

Background and Summary of Advisory Opinion by the NC Attorney General's Office

In the fall of 2009, the Geographic Information Coordinating Council (GICC), at the request of the Local Government Committee and the Surveyors' Model Law Working Group, submitted a request to the NC Attorney General's office for an advisory opinion to clarify situations for which a licensed surveyor is required when a local government collects GIS or digital geospatial data.

The NC Board of Examiners for Engineers and Surveyors (NCBELS) is organized under the provisions of The North Carolina Engineering and Land Surveying Act, Chapter 89C of the North Carolina General Statutes (N.C. G.S § 89C). The Board is responsible for the administration and regulation of the professions of engineering and land surveying in North Carolina.

One section of the act - § 89C-3 (7)a7 – defines the practice of land surveying as “(c)reating, preparing or modifying electronic or computerized data, including land information systems and geographic information systems relative to the performance of the practice of land surveying.” Section § 89C-23 establishes that it is unlawful to practice surveying without a license. Section § 89C-25 defines limitations of the chapter and exempts “work done by employees of the State of North Carolina, or any political subdivision of the State, or any municipality.”

The Local Government Committee sought clarification on the whether a local government needs to use a licensed surveyor for the following situations.

1. Is a municipality permitted to collect data outside of its municipal limit?
2. Is a municipality (Municipality A) permitted to collect data for another municipality (Municipality B), within the boundaries of Municipality B?
3. Is a municipality permitted to collect data for a county outside the boundary of the municipality?
4. Is a county permitted to collect data for another county?
5. Can a municipality collect data in that city's Extra-Territorial Jurisdiction (ETJ) area?
6. Can a county collect data within an incorporated city/town area?
7. Can a municipality collect data outside its corporate or ETJ limits but within an area for which the municipality services with utilities such as water, sewer or electricity or for which the municipality serves as lead organization for a regional organization?

In addition, the Association of Regional Council Executive Directors, which represents Regional Councils of Governments (COGs), requested that NCBELS seek an advisory opinion from the Attorney General's office as to the applicability of the law to COGs.

Advisory Opinion

In response to the request from the Geographic Information Coordinating Council, the Attorney General's office issued the following advisory opinion.

"Our opinion is that so long as the data are collected by an employee of the State of North Carolina, any political subdivision of the State or a municipality while engaged in that activity in the course of their employment, pursuant to N.C.G.S. § 89C-25(7), such collection of GIS data in each of the seven instances you specify is permissible."

The response further states that the legislation "is unambiguous and clearly removes county and municipal employees collecting of GIS data from the purview of licensing requirements of N.C.G.s. § 89C-23 while engaged in that activity in the course of employment." The Attorney General's office does note that no court has reviewed this section of the law and that the issue is subject to judicial interpretation.

Regarding the applicability of the law to the COGs, the Attorney General's office concluded that "so long as a COG has been so authorized by resolution of its member governments, the COG can perform engineering and surveying work to the same extent as can a 'political subdivision of the State' or 'municipalities' as set out in G.S. 89C-25(7)."