



Wisconsin Counties Association  
**ANNUAL CONFERENCE**  
*& Exhibit Hall* **2023**

**8:00 – 9:00 AM**

**Whose Job Is It? Top 10 Misconceptions About Board and Administration Roles**

Speaker: Andy Phillips, Attorney, Attolles Law, s.c.

Moderator: Lance Pliml, County Board Chair, Wood County

# Whose Job Is It Anyway? Top 10 Misconceptions about the Roles of the Board and Administration

2023 WCA Annual Conference

Attorneys Andy Phillips and Jake Curtis

# What We'll Cover Today

- The Top 10 Misconceptions
- Questions and Answers  
surrounding the role of the  
county board and the role of  
administration

# County Form of Government

Rev. 01-2021

## Full Time Dedicated Positions: 52 Counties

12 Elected County Executives (CE)

33 Appointed County Administrators (CA)

7 Appointed Administrative Coordinators (AC)

## Dual Role Positions: 20 Counties

10 AC/County Clerks

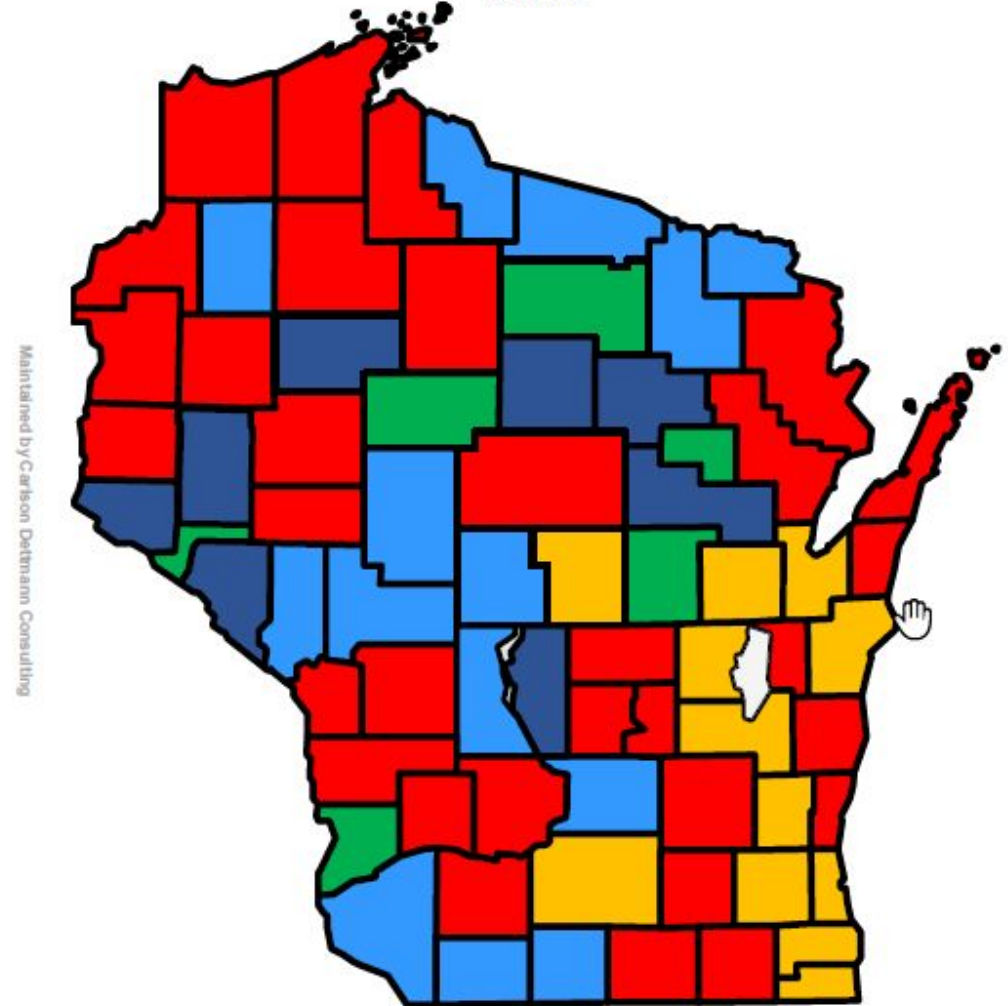
4 AC/Board Chairs

3 AC/Human Resources

1 AC/Finance Director

1 AC/Human Services

1 AC/Highway Commissioner



County Administrator

County Executive

Administrative Coordinator (Sole Job)

Administrative Coordinator (Dual Staff Role)

Administrative Coordinator (Elected Official)

# Misconception Number 1

- “There really is no clear legal distinction between the role of the board and the role of staff.”

# Reality Number 1

- “The county board’s 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). “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.*

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

## Misconception Number 2

When you look at the roles of the board and the roles of staff, there really isn't a whole lot of difference in terms of the function.

## Reality Number 2

- A legislative body (county board) has two primary responsibilities:
  1. Enact policy and “hand it off” to staff; and
  2. Hold staff accountable for the faithful implementation of policy.
- Administration (staff) has two primary responsibilities:
  1. Carry out the policy direction the legislative body (county board) enacts; and
  2. Provide the legislative body (county board) with the information necessary for the body to make an informed policy decision.



## Reality Number 2 (an example)

Do the Green Bay Packers follow these distinctions in roles?

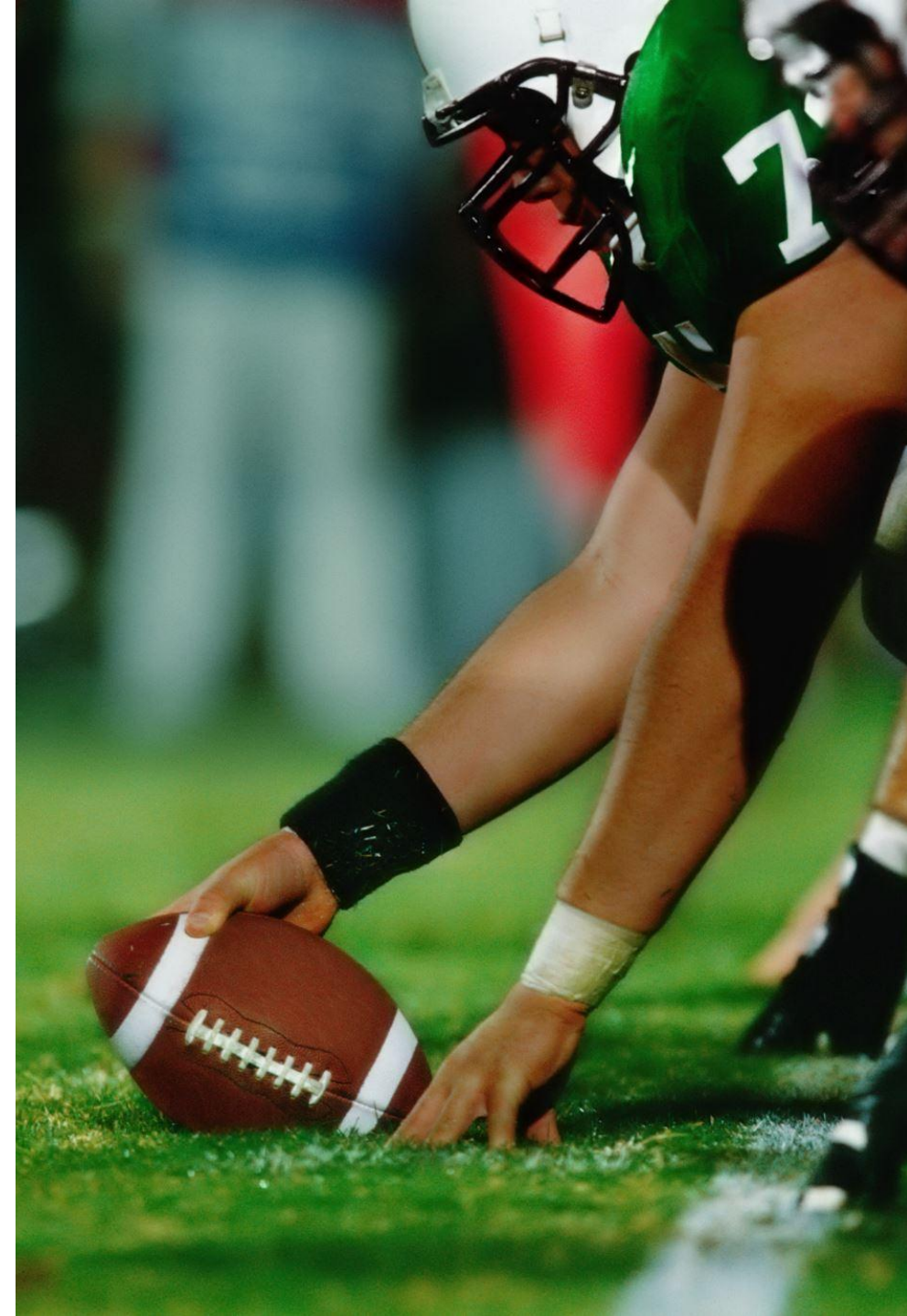
Who determines the Packers' budget?

Who hires the General Manager?

Who hires the head coach?

Who fires the head coach?

Who calls the plays during the game?





# Reality Number 2

- How does “information” get from staff to board member in your county?
  - Committee reports
  - Board reports
  - Informal information sessions
  - HOPEFULLY NOT a daily visit to staff from board members curious about how certain decisions were made
- Should we consider a policy addressing board member and staff interaction?

# Misconception Number 3

- A county board supervisor should have tons of relevant professional experience. After all, how can he/she “supervise” things without experience?

# Reality Number 3

- A connection to the electors is the primary and ONLY qualification that truly matters.
- A policy-making body should reflect the will of the citizens that put the policy makers in their seats.

## **STAFF**

Education

Experience

Background checked

Bonded

Professionally current

Professional associations

## **BOARD**

Elected by people

Local connection

Reality Number 3 (cont.) - County  
Staff Qualifications Compared to  
Supervisor Qualifications

## Misconception Number 4

- “If I am appointed/elected the chair of a committee, that means I have a significant hand in running the department for which the committee has oversight responsibility.”

- Policy oversight for departments, offices and other entities
- Monitor performance
- Review and make budget recommendations
- Draft ordinances and resolutions

In other words, assist in POLICY DEVELOPMENT

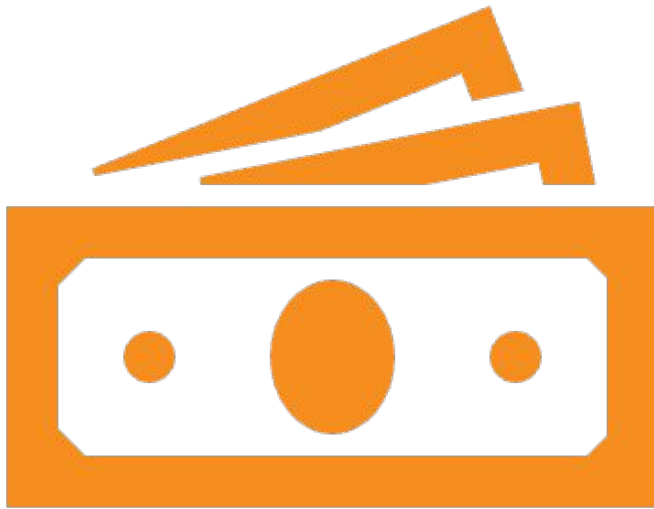
Reality  
Number 4  
(the role of  
committees  
)

# Reality Number 4

- Supervisors' authority is collective versus individual.
- When appointed to a committee chair position, a supervisor has the authority to set the agenda for committee meetings, preside at meetings and make reports and recommendations on the committee's behalf.
- So do "supervisors" actually "supervise" anything?
- Thank you legislature for creating confusion with the name!



## Misconception Number 5



**“The County Budget is a financial document so it is important that our financial staff develop it.”**

## Reality Number 5

- The County Budget is the preeminent policy document in county government.
  - Wis. Stat. § 65.90(2)(a) – “An annual budget shall list all existing indebtedness and all anticipated revenue from all sources during the ensuing year and shall likewise list all proposed appropriations for each department, activity and reserve account during the said ensuing year.
- The budget links current year expenditures with a county’s long-range vision
- Even though the budget is a “year in a glance,” there should be attention to the county’s long-term plans.

## Reality Number 5 “Reality Check”

- What percentage of your county’s budget is dedicated to health and human services?
- Do your constituents know this?
- Why would it be important for constituents to know this?



## Reality Number 5 - What is your county's budget development process?

- **Counties with an Executive or Administrator**
  - What is committee involvement?
- **Counties with an Administrative Coordinator**
  - What is staff involvement?
- **How early do you start the budgeting process?**
  - How early should you start the budgeting process?

# Misconception Number 6

- Meetings are a great place to solve all the county's problems

- If meetings are a place where problems are solved, you have some REALLY long meetings!
- Reactivity vs. Proactivity
  - What is the difference and why is this important?
- Does a “visionary” really only react to issues that are brought to the body’s attention at a meeting?

OR

- Does a visionary establish policy that staff are obliged to follow, which dictates the procedure utilized to solve problems?

# Reality Number 6

# Misconception Number 7

**Our department heads  
should be visionaries!**

# Reality Number 7

- Department heads (non-elected) 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.
- Department heads and staff can and should recommend changes to policy, but should only be involved in actually adopting policy when explicitly authorized by the board of supervisors.



# Misconception Number 8

“Hah – the State can’t tell us  
what to do!”

# Reality Number 8

“This court recently affirmed the principle that counties are creatures of the Legislature and their powers must be exercised within the scope of authority ceded to them by the state ... In governmental matters, the county is simply the arm of the state; the state may direct its action as it deems best and the county cannot complain or refuse to obey ... The county exists in large measure to help handle the state’s burden of political organization and civil administration ... But as a creature of the state, it is not permitted to ‘censor or supervise’ the activities of its creator.”

*Dane County v. Wisconsin Dept of Health and Soc Svcs*, 79 Wis. 2d 323 (1977) (many other citations omitted).

“This court has often expressed the fundamental rule that counties, as creatures of the legislature, exist largely for purposes of political organization and administrative convenience ... Because of its status as an arm of the state, a county cannot be heard to challenge or question the wisdom of its creator ... It follows logically from this, for example, that a county may not raise a constitutional challenge to a statute.”

*Brown County v. Dept of Health and Soc Svcs*, 103 Wis. 2d 37 (1981) (many other citations omitted).

# Reality Number 8 (cont. post-Administrative Home Rule)

“A county is a creature of the legislature and as such, it has only those powers that the legislature by statute provided. Wis. Const. art. IV, § 22. For more than a century, Wisconsin courts consistently have interpreted counties' powers as arising solely from the statutes:


Counties are, at most, but local organizations, which, for the purposes of civil administration, are invested with a few functions characteristic of a corporate existence.... [T]he statutes confer upon them all the powers they possess.

*Frederick v. Douglas County*, 96 Wis. 411, 416–17, 71 N.W. 798 (1897) (citations omitted). We have held that counties exist for, and derive their powers from, the state, through legislation. *State ex rel. Conway v. Elvod*, 70 Wis.2d 448, 450, 234 N.W.2d 354 (1975) (explaining that a “county is totally a creature of the legislature, \*511 and its powers must be exercised within the scope of authority ceded to it by the state”); *Kyncl v. Kenosha County*, 37 Wis.2d 547, 555, 155 N.W.2d 583 (1968) (citation omitted) (explaining that a county “exists not by virtue of its own will or consent, but as a result of the superimposed will of the state”); *Douglas County v. Indus. Comm'n*, 275 Wis. 309, 313–14, 81 N.W.2d 807 (1957) (citations omitted) (pointing out that “[c]ounties, like other municipal corporations, are mere instrumentalities of the state, and statutes confer upon them their powers, prescribe their duties, and impose their liabilities”); *Spaulding v. Wood County*, 218 Wis. 224, 226, 260 N.W. 473 (1935) (citations omitted) (explaining that a county has “only such powers as are conferred upon [it] by statute, or such as are necessarily implied therefrom”).”

*Jackson County v. State, Dept of Nat Resources*, 2006 WI 96.

## Reality Number 8 (cont.)

- A county's home rule authority found in s. 59.03 is not nearly as expansive as the constitutional home rule authority enjoyed by cities and villages in the Constitution.
- The historical partnership between the state and counties may at times appear strained, but it is critically important to the efficient delivery of services.
- The history lesson...
- So the lesson for us here in modern times is?



## Misconception Number 9

- As a county board, we oversee constitutional officers and can provide direction to them on how to do their job.

# Reality Number 9

- Constitutional officers (sheriff, clerk, treasurer, register of deeds, clerk of courts) have a constitutional and statutory obligation and prerogative to perform their duties without interference.
  - But does the Constitution have a job description for county constitutional officers? So where do we look?
- The legislature established the “grand unresolved conflict.” What is it?
- The goal is to work together with constitutional officers to understand duties, responsibilities and needs.



## Misconception Number 10

As a county board supervisor, it is my job to make sure I help constituents by resolving their problems within the county.

## Reality Number 10

- This is a TRICK QUESTION!
  - Of course it is part of a county board supervisor's job to help constituents, but what does "help" look like? "Help" is a lot different than "resolve."
- Remember:
  - No operational control resides with individual supervisors
  - Supervisors authority is collective versus individual
  - "Supervisors" don't actually "supervise" anything?
- Supervisors can play a role in ensuring staff is responsive to constituent concerns.





# Reality Number 10

- What is your county's policy and procedure for addressing constituent concerns?
  - Addressed at the committee level?
  - Addressed directly with staff?
  - Addressed at the Board level?
- What policy is in place to allow for interaction between board members and staff as it relates to constituent concerns?

# BONUS!!

## Misconception Number 11

- There aren't a lot of resources out there to help me be the best board supervisor I can be.

# Reality Number 11 – WOW!

- The Wisconsin Counties Association...
  - Is the voice for county government in the State Capitol
  - Is held in the highest regard in all three branches of state government
  - Provides live “on demand” educational opportunities for members
  - Coordinates legal questions impacting county government across the state
  - Links Wisconsin counties to federal decision makers
  - Employs some really awesome people!
- And this is all because of you and for you – just ask!



Thank you for your  
service to county  
government!



Questions? Comments?

# Contact Information



**Attolles Law, s.c.**

**222 E. Erie Street, Suite 210**

**Milwaukee, WI 53202**

**414-279-0962**

**[www.attolles.com](http://www.attolles.com)**

**ATTOLLES**  
**LAW, s.c.**