

Katie Bordeaux

From: Boyette, Eric <jeboyette@ncdot.gov>
Sent: Friday, April 2, 2021 3:37 PM
To: Katie Bordeaux
Cc: Carter, Natalie R
Subject: RE: [External] Onslow County Delinquent on RPO Dues

Katie,

Thank you for your email. I have asked our staff to review and respond accordingly.

Thank you for all you do to support transportation and have a wonderful weekend.

J. Eric Boyette
Secretary North Carolina Department of Transportation
Phone 919-707-2800
jeboyette@ncdot.gov
1 South Wilmington Street
1501 Mail Service Center
Raleigh, North Carolina 27699-1501



From: Katie Bordeaux <kbordeaux@eccog.org>
Sent: Monday, March 29, 2021 4:06 PM
To: Boyette, Eric <jeboyette@ncdot.gov>
Subject: [External] Onslow County Delinquent on RPO Dues

CAUTION: External email. Do not click links or open attachments unless you verify. Send all suspicious email as an attachment to [Report Spam](#).

Secretary Boyette,

I am the Executive Director for the Eastern Carolina Council of Governments and the Down East Rural Planning Organization (DERPO) is housed with our Council of Governments. We are based in New Bern. The ECC is comprised of 9 counties and 62 municipalities.

The ECC Board has directed me to solicit your help in recovering delinquent dues from Onslow County. The first attachment shows a timeline. The second attachment are the correspondences from the ECC Board Attorney and Onslow County Attorney that I reference in the attached letter.

I appreciate your assistance.



Eastern Carolina Council

233 Middle Street, Ste 300

Phone: 252.638.3185

PO Box 1717

Fax: 252.638.3187

New Bern, NC 28560

www.eccog.org

March 29, 2021

Secretary Eric Boyette
1501 Mail Service Center
Raleigh, NC 27699-1501

Via Email (3/29/21) and postal mail

Secretary Boyette,

The purpose of this letter is to request your assistance regarding Onslow County joining the Jacksonville Metropolitan Planning Organization (JUMPO) with outstanding dues to the Down East Rural Planning Organization (DERPO) housed in the Eastern Carolina Council of Governments (ECC). The ECC Board met on March 24, 2021 and requested that I work with you to collect the delinquent dues.

The ECC Board believes in part that NC DOT not requiring the membership dues debit to be reconciled prior to joining a metropolitan planning organization will create a precedent for other counties and/or towns to avoid paying for services they received. Additionally, the ECC provided a service for the County thus the County was enriched without compensating the ECC for the enrichment.

Onslow County is a current member of the DERPO (the year the dues are delinquent). In fact, an email was received by the ECC from the Onslow County Clerk on October 15, 2020 updating their records of Commissioner Shanahan appointment to the DERPO. Onslow County has received services from the ECC with six highway projects being placed in SPOT. Since Onslow County had our region's lion share of projects, it is reasonable to conclude that the DERPO acted on Onslow's behalf and Onslow is enriched by the services.

The ECC mailed membership dues letter on July 1, 2020, a second notice was mailed in mid-September. ECC DERPO Secretary B.J. Eversole reached out to the Onslow County Finance Office on December 31, 2020, with no response. DERPO Secretary Eversole has contacted the County diligently stating the dues are delinquent.

The ECC has had multiple contact with the Transportation Planning Division through emails and phone calls. We appreciate Jamal Alavi, Behshad Norowzi, and Chris Connolly helping us in regards of the JUMPO expansion and the effect it will have on the DERPO. All concluded that Onslow County should pay the membership dues. To my recollection, Mr. Alavi and Mr. Norowzi talked with Onslow County Manager urging her to pay the membership dues.

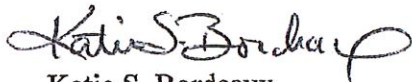
On January 21, 2021 I called County Manager Russell and followed up with an email to her with no response. Later that week I received a call from Onslow County Attorney Bret DeSelms requesting a phone call. The ECC had a phone conference call with Onslow County Attorney DeSelms on January 26, 2021 and he contends that the County is not required to pay the membership dues.

Onslow County Attorney DeSelms contends that since Onslow County has been preparing to join JUMPO, Onslow County does not have to pay the current year dues. Attached are the correspondences between ECC Attorney Jill Quattlebaum and Onslow County Attorney Bret DeSelms.

According to the 2002 Memorandum of Understanding, a DERPO member is required to provide a ninety-day notice of their intentions to terminate their membership. That letter was received by ECC on February 2, 2021. ECC Attorney Quattlebaum responded to the termination letter on February 2 and Attorney DeSelms responded on February 4.

I am hopeful that we can resolve this matter with your assistance. I can be reached at the above number extension 3005. The ECC appreciates your help.

With Kind Regards,



Katie S. Bordeaux

Eastern Carolina Council Executive Director

DEPARTMENT OF ADMINISTRATION



January 22nd, 2021

Katie Bordeaux
Executive Director
Eastern Carolina Council of Governments
PO Box 1717
New Bern, NC 28563-1717

Ms. Bordeaux,

To the extent that the Memorandum of Understanding signed by Onslow County on December 2nd, 2002 is still valid and controlling, which is debated, please allow this letter to serve as written notification that Onslow County immediately, or as soon as permitted, terminates its participation in the transportation planning process detailed therein.

Best regards,

Brett J. DeSelms
Mewborn & DeSelms, Attorneys at Law

cc: North Carolina Department of Transportation
Carteret County Board of Commissioners
Craven County Board of Commissioners
Jones County Board of Commissioners
Pamlico County Board of Commissioners



March 29, 2021

Brett J. DeSelms
Mewborn & DeSelms, Attorneys at Law
829 Gum Branch Road, Suite C
Jacksonville, NC 28540

RE: Eastern Carolina Council of Governments: Outstanding Dues
Owed by Onslow County

Good afternoon Brett,

Thank you for speaking with us last week regarding the outstanding dues owed by Onslow County to the ECC. As we discussed, the ECC contends that these dues are owed under both state statute and under one or more contracts between the parties. Regarding your concerns that the contract to pay dues was not in writing, the ECC contends that based on the payment history, there is a clear contract, implied in fact, which entitles the ECC to payment of these dues. Notwithstanding any contractual remedies, the ECC has a strong quantum meruit case, as Onslow County has been unjustly enriched by having been provided the benefit of the ECC's services, which were never intended to be gratuitous.

Primarily, it is the ECC's contention that Onslow County has an independent, statutory duty to pay these dues. Please note N.C. Gen. Stat. §136-213, Administration and Staff, which is squarely on point and provides as follows:

- (a) Administrative Entity. - Each Rural Transportation Planning Organization, working in cooperation with the Department, shall select an appropriate administrative entity for the organization. Eligible administrative entities include, but are not limited to, regional economic development agencies, regional councils of government, chambers of commerce, and local governments.

- (b) Professional Staff. - The Department, each Rural Transportation Planning Organization, and any adjacent Metropolitan Planning Organization shall cooperatively determine the appropriate professional planning staff needs of the organization.
- (c) Funding. - If funds are appropriated for that purpose, the Department may make grants to Rural Transportation Planning Organizations to carry out the duties listed in G.S. 136-212. The members of the Rural Transportation Planning Organization shall contribute at least twenty percent (20%) of the cost of any staff resources employed by the organization to carry out the duties listed in G.S. 136-212. The Department may make additional planning grants to economically distressed counties, as designated by the North Carolina Department of Commerce.

The December 2, 2002 Amended Memorandum of Understanding for Cooperative, Comprehensive and Continuing Transportation Planning and the Establishment of a Rural Transportation Planning Organization for Carteret, Craven, Jones, Onslow, and Pamlico Counties and the Participating Municipalities Therein and the North Carolina Department of Transportation dated (hereinafter referred to as "DERPO MOU"), signed by Onslow County, clearly shows Onslow County's intent to join the DERPO. The execution by Onslow County of the 2009 Memorandum of Understanding and Onslow County's subsequent attendance at DERPO meetings, payment of dues to the ECC, and acceptance of benefits from the ECC and the DERPO further confirms Onslow County's intent to become and remain a member of the DERPO.

Onslow's 2020 dues for the DERPO were calculated noted below. The DERPO dues based on population and fluctuate slightly each year based arrive at the total amount of the match required.

<u>LOCAL GOVT. ENTITY</u>	<u>DOT</u>	<u>County Match</u>	<u>Percentage</u>	<u>Total</u>
Carteret County	\$39,763.64	\$9,941.00	35.54%	\$49,704.64
Craven County	\$29,919.73	\$7,480.00	26.74%	\$37,399.73
Jones County	\$5,891.95	\$1,473.00	5.27%	\$7,364.95
Onslow County	\$28,731.74	\$7,183.00	25.68%	\$35,914.74
Pamlico County	<u>\$7,587.93</u>	<u>\$1,897.00</u>	<u>6.78%</u>	<u>\$9,484.93</u>
	\$111,895.00	\$27,974.00	100.00%	\$139,869.00

Clearly, Onslow County has not raised any prior objection to the payment of dues for its membership, as evidenced by the below schedule of dues payments made by Onslow County over the past five years. These payments alone are compelling evidence of an implied in fact contract.

- 2016 - \$6,349.00
- 2017 - \$7,301.00
- 2018 - \$7,506.00
- 2019 - \$7,183.00
- 2020 - \$0

All RPOS members from Onslow County have been consistently invited to attend all meetings and will continue to be invited until the date on which Onslow County leaves the RPO.

You mentioned that lack of recent attendance by Onslow County at the meetings should have put the ECC on notice of Onslow County's intention to withdraw from DERPO, but the relevant facts make that position indefensible.

First, representatives from Onslow County have regularly attended the TCC meetings and continue to do so. Furthermore, The ECC has had regular attendance from Swansboro and North Topsail Beach at the TCC as well as from OUTS and JUMPO representatives.

Furthermore, Onslow representatives have not regularly attended the TAC meetings. The ECC has no record of a representative from the Onslow County government (county manager, planning director, etc.) attending any TCC since October 2016, although Onslow County continued to pay dues during this time and gave no indication of an intent to withdraw. Accordingly, lack of attendance in this fiscal year would not have put the ECC on notice that Onslow County intended to withdraw from the DERPO. TAC minutes show the following attendance by Onslow County representatives:

- Commissioner Bill Shanahan: January - May 2019
- Commissioner Royce Bennett: January - April 2018, November 2018
- Commissioner Paul Buchanan: September 2015, July 2016
- Commissioner Lionel Midgett: November 2006, March - May 2007, May - July 2008, September 2009 - March 2010, September 2010 - January 2011, November 2011, May - October 2012, May-June 2013

Based on the prior record of Onslow County attendance and the payment of dues by Onslow County, Onslow County has clearly been functioning as a member of the DERPO. Should litigation be necessary, ECC contends that Onslow County would be estopped from claiming otherwise.

Finally, Onslow County can't legally withdraw from the RPO until the municipalities therein agree to the organization of a metropolitan planning organization. The schedule of approval for this organization of municipalities within Onslow County is as follows:

- **Towns approved MOU and support resolution to join JUMPO:**

- Town of North Topsail Beach 12/3/2020
- Town of Holly Ridge 12/8/2020
- City of Jacksonville 12/8/2020
- Town of Swansboro 12/28/2020
- Onslow County 1/4/2021
- Town of Richlands 1/12/2021

- **Towns approved MOU and support resolution to join JUMPO:**

- Town of North Topsail Beach 12/3/2020
- Town of Holly Ridge 12/8/2020
- City of Jacksonville 12/8/2020
- Town of Swansboro 12/28/2020
- Onslow County 1/4/2021
- Town of Richlands 1/12/2021

Onslow County could not have legally withdrawn from the DERPO before all municipalities had withdrawn and agreed to join/form JUMPO. Accordingly, as a continuing member of DERPO, Onslow County is obligated for to pay dues.

The ECC sent notice to Onslow County that the 2020 dues were due in June, 2020. In response, there was no mention by Onslow County of an intent to withdraw from the RPO. The following is a history of communication between the ECC and Onslow County on the subject of dues:

- **Correspondence:**

First Invoice sent: July 2020

Second Invoice mailed: in or around September 2020

Email sent on December 31, 2020 to Brenda Reece about dues (no response)

October 15, 2020 – Email from Morgan Cunningham updating records of Commissioner Shanahan is appointed to DERPO

January 21, 2021 – Email to Sharon Russell

January 22, 2021 – Onslow supposedly mailed notice to not be part of DERPO (ECC has not received.)

January 26, 2021 – Call with Brett DeSelms, Onslow County Attorney

In response to your position that the ECC should have advised Onslow County that Onslow County was required to provide a 90-day notice of withdrawal, the ECC would argue that the provision of the invoices should have put Onslow County on notice that payment was due, and that the County was obligated to either pay the current dues or give notice of withdrawal from the RPO, in order to avoid further liability for dues. Furthermore, if Onslow County had responded at all, the ECC would have absolutely answered any questions the County may have had about notice of withdrawal. Instead, Onslow County opted not to respond.

Finally, you stated that Onslow County's position is that the ECC has done little or nothing to benefit Onslow County. The ECC strongly denies this and has been advocating for Onslow County's projects to be included and given priority in the SPOT process. Supporting the ECC's quantum meruit theory, should this matter proceed to litigation, attached are all the projects that have been submitted in the SPOT process for the past few years for Onslow County by the ECC DERPO.

Please consider the matters addressed herein, and advise if Onslow County will pay these dues voluntarily, without the need for the ECC to institute litigation. Dues owed are \$_____, and as we discussed, Onslow County will receive a refund of dues, as prorated as of the date of withdrawal.

I thank you in advance for your attention to these matters and look forward to hearing from you.

With warmest and best regards,

Jill R. Quattlebaum

JRQ/cpf

cc: Katie Bordeaux, Eastern Carolina Council





February 4, 2021

VIA EMAIL (jrquattlebaum@enclawyers.com)

Grady Quattlebaum, PLLC

c/o Jill R. Quattlebaum

244-A Craven St.

New Bern, NC 28560

Re: Eastern Carolina Council of Governments/RPO

Dear Jill,

I hope you are doing well. When I spoke to you last I did not realize that you were Arey Grady's law partner. I knew Arey had recently started a firm, but I did not put two and two together. In any event, please give Arey my regards.

I have spoken individually with our Commissioners regarding the content of the letter you sent to me on February 2, 2021. While I certainly appreciate your advocacy for your client, I simply cannot see a way Onslow County can be held legally responsible for the invoice it has received from ECC. I will outline below some of my reasoning.

The statute you reference, G.S. §136-213, merely provides that the members of the RPO collectively pay 20% of the cost of any staff resources employed by ECC to carry out the duties listed in G.S. §136-212. Payment of the 20% would enable the RPO to obtain the 80% match from the State. The statute does not state the amount that the RPO must seek from the State, and I know of no requirement that mandates the RPO accept the full amount that the State is willing to grant. Likewise, the statute does not provide how the 20% contribution will be split amongst the membership. Onslow County has never agreed to pay any amount in fiscal year 20-21.

G.S. §136-213 certainly cannot be read to require the members of the RPO to have a blank check to pay whatever fees ECC wants it to pay. To the best of my knowledge ECC did not communicate to Onslow County the amount of contribution it would seek from Onslow County in fiscal year 20-21 prior to the budget being passed. In fact, it appears that the first invoice was sent to Onslow County in July 2021, after the budget had already been passed. Simply put, your reading of G.S. §136-213 would make impossible the budget process that counties are required to follow. I simply cannot see any statutory requirement for Onslow County to make payment on this invoice.

CHRISTOPHER L. MEWBORN
cmewborn@mewbornlaw.biz

BRETT J. DESELMS
bdeselms@mewbornlaw.biz

J. TIMOTHY WILSON
twilson@mewbornlaw.biz

JONATHAN KURE
jeure@mewbornlaw.biz

SARAH SHERRINGTON
ssherrington@mewbornlaw.biz

.....

829 Gum Branch Road | Suite C
Jacksonville, NC 28540
P: 910.455.9755 | 800.509.8219
F: 910.346.3483 • mewbornlaw.biz

The only document that establishes the relationship between the members of the RPO appears to be a Memorandum of Understanding ("MOU") entered into 2002. I understand a new MOU was circulated in or around 2009; however, Onslow County never entered into that MOU. It is questionable whether the 2002 MOU is still effective, but to the extent that it is, the MOU does not contain within it any duty upon Onslow County to pay dues of any amount. To the contrary, the only provision in the MOU that discusses money at all states "If funds provided by the North Carolina Department of Transportation for the Rural Planning Organization are withdrawn at any time, parties to this Memorandum of Understanding shall not be obligated to provide for those missing funds". In other words, the MOU specifically states that the members are not required to pay funds. The MOU goes on to state that the participating agencies will assist the RPO by providing "planning assistance (where possible), data, and inventories in accordance with the approved work program". Again, nowhere does it state that the County will pay yearly dues to ECC.

In your letter you rely upon Onslow County's past participation in the RPO and voluntary payment of dues to somehow stand for the proposition that it must continue paying dues that it is otherwise not legally obligated to pay. That position is nonsensical and holds no legal weight. Merely because Onslow County wishes to participate and contribute funding to a particular organization does not bind it to do so in the future. For example, Onslow County provides funding to many non-profits that serve its citizens. By doing so it in no way creates entitlement to those funds in future years.

Importantly, the RPO and ECC have known for the past calendar year that Onslow County was not satisfied with the RPO and ECC's product. Onslow County did not realize a return on its investment and began the process to join a MPO that would better suit its needs. Your letter clearly shows that Onslow County did not participate in any meetings of the RPO for this fiscal year (the year being invoiced for), with Commissioner Shanahan's last appearance in May 2019. Onslow County, and other municipalities within the County, have now all joined the MPO.

Despite its knowledge well before July 1, 2020 of Onslow County's intention to leave the RPO there was never any communication from the RPO or ECC regarding its need to provide that notice in writing in order to avoid being invoiced. Instead, your letter states that "ECC would argue that the provision of the invoices should have put Onslow County on notice that payment was due, and that the County was obligated to either pay the current dues or give notice of withdrawal from the RPO, in order to avoid further liability for dues". This statement contradicts the position the ECC is now taking, which is that Onslow County is responsible for dues until 90 days after the notice of withdrawal was sent. In other words, even if we would have provided written notice to the RPO and ECC of its intent to withdraw immediately after receiving the July invoice, your client's position would be that we would still have to pay 90 days worth of dues. You cannot have it both ways, in one breath argue that the invoice served as notice to withdraw or pay, and at the same time contend that dues are owed even after notice of withdrawal is given.

Lastly, I will direct your attention to *M Series Rebuild, LLC v. Town of Mount Pleasant*, NC, 22 N.C. App. 59 (2012). This case clearly stands for the proposition that without a preaudit certificate a contract could not have been entered into, and sovereign immunity would prevent recovery under unjust enrichment or quantum meruit theories. Even if this were not the case, Onslow County would strongly contest that it has received any benefits in quite some time, and certainly nothing of tangible value during this fiscal year. Frankly, I believe that if a lawsuit was filed that the case would be dismissed summarily.

It is with hope that your client reviews this letter and decides not to pursue forward with litigation. In light of the case law directly on point forbidding your claims of quantum meruit, and the non-existence of a pre-audited contract to back its position, it seems to me that any lawsuit would be frivolous and subject your client to additional

attorney fees and costs. In light of the amount that ECC stands to gain from Onslow County (i.e. \$7,183.00) it seems that there are better uses of its resources.

If you have any additional documentation or references you would like me to review I am happy to do so and I will certainly weigh the additional information accordingly. If you have any questions or concerns please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "B. DeSelms", written in a cursive style.

Brett J. DeSelms

MEWBORN & DESELMS

829 Gum Branch Road | Suite C | Jacksonville, NC 28540
P: 910.455.9755 | F: 910.346.3483 | mewbornlaw.biz