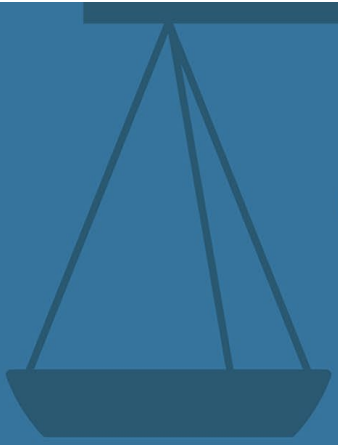
MUNICIPAL LAW NOTES



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Greetings municipal attorneys,

Demolition of blighted property, small business loans, running a red light, oh my! This edition of Municipal Law Notes dives into the legal nuances of some Big Ideas your board may be considering, and hopefully adds some insight to help you better advise your client. This edition also features links directly to the opinions discussed, and several links to resources provided by the League to improve the health of North Carolina's cities. We hope you take a look.

Speaking of resources, let me start with a huge lift performed by our Government Affairs team. Each year, the League publishes an **End of Session Bulletin** available here. This survey of bills that were considered during the last legislative session will keep you on the cutting edge of how the municipal law landscape changes from year to year. Even those bills that did not make it to the finish line offer a candid look into what the General Assembly considers important.

We are always looking for ways to better serve our members, and this includes adding corrections or context where needed. If you have thoughts on an issue discussed here, or think an area of the law needs more attention, please send me a note. I look forward to hearing from you.

Sincerely,

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Constitution

Corum claims implicate not just an official act, but the process of decision making itself; exhaustion of administrative remedies is no jurisdictional defense.

Askew v. City of Kinston, 902 S.E.2d 722 (N.C. 2024). In 2017, Kinston directed its planning department to assess and identify clusters of dangerous and blighted buildings based on criteria including the degree of dilapidation, proximity to heavily travelled roads, and demand on police resources. The planning director presented a list of 150 dilapidated properties statutorily-eligible for condemnation to Kinston's Council. The Council narrowed the list to a "Top 50," favoring properties that were close to main thoroughfares, clustered near other blighted properties, or which the police department characterized as "especially problematic." Plaintiffs in this case are property owners in the City: Joseph Askew owns two houses selected for condemnation after a building inspector presented its hazardous and decaying condition to the Council, and Curtis Washington owns another. Neither plaintiff exhausted an administrative appeal process set by statute to accompany a property's selection for condemnation. According to a procedure spread across the now defunct Article 19 of Chapter 160A, plaintiffs could have asked for a hearing with the inspector, whose decision to select a property for condemnation could be appealed to the entire City Council, and then to the Superior Court by writ of certiorari.

Mr. Askew engaged with Kinston for some time after his properties were initially selected, but a general lack of progress improving his properties resulted in the City condemning his two parcels for demolition in November 2017. After the City Council voted to follow through with condemnation of one of Mr. Askew's houses amidst his protestations, Mr. Askew joined Mr. Washington—who did not engage in the statutory appeal process at all—in filing a *Corum* suit. *Corum* claims, of course, give our courts the opportunity to fashion a remedy to "a violation of a particular constitutional right" allegedly perpetrated by a state actor. *Corum v. Univ. of N.C.*, 330 N.C. 761, 784 (1992). Plaintiffs alleged that Kinston violated their particular constitutional rights found in the (a) equal protection and (b) due process provisions of the North Carolina Constitution. Kinston had violated their right to equal protection by selecting their homes over their similarly situated white neighbors because of the plaintiffs' race, not based on the facially neutral criteria asserted by the City. The City ran afoul of their substantive due process rights, plaintiffs asserted, by exercising an arbitrary and capricious procedure to deprive them of their property. According to plaintiffs, this entitled them to the specific remedy of an injunction preventing the City's condemnation in response to the due process violation, and separate injunctive relief forcing Kinston to treat plaintiffs equally to their neighbors to remedy the more systemic equal protection violation.

The Court of Appeals upheld the trial court's summary judgment dismissal of both constitutional claims, holding that the plaintiffs' failure to exhaust the statutory appeal process operated as a bar to any claim that the City had violated their constitutional rights by condemning their property according to *Presnell v. Pell*, 298 N.C. 715, 721 (1979). To the Court of Appeals, the plaintiffs' nonfeasance was jurisdictional; it would be premature to hear either constitutional claim until the administrative apparatus had considered and passed on the very relief sought by plaintiffs. Enter a unanimous North Carolina Supreme Court. *Corum* claims are fundamental, according to the higher Court. They strike not only at the government's action, but at the constitutional implications of the journey to arrive at that action. Thus, the Supreme Court explains, the Court of Appeals erred for two reasons.

First, the Court of Appeals analyzed and disposed of both the due process and equal protection claims as though plaintiffs were alleging the same facts to request functionally identical relief: "to enjoin Kinston from demolishing plaintiffs' properties." But despite these two rights sharing an origin in Article 1, Section 19 of the North Carolina Constitution—the Law of the Land Clause—

Corum and its progeny requires that courts separate out each constitutional right allegedly violated and, if the facts show that a violation occurred, fashion a bespoke remedy for that claim. In the instant case, the Court of Appeals appropriately identified that enjoining the City's seizure of plaintiffs' property may have adequately prevented a due process violation if Kinston had actually engaged in an arbitrary and capricious process. But that remedy would do little to address a systemic targeting of plaintiffs based on their race: the basis for the equal protection claim at issue here. That constitutional violation would require a "mandate of equal treatment" from the start of the City's relationship with the subject properties. *Heckler v. Mathews*, 465 U.S. 728, 740 (1984). Per chance a change in process, free from racial animus or capricious decision making.

Second, the Court of Appeals held that plaintiffs' failure to avail themselves of the statutory process to appeal the City's decision deprived the trial court of subject matter jurisdiction to hear the *Corum* challenges. The lower Court's opinion relied on a line of cases specific to appeals of administrative decisions, starting with the *Presnell* case cited above. The Supreme Court noted that plaintiffs were not, however, engaged in the methodical elevation of a city's administrative actions to a higher decision maker. They did not assert that the planning department interpreted the fire code incorrectly, or that their variance application really did establish hardship in conforming to a UDO. They were challenging the constitutionality of Kinston's process and decision, and imploring a court to remove plaintiffs from the auspices of the procedure altogether. Jurisdiction then flows, according to the Supreme Court, directly from the state constitution's guarantee that "where there is a right, there is a remedy." *Washington v. Cline*, 898 S.E.2d 667, 668-69 (N.C. 2024). So does that mean that a plaintiff who stonewalls a city's inspectors can skip past the administrative board and get before a judge with a claim that the process is constitutionally deficient, or applied arbitrarily? Hold that thought.

The plaintiffs' engagement in this case with the statutory appeal procedure of the old Chapter 160A, Article 19 proved immaterial to a court's jurisdiction over *Corum* claims. But the *Corum* framework itself still requires practitioners defending municipalities to examine a plaintiff's engagement with Chapter 160D's new process—spread amongst Articles 4 and 14 of Chapter 160D—with equal vigor. As the Supreme Court explained, a plaintiff must establish that existing statutory or administrative relief falls short of providing plaintiff the opportunity to remedy their alleged constitutional violation in a meaningful way. The Court opined that this was an essential element of a *Corum* claim, not a jurisdictional threshold. Thus the question in this case is reframed from one of administrative exhaustion by the plaintiff, to one of insufficiency of the process allowing a plaintiff to skip it altogether. Practitioners should expect the plaintiff to plead that any other route to relief other than a *Corum* claim is insufficient, as opposed to anticipating a classic exhaustion of administrative remedies defense argument in the municipality's reply.

The case was remanded to the Court of Appeals for individual review of each of plaintiffs' claims, and the Court of Appeals made quick work. Its latest opinion released in August of 2024 executes the Supreme Court's clarified examination of *Corum* claims, conducting a separate analysis of plaintiffs' due process and equal protection claims. *Askew v. City of Kinston*, 2024 N.C.App. LEXIS 649* (2024). The Court of Appeals highlights that the threshold element of inadequacy of existing remedies is established in two parts by determining whether the administrative process provides (1) "the opportunity to enter the courthouse doors and present [their] claim[s]" and (2) "the possibility of relief under the circumstances," citing *Craig v. New Hanover Cnty Bd. Of Educ.*, 262 N.C. 334, 339–40 (2009). According to the Court of Appeals, both distinct claims could find adequate resolution through the statutory process set out in old Article 19 of Chapter 160A. And they could do so in essentially the same way: engagement in the statutory remedy—according to its terms—always leads a plaintiff to the opportunity to petition a Superior Court for certiorari, where they could assert their *Corum* arguments. The

Superior Court would then have the very same opportunity to fashion an individual remedy to each constitutional violation as it would have had through a direct *Corum* suit. For the due process violation, an injunction could issue halting the town's demolition. For the equal protection violation, the court could order the City to implement a nondiscriminatory selection process. To the Court of Appeals, the fact that an alternate route existed precluded any argument from plaintiffs that their only road to relief was through *Corum*. The panel again affirmed the trial court's grant of summary judgment in favor of the City. Plaintiffs have not filed additional appellate documents in this matter.

Governmental Immunity

Court of Appeals continues to flesh out Supreme Court's governmental immunity nuance, from firehouses to small business loans; panel also analyzes whether city's letter is a contract.

Flomeh-Mawutor v. City of Winston-Salem, No. COA23-809, 2024 N.C. App. LEXIS 628 *, 2024 WL 3658792 (2024). The plaintiffs in this case, proprietors of a health supplement derived from ground Moringa leaves and nuts, filed this suit alleging breach of contract, negligent misrepresentation, and negligent hiring and retention by the City of Winston-Salem. According to plaintiffs, unnecessary delays by the City in closing on a $100,000 small business loan cost them over a million dollars in lost revenue when they could not fulfill their end of an order without the loan's proceeds. A City employee had confirmed in writing over the course of a few months that the loan would close soon, prompting plaintiffs to promise a shipment to a vendor in Arizona without the money in hand to produce the goods. By the time the funds were distributed in August of 2020, plaintiffs had lost the deal. The trial court dismissed plaintiffs' claims after a summary judgment hearing, where the City argued their small business loan program and interaction with plaintiffs were subject to governmental immunity. The Court of Appeals affirmed in a thorough opinion reminiscent of a Sgt. Joe Friday deadpan: "All we want are the facts, ma'am." Or in this case, just the law.

The appellate courts of this state have a rich discography on governmental immunity and the analysis employed to determine whether an activity is governmental or proprietary in nature. *Meinck v. City of Gastonia*, 371 N.C. 497 (2018) and *Providence Volunteer Fire Dep't, Inc. v. Town of Weddington*, 382 N.C. 199 (2022) combine for a great primer on this issue, and both served as the basis for the Court of Appeals opinion here. These cases apply a three-step analysis developed in *Estate of Williams v. Pasquotank Cnty. Parks & Recreation Dep't*, 382 N.C. 199 (2012) for determining the governmental or proprietary nature of a local government's actions. The Court of Appeals applied the three-step *Williams* analysis to hold here that small business loan programs like Winston-Salem's—offering low or no interest small business loans to borrowers that would not otherwise qualify for lending from the private sector—was a governmental function deserving of immunity unless waived by the City.

Step One looks at whether and to what degree the Legislature has addressed the government's actions. The City argued that the enabling statute "specifically indicated" that expending money for community development was a governmental function. The Court of Appeals agreed. But this should be compared with an *explicit* indication from the Legislature that an act is a governmental function. For instance, the law cited by the City as the Legislature's stance on community development loans, N.C.G.S. § 160A-456, certainly empowers municipalities to run the loan program at issue here, but stops short of explicitly labelling the activity "governmental." Coincidentally, § 160A-456 was also recodified into Chapter 160D like the statute at issue in the *Askew* note above. *See* N.C.G.S. § 160A-1311. Contrast that with N.C.G.S. § 160A-512, which describes the authority of an urban redevelopment commission stood up by a local government as "public and essential governmental powers." The Supreme Court in *Meinck* analyzed that very language as a strong indication of the Legislature's opinion, but

continued further into the inquiry because "even when the legislature has designated a general activity to be a governmental function by statute, the question remains whether the specific activity at issue, in this case and under these circumstances, is a governmental function." *Meinck*, 371 N.C. at 513–14 (cleaned up). As the *Meinck* opinion reminds us, the question is not just "whether the legislature has explicitly provided that a specific activity is governmental by rather, whether, and to what degree, the legislature has addressed the issue." *Id*. at 511 (cleaned up).

There is a little tension here between *Meinck* and *Providence*. *Meinck* seems to suggest that even if an enabling statute utilized by your client to engage in an activity explicitly labels that authority as governmental in nature, you still must be prepared to address the remaining two steps because each distinct act taken under that authority may be either governmental or proprietary in nature. The *Meinck* opinion ultimately looked past the robust statutory language authorizing the city to acquire and dispose of property for downtown revitalization efforts, instead moving on to the characteristics of the specific activity challenged there: leasing a premises to an artist collective at a loss in order to attract tourism dollars. Then enter *Providence* four years later. That case examined a series of agreements between a town and a rural volunteer fire department whereby the town acquired a fire station that it was supposed to then lease back to the fire company. The fire company accused the town of a bait-and-switch after the town soon terminated the agreements between the parties and instead brought in a different fire company to service the town. After engaging in the full *Williams* analysis, the Court declined to examine the purchase and leaseback agreement, which served as the basis for the plaintiff's fraud allegation, separately from the more general governmental activity of providing fire suppression services. After all, the Court reasoned:

> A municipality cannot provide fire suppression services without some degree of preparation, such as ensuring that the facilities and equipment needed to permit effective fire suppression functions to be performed by Town directly or an entity with which the Town had contracted are available. Put another way, more is necessarily involved in the provision of fire protection services than the immediate act of fire suppression.

Providence, 382 N.C. at 218. This includes purchasing a fire station, even if the grantor alleges that the purchase is fraudulent. While the purpose for the government's disposition of real estate was critical for the Court's analysis in both *Meinck* and *Providence*, the *Meinck* opinion is surgical in its treatment of the authority and characteristics of the particular property transaction while *Providence* rests the lion's share of its laurels on the overarching purpose of the transaction.

The takeaway from this first step of analysis in a governmental vs. proprietary affray? Two distinct fact patterns—one where the Legislature has explicitly labeled an exercise of authority as governmental like in *Meinck*, and one where the Legislature has simply bestowed authority on a municipality with various procedural and substantive accoutrement like in *Providence*—will still prompt our appellate courts to engage in a full, three-step *Williams* analysis. Craft the factual background portion of your brief accordingly.

Step Two looks at whether the activity is one in which only the government could engage. The Court of Appeals in the instant case foregoes a hard analysis of the second step, instead recognizing that both parties have reasonable arguments. The City asserted that the money for the loan at issue, and the loan program itself, was required by federal law to be administered through units of government. The plaintiff noted that while community development may have been governmental in nature, loaning money to private citizens was certainly an activity enjoyed by the private sector. In any event, the Court moves on to Step Three which examines a non-exhaustive list of factors pulled from the granular details of the activity at issue: "whether

the service is traditionally a service provided by a governmental entity, whether a substantial fee is charged for the service provided, and whether that fee does more than simply cover the operating costs of the service provider." *Providence*, 382 N.C. at 213. While Step Two of a *Williams* analysis asks whether the private sector *could* engage in an activity, Step Three appears to examine whether the private sector *would* engage in such an activity. Here, the City again prevails. The loan program at issue utilized HUD block grants that, by their terms, could only pass through state and local governments. The loan program was designed to operate at a loss, and only lent money to small businesses without the credit to obtain similar funding from private banks. This is not lending behavior exhibited by the private sector. The Court of Appeals held that all three steps of the *Williams* analysis supported a conclusion that Winston-Salem's small business loan program was a governmental activity.

If the Court of Appeals' brief discussion of Steps Two and Three in the instant case doesn't quench your thirst, look to the *Meinck* opinion. First, the opinion discusses the interplay between legislative pronouncements about the governmental purpose behind an enabling statute and Step Two's contemplation of whether the private sector is also allowed to engage in similar activity. For instance, the fact that the Legislature pronounced that downtown blight was a problem that could only be solved through the government's revitalization efforts did not legally prohibit the private sector from engaging in similar activity should the desire arise. *Meinck*, 371 N.C. at 514. Second, the *Meinck* Court recognizes that the three factors explicitly listed in Step Three of the *Williams* analysis are non-exhaustive. That opinion also examines the "particular and noncommercial nature" of renting out a historic property to an artist collective at a loss. The leasing of the property in *Meinck* served another legislative prerogative to promote the arts and culture of the state while simultaneously bringing visitors to the downtown area. *Id*. at 516-17.

Finally, the icing on the cake. Remember that the plaintiffs here also alleged that Winston-Salem had breached a contract. But what contract? In their complaint, plaintiffs initially pointed to the loan agreement between the parties as the alleged contract. But plaintiffs also asserted that the City had breached the contract by delaying its execution. Probably realizing that it would be hard to prove the City had breached a contract that did not exist until after the alleged breach, plaintiffs pivoted during discovery and produced a letter sent to plaintiffs from a city employee months before the loan closed advising that the loan would close soon. Our client's employees put in titanic effort to keep our cities moving. They do not, however, have authority to bind their cities to a contract absent some delegation of authority. Unlike the private sector where a party could rely on apparent authority based on the counterparty's representations, "the law holds those dealing with a city to a knowledge of the extent of the power and of any restrictions imposed," according to a line of cases from the Court of Appeals. *See L&S Leasing, Inc. v. City of Winston-Salem*, 122 N.C. App. 619, 622 (1996). This includes knowledge that the rank and file of a municipality's economic development department would lack the power to bind the city to the terms of a large financial transaction. The letter produced by plaintiffs as the alleged contract was not in fact a valid contract. Having held that Winston-Salem did not waive its governmental immunity by entering into a contract, the panel affirmed the trial court's summary judgment order in favor of the City.

Fines and Forfeitures

Supreme Court says red light camera programs are back on the menu through local acts.

Fearrington v. City of Greenville, 386 N.C. 38 (2024). In 2018, plaintiffs each received a citation for running a red light in Greenville after a red light camera captured an image of their respective vehicles crossing the intersection at the wrong time. Greenville's red light camera program had been revived just a year prior after the General Assembly granted Greenville and

the Pitt County Board of Commissioners the authority to execute an interlocal agreement with "provisions on cost-sharing and reimbursement." 2016 N.C. Sess. Laws (Reg. Sess. 2016) 64, §4. Before that local act, a red light camera program operated by the City would have been financially untenable, as N.C.G.S. § 115C-437 limited the City's cut of any fines collected to 10%. This 10% could only be used to cover the actual costs of *collection* of the fine after a citation was issued, which did not include enforcement efforts like gathering evidence of a violation and issuing the citation itself. Acting quickly on this new authority, the City and County executed an interlocal agreement whereby the City would operate the red light cameras and remit 100% of the fines collected to the County. The County would then reimburse the City for the costs of doing business: paying a vendor to install and operate the cameras, along with an officer's salary to review the footage and issue citations. Over the two years preceding the filing of the complaint, Pitt County schools netted almost $1.7 million that it would not have had otherwise. This represented 72% of the fines collected with the other 28% going towards the City's enforcement efforts, including a large fee to the red light camera operator American Traffic Systems, Inc. of Arizona.

Plaintiffs' complaint attacks many facets of Greenville's red light program, from the alleged unlicensed practice of engineering by ATS, to the procedural due process shortcomings of the appeal process, to an assertion that the red light camera program runs "contrary to the immutable laws of physics." Nestled in plaintiffs' complaint you'll find an argument that Pitt County's voluntary remittance of any amount over 10% of collected fines violates a combination of Article IX, Section 7 of the North Carolina Constitution—containing the fines and forfeitures clause—and its legislative complement in N.C.G.S. § 115C-437. A unanimous Court of Appeals panel agreed. The Court of Appeals noted that the Supreme Court dissected the fines and forfeitures clause in *Cauble v. City of Asheville*, where the highest Court held that the clause's reference to "clear proceeds" meant the total amount of fines actually collected, minus only the costs of collection "which do not include the costs associated with enforcing the ordinance." 314 N.C. 598, 604–06 (1985). The Court of Appeals applied this rule directly to the payment of a red light camera vendor in *Shavitz v. City of High Point*, holding that paying the third-party operator constitutes "enforcement of the traffic laws in much the same way as paying police officers for traditional enforcement." 177 N.C. App. 465, 482 (2006). Here, the sum retained by Greenville was both too much and applied too broadly to satisfy the constitutional requirements of *Cauble* and the statutory interpretation of *Shavitz*. It did not matter that the City initially remitted the entire amount of collected fines to the County to be invoiced against at a later date. While that may have been a smart workaround in a vacuum while viewing each step in isolation, the plain language of our state's constitution required that the clear proceeds of collected fines "shall belong to and remain in the several counties, and shall be faithfully appropriated and used exclusively for maintaining free and public schools." N.C. Const. Art. IX, §7. The Court of Appeals remanded the case for entry of summary judgment in favor of plaintiffs on the fines and forfeitures issue.

Now, *Cauble* and *Shavitz* lacked the impetus for Greenville's confidence in the instant case: a local act which ostensibly allowed the City and Pitt County to disregard § 115C-437's 10% cap in favor of an interlocal agreement that provided for "provisions on cost-sharing and reimbursement," whatever the parties decided that may be. But before the case at bar reached the Supreme Court, our appellate courts interpreted the 10% statutory cap on the retention of any fines as an absolute ceiling on the practical costs of collecting a fine after it had been levied, not an allowance that cities could retain for any and all costs associated with promoting an ordinance's efficacy. The 10% cap was still subject to the overall constitutional requirement that any retained funds may only satisfy the costs of collection, not enforcement.

The North Carolina Supreme Court reversed the Court of Appeals, drawing a heated dissent in the process. The opinion parses out the issue into two distinct tracks. The first track addresses what amount of money Pitt County could return to Greenville to run the program. Instead of

treating § 115C-437 as a statutory overlay meant to codify the strictures of the fines and forfeitures clause in all contexts, the Court compared the 10% cap in that statute against the legislative intent of the local act allowing the City and County to execute the interlocal agreement providing for any cost sharing arrangement agreeable to the parties. The majority noted that the local act would have been utterly unnecessary if the Legislature did not intend for the interlocal agreement to replace the monetary cap in § 115C-437. After all, the City already possessed the statutory authority necessary to run the red light camera program at issue here through N.C.G.S. § 160A-300.1, and to execute an interlocal agreement with the County subject to the 10% cap through N.C.G.S. § 160A-460. The ambiguity of the local act's language allowed the Court to explore the act's history. That history ranges from the City and County's resolutions asking the Legislature to allow for flexible funding arrangements, to the remarks of the bill's sponsor when introducing the legislation. Examining that record reveals that the Legislature endorsed this kind of cost sharing arrangement "precisely because section 115C-437 made a red light camera program a pipe dream." *Fearrington*, 386 N.C. at 53. The Court concluded that the local enabling legislation in the instant case removed Greenville's red light camera program from the auspices of N.C.G.S. § 115C-437.

In its second track, the Court addresses the constitutionality of how Greenville deploys the funds returned to the City through the invoicing provisions of the interlocal agreement. The opinion grapples with the fact that 28% of collected fines are returned to the City to pay a vendor to operate the cameras which collect the evidence of the violation, and to cover the salary of a police officer to review the footage and issue the citations. This tough fact is sifted through *Cauble's* pronouncement that reasonable costs of collection, but not enforcement, may be deducted from the clear proceeds of any collected fines.

The Court's discussion of the difference between enforcement and collection in the context of the fines and forfeitures clause is sure to provide some leeway to municipalities in how they fund ordinance enforcement programs in the future. Enforcement costs, according to the majority, refer to the "general costs of investigation and prosecution of a citizen's unlawful conduct," quoting *N.C. Sch. Bds. Ass'n v. Moore*, 359 N.C. 474, 491 (2005). Costs of collection, though, are administrative expenditures made to recover penalties for unlawful conduct. The former describes an active posture of investigating and prosecuting violations, while the later is a passive, discrete task of collecting a penalty. The Court eschews a rigid divide between the two concepts, instead holding that "permissible deductions must bear a reasonable relation to the costs of collection of the fine," quoting *Cauble*, 314 N.C. at 605. Greenville's use of the funds returned by the County fit that bill. The Court cites the passive, automated nature of the red light camera program. The red light camera operator has no discretion in how the footage is used by the City, and "everything else is downstream of the violation and geared towards collecting the resultant penalty." *Fearrington*, 386 N.C. at 56. The police officer's salary was also a permissible deduction, as their task was limited to the ministerial, administrative review of the footage. The officer's executive function was clerical: once they determined the vehicle was in an intersection after a red light was displayed, they transmitted approval back to the red light camera vendor to send out the citation. The Court concludes that Greenville's red light camera program and its essential cost sharing agreement with the County satisfied the fines and forfeitures clause. The majority opinion closes with a comment on the reality of the opposite outcome: if a combination of the local act and state constitution did not allow for this type of cost sharing arrangement, Pitt County schools would receive nothing as the program would revert to insolvency.

The impact of the Court's analysis of permissible deductions from fines remitted to the local school board is sure to play out in subsequent cases where municipal ordinance enforcement brushes against the boundaries of creativity. This opinion certainly establishes additional breathing room in that regard. But Greenville's success here would not be possible without the threshold interaction between the City, County, and General Assembly. The City and County

had to ask its legislative cohort to introduce and advance the special permissions contained in the local act here. This required at least a working relationship between the governing boards and their respective legislators. This relationship can be fostered many different ways, but nothing can replace the face-to-face meeting, the handshake, and the breaking of bread offered by the League's annual Town & State Dinner. Council members and mayors are able to discuss the biggest issues facing their towns with the state legislators best poised to implement change. More than that, the annual gathering opens or refreshes channels of direct communication between elected officials even if a need is not immediate. So whether your client foresees legislative intervention in the future, or would simply stand to benefit from a periodic, friendly meeting with its state representatives, the Town & State Dinner should enjoy serious consideration. Visit this page for save the date information and look out for forthcoming registration opportunities.

Statutory Change Alert

2024 N.C. Sess. Laws 26, § 7 prohibits all branches of state and local government from permitting the consumption of pornography by employees, elected officials, or appointees on a network maintained by a public agency. It also prohibits all employees, officials, appointees, and students of a public agency from viewing pornography "on a device owned, leased, maintained or otherwise controlled by that public agency." Relevant to our local governments, this new law creates three affirmative duties for all public bodies of the state. First, your client must adopt a policy governing the use of its network and devices under its control by January 1, 2025. The session law does not describe what the policy must cover, other than requiring that the policy delineate what disciplinary action will be taken in response to a violation of the policy. Second, all public agencies and employees must scrub their publicly-owned devices of pornography no later than January 1, 2025. Technically the onus is on each employee, elected official, appointee, or student of a public agency to delete the pornography, but practicality requires *at least* mass messaging from the employer to whoever possesses a device owned or leased by your client. And third, by August 1 of each year going forward, each public agency must submit a report to the State Chief Information Officer detailing the "number of incidences of unauthorized viewing or attempted viewing of pornography on that public agency's network," and must include whether or not such unauthorized viewing was done by an employee, elected official, appointee, or student, and whether it was done on a device under the control of that agency. Your client should consider how the information used to compile this report is gathered and treated lest it become a public record. Perhaps as a personnel record under N.C.G.S. § 160A-168? After the report is submitted, Sister Margret will travel the state with an extra-long ruler and bring a new definition to the term "percussive maintenance." Everything except that last sentence is codified at N.C.G.S. § 143-805.

This new statute has a deadline of January 1, 2025, for the policy portion, but also saddles your town with yet another annual reporting requirement to keep track of on August 1 of each year. This is a good opportunity to familiarize yourself with the Municipal Calendar published annually by the League, a copy of which can be accessed here. This document is periodically updated and provides a month-by-month, day-by-day ledger of due dates applicable to local governments. The calendar even includes citations to relevant statutes or administrative rules imposing the deadlines. While we try to capture every date relevant to your town's reporting requirements, we may miss a few. If you notice a deadline is missing from the Municipal Calendar, please drop me a line at bwells@nclm.org so we can update this very helpful tool.