



LEGAL ISSUES RELATING TO COUNTY GOVERNMENT

Who Decides?

The Intersecting Authority of County Highway Commissioners and Committees

By Andy Phillips and Rebecca Roeker, Attorneys, Attolles Law, s.c.

County highway commissioners and county highway committees play key roles in maintaining Wisconsin's transportation system. Their authority varies and intersects differently, depending on whether the county board has chosen the executive, administrator or administrative coordinator form of county government.¹ As a result, it may be challenging to know “who decides” on matters such as whether a project moves forward, certain equipment is purchased, or road supplies are sold to another municipality. This can be especially challenging as counties transition from an administrative coordinator form of county government to an executive or administrator form.

In this article, we break down the roles, authority, obligations, and responsibilities of highway commissioners and highway committees under the different forms of county government.

► **Wis. Stat. Ch. 83: County highways and unique statutory authority**

County highway operations hold a unique place in county government because their statutory authority comes from both Chapters 59 and 83 in the Wisconsin Statutes.

In counties with a population of 750,000 or less that utilize an executive or administrator form of county government, the executive or administrator appoints and supervises the county highway commissioner.² The county

board must confirm the appointment unless the board adopts an ordinance waiving confirmation.³ Importantly, the county highway commissioner has administrative powers and duties prescribed for the county highway committee pursuant to Wis. Stat. § 83.015. These duties are discussed in greater detail below. [Wis. Stat. § 83.01(b) sets forth particular requirements for counties with a population of 750,000 or greater. Those requirements exceed the scope of this article.]

In counties with the administrative coordinator form of government, the county highway commissioner is selected by the county board and supervised by the county highway committee. In these counties, the county highway commissioner does not have the administrative powers and duties prescribed for the county highway committee by statute. Rather, the county highway committee maintains those powers and duties.

► **“Universal” county highway commissioner duties, but under whose supervision?**

Some county highway commissioner duties apply regardless of the form of county government. Those tasks are set forth in Wis. Stat. § 83.01(7) and include:

- Have charge of the construction of highways built with county aid and of the maintenance of all highways maintained by the county;⁴
- Perform all duties required by the county board,

The county form of government determines the county highway commissioner's additional duties, and whether the commissioner steps into the shoes of the highway committee to perform the extensive duties set forth in Wis. Stat. § 83.015.

and complete all necessary engineering and examinations for the establishment, construction, improvement and maintenance of highways;⁵ and

- Have charge of all county road machinery and tools, and be responsible for the proper maintenance, storage and repair of the road machinery and tools, and make an annual report to the county board showing a full inventory of such machinery and tools.⁶

While a county highway commissioner must perform these duties regardless of the form of county government, the form of county government determines whether the highway commissioner performs these duties under the direction of the county highway committee or under the supervision and direction of the executive or administrator.⁷

► Form of county government and determination of county highway commissioner duties

The county form of government determines the county highway commissioner's additional duties, and whether the commissioner steps into the shoes of the highway committee to perform the extensive duties set forth in Wis. Stat. § 83.015. In counties with an administrative coordinator, the county highway committee maintains the authority to administer most of the county highway department operations, and is responsible for performing the duties set forth in Wis. Stat. § 83.015, including:

- Determine whether county aid construction shall be let by contract or shall be done by day labor;
- Enter into contracts on behalf of the county;
- Enter private lands with their employees to remove weeds and brush and erect or remove fences that

are necessary to keep highways open for travel during the winter;

- Direct the expenditure of highway maintenance funds received from the state or provided by county tax;
- Audit all payrolls and material claims and vouchers resulting from the construction of highways;
- Perform other duties imposed by law or by the county board;⁸ and
- Sell road building and maintenance supplies on an open account to any city, village, town or school district within the county; and any such city, village, town or school district is authorized to purchase such supplies.⁹

In counties with an executive or administrator form of county government, the executive or administrator appoints and supervises the highway commissioner, who performs the duties set forth in Wis. Stat. §§ 83.01(7) and 83.015 (referenced above) as well as additional statutory duties, including those set forth in Wis. Stat. § 32.05, Wis. Stat. Ch. 84, and Wis. Stat. Ch. 86.

Given the expansion of the highway commissioner's duties under the executive and administrator forms of government, a logical question is whether the highway committee has any remaining authority or role in the highway department administration. The answer is simple in that Wis. Stat. § 83.015(2)(b) provides that the county highway committee's role is as a "policy-making body determining the broad outlines and principles governing administration" of the county highway department.¹⁰ The policy decisions are legislative determinations, and

Continued on page 46



LEGAL ISSUES

Continued from page 45

by overseeing the highway program, the highway committee still acts as a key connection with the county board. The highway commissioner is the professional tasked with implementing those policies.

► Conclusion

The form of county government plays a unique role in determining the roles and responsibilities of a county highway commissioner and a county highway committee. In times of increased transportation needs and potential decreased funding, the roles and responsibilities of administrative oversight by the highway commissioner and highway committee are key considerations in the operation of a county highway program. ■

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

1. Wis. Stat. § 59.17 (County Executive); Wis. Stat. § 59.18 (County Administrator); and Wis. Stat. § 59.19 (County Administrative Coordinator).
2. Wis. Stat. § 83.01(c).
3. *Id.*
4. Wis. Stat. § 83.01(7)(a).
5. Wis. Stat. § 83.01(7)(b).
6. Wis. Stat. § 83.01(7)(c).
7. Wis. Stat. § 83.01(7)(a).
8. Wis. Stat. § 83.015(2)(a).
9. Wis. Stat. § 83.015(2)(a).
10. Wis. Stat. § 83.01(7)(b).

Building Wisconsin Communities

It's what we do!

 800-552-1171  ehlers-inc.com



- Debt Planning & Issuance
- Financial Management Planning
- Economic Development & Redevelopment
- Investments & Treasury Management
- Arbitrage Consulting
- Paying Agent Services
- Continuing Disclosures

The information does not create or imply a fiduciary relationship. It is solely for the purposes of marketing our services to you. Ehlers is the joint marketing name for all its affiliated businesses. Please visit www.ehlers-inc.com/disclosures for more information.