



Limits of County Board Administrative Authority

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Introduction

Conflicts over administrative roles of county boards, on the one hand, and county officers, administrators and executives, on the other, are not uncommon. County administrative duties under Wisconsin law are never so clear as to explicitly say to the Board “Thou shall not micro-manage.” However, a review of the statutes, their history, subsequent court decisions and attorney general opinions and resulting practices show there are limits on a county board’s authority to act in the day-to-day administration of county government.

Prior to 1960, Wisconsin county boards carried out both the legislative and executive (supervisory) functions in the county. In 1960, state statutes were amended to permit the creation of a separate, elected position of county executive, thereby setting the precedent for the separation of powers in Wisconsin counties. In a 1979 opinion, the Wisconsin Attorney General described the ensuing years after that as “a significant evolution...in the law relating to county administrative practice in Wisconsin.”¹The “significant evolution” continued with the creation of the County Administrator position and culminating in the requirement to have an Administrative Coordinator no later than 1987 if the county had neither a County Executive nor County Administrator.² The clear progression is a diminishing of county board administrative functions, and greater specification of administrative authority in one of the three county administrative position options.

The statutes delineate the duties of those holding these primary administrative positions.

¹68 Wis. Op. Att’y Gen. 92 (1979) (OAG 32- 79).

² 1985 Act 29 s.1164

County Executive

Wis. Stat. § 59.17(1)(a) states “each county with a population of 500,000 or more, a county executive *shall* be elected for a 4-year term.” In addition, Wis. Stat. § 59.17(1)(b) provides that “Counties with a population of less than 500,000 *may* by resolution of the board or by petition and referendum create the office of county executive or abolish it by petition and referendum.”

The county executive’s duties include:

- Serve as “chief executive officer” for county
- Coordination and direction of all administrative and management functions of the county government not otherwise vested by law in other elected officers.
- Appoint and supervise of department heads subject to county board confirmation, unless confirmation is waived or there exists a civil service system.
- Appoint members to boards and commissions, where statutes give this authority to county board or its chairperson, subject to board confirmation.
- Submit the annual budget
- Annually communicate to the Board on the condition of the county.
- Veto authority
 - May veto ordinances and resolutions
 - May veto appropriation in whole or part
 - County board can override with 2/3 vote ³

In the case of the county executive, the authority to appoint and supervise employees is categorically reserved for the county executive and excludes county board supervisors. Thus, the county boards of supervisors have no authority to supervise at all, much less to micro-manage.

County Administrator

Wis. Stat. § 59.18(1) states, “Counties having a population of less than 500,000 may by resolution of the board or by petition and referendum create the office of county administrator”

County administrators have the following authority:

- Serve as “chief administrative officer” for county
- Coordinate all administrative and management functions of the county government
- Appoint and supervise department heads subject to county board confirmation, unless confirmation waived or the county is under a civil service system.
- Appoint members to boards and commissions, where statutes give this authority to county board or its chairperson, subject to board confirmation
- Annually communicate to the Board on the condition of the county.
- Submit the annual budget ⁴

³ Wis. Stat. §59.17(2)

⁴ Wis. Stat. §59.18(2)

Again, as with the county executive, the statutes grant supervisory authority to the county administrator and any individual county board supervisor attempting to supervise or give direction to staff is operating outside his or her authority. Elections make a county executive answer to the public, and the county administrator serves at the pleasure of the county board.

A 2010 formal Wisconsin Attorney General's Opinion reinforces the authority of the county executive and county administrator when clarifying the limitations on county board authority stating:

In my opinion, a county board in a county with a county administrator or a county executive cannot reassign the power of appointment that is statutorily granted to a county executive or county administrator in cases where the statutes provide that appointments to a particular board or commission are to be made by...the county administrator or county executive.⁵

Administrative Coordinator

The authority of the administrative coordinator is less explicit and sometimes invites more questions as to whether there is room for board supervision of staff than the other two forms of county government.

Nonetheless, the intent of the statute is apparent. Wis. Stat. § 59.19 states: "The administrative coordinator *shall* be responsible for coordinating *all administrative and management* functions of the county government not otherwise vested by law in boards or commissions, or in other elected officers." (*Emphasis added*)

The terms "all administrative and management functions" show the intent of the statute is making the administrative coordinator responsible for ensuring that the day-to-day functions of the county are performed. In those cases where an elected officer, board or commission is vested with the authority, those cases are designated in the statutes.

The history of these administrative positions in the statutes demonstrate movement away from the earlier county board model in which the board jointly functioned with legislative and central executive duties to a more efficient model vesting executive functions in an executive, administrator or administrative coordinator. The statute must be given effect, and practically it can have no other intent than separation of day to day county administration from the county board. The separation of administrative authority from county board supervisor authority is underscored in a 2011 Attorney General Opinion that determined the positions of county supervisor and county administrative coordinator was incompatible.⁶

An analogy to illustrate the functions of the county administrative function is to look at cities and villages. A county executive functions like a city mayor, and a county administrator and

⁵Opinion of Wis. Att'y Gen. to Dennis Kenealy, Ozaukee County Corp. Counsel, OAG 1-10, ¶3, (January 28, 2010).

⁶Opinion of Wis. Att'y Gen. to Bradley Lawrence, Price County Corp. Counsel, OAG 1-11 (October 27, 2011).

administrative coordinator function like a city or village administrator, except unlike the municipal administrator, a county administrator has appointment and hiring authority granted by statute.

The “other elected officers” referred to in the statutes means the constitutional officers, such as the sheriff or county clerk. Note that no statute grants duties to individual supervisors other than to act collectively through the board. The term “supervisor” is not descriptive of that office’s duties, but a historical term. Retention of the historic term “supervisor” may be misleading, but not when read in conjunction with the statutes establishing the county executive, administrator and administrative coordinator.

Constitutional and Statutory Officers

Constitutional officers have their own duties, responsibilities, and authority described in the statutes. They are as follows:

Sheriff	59.26-59.33	(jail, law enforcement)
Coroner (or Medical Examiner)	59.34	(medical examiner)
Clerk of Court	59.40	(court records)
Register of Deeds	59.43	(record real estate and vital statistic documents)
Clerk	59.23	(board & other records)
Treasurer	59.25	(collect & disperse funds)
District Attorney	978.05	(criminal prosecutor)
Surveyor	59.45	(certain land surveys)

Because these officers are elected, just as the members of the County Board of Supervisors are, with statutes defining their office’s authority, the Board has no supervisory authority or legitimate authority to micro-manage the affairs of the departments under those officers. Straightforwardly, “thou shall not micro-manage” is the clear intent of the statutes.

Furthermore, a great deal of case law supports the authority of the Constitutional Officers in their positions. Court decisions involving disputes between constitutional officers and county boards have established the limitations on the board to encroach on the duties of county constitutional officers. Some examples of case law limiting the powers of County Board Supervisors include:

Beal v. Supervisors of St. Croix County, 13 Wis 500 (1861), forbidding the county board from revoking county officer powers that were conferred by statute.

Schultz v. Milwaukee County, 250 Wis 18, 26 NW2d 260(1947), and *State ex rel. Conway v. Elvod*, 70 Wis 2d 448, 234 NW2d 354(1975), limiting the board’s ability to change salaries.

Maier v. Racine County, 1 Wis 2d 384, 84 NW2d 76(1957), holding county boards have only such powers as are conferred upon them by statute, expressly or by clear implication.

Schuette v. Van De Hey, 205 Wis 2d 475, 556 NW2d 127 (Ct App. 1996), approving of the Attorney General Opinion at 68 Wis. Op. Att’y Gen. 92 (1979) (OAG 32- 79), stating the governmental concept that the county board’s function is primarily as a policy making and legislative and the county executive is administrator and manager.

County Board Authority

Chair. Wis. Stat. § 56.12 of the statutes provides for the County Board Chairperson to administer oaths, countersign ordinances, and preside over meetings. When directed by ordinance, the Chairperson also transacts necessary board business with local and county officers, expedites business, and ensures all laws are enforced.

Board. Wis. Stat. § 59.51(1) gives the board authority to exercise organizational or administrative powers subject only to the Constitution and any enactment of the Legislature which grants those powers to the County Executive or the County Administrator, or “...[a]ny enactment of statewide concern and which uniformly affects every county.” The last phrase is significant because the statute specifically references county executive and administrator powers as limiting board administrative authority. It does not mention the administrative coordinator, because Wis. Stat. § 59.51 was enacted in 1975, and Wis. Stat. § 59.19, creating the administrative coordinator went into effect afterwards in 1985. Thus the requirement that all counties have one of the three types of administrative positions is an enactment affecting counties uniformly statewide, and a further limit to county board administrative authority granted under §59.51(1). These statute statutes have diminished, if not eliminated entirely, county board daily administrative authority.

The *Schuette* case, cited above, clarified the respective roles by stating boards are policy makers and executives or administrators are managers. It may sometimes be a challenge to distinguish policy making and administrative authority. As an example, one Attorney General’s Opinion states the decision to enter into a public works contract is policy, but the administration of the contract terms is a manager function.⁷ It is the contrast between means and ends. Policy determines the ends to be achieved and administration the means to achieve the policy ends. In business, it is the difference between the roles of the corporate board to set policy and the chief executive officer to manage the affairs of the business. You do not see a bank’s directors overseeing the bank tellers. A vivid example is the Green Bay Packers. It is a corporation with a board of directors that sets policy, but the board does not draft the players and certainly the board is not on the sidelines during the game calling the plays. Play calling is clearly not policy making, but administrative and management duties. These divided duties are true, be it Packer football, business or county governance.

⁷80 Wis. Op Att’y Gen. 49 (1991).

Summary

County Board authority is only that granted by the legislature in statutes.⁸ Reviewing the pertinent statutes, case law, Attorney General opinions, with the Constitution of the State of Wisconsin, it is evident that supervisors' administrative authority (i.e. the authority to "micro-manage") does not exist and the essence of all applicable legislation is to limit and outright prohibit board members from becoming directly involved with supervision of county employees. The title "Supervisor" is, in fact, a misnomer in that it does not confer the right to actually supervise. The modern County Board has evolved into a legislative and policy setting body.

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⁸*Jackson County v. State*, 2006 WI 96 ¶16, 293 Wis. 2d 497, 717 N.W. 2d 713.