

REMOVING COUNTY ELECTED OFFICIALS FROM OFFICE- NOT SO FAST...

In the Boardroom
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Overview

- The complexities of the county government organizational chart
- The role of constitutional officers
- Due Process – what does it mean when it comes to elected officials?
- How can we avoid this entire process?

ROLES AND RESPONSIBILITIES

For County Government



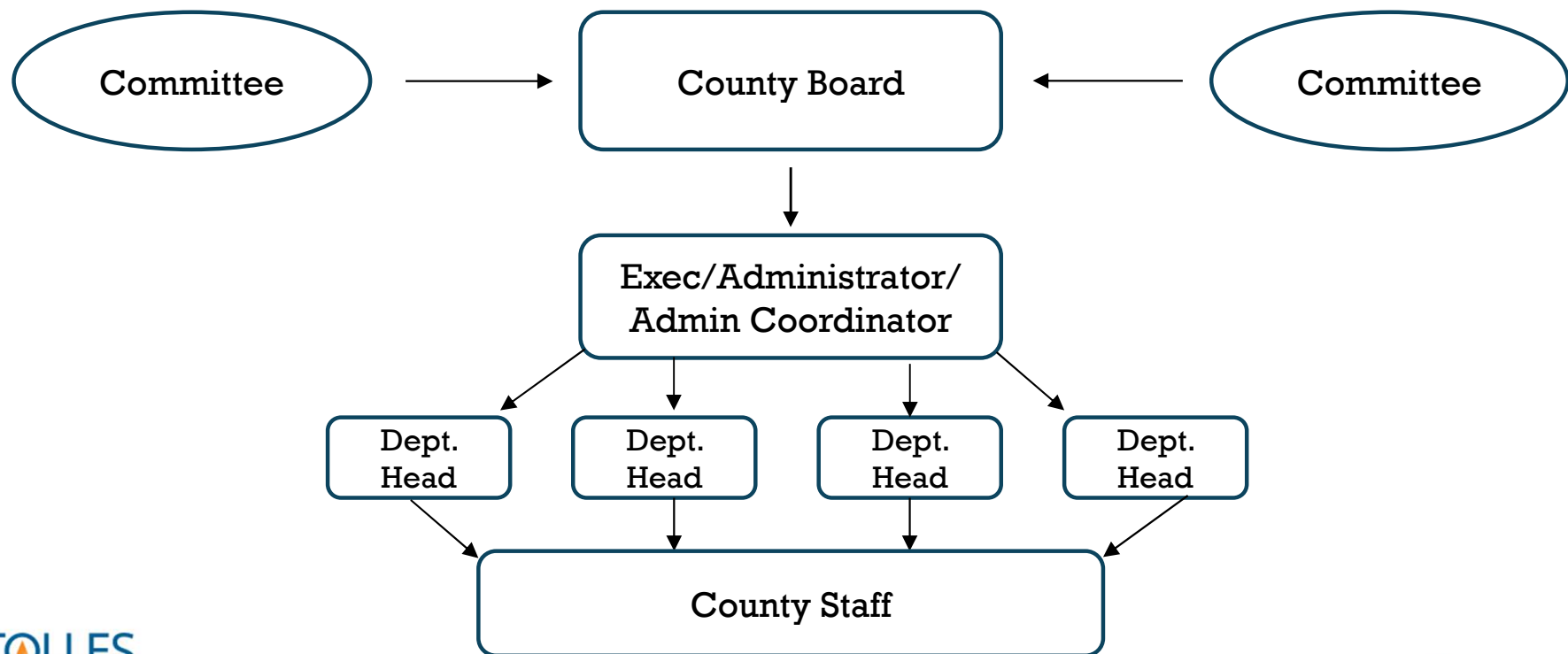
County Board of Supervisors

- 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

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

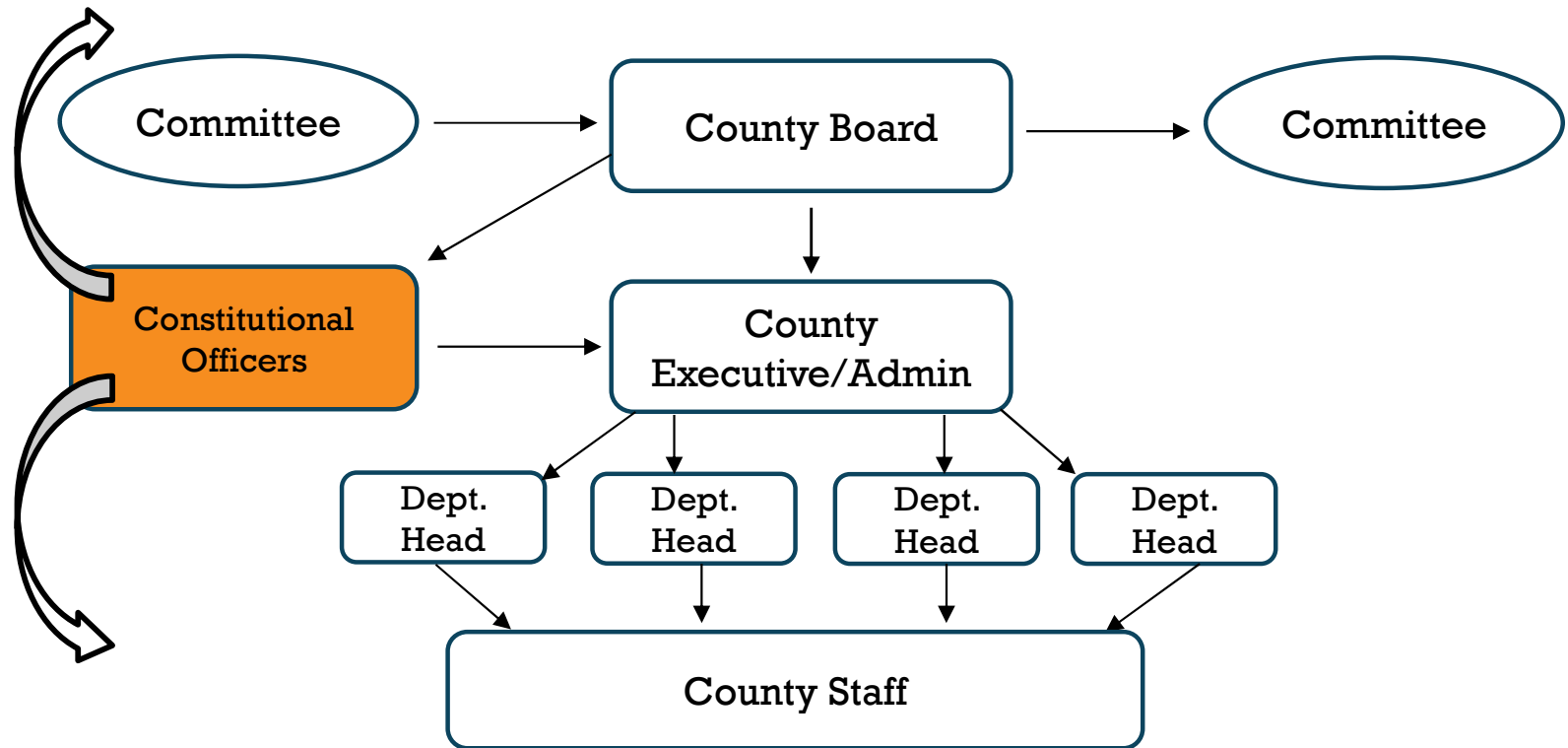
In County Government



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

The Constitutional Officer “Dual Persona”



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; (2) provide personnel to support the offices; and (3) regulate employment of those paid from the county treasuries.
- 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 county 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.

WHAT IF REMOVAL PROCEEDINGS ARE THE ONLY OPTION?



Step 1 – Written Verified Charges

- **Step 1:** A resident taxpayer of the governmental unit of which the elected official is an officer files written verified charges.
- A county official (such as a supervisor) can be the “resident taxpayer of the governmental unit” that files the charges.
- A copy of the charges and written notice of the time and place for the hearing must be given to the elected official at least 10 days prior to the hearing. This can be provided in person or by mail.

Step 1 – Written Verified Charges

These charges must be “reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.”

(State ex rel. Messner v. Milwaukee County Civil Service Commission, 56 Wis. 2d 438, 202 N.W.2d 13 (1972))

Step 2 – The Hearing

- **Step 2:** A speedy public hearing at which the elected official shall have the full opportunity to be heard to present a defense against the charges, personally and by counsel.
- The elected official may, within 10 days after receiving the charges, file a verified answer to the charges.
- The hearing shall be conducted and the investigation made by the removing power “with due dispatch.”
- What does the investigation look like and who conducts it?

The Hearing (cont.)

- Who is the “removing power”?
- This is the person or entity who has the authority to remove an official from office. Different positions have different removing powers, including:

County Clerk, County Treasurer, Surveyor, County Supervisor – **County Board** (for cause, by a vote of 2/3 of all the supervisors entitled to seats on the County Board)

Clerk of Circuit Court – The **judge or a majority of judges of the circuit court** for the clerk’s county (for cause)

The District Attorney, Sheriff, Coroner, or Register of Deeds – The **Governor** (for cause)

The Hearing (cont.)

- More Details on the Hearing:

When the Governor is removing power, the Governor may appoint a commission to conduct the hearing, make the investigation and report the testimony and proceedings to the governor.

The Hearing (cont.)

- More Details on the Hearing:

An unbiased tribunal is a “constitutional necessity”. The denial of such a tribunal is the denial of due process. (*State ex rel. DeLuca v. Common Council*, 72 Wis. 2d 672, 242 N.W.2d 689 (1976))

A board supervisor who: (1) files the charges or (2) votes for a procedure which initiates removal is not automatically disqualified from participating in the hearing.

Circumstances which lead to a **high probability of bias** are sufficient. These include: (1) if the adjudicator has a financial interest in the outcome and (2) if the adjudicator has been a target of personal abuse or criticism from the party before them.

The Hearing (cont.)

- More Details on the Hearing:

The removing power is authorized to administer oaths and to issue subpoenas for the attendance of witnesses and the production of evidence. The removing power may appoint and pay a stenographer to take testimony at the hearing.

There is no right against self-incrimination.

“No person may be excused from testifying or from producing evidence on the hearing for the reason that the testimony, documentary or otherwise, required of him or her may tend to incriminate him or her, but no person so testifying may be prosecuted for or on account of testifying or producing any documentary evidence, except for perjury committed in giving the testimony.”

This immunity is subject to certain statutory limitations.

Step 3 – the Removal Decision

- Step 3: Removal from office

Removals from office for cause shall be by order, a certified copy of which, together with a complete transcript of the testimony and proceedings at the hearing and a statement of the cause or causes for which removal is made, shall be filed by the removing power in the location set by statute (which depends on the particular officer that has been removed).

What is “cause”?

- Wis. Stat. § 17.001

In this chapter, unless qualified, “cause” means inefficiency, neglect of duty, official misconduct, or malfeasance in office.

- Because the removal procedure contemplates a case-by-case determination by the removing power, a board cannot create rules or ordinances that certain actions automatically constitute cause for removal. (66 Op. Atty. Gen. 148 (1977))

Costs

- Costs:

In the case of procedure for removal by officers or bodies other than the governor or any other state officer or body, the expenses thereof shall be paid by the unit of government of which the person against whom charges are filed was an officer.

However, if the removing power finds that the complaint was “willful and malicious” and “without probable cause”, all such expenses shall be paid by the person who filed the charges (and may be collected in an action against that person or on the bond furnished by the person).

TAKEAWAYS



Removal as an Option...

1. Having written policies and procedures is typically a positive, but there are limitations
Are elected officials subject to the policies?
Have you written yourself out of a Monell defense?
2. Are there other measures that can be explored as it relates to elected officials?
Censure
Ethics Violation (but, be careful...)
3. In today's political climate, is a problem simply inevitable?

ATTOLLES
LAW, s.c.

THANK YOU.





Q&A



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