

# 2024 ANNUAL CONFERENCE

Wisconsin Counties Association



**8:00 – 9:00 AM**

**The Role of Constitutional Officers: Why  
Does it Matter? (Hint: It Matters a Lot!)**

# The Role of Constitutional Officers – Why Does it Matter?

2024 WCA Annual Conference  
September 23, 2024

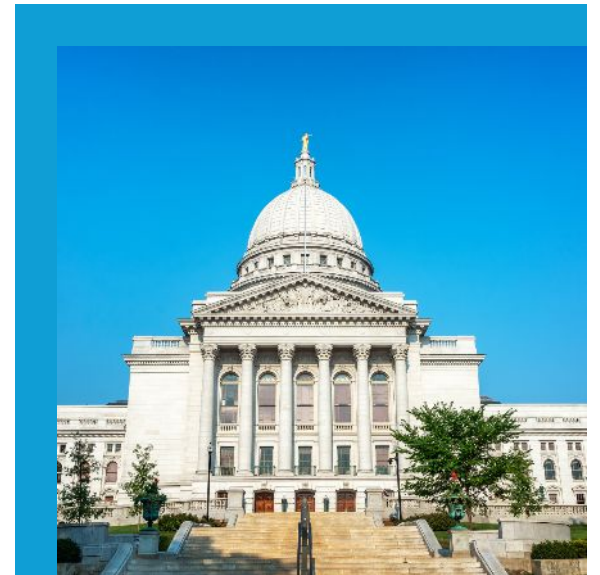
**ATTOLLES**  
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Wisconsin Counties Association



# Roles and Responsibilities

**For County Government**



An aerial photograph of a city, likely San Francisco, showing a mix of urban buildings and green spaces. A semi-transparent white banner is overlaid across the middle of the image, containing the title text.

# County Board of Supervisors

- Supervisors serve primarily a legislative function
- The legislative function is largely limited to policy making, law making, budgetary approval and cooperative decision making on matters within their statutory authority (recall the limitations based upon statute)
- No operational control resides with individual supervisors

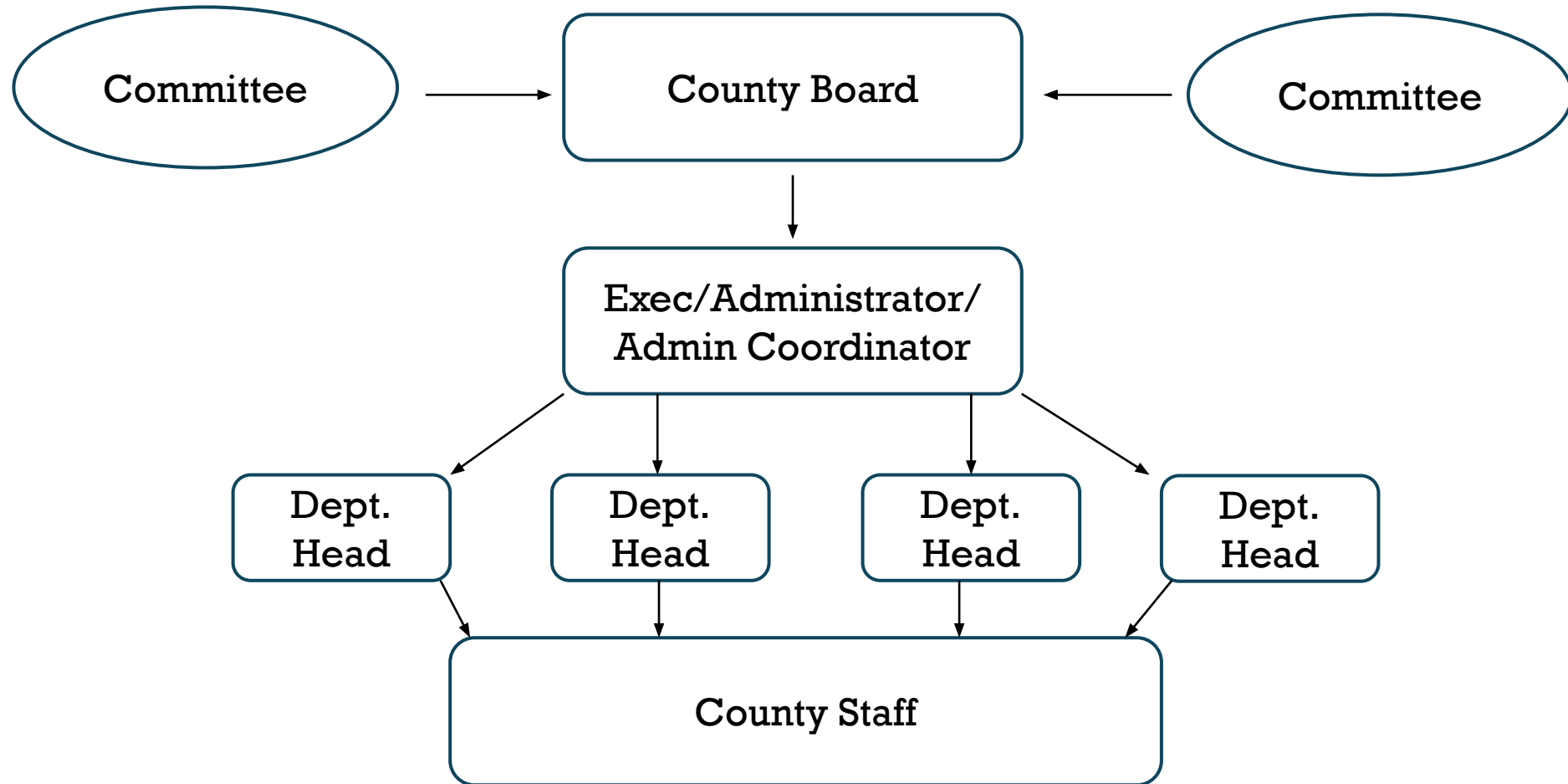


An aerial photograph of a city, likely New York City, showing a mix of urban buildings and green spaces. A semi-transparent white banner is overlaid across the middle of the image, containing the title text.

## **Administration (Department Heads & Staff)**

- Implementation of policies and strategies
- Shorter term
- Day to day operations
- Related to smaller functions
- Addresses department or individual issues
- Requires attention to detail
- Requires specialized training

# Wisconsin County Organizational Chart (Greatly Simplified)



# Where Do Constitutional Officers Fall on the Org Chart?

Clerk of  
Courts

Sheriff

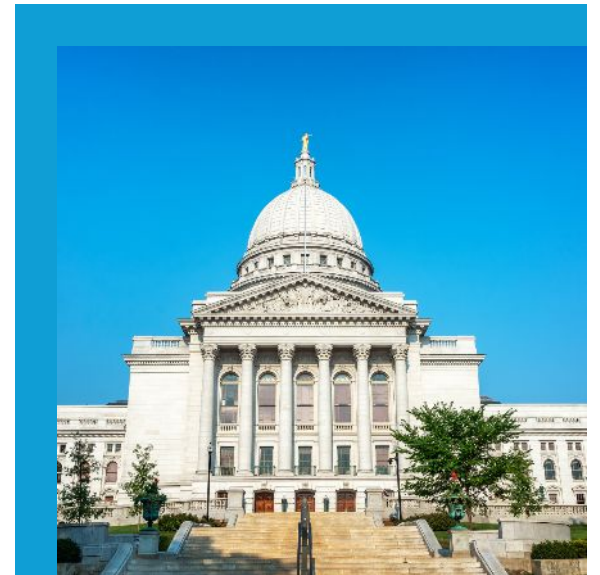
Treasurer

Register of  
Deeds

Clerk

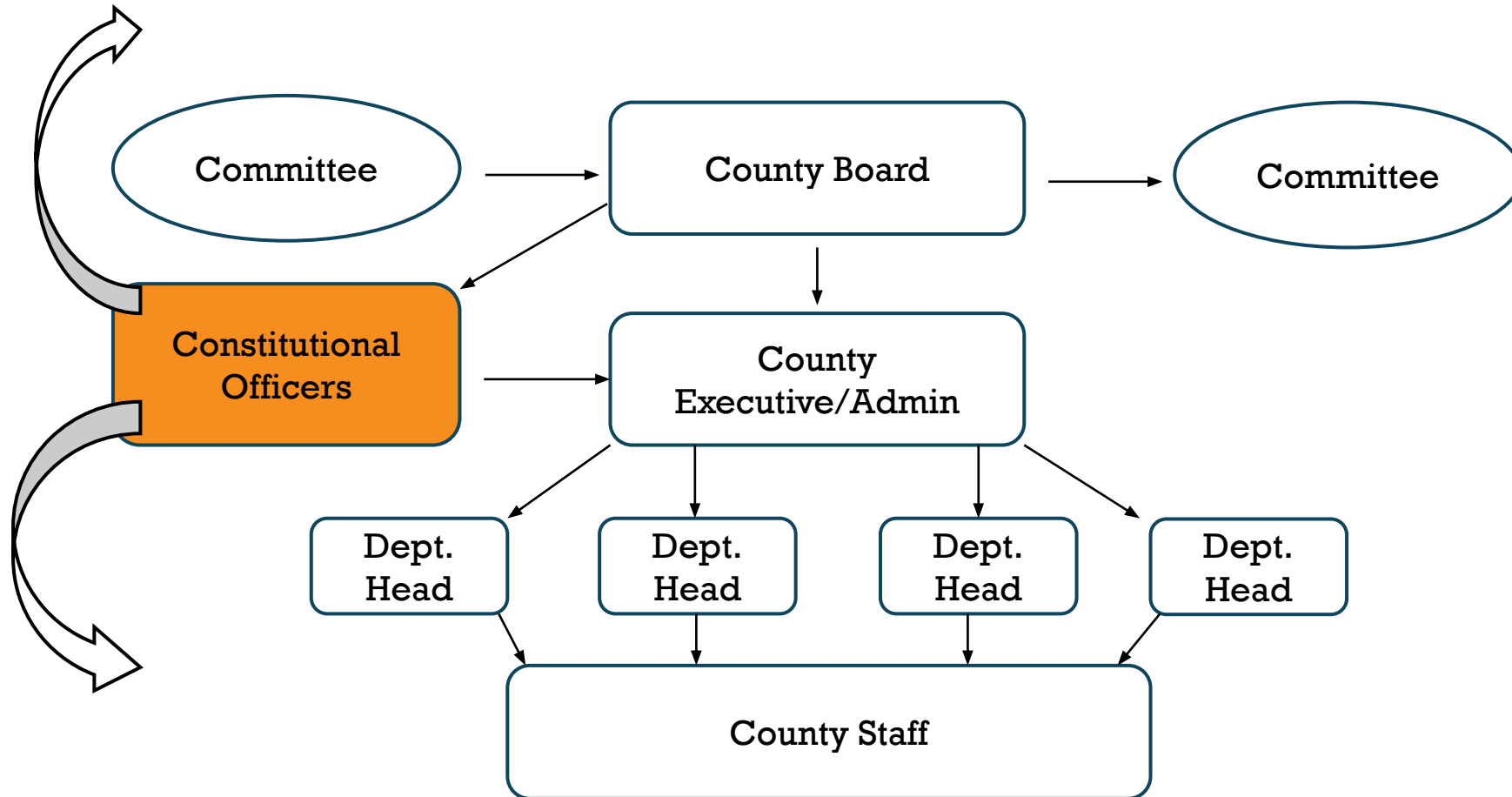
# Constitutional Officers

**In County Government**





# The Constitutional Officer “Dual Persona”



An aerial photograph of a city, likely Madison, Wisconsin, showing a mix of urban buildings and green spaces. A semi-transparent white banner is overlaid across the middle of the image, containing the title text.

# Constitutional Officers

- Article VI, § 4 and Article VII, § 12 of the Wisconsin Constitution provides for the election and appointment of county officers
- Constitutional Officers
  - County Clerk
  - Coroner
  - Register of Deeds
  - District Attorney
  - Sheriff
  - Clerk of Court
  - Surveyor
  - Treasurer
- Such officers' duties are prescribed by statute

An aerial photograph of a city, likely Denver, showing a mix of urban buildings and green spaces. A semi-transparent white banner is overlaid across the middle of the image, containing the title text.

## **“Important Duties”**

- In addition to the duties set by statute, courts recognize that there are certain other “important duties” that have been performed on an “immemorial basis.”
  - These duties cannot be transferred by county board action.
  - For offices other than sheriff, the “important duties” that have been performed on an “immemorial basis” are scant.



An aerial photograph of a city, likely New York City, showing a mix of urban buildings and green spaces. A semi-transparent white rectangular box is overlaid on the center of the image, containing the title text. The background image shows various city blocks with different building styles, including some taller skyscrapers in the distance and more residential-looking buildings in the foreground.

# Authority of the County Clerk

- Constitutional:
  - Elected for four-year term during Fall presidential election
  - Constitution is silent on any duties, powers or obligations

An aerial photograph of a city, likely Madison, Wisconsin, showing a mix of urban buildings and green spaces. A semi-transparent white rectangular box is centered over the image, containing the title text.

# Authority of the County Clerk

- Statutory Powers
  - Set forth in Wis. Stat. § 59.23
- Authority to:
  - Keep and record minutes of County Board meetings and document Board resolutions and decisions including vote of each supervisor;
  - Sign all orders of payment issued by the Board;
  - Maintain records, receipts and reports of payments made;
  - Make certified copies of records upon request; and
  - Duties related to the assessment and collection of taxes and preparation and distribution of ballots in general, judicial and special elections.



An aerial photograph of a city, likely Madison, Wisconsin, showing a mix of urban buildings and green spaces. A semi-transparent white banner is overlaid across the middle of the image, containing the title text.

# Authority of the Treasurer

- Constitutional:
  - Elected along with president for four (4) years pursuant to Art. VI s. 4 of the Wisconsin Constitution.
  - The Constitution is silent on any duties, powers or obligations of the treasurer.

An aerial photograph of a city, likely Madison, Wisconsin, showing a mix of urban buildings and green spaces. A semi-transparent white rectangular box is centered over the image, containing the title text.

# Authority of the Treasurer

- Statutory Powers
  - Set forth in Wis. Stat. § 59.25
- Authority to:
  - Receive all monies belonging to the county from all sources;
  - Pay out all monies belonging to the county on the order of the Board;
  - Keep an account of all receipts and expenditures;
  - By March 15 of every year, furnish the Department of Revenue a complete tax roll settlement sheet;
  - Furnish all fees to the appropriate state and municipal agencies; and
  - Exercise any investment authority delegated by the Board.

An aerial photograph of a city, likely Chicago, showing a mix of urban buildings and green spaces. A semi-transparent white rectangular box is centered over the image, containing the title text.

# Authority of the Clerk of Courts

- Constitutional
  - Article VII, s. 12
  - Circuit Court clerk elected with the governor every 4 years
  - Removal only as provided by law
  - Vacancies filled by the judge of the circuit court until position filled by election
  - Supreme Court shall appoint its own clerk
  - The Constitution is silent on any duties, powers or obligations of the clerk of court.



An aerial photograph of a city, likely Madison, Wisconsin, showing a mix of urban buildings and green spaces. A semi-transparent white rectangular box is centered over the image, containing the title text.

# Authority of the Clerk of Courts

- Statutory Powers
  - Set forth in Wis. Stat. § 59.40
- Authority to:
  - Keep court records in every action and proceeding and judgment and lien dockets;
  - Collect prescribed fees and invest any funds paid to the office;
  - Upon authorization from the Board, may contract with a debt collector to collect unpaid fines and forfeitures.
  - Accept credit or debit cards as payment of fees and may establish payment plans for the collection of fees based on the person's ability to pay.

An aerial photograph of a city, likely Madison, Wisconsin, showing a mix of urban buildings and green spaces. A semi-transparent white banner is overlaid across the middle of the image, containing the title text.

# **Authority of the Register of Deeds**

- Constitutional
  - Elected along with president for four (4) years pursuant to Art. VI, § 4 of the Wisconsin Constitution.
  - Vacancies filled by appointment.
  - The Constitution is silent on any duties, powers or obligations of the register of deeds.





# Authority of the Register of Deeds

- Statutory powers set forth in Wis. Stat. § 59.43
- Authority to:
  - Record deeds, mortgages and other instruments related to land;
  - Index all marriages, deaths and births;
  - Index all organizational documents of corporations, fraternal societies, associations or other entities;
  - File financing statements and other documents related to security interests;
  - Receive fees for filing and copying of recorded documents;
  - By Board resolution, convert recorded documents to electronic format;



# Authority of the Register of Deeds

- Maintain an index searchable by grantee or grantor name, document number or tract of land parcel.
- Ensure that documents indexed contain:
  - Consecutive number of the instrument;
  - Time and date of instrument's acceptance
  - Name of the Grantor;
  - Name of the Grantee.
  - Land description;
  - Name of the instrument;
  - To whom the instrument was delivered;
  - Amount of fee received.



An aerial photograph of a city, likely Boston, showing a mix of urban buildings and green spaces. A semi-transparent white rectangular box is centered over the image, containing the title text.

# Authority of the Register of Deeds

- Board may authorize the Register to destroy obsolete documents pertaining to chattels antedating by 6 years and other documents formerly required to be filed such as documents pertaining to town mutual insurance companies or stock corporations;
- Board may by ordinance require that the Register keep a tract index of records searchable by:
  - Quarter- sections of land which refer to the public land survey system or recorded private claim;
  - Certified survey map and lot or outlot number;
  - Name and lot, block outlot or unit within a plat, according to the land description.

An aerial photograph of a city, likely Madison, Wisconsin, showing a mix of urban buildings and green spaces. A semi-transparent white banner is overlaid across the middle of the image, containing the title text.

# Authority of the Sheriff

- Constitutional
  - Elected along with governor for four (4) years pursuant to Art. VI, § 4 of the Wisconsin Constitution.
  - Cannot hold any other partisan office. Wis. Const. Art. VI, § 4.
  - If position is vacant, it is filled by appointment by the governor and serves until a successor is elected. Wis. Const. Art. VI, § 4.
  - The Constitution is silent on any duties, powers or obligations of the sheriff.





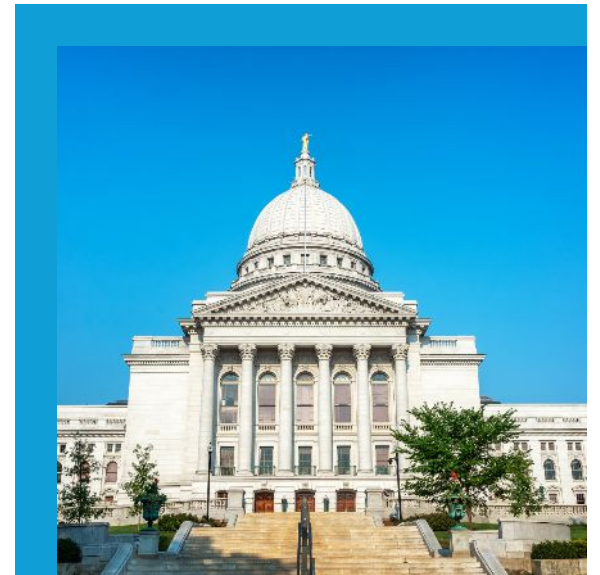
# Authority of the Sheriff

- General Statutory Authority
  - Set forth in Wis. Stat. § 59.27
- Authority to:
  - Take charge and custody of the jail maintained by the county and all persons in the jail;
  - Maintain an exact register of all prisoners including name, address, length of commitment and cause for commitment;
  - Serve and execute all processes, writs, precepts and orders and serve or execute any summons, order or judgment;
  - Enforce all city or village ordinances, under which the sheriff provides law enforcement services under contract;
  - Keep and preserve the peace in their respective counties;
  - Transport legally arrested persons throughout any county in the ordinary route of travel from the place of arrest to the place where the person is to be conveyed;
  - Collect fees prescribed by statute and remit them to treasurer.



# Personnel Administration in Constitutional Offices

**In County Government**





# Principles Surrounding Personnel Administration

Wis. Stat. § 59.22(2):

**(2)** APPOINTIVE OFFICIALS; DEPUTY OFFICERS; AND EMPLOYEES.

(a) Except for elective offices included under sub. (1), supervisors and circuit judges, and subject to s. [59.794 \(3\)](#), the board has the powers set forth in this subsection, sub. [\(3\)](#) and s. [59.03 \(1\)](#) as to any office, department, board, commission, committee, position or employee in county service created under any statute, the salary or compensation for which is paid in whole or in part by the county, and the jurisdiction and duties of which lie within the county or any portion thereof and the powers conferred by this section shall be in addition to all other grants of power and shall be limited only by express language.

(c)

1. Except as provided in subd. [2.](#) and par. [\(d\)](#), the board may do any of the following:

a. Provide, fix or change the salary or compensation of any office, board, commission, committee, position, employee or deputies to elective officers that is subject to sub. [\(1\)](#) without regard to the tenure of the incumbent.

b. Establish the number of employees in any department or office including deputies to elective officers.

c. Establish regulations of employment for any person paid from the county treasury.



# Appointment of Deputies

- With the exception of the office of sheriff, the constitutional officer statutes provide similar appointment authority as it relates to the appointment of deputies.

*EXAMPLE – Register of Deeds (Wis. Stat. § 59.43(3)): “Every register of deeds shall appoint one or more deputies, who shall hold office at the register’s pleasure. ...”*

- Does this create a conflict with Wis. Stat. § 59.22(2)?
  - Yes, but Wis. Stat. § 59.22(4) resolves the conflict:

**(4) INTERPRETATION.** In the event of conflict between this section and any other statute, this section to the extent of the conflict shall prevail.

*See Milwaukee Deputy Sheriffs’ Ass’n v. Milwaukee County, 2016 WI App 56.*



An aerial photograph of a city, likely Milwaukee, showing a mix of urban buildings and green spaces. A semi-transparent white banner is overlaid across the middle of the image, containing the title 'Financial Resources' in a bold, black, sans-serif font.

## Financial Resources

- So where do these “constitutional” and statutory duties come into the picture?
  - A county board may not “through the exercise of its budgetary and fiscal controls ... render impossible the performance of the duties which devolve upon a constitutional officer because of the officer’s constitutional status.” *Wisconsin Pro. Police Ass’n/LEER v. Dane County*, 149 Wis. 2d 699, 710-711 (Ct. App. 1989).
  - The applicable standard when determining whether a constitutional officer has enough resources to perform his or her constitutional duties is based on whether the constitutional officer has enough *fiscal* resources and whether the county budget is arbitrary or unreasonable. *Milwaukee Deputy Sheriffs’ Ass’n*, 2016 WI App 56, ¶ 18; 77 OAG 113.

An aerial photograph of a city, likely Philadelphia, showing a mix of urban buildings and green spaces. A semi-transparent white banner is overlaid across the middle of the image, containing the title text.

## Financial Resources (cont.)

- Questions surrounding adequacy of “fiscal” support does not necessarily translate to specific deputy or employee headcount.
- Questions board and constitutional officers should consider when working together to determine appropriate “budget” and “headcount:”
  - Are there statutory limitations on who can perform which functions?
  - What is the average workload for positions within the office?
  - Is there opportunity for cross-training?
  - Do constitutional officers get vacation time? (HINT ... yes)



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## Who Appoints the Deputy(ies)?

- With exceptions for civil service and the office of sheriff (see Wis. Stat. § 59.26), the constitutional officer generally appoints deputies.
  - “...the constitutional origins of the offices themselves, the statutory provisions authorizing their appointed deputies to carry out the functions of the offices in the event of vacancy or inability of the officeholder to serve, and by the various provisions of the Wisconsin Constitution and state statutes which, in distinction to local officers, give other *state* officials a role in their appointment, resignation and removal.” *Crawford Cnty. v. Wisconsin Emp. Rels. Comm’n*, 177 Wis. 2d 66, 78, 501 N.W.2d 836 (Ct. App. 1993)
- HOWEVER, the county board establishes the terms and conditions of employment. *Id.*; see also Wis. Stat. § 59.22.

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## **What Does All of this Mean?**

- The Legislature has bestowed upon constitutional officers important duties that cannot be abridged through county board action.
- The Legislature has bestowed upon county boards the opportunity and obligation to (1) fund the offices; and (2) provide personnel to support the offices.
- A conflict between constitutional officer and county board or administration can get ugly – allegations relating to a failure to properly support an office or an office disregarding efficient personnel policy are not helpful.
- Boards and administration should work with constitutional officers (and vice versa) to understand what an office is required by law to do, what the office needs to do to best serve the citizens and what budgetary and personnel resources are necessary to accomplish these important tasks.







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DELIVERING OPPORTUNITY.

**THANK YOU**

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