**Enclosure:**

**Some[[1]](#footnote-1) Constitutional and Statutory Provisions**

**Related to Presidential Electors and to Dual-Office Holding**

**Provisions of the United States Constitution and United States Code[[2]](#footnote-2)**

**United States Constitution, Article. II, Section 1**. [The language quoted is the original language and spellings have not been modernized. Note that this section was amended by the 12th Amendment to the Constitution, which was in turn amended by Section 3 of the 20th Amendment to the Constitution.]

. . . .

Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector.

The Electors shall meet in their respective States, and vote by Ballot for two Persons, of whom one at least shall not be an Inhabitant of the same State with themselves. And they shall make a List of all the Persons voted for, and of the Number of Votes for each; which List they shall sign and certify, and transmit sealed to the Seat of the Government of the United States, directed to the President of the Senate. . . .

**United States Constitution, Amendment 12.**

The electors shall meet in their respective states and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate . . . .

**Provisions of the United States Code, Title 3—The President, Chapter 1—Presidential Elections And Vacancies[[3]](#footnote-3) (Emphasis and Comment added)**

**§1. Time of appointing electors**

The electors of President and Vice President shall be appointed, in each State, on the Tuesday next after the first Monday in November, in every fourth year succeeding every election of a President and Vice President.

. . . .

**§3. Number of electors**

The number of electors shall be equal to the number of Senators and Representatives to which the several States are by law entitled at the time when the President and Vice President to be chosen come into office; except, that where no apportionment of Representatives has been made after any enumeration, at the time of choosing electors, the number of electors shall be according to the then existing apportionment of Senators and Representatives.

. . . .

**§7. Meeting and vote of electors**

The electors of President and Vice President of each State shall meet and give their votes on the first Monday after the second Wednesday in December next following their appointment at such place in each State as the legislature of such State shall direct. [*Comment*: The 2020 date is December 14, 2020.]

. . . .

**Provisions of the North Carolina Constitution and General Statutes**

**Elector Nomination:**

**G.S. §163-1(c)**

. . . an election shall be held in all of the election precincts of the State for the election of electors of President and Vice-President of the United States. The number of electors to be chosen shall be equal to the number of Senators and Representatives in Congress to which this State may be entitled. Presidential electors shall not be nominated by primary election; instead, they shall be nominated in a State convention of each political party as defined in G.S. 163-96 unless otherwise provided by the plan of organization of the political party; provided, that in the case of a candidate for President of the United States who has qualified to have his name printed on the general election ballot as an unaffiliated candidate under G.S. 163-122, that candidate shall nominate presidential electors. One presidential elector shall be nominated from each congressional district and two from the state-at-large, and in addition, the State convention of each party and the unaffiliated candidate shall each nominate first and second alternate electors who shall serve if their slate is elected as provided by G.S. 163-209 and if there is a vacancy as provided by G.S. 163-210. (Const., art. 4, s. 24; 1901, c. 89, ss. 1-4, 73, 74, 77; Rev., ss. 4293, 4294, 4296-4299; 1915, c. 101, s. 1; 1917, c. 218; C.S., ss. 5914, 5915, 5917-5920, 6018; 1935, c. 362; 1939, c. 196; 1943, c. 134, s. 4; 1947, c. 505, s. 1; 1951, c. 1009, s. 2; 1953, c. 1191, s. 1; 1967, c. 775, s. 1; cc. 1264, 1271; 1969, c. 44, s. 80; 1971, c. 170; 1973, c. 793, s. 93; 1977, c. 265, s. 1; c. 661, s. 1; 1991 (Reg. Sess., 1992), c. 782, s. 1; 1993 (Reg. Sess., 1994), c. 738, s. 2; 1996, 2nd Ex. Sess., c. 9, s. 2; 2003-434, 1st Ex. Sess., s. 6; 2004-127, s. 12; 2005-425, s. 3.2; 2015-66, s. 3; 2017-3, s. 2; 2017-6, s. 3; 2018-21, s. 1; 2018-146, s. 3.1(a), (b).)

**§ 163-209. Names of presidential electors not printed on ballots; notification**.

(a) The names of candidates for electors of President and Vice-President nominated by

any political party recognized in this State under G.S. 163-96, or nominated under G.S. 163-1(c)

by a candidate for President of the United States who has qualified to have his or her name printed on the general election ballot as an unaffiliated candidate under G.S. 163-122, shall be filed with the Secretary of State but shall not be printed on the ballot. In the case of the unaffiliated candidate, the names of candidates for electors must be filed with the Secretary of State no later than 12:00 noon on the first Friday in August. In place of their names, there shall be printed on the ballot the names of the candidates for President and Vice-President of each political party recognized in this State, and the name of any candidate for President who has qualified to have his or her name printed on the general election ballot under G.S. 163-122. A candidate for President who has qualified for the general election ballot as an unaffiliated candidate under G.S. 163-122 shall, no later than 12:00 noon on the first Friday in August, file with the State Board of Elections the name of a candidate for Vice-President, whose name shall also be printed on the ballot. A vote for the candidates named on the ballot shall be a vote for the electors of the party or unaffiliated candidate by which those candidates were nominated and whose names have been filed with the Secretary of State.

(b) Upon receiving the filing of a name as a candidate for elector under this section, the

Secretary of State shall notify that candidate of the dual-office holding requirements of the North

Carolina Constitution and the General Statutes, including specifically that if a person elected as

elector holds another elective office at the time of taking the oath of office as elector, that other

office is vacated upon taking the oath of office. (1901, c. 89, s. 78; Rev., s. 4372; C.S., s. 6010;

1933, c. 165, s. 11; 1949, c. 672, s. 2; 1967, c. 775, s. 1; 1991 (Reg. Sess., 1992), c. 782, s. 2;

2001-460, s. 5; 2009-96, s. 2; 2017-6, s. 3; 2018-146, s. 3.1(a), (b).)

**Dual Office Holding**

**North Carolina Constitution, Article VI, Section 9. Dual office holding.**

(1) Prohibitions. It is salutary that the responsibilities of self-government be widely shared among the citizens of the State and that the potential abuse of authority inherent in the holding of multiple offices by an individual be avoided. Therefore, no person who holds any office or place of trust or profit under the United States or any department thereof, or under any other state or government, shall be eligible to hold any office in this State that is filled by election by the people. No person shall hold concurrently any two offices in this State that are filled by election of the people. No person shall hold concurrently any two or more appointive offices or places of trust or profit, or any combination of elective and appointive offices or places of trust or profit, except as the General Assembly shall provide by general law.

(2) Exceptions. The provisions of this Section shall not prohibit any officer of the military forces of the State or of the United States not on active duty for an extensive period of time, any notary public, or any delegate to a Convention of the People from holding concurrently another office or place of trust or profit under this State or the United States or any department thereof.

**North Carolina General Statutes:**

**§ 128-1. No person shall hold more than one office; exception.**

No person who shall hold any office or place of trust or profit under the United States, or any department thereof or under this State, or under any other state or government, shall hold or exercise any other office or place of trust or profit under the authority of this State, or be eligible to a seat in either house of the General Assembly except as provided in G.S. 128-1.1, or by other General Statute. (Const., art. 14, s. 7; Rev., s. 2364; C.S., s. 3200; 1967, c. 24, s. 24;

1969, c. 1070; 1971, c. 697, s. 1; 1983, c. 609, s. 9.)

**G.S. § 128-1.1. Dual-office holding allowed.**

(a) Any person who holds an appointive office, place of trust or profit in State or local government is hereby authorized by the General Assembly, pursuant to Article VI, Sec. 9 of the North Carolina Constitution, to hold concurrently one other appointive office, place of trust or profit, or an elective office in either State or local government.

(b) Any person who holds an elective office in State or local government is hereby authorized by the General Assembly, pursuant to Article VI, Sec. 9 of the North Carolina Constitution to hold concurrently one other appointive office, place of trust or profit, in either State or local government.

(c) Any person who holds an office or position in the federal postal system or is commissioned as a special officer or deputy special officer of the United States Bureau of Indian Affairs is hereby authorized to hold concurrently therewith one position in State or local government.

(c1) Where authorized by federal law, any State or local law enforcement agency may authorize its law enforcement officers to also perform the functions of an officer under 8 U.S.C. Section 1357(g) if the agency has a Memorandum of Agreement or Memorandum of Understanding for that purpose with a federal agency. State and local law enforcement officers authorized under this provision are authorized to hold any office or position with the applicable federal agency required to perform the described functions.

(c2) Repealed by Session Laws 2015-201, s. 3(b) , effective August 5, 2015.

(d) The term "elective office," as used herein, shall mean any office filled by election by the people when the election is conducted by a county board of elections under the supervision of the State Board of Elections. [Comment: the Bipartisan Board is now the State Board of Elections.] (1971, c. 697, s. 2; 1975, c. 174; 1987, c. 427, s. 10; 2006-259, s. 24(a); 2011-31, s. 13; 2014-100, s. 14.11(b); 2015-201, s. 3(b); 2015-241, s. 14.30(u); 2017-6, s. 3.)

**G.S. § 128-1.2**. **Ex officio service by county and city representatives and officials.**

Except when the resolution of appointment provides otherwise, whenever the governing body of a county or city appoints one of its own members or officials to another board or commission, the individual so appointed is considered to be serving on the other board or commission as a part of the individual's duties of office and shall not be considered to be serving in a separate office.

As used in this section, the term "official" means (i) in the case of a county, the county manager, acting county manager, interim county manager, county attorney, finance officer, or clerk to the board and (ii) in the case of a city, the city manager, acting city manager, interim city manager, city attorney, finance officer, city clerk, or deputy clerk. As used in this section, the term "city" has the meaning provided in G.S. 160A-1. (1983, c. 651, s. 1; 1991, c. 508, s. 5.)

**G.S. § 128-2. Holding office contrary to the Constitution; penalty.**

If any person presumes to hold any office, or place of trust or profit, or is elected to a seat in either house of the General Assembly, contrary to Article VI, Sec. 9 of the North Carolina Constitution, he shall forfeit all rights and emoluments incident thereto. (1790, c. 319, P.R.;

1792, c. 366, P.R.; 1793, c. 393, P.R.; 1796, c. 450, P.R.; 1811, c. 811, P.R.; R.C., c. 77, s. 1;

Code, s. 1870; Rev., s. 2365; C.S., s. 3201; Ex. Sess., 1924, c. 110; 1971, c. 697, s. 3.)

**G.S. § 160A-147. Appointment of city manager; dual office holding.**

(a) In cities whose charters provide for the council-manager form of government, the council shall appoint a city manager to serve at its pleasure. The manager shall be appointed solely on the basis of the manager's executive and administrative qualifications. The manager need not be a resident of the city or State at the time of appointment. The office of city manager is hereby declared to be an office that may be held concurrently with other appointive (but not elective) offices pursuant to Article VI, Sec. 9, of the Constitution.

(b) Notwithstanding the provisions of subsection (a), a city manager may serve on a county board of education that is elected on a non-partisan basis if the following criteria are met:

(1) The population of the city by which the city manager is employed does not exceed 10,000;

(2) The city is located in two counties; and

(3) The population of the county in which the city manager resides does not exceed 40,000.

(b1) Notwithstanding the provisions of subsection (a) of this section, a city manager may serve on a county board of education that is elected on a nonpartisan basis if the population of the city by which the city manager is employed does not exceed 3,000.

(c) Notwithstanding the provisions of subsection (a), a city manager may hold elective office if the following criteria are met:

(1) The population of the city by which the city manager is employed does not exceed 3,000.

(2) The city manager is an elected official of a city other than the city by which the city manager is employed.

(d) For the purposes of this section, population figures shall be according to the latest United States decennial figures issued at the time the second office is assumed. If census figures issued after the second office is assumed increase the city or county population beyond the limits of this section, the city manager may complete the term of elected office that the city manager is then serving. . (1969, c. 629, s. 2; 1971, c. 698, s. 1; 1989, c. 49; 1997-25, s. 1;

2009-321, s. 1.)

**G.S. § 153A-423. Membership; board; delegates.**

(a) Each unit of local government initially adopting a resolution under G.S. 153A-421 shall become a member of the regional solid waste management authority. Thereafter, any unit of local government may join the authority by ratifying its charter and by being admitted by a unanimous vote of the existing members. All of the rights and privileges of membership in a regional solid waste management authority shall be exercised on behalf of the member units of local government by a board composed of delegates to the authority who shall be appointed by and shall serve at the pleasure of the governing boards of their respective units of local government. A vacancy on the board shall be filled by appointment by the governing board of the unit of local government having the original appointment.

(b) Any delegate appointed by a member unit of local government to an authority created pursuant to this Article who is a county commissioner or city or town alderman or commissioner serves on the board of the authority in an ex officio capacity and such service shall not constitute the holding of an office for the purpose of determining dual office holding under Section 9 of Article VI of the Constitution of North Carolina or of Article 1 of Chapter 128 of the General Statutes. (1989 (Reg. Sess., 1990), c. 888, s. 1.)

1. This set of potentially relevant constitutional and statutory provisions is provided as a courtesy and is not intended to be an exclusive listing of such provisions. [↑](#footnote-ref-1)
2. Transcript of the United States Constitution, U.S. Archives, <http://www.archives.gov/exhibits/charters/constitution_transcript.html> [↑](#footnote-ref-2)
3. <https://uscode.house.gov/browse/prelim@title3/chapter1&edition=prelim> [↑](#footnote-ref-3)