

NORTH CAROLINA GENERAL ASSEMBLY
1963 SESSION

CHAPTER 959
SENATE BILL 610

AN ACT TO AUTHORIZE THE INCORPORATION OF A MUNICIPAL
CORPORATION IN LINCOLN COUNTY.

The General Assembly of North Carolina do enact:

Section 1. The Municipal Board of Control is hereby authorized to create as a municipal corporation any area in Lincoln County not a part of nor within three miles of any other municipality, upon receipt of a petition filed in compliance with the provisions of this Act.

Sec. 2. Any petition requesting incorporation of an area under authority of this Act shall be signed by all the owners of real property within the area proposed to be incorporated, shall describe by metes and bounds the area proposed to be incorporated, shall recite the name of the proposed municipality, shall recite the names of the persons proposed as Mayor and Commissioners to serve until the first election, and shall be filed with the Secretary of State. The petition shall be verified by at least three of its signers who are of the age of twenty-one years or more.

Sec. 3. Upon receipt of such a petition, the Secretary of State shall make an order prescribing the time and place of consideration of the petition by the Municipal Board of Control. If the Board, at its meeting, finds the allegations of the petition to be true, and that all the requirements of this Act have been complied with, the Board shall enter an order creating the area described in the petition into a town, giving it the name proposed in the petition and appointing the officials proposed in the petition to serve until the first election required under the terms of this Act.

Sec. 4. Upon the entering of an order by the Municipal Board of Control creating a town under authority of this Act, the said town shall have all the powers of and be subject to all the general laws relating to municipal corporations.

Sec. 5. The following shall be the Charter of any town created under authority of this Act:

CORPORATE POWERS

Section 1. Incorporation and Corporate Powers. The inhabitants of the Town of _____, North Carolina, within the boundaries as established in Section 3 of this Charter or as hereafter established in the manner provided by law, shall continue to be a body politic and corporate by name the Town of _____, and under that name shall have perpetual succession; may use a corporate seal; may sue and be sued; may acquire property within or without its boundaries for any municipal purpose, in fee

simple or lesser interest or estate, by purchase, gift, devise, lease or condemnation and may sell, lease, hold, manage and control such property as its interests may require; and, except as prohibited by the Constitution of North Carolina or restricted by this Charter, the Town of _____ shall have and may exercise all municipal powers, functions, rights, privileges and immunities of every name and nature whatsoever. The following shall be deemed to be a part of the powers conferred upon the Town of _____ by this Section:

(1) To levy, assess and collect taxes and to borrow money within the limits prescribed by general law; and to levy and collect special assessments for benefits conferred.

(2) To furnish all local public services; to purchase, hire, construct, own, maintain and operate or lease local public utilities, to acquire, by condemnation or otherwise, within or without the corporate limits, property necessary for any such purposes, subject to restrictions imposed by general law for the protection of other communities; and to grant local public utility franchises and regulate the exercise thereof.

(3) To make local public improvements and to acquire, by condemnation, or otherwise, property within or without its corporate limits necessary for such improvements; and also to acquire an excess over that needed for any such improvement, and to sell or lease such excess property with restrictions, in order to protect and preserve the improvement.

(4) To issue and sell bonds on the security of any such excess property, or of any public utility owned by the town, or of the revenues thereof, or of both, including the case of a public utility, if deemed desirable by the town, a franchise stating the terms upon which, in case of foreclosure, the purchaser may operate such utility.

(5) To organize and administer public libraries.

(6) To adopt and enforce within its limits local police, sanitary and other similar regulations not in conflict with general laws.

Except as otherwise provided in this Act the Board of Commissioners shall have authority to determine by whom and in what manner the powers granted by this Section shall be exercised.

Sec. 2. Enumerated Powers Not Exclusive. The enumeration of particular powers by this Charter shall not be held or deemed to be exclusive but, in addition to the powers enumerated therein or implied thereby, or appropriate to the exercise of such powers, it is intended that the Town of _____ shall have, and may exercise, all powers which, under the Constitution of North Carolina, it would be competent for this Charter specifically to enumerate. All powers of the town, whether expressed or implied, shall be exercised in the manner prescribed by this Charter, or, if not prescribed therein, then in the manner provided by ordinance or resolution of the Board of Commissioners.

Sec. 3. Corporate Boundaries. The corporate boundaries of the town shall be as follows: (Insert here complete description of corporate boundaries.)

BOARD OF COMMISSIONERS

Sec. 4. Creation, Salary and Composition of Mayor and Board of Commissioners. Except as otherwise provided in this Charter all powers of the town shall be vested in a Board of Commissioners consisting of three members and a mayor nominated and elected from the town at large in the manner hereinafter provided. The term of office of the mayor and the Board of Commissioners shall be for two (2) years and until their successors are elected and qualified, and shall begin on the first day of June next following their election. If a vacancy occurs in the office of Mayor or Commissioner, it shall be filled for the remainder of the unexpired term by a majority vote of the remaining members of the Board of Commissioners. Each member of the Board of Commissioners shall receive a salary, the amount of which shall be prescribed by ordinance. Provided, however, that the present Mayor and members of the Board of Commissioners shall continue to receive the same salary until the same is changed as provided herein. No ordinance fixing or changing the salary of members of the Board of Commissioners shall become effective during the current term of office of the members of the Board of Commissioners enacting such ordinance. Members of the Board of Commissioners shall be qualified electors of the town. A member of the Board of Commissioners ceasing to possess any of the qualifications specified in this Section, or convicted of crime while in office, shall immediately forfeit his office.

Sec. 5. Meetings of the Board of Commissioners. On the first day of June following a regular municipal election the Board of Commissioners shall meet at the usual place for holding its meetings and the newly elected members shall assume the duties of office. Thereafter the Board of Commissioners shall meet at such times as may be prescribed by ordinance or resolution, but not less frequently than once each month. Special meetings shall be called by the clerk upon the written request of the mayor or two members of the Board of Commissioners. Any such notice shall state the subject to be considered at the special meeting and no other subject shall be there considered. All meetings of the Board of Commissioners and of committees thereof shall be open to the public, and the rules of the Board of Commissioners shall provide that citizens of the town shall have a reasonable opportunity to be heard at any such meetings in regard to any matter considered thereat.

Sec. 6. Mayor and Mayor Pro Tem. At its first meeting in the month of June following a regular municipal election the Board of Commissioners shall choose one of its members as vice chairman, who shall act as mayor pro tem. The mayor shall preside at meetings of the Board of Commissioners and shall exercise such other powers and perform such other duties as are or may be conferred and imposed upon him by the general laws of North Carolina, by this Charter and the ordinances of the town. He shall be recognized as the head of the town government for all ceremonial purposes, by the courts for serving civil processes, and by the Governor for purposes of military law. In time of public danger or emergency the mayor shall, if so authorized and directed by vote of the Board of Commissioners, take command of the police, maintain order and enforce the law. In case of the absence or disability of the mayor, the mayor pro tem shall act as mayor during the continuance of the absence or disability.

Sec. 7. Board of Commissioner Rules. The Board of Commissioners shall be the judge of the election and qualifications of its members and the mayor, and in such cases shall have power to subpoena witnesses and compel the production of all pertinent books, records, and papers; but the decision of the Board of Commissioners in any such case shall be subject to review by the courts. The Board of Commissioners shall determine its own rules and order of business and keep a journal of its proceedings.

Sec. 8. Quorum. A majority of the members elected to the Board of Commissioners shall constitute a quorum to do business, but a less number may adjourn from time to time and compel the attendance of absent members in such manner and under such penalties as may be prescribed by ordinance. The affirmative vote of a majority of the members elected to the Board of Commissioners shall be necessary to adopt any ordinances, resolutions, order or vote; except that a vote to adjourn, or regarding the attendance of absent members, may be adopted by a majority of the members present. No member shall be excused from voting except on matters involving the consideration of his own official conduct or when his financial interests are involved.

Sec. 9. Introduction and Passage of Ordinances and Resolutions. Ordinances and resolutions shall be introduced in the Board of Commissioners only in written or printed form. All ordinances, except ordinances making appropriations and ordinances codifying or rearranging existing ordinances or enacting a code of ordinances, shall be confined to one subject, and the subject, or subjects of all ordinances shall be clearly expressed in the title. Ordinances making appropriations shall be confined to the subject of appropriations. The yeas and nays shall be taken upon the passage of all ordinances and resolutions and entered upon the journal of the proceedings of the Board of Commissioners. The enacting clause of all ordinances shall be: "Be it ordained by the Town of".

Sec. 10. When ordinances and Resolutions Take Effect. Emergency Measures. Ordinances making the annual tax levy, appropriation ordinances, ordinances and resolutions pertaining to local improvements and assessments, ordinances and resolutions providing for or directing any investigation of town affairs, resolutions requesting information from administrative officers or directing administration action, and emergency measures shall take effect at the time indicated therein. Except as otherwise prescribed in this Charter, all other ordinances and resolutions passed by the Board of Commissioners shall take effect at the time indicated therein, but not less than ten (10) days from the date of their passage. An emergency measure is an ordinance or resolution to provide for the immediate preservation of the public peace, property, health or safety, in which the emergency claimed is set forth and defined in a preamble thereto. The affirmative vote of at least four members of the Board of Commissioners shall be required to pass any ordinance or resolution as an emergency measure. No measure making or amending a grant, renewal or extension of a franchise or other special privilege shall ever be passed as an emergency measure. No situation shall be declared an emergency by the Board of Commissioners except as defined in this

Section, and it is the intention of this Charter that such definition shall be strictly construed by the courts.

Sec. 11. Authentication and Publication of Ordinances and Resolutions. Upon its final passage each ordinance or resolution shall be authenticated by the signature of the mayor and the town clerk and shall be recorded in a book kept for that purpose. Within ten (10) days after final passage, a notice setting forth in brief the substance of each ordinance shall be published or posted at least once in such manner as the Board of Commissioners may prescribe.

MUNICIPAL ELECTIONS

Sec. 12. Municipal Elections. The regular election for the choice of mayor and members of the Board of Commissioners shall be held on Tuesday following the first Monday in May in odd-numbered years. The Board of Commissioners may by resolution order a special election, fix the time for holding the same, and provide all means for holding such special election.

Sec. 13. Regulations of Elections. All elections shall be conducted in accordance with the general State laws relating to municipal elections, except as otherwise provided herein.

Sec. 14. Candidates for Office. Any qualified elector of the town may become a candidate for the office of mayor or Board of Commissioners by filing a written notice on forms provided by the town with the town clerk.

The town clerk shall take and preserve the form filed by each candidate. No filing form shall be accepted unless signed by the candidate. Any candidate may withdraw his nomination not later than the last day for filing by filing a notice of withdrawal with the town clerk. The filing form of each candidate for mayor or a member of the Board of Commissioners shall be preserved by the town clerk until the expiration of the term of office for which he filed.

Sec. 15. Ballots. The full names of candidates nominated for mayor or Board of Commissioners in accordance with the provisions of this Charter, except such as may have withdrawn, died or become ineligible, shall be printed on the official ballots in the alphabetical order of the surnames in rotation without any party designation. There shall be printed as many sets of ballots as there are candidates. Each set of ballots shall begin with the name of a different candidate, the other names being arranged thereafter in regular alphabetical order, commencing with the name next in alphabetical order after the one that stands first on such set of ballots. When the last name is reached in alphabetical order it shall be followed by the name that begins with the first letter represented in the list of names and by the others in regular order.

Sec. 16. Election of Mayor and Board of Commissioners. All members of the Board of Commissioners shall be elected at large. Every voter shall be entitled to vote for one candidate for mayor and for as many candidates as there are members to be elected to the Board of Commissioners. All candidates up to the number to be elected, who receive the largest number of votes shall be declared elected.

ADMINISTRATIVE SERVICE

Sec. 17. Appointment of Officers and Employees. The Board of Commissioners may appoint a town clerk, a treasurer, a tax collector, an accountant, a town attorney, a chief of police, a fire chief, and such other officers and employees as may be necessary, none of whom need be a resident of the town at the time of appointment: Provided, that the Board of Commissioners may appoint one person to fill any two or more such positions. Such employees or officers shall serve at the pleasure of the Board of Commissioners, and shall perform such duties as may be prescribed by the Board of Commissioners. The Board of Commissioners shall fix all salaries, prescribe bonds and require such oaths as they may deem necessary.

Sec. 18. Town Clerk. The Board of Commissioners shall choose a town clerk. The town clerk shall keep the records of the Board of Commissioners and perform such other duties as may be required by law or the Board of Commissioners.

Sec. 19. Duties of Town Attorney. The attorney shall be an attorney at law who shall have practiced in the State of North Carolina for at least five (5) years. He shall be the chief legal adviser of and attorney for the town and all departments and officers thereof in matters relating to their official powers and duties. It shall be his duty, either personally or by such assistance as he may designate, to perform all services incident to the department of law; to attend all meetings of the Board of Commissioners; to give advice in writing, when so requested, to the Board of Commissioners or the director of any department; to prosecute or defend, as the case may be, all suits or cases to which the town may be a party, to prepare all contracts, bonds and other instruments in writing in which the town is concerned, and to endorse on each his approval of the form and correctness thereof; and to perform such other duties of a legal nature as the Board of Commissioners may require. In addition to the duties imposed upon the town attorney by this Charter or required of him by ordinance or resolution of the Board of Commissioners, he shall perform any duties imposed upon the chief legal officers of municipalities by law.

Sec. 20. Duties of Town Accountant. The town accountant shall prepare the budget in accordance with the general laws of North Carolina relating to the preparation of municipal budgets. He shall have authority and shall be required: To maintain accounting control over the finances of the town government, for which purpose he is empowered to operate a set of general accounts embracing all the financial transactions of the town, and such subsidiary accounts and cost records as may be required by ordinance or by the Board of Commissioners for purposes of administrative direction and financial control; to prescribe the forms of receipts, vouchers, bills, or claims to be filed by all departments and agencies of the town government; to examine and approve all contracts, orders and other documents by which the town incurs financial obligations, having ascertained before approval that moneys have been duly appropriated and allotted to meet such obligations and will become available when the obligations have become due and payable; to audit and approve all bills, invoices, payrolls, and other evidences of claims, demands, or charges against the town government and to determine the regularity, legality, and correctness of such claims, demands or charges; to make monthly reports on all receipts and expenditures of the

town government to the mayor and Board of Commissioners, and to take monthly reports on funds, appropriations, allotments, encumbrances and authorized payments to the mayor, the Board of Commissioners, and the head of the department or agency directly concerned; to inspect and audit any accounts or records of financial transactions which may be maintained by any department or agency of the town government apart from or subsidiary to the general accounts; and to perform such other duties pertaining to the financial records of the town government as the Board of Commissioners may require by ordinance.

Sec. 21. Duties of Town Tax Collector. Tax collector shall collect all taxes, licenses, fees and other moneys belonging to the town government, subject to the provisions of this Charter and ordinances enacted thereunder, and he shall diligently comply with and enforce the general laws of North Carolina relating to the collection, sale and foreclosure of taxes by municipalities. It shall be the duty of the tax collector to deposit daily in the town depository all money belonging to the town.

Sec. 22. Duties of Town Treasurer. The treasurer, if any, shall have custody of and shall disburse all moneys belonging to the town government subject to the provisions of this Charter and ordinances enacted thereunder; shall have custody of all investments and invested funds of the town or in possession of the town in a fiduciary capacity, and shall keep a record of such investments, and shall have custody of all bonds and certificates of town indebtedness including such bonds and certificates unissued or cancelled, and the receipt and delivery of town bonds and certificates for transfer, registration, or exchange.

Sec. 23. Custody of Town Money. All moneys received by any department or agency of the town for or in connection with the business of the town government shall be paid promptly into the town depository. Such institutions shall be designated by the Board of Commissioners in accordance with such regulations and subject to such requirements as to security for deposits and interest thereon as may be established by ordinance. All interest on moneys belonging to the town shall accrue to the benefit of the town government. All moneys belonging to the town government shall be disbursed only on vouchers signed by the mayor and countersigned by the town clerk.

Sec. 24. Issuance of Bonds. The town may issue bonds for the purpose and in the manner prescribed by the general laws of North Carolina for the issuance of bonds by municipalities.

Sec. 25. Purchase Procedure. Before making any purchase for supplies, materials, equipment, opportunity shall be given for competition, under such rules and regulations, and with such exceptions, as the Board of Commissioners may prescribe by ordinance. All expenditures for supplies, materials, equipment, involving more than two thousand dollars (\$2,000.00) shall be made on a written contract, and such contract shall be awarded to the lowest responsible bidder after such public notice and competition as may be prescribed by ordinance and not in conflict with the general law of the State.

Sec. 26. Contracts for Town Improvements. Any town improvement costing more than thirty-five hundred dollars (\$3500.00) shall be executed by contract except where such improvement is authorized by the Board of Commissioners to be executed

directly by a town department in conformity with detailed plans, specifications and estimates and provided, the total cost is estimated not to exceed fifteen thousand dollars (\$15,000.00). All such contracts for more than thirty-five hundred dollars (\$3500.00) shall be awarded to the lowest responsible bidder after such public notice and competition as may be prescribed by ordinance, provided the Board of Commissioners shall have the power to reject all bids and advertise again.

Sec. 27. Contracts Extending Beyond One (1) Year. No contract involving the payment of money out the appropriations of more than one (1) year (other than renewals of continuing appropriations), shall be made for a period of more than ten (10) years; nor shall any such contract be valid unless made or approved by ordinance. No ordinance providing for such a contract shall be valid unless notice of the intention to pass the same was published in a newspaper of general circulation within the town at least ten (10) days before its passage by the Board of Commissioners.

Sec. 28. Independent Audit. As soon as practicable after the close of each fiscal year, an independent audit shall be made of all accounts of the town government by qualified public accountants, selected by the Board of Commissioners, who have no personal interest directly or indirectly in the financial affairs of the town government or any of its officers.

MISCELLANEOUS PROVISIONS

Sec. 29. Publicity of Records. All records and accounts of every office and department of the town shall be open to inspection by any citizen or by any representative of the press at all reasonable times and under reasonable regulations established by the Board of Commissioners.

Sec. 30. Personal Interest. Neither the mayor nor any member of the Board of Commissioners nor any officer or employee of the town shall have a financial interest, direct or indirect, in any contract with the town, or be financially interested, directly or indirectly, in the sale to the town of any land, materials, supplies or services, except on behalf of the town as an officer or employee. Any wilful violation of this Section shall constitute malfeasance in office, and any officer or employee of the town found guilty thereof shall thereby forfeit his office or position. Any violation of this Section, with the knowledge express or implied of the person or corporation contracting with the town shall render the contract voidable by the Board of Commissioners.

Sec. 31. Oath of Office. Every officer of the town shall, before entering upon the duties of his office, take and subscribe to the following oath or affirmation, to be filed and kept in the office of the town clerk.

"I solemnly swear (or affirm) that I will support the Constitution and will obey the laws of the United States and of the State of North Carolina, that I will, in all respects, observe the provisions of the Charter and ordinances of the Town of _____ and will faithfully discharge the duties of the office of _____."

Sec. 32. Saving Clause. If any part of this Charter shall be declared invalid by a court of competent jurisdiction, such judgment shall not invalidate the remainder of the Charter. The provisions of this Charter shall supersede all laws and ordinances not consistent herewith, insofar as the Town of _____ is affected thereby.

Sec. 6. All laws and clauses of laws in conflict with the provisions of this Act are hereby repealed to the extent of such conflict.

Sec. 7. This Act shall be in full force and effect upon its ratification; provided, that the powers and authority granted herein shall expire and be null and void if no municipal corporation is created hereunder prior to January 1, 1965.

In the General Assembly read three times and ratified, this the 18th day of June 1963.