability.

In a substantial respect, this legal memorandum provides some enhanced level of protection against personal liability of elected officials, in that it forms a basis for County Board Members' beliefs that this policy is within the authority of existing law. It would be advisable to obtain a legal opinion that each incentive agreement entered into in the future, with companies locating in the County, is within the authority of existing law.

This would not guarantee that a lawsuit would not be brought by some citizen challenging such arrangement and alleging that Commissioners are personally liable for any incentive appropriations. However, the opinion itself offers an enhanced level of defense against such a suit because again, there would be clear evidence that the Commissioners acted in the good faith belief that their appropriations are permitted under applicable law.

Two last points are worth noting. If a suit was brought alleging personal liability, it would be advisable to exercise the coverage provided by officers and directors liability insurance, which it is assumed covers the members of the County Board. Also in any such suit, it would be advisable to cross claim for recovery of the money from the Company, which would provide a likely source of recovery of the funds, if a court found the expenditures to be impermissible.

CONCLUSION

In regard to the _____ County incentive policy, there is a clear grant of authority to support this measure. Provided that the elected officials acting on these measures act in good faith and based on a reasonable belief that their actions are supported by the color of law, it would seem that no personal liability would result, although the results of future litigation are unpredictable.

It is beyond the scope of this attorney's insight to determine whether the amount of any incentive expenditures are within the financial capabilities of the County to absorb, or whether they exceed the limit of 0.5% set forth in N.C.G.S. §158-7.1. Hence any incentive arrangement should be subject to a review by the Finance Officer of each local government entity.

This opinion is delivered solely for the benefit of _____ County in connection with the preparation and passage of the incentive policy, and it may not be relied upon by any other person or for any other purpose without our prior written consent. You may not provide copies to any other person, government, corporation, or entity for any purpose whatsoever, nor may our opinion be quoted or otherwise referred to in any report, without our prior written consent.

Thank you for allowing us to provide this legal opinion. Let me know if we need to expand on this.