



LEGAL ISSUES
RELATING TO COUNTY GOVERNMENT

Who's Job Is It?

Roles and Responsibilities in County Government

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Counties are unique. While every other level of government — federal, state, city/village — can rely upon distinct provisions in a constitution or statute when determining the role of the executive, legislative and judicial branches, the statutes governing counties are not as clearly organized. In fact, it was not until 1985 that the Wisconsin Legislature required counties to choose between three “executive/administrative branch” options — county executive, administrator or administrative coordinator.

Questions persist surrounding the roles and responsibilities of county boards, administrative officials and county constitutional officers. The lack of clarity in statute has historically led to disagreements over questions surrounding who has the authority to make certain decisions and otherwise direct the activities of county government.

In order to appropriately serve its citizens, a county needs a functioning system of governance. This means a county board should be in regular communication with administration, staff and constitutional officers to clarify roles and responsibilities. Indeed, the WCA spends

a significant amount of time facilitating discussions surrounding roles and responsibilities in county government. While this article will discuss broad principles relating to county governance, it should be a mere launching point for counties to begin, or continue, their own discussions.

The county board is the legislative branch of county government. It adopts laws (ordinances) and budgets, levies taxes, and otherwise sets policy. In addition, the county board is responsible for appointing the staff (subject to certain statutes relating to methods of appointment)¹ required to carry out the policy direction it has established.

A county board derives its organizational and administrative powers from Wis. Stat. § 59.51, which states (emphasis added):

► **59.51 Board powers.**

1. Organizational or administrative powers. The board of each county shall have the authority to exercise any organizational or administrative power, subject only to the constitution and any enactment of the legislature which grants the organizational or administrative power to a

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county executive or county administrator or to a person supervised by a county executive or county administrator or any enactment which is of statewide concern and which uniformly affects every county. Any organizational or administrative power conferred under this subchapter shall be in addition to all other grants. A county board may exercise any organizational or administrative power under this subchapter without limitation because of enumeration, and these powers shall be broadly and liberally construed and limited only by express language.

2. General authority. The board may represent the county, have the management of the business and concerns of the county in all cases where no other provision is made, apportion and levy taxes and appropriate money to carry into effect any of the board's powers and duties.

A county board's role stands in direct contrast to the role of a county executive, administrator or administrative coordinator. The executive/administrative branch does not create policy — it carries out the policy the county board establishes according to the budget parameters the county board has set. It is also incumbent upon the executive/administrative branch to provide information and advice to the county board to allow the board to make informed policy decisions. In other words, the two primary roles of the executive/administrative branch are to support the county board in establishing policy and, once policy is established, carry out the policy.

In discussing the distinction between legislative power (vested with a county board) and administrative power (vested with a county administrator or executive), the Court of Appeals in *Schuette v. Van De Hey* held “[t]he

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.”² Therefore, the analysis revolves around whether a particular act undertaken by an executive/administrator/administrative coordinator is viewed as creating a new policy (i.e., legislating) or carrying out a policy already in place (i.e., administering, directing and managing).

The terms “direct” and “management” as used in the statutes relating to county executive and administrative powers are not defined in statute. The Wisconsin Supreme Court has explained that the purpose of statutory interpretation is to “determine what the statute means so that it may be given its full, proper, and intended effect.”³ Statutory interpretation begins with the language of the statute. Statutory language is “given its common, ordinary, and accepted meaning,” unless there are technical or specially defined words or phrases.⁴ If the statutory language yields a “plain, clear statutory meaning, then there is no ambiguity,” and there is no need to consult extrinsic sources of interpretation.⁵ Here, because the applicable terms are not technical in nature, a dictionary definition of terms is appropriate for the purpose of determining the plain meaning of a statute.

According to the Merriam-Webster Dictionary, the verb “direct” means “to carry out the organizing, energizing, and supervising of.” The term “management” is defined as “the act or art of managing — the conducting or supervising of something (such as a business).” Based upon these definitions, the actions of “organizing” and “supervising”

Continued on page 46



Continued from page 45

LEGAL ISSUES

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the county's business affairs are appropriately interpreted as administrative acts within the statutory power of a county administrator.

Milwaukee County is subject to additional separation of powers statutes not applicable to other counties.⁶ The Milwaukee County Board is statutorily excluded from exercising day-to-day control of any county department or subunit of a department. This is in contrast to other county boards which retain some authority to determine job duties and related matters for the county's employees.

Instead, such authority in Milwaukee County is specifically reserved for the county executive. In interpreting statutory language relating to the powers of the Milwaukee County executive, the Court of Appeals concluded, "that the Board improperly exercises 'day-to-day control of any county department or subunit of a department' when the Board's action ... involves the Board effectively directing what duties may or must be accomplished by employees or officers or how they may or must perform those duties."⁷

As seen above, even the legal precedent discussing the distinction between a policy function and administrative role lacks precision. Nonetheless, it is clear that such a distinction indeed exists. It is also clear that a high-functioning system of governance recognizes the distinction.

If your county is encountering the symptoms associated with a blurred understanding of roles and responsibilities, you are not alone. But do not let the symptoms lead to unnecessary frustration. Instead, begin (or continue) the discussion surrounding roles and responsibilities. And if you would like assistance with the discussion, know that the WCA would be happy to help facilitate. ■

Attolles Law, s.c. works on behalf of Wisconsin counties, school districts and other public entities across the state of Wisconsin. Its president and CEO, Andy Phillips, has served as outside general counsel for the Wisconsin Counties Association for nearly 20 years.

1. For example, some appointed officials (e.g., corporation counsel, department heads, etc.) are appointed by a county executive or county administrator and subject to confirmation by the county board.
2. *Schuetz v. Van De Hey*, 205 Wis. 2d 475 (Ct. App. 1996)
3. *State ex rel. Kalal v. Circuit Court*, 2004 WI 58, ¶44
4. *Id.* at ¶ 45
5. *Id.* at ¶ 46
6. Wis. Stat. § 59.794(3)
7. *Lipscomb v. Abele*, 2018 WI App 58 at ¶49

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