

**County Government Authority,
Administrative Structure
Options, and The Roles And
Responsibilities Of County
Board Members**

*WCA Educational Seminar
January 25, 2016*

County Government Authority

- * Each county is a body corporate
 - * Authorized to sue and be sued
 - * Acquire and hold, lease , rent , or sell real and personal estate for public uses or purposes
 - * Includes lands acquired by tax deed
 - * Including leases or contracts with the state for conservation purposes
 - * “Such other acts as are necessary and proper to the exercise of the powers and privileges granted and the performance of the legal duties charged upon it.”
- * Wis. Stat. §59.01

Counties Under The Wisconsin Constitution

- * Article IV, Section 22: “The Legislature may confer upon the boards of supervisors of the several counties of the state such powers of a local, legislative and administrative character as they shall from time to time prescribe.”
- * Article VI, Section 4 identifies county officers, as well as the conditions of their election, removal and terms of office. The constitutionally specified officers are sheriffs, coroners, registers of deeds, district attorneys, judges and clerks of circuit court, treasurers and county clerks.

County Administrative Home Rule Statute

- * **Administrative Home Rule.** Sec. 59.03(1)
Every county may exercise any organizational or administrative power, subject only to the constitution and to any enactment of the legislature which is of statewide concern and which uniformly affects every county.
- * Limitation Example: County with County Administrator cannot place appointment authority with board
 - * AG Opinion January 28, 2010

Self-Organized Counties

Self organization provides more flexibility on the manner in which the board of supervisors may operate

- * Use of staggered terms
- * Compensation of supervisors
- * Filling county supervisor vacancies

* Wis. Stat. §59.10(1)

Self-Organized Counties

How accomplished?

- * Majority of whole board adopts an ordinance invoking the authority of the authorizing statute
- * County board adopts the policies it desires

* Wis. Stat. §59.10(1)

Organizational Meeting

- * Required to meet on the third Tuesday of April
 - * May adjourn to different date
 - * Purpose is to organize & transact business
- * Wis. Stat. §59.11(1) (c)

Annual Meeting

- * To be held annually on the Tuesday after the second Monday of November
 - * A board may establish by rule an earlier date in October or November for the annual meeting
 - * Purpose is to organize & transact business
 - * May be adjourned by the clerk, upon written request by a majority of the supervisors, but not less than one week nor more than three weeks from the Tuesday after the second Monday in November
- * Wis. Stat. §59.11(1) (a) and (b)

QUIZ

- * Name the 3 branches of Federal Government
 - * Legislative (House and Senate)
 - * Executive (President)
 - * Judicial (Federal Courts)
- * Name the 3 branches of State Government
 - * Legislative (Assembly and Senate)
 - * Executive (Governor)
 - * Judicial (State Courts)
- * Name the 3 branches of City Government
 - * Legislative (City Council)
 - * Executive (Mayor)
 - * Municipal Courts

QUIZ

- * Name the 3 branches of County Government
 - * Legislative (County Board)
 - * Executive?? (Executive, Administrator, Administrative Coordinator)
 - * Judicial??

WHY ARE COUNTIES DIFFERENT THAN EVERY OTHER LAYER OF GOVERNMENT??

DOES THAT MEAN THAT COUNTIES MUST OPERATE DIFFERENTLY THAN OTHER LAYERS??

Forms Of Governance

- * **Traditional Governance:** The board approves staff action plans and then exercises oversight by monitoring all aspects of the operation. The board tries to keep up with and to instruct management.
- * **Policy Governance:** The board states what the organization must achieve and holds management accountable. The board must lead. Also the board describes what means will not be acceptable. The work of the board is focused on revising the desired results and means. Consequently its attention is given mainly to attending to the needs of the community served.

An Alternative – the County Commission Form of Government

- * Common in Western States as well as Illinois
- * Usually 3, 5 or 7 members
- * Well paid, with their own offices and staff
- * Have absolute authority over operational aspects
- * Incredibly inefficient – detracts from legislative and policy role
- * Wisconsin does not allow for the commission form of county government

Forms of County Government

In Wisconsin, three forms of county government exist

- * County Executive (11 counties)
- * County Administrator (26 counties)
- * County Administrative Coordinator (35 counties)

County Government Structure in Wisconsin (continued)

WCA does not have a position on which form of government a county should choose. WCA believes that decision is best made at the local level by the county board.

- * The most recent county to move to a county executive was Portage County in 2006. Portage County is also the smallest county in population (approx. 71,000) to have a county executive
- * Since 2007, nine counties have moved from an administrative coordinator position to a county administrator

County Government Structure in Wisconsin (continued)

- * Almost all counties have moved from the board chair serving as administrative coordinator, to having a full-time coordinator, or some other county official designated as the administrative coordinator
- * Currently, 15 county clerks serve as the administrative coordinator

County Executive

- * County Executive is the chief executive officer
- * “Coordinates and directs all administrative and management functions”
 - * Wis. Stat. §59.17

County Executive

Wis. Stat. §59.17(1)(a) :

- * Population of 500,000 or more, a county executive shall be elected for a 4-year term

Wis. Stat. §59.17(1)(b):

- * “Counties with a population of less than 500,000 may by resolution of the board or by petition and referendum create the office of county executive or abolish it by petition and referendum.”

County Executive Appointments and Budget

- * Appoints and supervises department heads subject to county board confirmation
 - * unless confirmation waived or civil service
- * Appoints members to boards and commissions, where statutes give this authority to county board or its chairperson
 - * subject to board confirmation
- * Submits the annual budget
 - * Wis. Stat. §59.17(2)

County Executive Veto

- * Veto authority
 - * Ordinances and resolutions
 - * Appropriation in whole or part
 - * County board can override with 2/3 vote
 - * Wis. Stat. §59.17(6)

County Administrator

- * Counties having a population of less than 500,000 may create the office of county administrator
 - * By resolution of the board, or
 - * by petition and referendum and
- * Appointed by majority vote of the board.
 - * Wis. Stat. §59.18.(1)

County Administrator

- * Chief administrative officer of the county
- * Coordinate and direct all administrative and management functions of the county government
- * Appoints and supervises department heads
 - * subject to county board confirmation, unless confirmation waived or civil service
- * Appoints members to boards and commissions, where statutes give this authority to county board or its chairperson
 - * subject to board confirmation

County Administrator

- * Answers to the county board of supervisors
- * Submits annual budget
- * “Appointed solely on merit”; no weight given to residence, political affiliation, etc.
 - * Wis. Stat. §59.18

Administrative Coordinator

- * Similar to county administrator but does not have appointment authority and “responsible for coordinating” rather than “coordinates and directs.”
- * Duties are close to those of a city or village administrator who works under a mayor or village president.

* Wis. Stat. §59.19

Administrative Coordinator

- * County must designate an Administrative Coordinator if it has neither an executive or administrator
- * “The administrative coordinator shall be responsible for coordinating all administrative and management functions of the county government not otherwise vested by law in boards or commissions, or in other elected officers.”

* Wis. Stat. §59.19

Administrative Coordinator

- * An elected or appointed official shall be designated Administrative Coordinator
 - * Wis. Stat. §59.19
- * The positions of County Supervisor and Administrative Coordinator are legally incompatible
 - * Attorney General Opinion, October 27, 2011

	Executive	Administrator	Admin. Coordinator
	(Sec. 59.17, Wis. Stats.)	(Sec. 59.18, Wis. Stats.)	(Sec. 59.19, Wis. Stats.)
HOW CREATED	Board resolution, petition, and/or referendum	Board resolution, petition and/or referendum	Board resolution or ordinance
HOW CHOSEN	Spring election every four years (non-partisan)	Appointed by majority vote of County Board	Appointed by majority vote of County Board
QUALIFICATIONS	U.S. Citizen, 18 years of age, county resident	Training, experience, education (no consideration for residence, nationality or political affiliation)	Elected or appointed County Official Other qualifications set by County Board Note: The Attorney General's Opinion of Incompatibility issued in October 2011
SOURCE OF POWERS	State statutes	State statutes	Limited State statutes and board resolution/ordinance
REMOVAL	By Governor for cause	By County Board (majority)	By County Board (majority)
BUDGET AUTHORITY	Prepares & presents to board	Prepares & presents to board	Only as authorized by board
VETO BOARD ACTIONS	Yes	No	No
DEPT. HEADS	Appoints (Subject to board confirmation) Removes at pleasure	Appoints (Subject to board confirmation) Removes at pleasure	No authority unless granted by County Board
ADVISORY COMMITTEES ADMINISTRATIVE BOARDS	Appoints & removes (Subject to Board confirmation unless waived or made under civil service)	Appoints & removes (Subject to Board confirmation unless waived or made under civil service)	No authority unless granted by County Board
COORDINATE DEPARTMENTS	Yes	Yes	Only management functions not assigned depts. by ordinance or law

County Board

- * Counties do not have “Home Rule” Authority”
 - * Only those powers granted by statute
 - * For example, Public Protection and Safety under Wis. Stat. §59.54
- * Levy taxes
- * Administrative and management authority only to extent not otherwise provided to others by statute
 - * Wis. Stat. §59.51

County Board Chair

- * Presides over meetings of the county board of supervisors
- * Administers oaths
- * Countersigns all ordinances
- * Commonly acts as spokesperson for the county board

* Wis. Stat. §59.12

County Board Supervisors

- * Supervisors' authority is collective versus individual
- * “Supervisor” is a historical, not a descriptive term

County Board Supervisors

- * Supervisors serve primarily a legislative function
 - * (in contrast to the commission form of county government in some states)
- * The legislative function is largely limited to policy making through law making, budgetary approval, and cooperative decision-making

Basic County Board Functions

- * Involve, represent and be accountable to the public
- * Determine which services are to be provided
- * Adopt the annual budget and levy taxes
- * Hire, evaluate and retain good Administration
- * Regulate within statutory authority
- * Cooperate with other levels of government
- * Focus on long-term rather than past or short-term
- * Conduct strategic planning addressing key issues and opportunities
- * Determine overall mission and purpose
- * Establish county's vision
- * Establish long-term desired results

Basic County Board Functions

* In other words, ENACT POLICY

County Board Sets Policy

Plans

Comprehensive, strategic, capital improvement, parks, farmland preservation, transportation etc.

Budgets

Most important document – determines what services are provided, how funded and the level of funding

County Board Sets Policy

Ordinances

- * An ordinance is a local law prescribing rules of conduct
- * Enforced by officials of the governmental body
- * Permanent part of governmental code
- * Ordinances can also be regulatory
 - * Licensing
 - * Zoning
 - * Peace and Order

County Board Sets Policy

Resolutions

- * Are usually less permanent and deal with matters that are temporary in character
- * Often used to grant special privileges, state policy, express opinions or communicate with other governmental bodies
- * Resolution may be used to adopt a budget

Board Roles & Responsibilities

Governance

- * Effective board operations are based on mutual understanding and respect for each other's position and viewpoint
- * Effective board members support the majority's decision once a final decision has been made
- * Effective board operations promote the public's best interests and its confidence in the decision-making process
- * Effective governance will include long term strategic planning and a shared vision of what the county looks like, and how it functions in the future

Board Roles & Responsibilities

Leadership

- * Leadership responsibility can easily become confused and controversial
- * Leaders should:
 - * Model the way – set an example for others
 - * Inspire a shared vision
 - * Challenge the process for positive outcomes
 - * Enable others to act
 - * Encourage the heart
 - * Maintain morale and a positive work environment for county staff
 - * Hold others accountable to promote the best interests of the county over personal goals or ambitions

Board Roles & Responsibilities

County Board

- * Has overall budget authority, however its relationship to county offices and departments must be consistent with the statutes and constitution
- * Role is that of “visionary”

Board Roles & Responsibilities

- * County board supervisors and department head/staff have vastly different responsibilities
- * Board supervisors serve primarily in a legislative role
- * Department heads and staff serve in an operational and advisory role

County Board Committees

- * Wis. Stat. § 59.13

- * The board may, by resolution designating the purposes and prescribing the duties thereof and manner of reporting, authorize their chairperson to appoint before June 1 in any year committees from the members of the board, and the committees so appointed shall perform the duties and report as prescribed in the resolution.

Required Committees

- * Wis. Stat. § 83.015 – county highway committee
- * Wis. Stat. § 166.03 – emergency management
- * Wis. Stat. § 59.56(3) – extension committee
- * Wis. Stat. § 46.82 – commission on aging
- * Wis. Stat. § 251.04 – local board of health
- * Wis. Stat. § 92.06 – land conservation committee
- * Community programs (Wis. Stat. § 51.42) /social services (Wis. Stat. § 46.22) /human services (Wis. Stat. § 46.23)
- * Wis. Stat. § 59.54 – local emergency planning committee
- * Wis. Stat. § 45.81 – veterans service commission

Committee Creation

- * A county board may establish as many standing and advisory committees as it deems necessary to conduct its business. These usually are created by ordinance or resolution.

What is the Committee Involvement?

- * Counties are structured so that the committees do much of the preliminary work, and then make recommendations to the full board
- * Committees have the knowledge, expertise and a better perspective of what is needed, what is achievable, how much it would cost (or save) to implement the new strategies and goals
- * Committees know who in the community their departments and programs serve

What is the Committee Involvement?

- * Committees have access to the appropriate staff to assist them with their planning needs
- * Committees know who the stakeholders are for their assigned committees and departments
- * Utilizing the committee structure allows for a process where everyone on the county board has an active role in planning the county's future

Standing Committee Functions

- * Much preliminary business and public hearings on legislation are conducted by committees, which then make recommendations or referrals to the full board for final action.
- * Monitor performance
- * Review and make budget recommendations
- * Draft ordinances and resolutions
- * Consider strategic planning efforts
- * In other words, assist in POLICY DEVELOPMENT

Committee Chair Role and Responsibility

- * When appointed to a committee chair position, a supervisor takes the leadership role in matters under the committee's jurisdiction
- * Committee leadership includes setting the tone, agenda, goals, making reports and recommendations on the committee's behalf, and presiding at the meetings

Policy vs. Administration

- * Policy (Board) = “What” and “Why”
- * Administrative/Operations (Staff) = “Where,” “When” and “How”

Policy vs. Administration Example

Policy

- * “What” – Will the county establish a hiking trail system?
- * “Why” – Will the system benefit the county?

Administration/Operations (staff)

- * “How” – Who will build and maintain the system?
- * “When” – What is the timeframe for implementation?
- * “Where” - Where will the system need to be maintained?

Administration

- * Implementation of policies and strategies
- * Focus is more narrow and shorter term
- * Day to day operations
- * Related to smaller functions
- * Addresses department or individual issues
- * Requires attention to detail
- * Requires specialized training

How Our Courts View the Distinction Between Policy and Administration

Court cites to Attorney General Opinion and dictionary

- The county boards function is primarily policy making and legislative, while the county executive functions as an administrator and manager. *See, e.g., 80 Op. Atty Gen. 49 (1991).*
- Policy has been defined as “a high-level overall plan embracing the general goals and acceptable procedures esp. of a governmental body.” *Webster's New Collegiate Dictionary 890 (1977).*

Schuetz v. Van De Hey, 205 Wis.2d 475 (Ct. App. 1996).

How Our Courts View the Distinction Between Policy and Administration

Court sites to leading treatise

- “Legislative power, as distinguished from executive power, is the authority to make laws, but not to enforce them, or appoint the agents charged with the duty of such enforcement.” See 2A MCQUILLIN, MUNICIPAL CORPORATIONS § 10.06 at 311 (3d ed. 1996).
- “The crucial test for determining what is legislative and what is administrative has been said to be whether the ordinance is one making a new law, or one executing a law already in existence.” *Id.*

Schuetz v. Van De Hey, 205 Wis.2d 475 (Ct. App. 1996).

What Happens Without Distinction Between Policy and Administration?

- * Time spent on the trivial
- * Reading reams of documents
- * Long-running meetings that accomplish little
- * Committees that are window dressing for what staff want to do
- * Meddling in administration
- * Staff in control of board agendas
- * Reactivity vs. proactivity
- * Executive committee as de facto Board
- * Confusion about what is going on
- * Rubber stamping or meddling
- * No incisive way to evaluate the Executive/
Administrator/Administrative Coordinator

What can be learned from the private sector?

Who are the shareholders in county government?

- * Taxpayers
- * Employees
- * State of Wisconsin

* Who is the Board of Directors in county government?

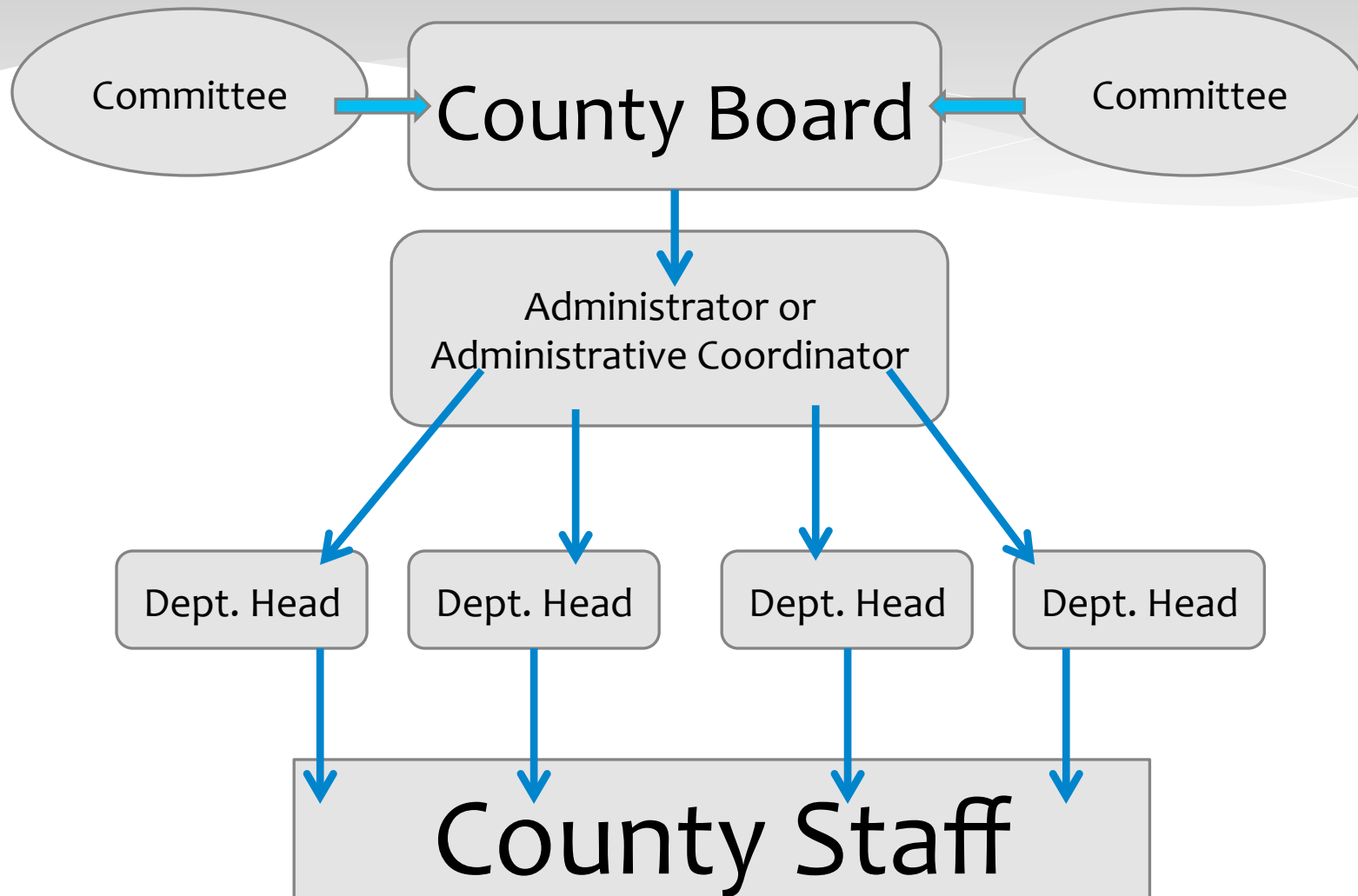
- * County Board

* Who is the CEO in county government?

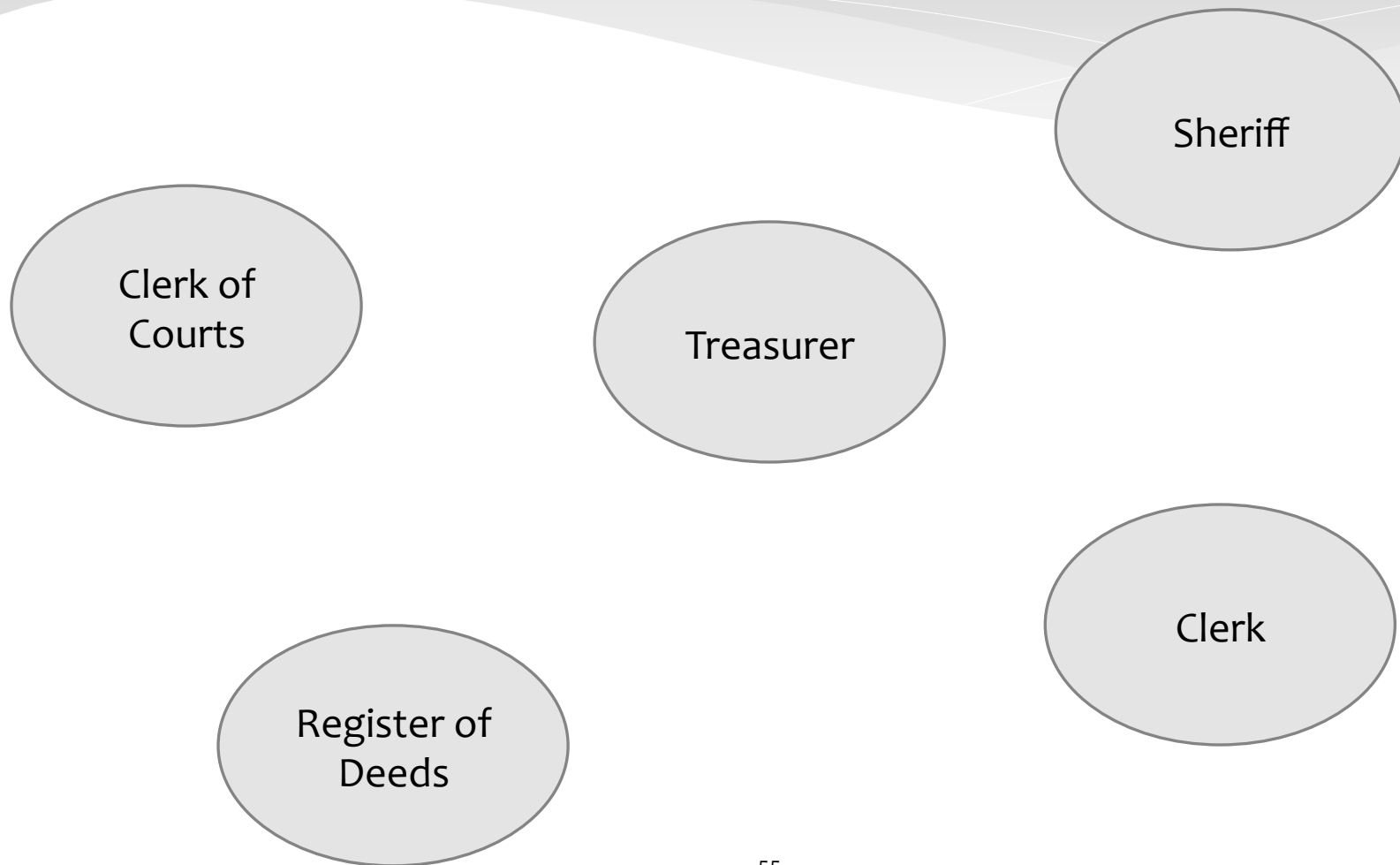
- * County Executive, Administrator, or Administrative Coordinator

* Where do Department Heads fall in the organizational chart?

Wisconsin County Organizational Chart (for counties without Exec)



Where do constitutional officers fall on the chart??



County Staff vs. Board

Staff

Education

Experience

Background checked

Bonded

Professionally current

Professional associations

Board

Elected by people

Local connection

Leadership Roles

When you read Chapter 59 of the Wisconsin statutes, it strongly implies:

“Thou Shalt Not Micro-Manage”

Leadership Roles

- * Individual county board supervisors have no management or leadership role outside of committees and commissions; their authority is collective as a member of the board
- * (Non-elected) department heads have the leadership role in their departments within the guidelines of the policies and procedures set by the board of supervisors and clarified through directives from the executive or administrator

Staff Roles and Responsibilities

- * Staff (non-elected department heads and other key staff) have an obligation to carry out their duties in a manner consistent with the policy direction of the board.
- * Staff makes recommendations and give professional advice. They generally do NOT make policy other than internal department policies as authorized.

Staff Roles and Responsibilities

- * Answer questions and present reports during meetings to enable elected officials to make informed decisions
- * Offer alternatives and recommendations as needed

How Does Micromanaging Hurt The County?

- * Employees spend time focusing on pleasing the micromanager vs. doing their jobs
- * Employees suffer a loss of morale because skills that took years to build are being wasted
- * A “futility” mentality sets in – “why am I even here if I cannot be trusted to do the simplest of tasks?”

Working Together As A Goal

- Between County Board members and the Administrative Team
 - Know your job and try not to interfere with that of the administration.
 - Devote the time needed to do a good job. Read the background materials the administration prepares.
 - Admit what you do not know.
 - Do not jump to conclusions; instead, hear and weigh all the facts.

Working Together As A Goal

- Between Board members and the Administrative Team (continued)
 - Keep your mind open to change.
 - Understand that the administrator is practicing a career - a highly complex one for which he or she has prepared with formal training and, in most cases, years of progressive experience.
 - Do not become a complaint department. Communicate with the staff through the administration as much as possible.

Working Together As A Goal

- Between County Board members and the Administrative Team (continued)
 - Do not make promises outside board meetings, not only for legal reasons, but also out of respect for the ethics of the situation and regard for the other board members, the administration and employees.
 - Listen to what your constitutional officers and employees have to offer and let them know you are listening.

Working Together As A Goal

- Between County Board members and the Administrative Team (continued)
 - If someone complains to you about a member of the administration, listen but do not automatically agree. Being supportive of the administration shows that you have confidence in yourself and in the county management team. If the complaint is serious, ask the person to put it in writing and ask the board as a whole to analyze it in light of the appropriate committee structure.

Working Together As A Goal

Between County Board members and the Administrative Team (continued)

- If you have to criticize any county employee, do so constructively. Criticize the work rather than the individual.
- Do not surprise the administration at a board meeting with resolutions, problems and issues without their prior knowledge. If you "spring" something at a meeting, the administration probably will not have the necessary data at hand to allow full and complete discussion of the issue. Incomplete data and discussion lead to unwise decisions.

Chain of Command

- * When issues are raised before County Board members, they should be referred to the appropriate source for handling.
- * County Board members should avoid engaging in individual initiatives to investigate or address issues unless authorized to do so by committees or the county board.
- * Following an appropriate chain of command will ensure that issues are addressed in an open and deliberate manner that is fair to all involved.

Key Points To Remember

- * Counties are a creature of the State. Counties can only do what the Statutes and Constitution allow
- * County Boards are to serve as a legislative body which sets policy, approves annual budgets and makes cooperative decisions.
- * County Boards work most effectively when utilizing a strong committee system.
- * County committees do much of the preliminary work prior to making recommendations to the full board. They monitor performance, review and develop budget recommendations, and draft ordinances and resolutions.

Key Points To Remember

- * Individual county supervisors have no management or leadership role outside of county committees or commissions.
- * County administration and department heads are to implement the policies and procedures of the Board.
- * Micromanaging stifles productivity of county operations.
- * The board & administrative team working cohesively & cooperatively provides the best chance of success in meeting the needs of county residents

Resources

- * The UW-Extension Local Government Center
- * 608-262-9961

- * Wisconsin Counties Association
- * 866-404-2700

- * von Briesen & Roper, S.C.
- * 414-287-1570

Questions? Comments?

Contact Information:

Andrew T. Phillips, Attorney

Von Briesen & Roper, s.c.

aphillips@vonbriesen.com

(414)287-1570

Jon Hochkammer, Outreach Manager

Wisconsin Counties Association

hochkammer@wicounties.org

(866)-404-2700