

**2026 ANNUAL
CONFERENCE**
WISCONSIN COUNTIES ASSOCIATION

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The Unique Roles of Constitutional Officers

10:30 – 11:30
am

THE UNIQUE ROLES OF CONSTITUTIONAL OFFICERS

2026 WCA Annual Conference



ROLES AND RESPONSIBILITIES

For County Government



First, Let's Understand “Why” Counties are Peculiar

- County government is much different than every other layer of government – why is that?
 - Why did counties exist before the State of Wisconsin?
 - 1818 – the first three counties are created in what is now Wisconsin in the Michigan Territory (Brown, Crawford, Michilimackinac)
 - 1823 – Congress makes the counties judicial districts
 - 1829 – a fourth county is created (Iowa)
 - 1834 – a fifth county is created (Milwaukee)
 - 1836 to 1901 – number of counties grew from 6 to 71
 - 1961 – a 72nd county is created
- What does this tell us about the organizational form?
- What challenges does this create?

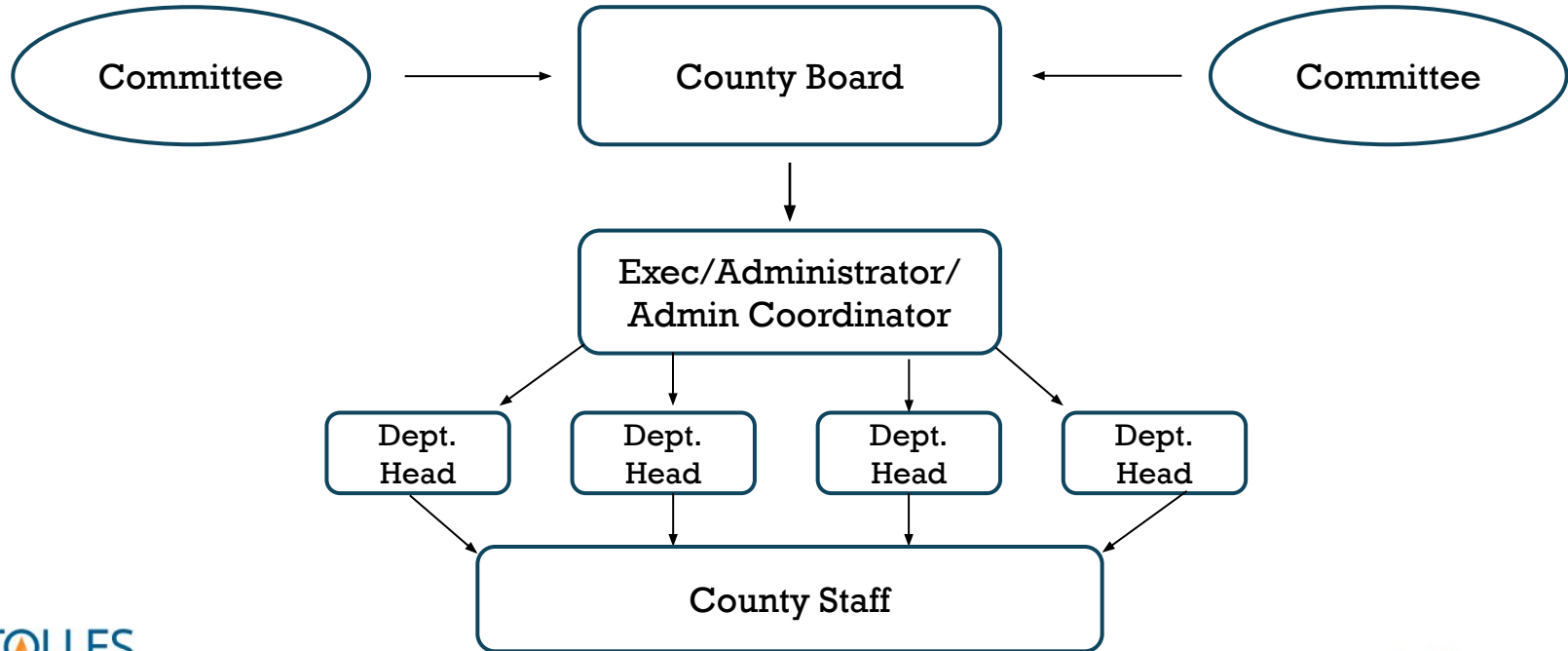
County Board of Supervisors

- 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

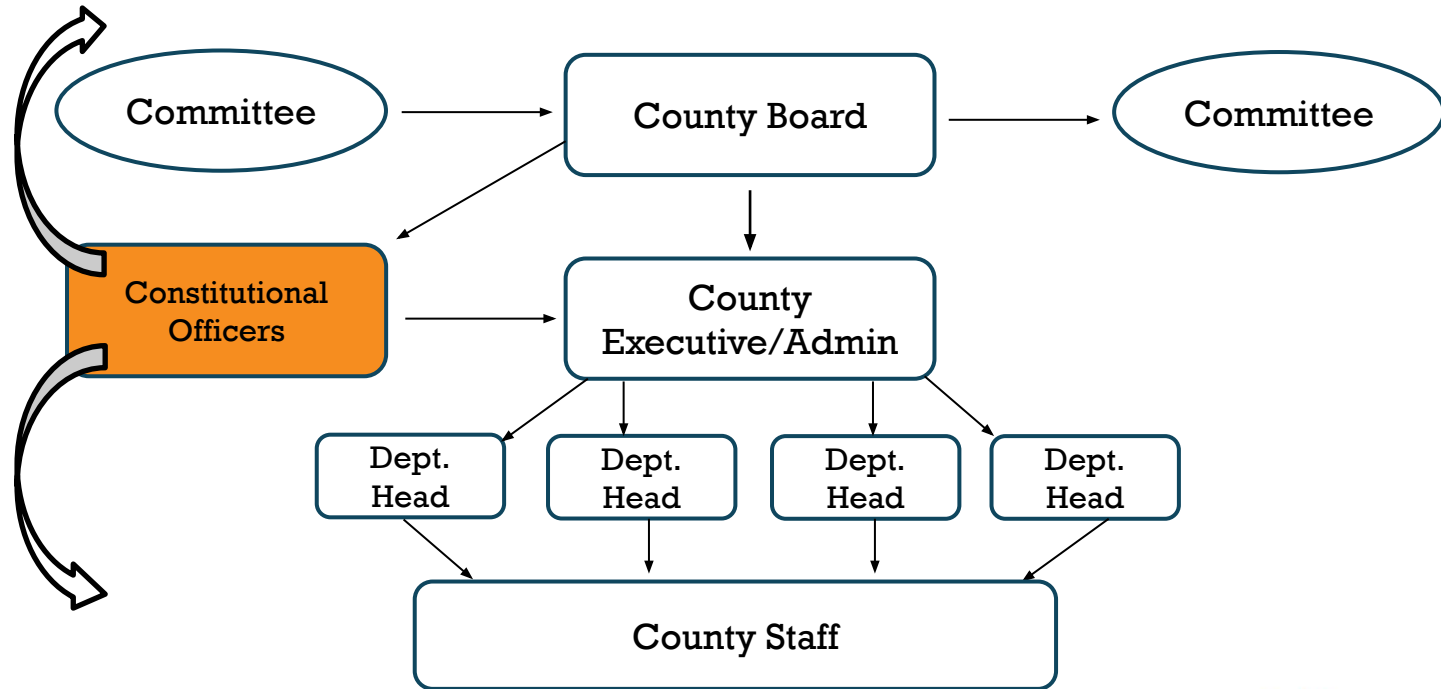
Clerk

CONSTITUTIONAL OFFICERS

In County Government



The Constitutional Officer “Dual Persona”



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

“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.

Authority of the County Clerk

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

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.

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.

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.

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.

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.

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.

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.

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. ... The deputy or deputies shall aid the register in the performance of the register’s duties under the register’s direction, and in case of the register’s vacancy or the register’s absence or inability to perform the duties of the register’s office the deputy or deputies shall perform the duties of register until the vacancy is filled or during the continuance of the absence or

Who Appoints the Deputies

- 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.

Appointment of Deputies (cont.)

- Does this create a conflict with Wis. Stat. § 59.22(2)?
 - Does Wis. Stat. § 59.22(4) resolve 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.

Terms and Conditions of Employment

- Although the constitutional officer generally appoints deputies, the county board establishes the terms and conditions for those deputies.
- Wis. Stat. § 59.22(2): “...the board may do any of the following... Establish regulations of employment for any person paid from the county treasury.”
- What could be considered a regulation of employment?
 - Hiring Policies¹
 - Qualifications
 - Wages
 - Benefits
 - (and so much more)

1. *Racine Cty. v. Flynn*, 150 Wis. 2d 947, 444 N.W.2d 66 (Ct. App. 1989).

Racine Cty. and Crawford Cty. cases, where do responsibilities lie?

- Wisconsin court cases have given some guidance on the responsibilities of both the County Board and Constitutional Offices
- “Section 59.22(2)(c) provides that the county board ‘may establish regulations of employment for any person paid from the county treasury.’ The court ruled that this language includes the establishment of hiring policies. *Racine Cty. v. Flynn*, 150 Wis. 2d 947, 444 N.W.2d 66 (Ct. App. 1989).
- The County Board may provide and set the compensation of employees of constitutional offices, as well as establishing the number of employees in county offices and the regulations of employment for anyone paid from the country treasury.

Racine Cty. and Crawford Cty. cases, where do responsibilities lie?

- Wisconsin court cases have given some guidance on the responsibilities of both the County Board and Constitutional Offices
- “that while the county has the authority to establish the pay and regulate other conditions of employment of its employees...that authority does not extend to bargaining away the statutory power of the clerk of court and register of deeds to appoint and discharge deputies” *Crawford Cty. v. Wis. Emp’t Relations Comm’n*, 177 Wis. 2d 66, 501 N.W.2d 836 (Ct. App. 1993).
- While the County Board can make guideline decisions, such as hiring policies, wages, and number of employees, the Constitutional Officer retains the ability to appoint and discharge their own deputies, provided they follow the guidelines.

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, ¶ 19-27, OAG 112.

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)

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 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.

THANK YOU.

