



OFFICE OF CORPORATION COUNSEL

Dennis E. Kenealy
Corporation Counsel

Rhonda K. Gorden
Assistant Corporation Counsel

February 12, 2009

WISCONSIN DEPARTMENT OF JUSTICE
Attention: Attorney General J.B. VanHollen
P.O. Box 7857
Madison, WI 53707-7857

RE: Proposed County Board Policy Changes on Appointments

Dear Mr. VanHollen:

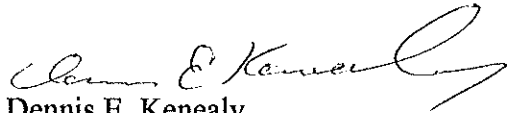
I have enclosed for your review and opinion, a novel issue that has arisen in our county. I believe my enclosed opinion sets forth the issue.

The county administrator has a concern that under his authority pursuant to § 59.18 to name members to boards and commissions, that his naming of county board members will alienate some board members who may have applied for the position, thus jeopardizing his effectiveness and potentially his job. To avoid that animosity it is proposed that the county board chair name county board members to the boards and commissions, rather than the county administrator.

There appears to be a conflict between the appointment authority of the county administrator under § 59.18 and the administrative authority of the county board under § 59.03. I have not been able to satisfactorily resolve that. As you can tell from my opinion, it appears the county administrator's appointment authority is not a matter of uniform statewide concern, therefore, the county board's ability to organize and administer its affairs takes precedent under § 59.03. However, I have not been able to find authority for that position. Therefore, I am submitting this request to your office for review and hopefully an opinion regarding the ability of the county board to transfer this appointment authority to the county board chair in these limited circumstances. If other counties have done this, I have not been able to find them.

If you need anything further, certainly contact my office. I would appreciate any guidance you may offer in this regard.

Sincerely,

A handwritten signature in black ink, appearing to read "Dennis E. Kenealy". The signature is fluid and cursive, with a long, sweeping tail on the final letter.

Dennis E. Kenealy
Ozaukee County Corporation Counsel

DEK:bae

Enclosures




OFFICE OF CORPORATION COUNSEL

Dennis E. Kenealy
Corporation Counsel

Rhonda K. Gorden
Assistant Corporation Counsel

DATE: February 13, 2009

TO: Tom Meaux
Robert Brooks

FROM: Dennis E. Kenealy
Corporation Counsel 

RE: Proposed County Board Policy Changes for Appointments

The County has proposed a resolution to alter the appointment authority the county administrator is granted in § 59.18(2)(c). The Administrator appoints members to boards and commissions. That proposed change would allow the county board chair to appoint members to boards and commissions if those appointees are county board members. The reasoning is that it may be difficult for the county administrator to choose from his employers, when recommending an appointment. By having the board chair make that decision, that conflict would not occur.

It was stated that some counties have that procedure in place. However, I have found no such policy in other counties.

This presents a possible conflict between § 59.18 of the Wisconsin Statutes, regarding the appointment authority of a county administrator and § 59.03 of the Wisconsin Statutes, regarding the organizational authority of a county board.

§ 59.18(2)(c) states: the county administrator shall “appoint the members of all boards and commissions where the statutes provide such appointment shall be made by the county board or by the chairperson of the county board. All appointments to boards and commissions by the county administrator shall be subject to confirmation of the county board.” Some members of those boards and commissions will be county board members. The concern is that there may be several county board members to fill a particular position and by making an appointment, the administrator will alienate board members and thus jeopardize his standing with the board. That may be integral to the administrator position, the same as opinions of the corporation counsel on a particular issue. However, it does raise an issue which the Ozaukee County Board has tried to address.

The county board under § 59.03 (1) of the statutes finds support for its position. That section, regarding home rule and administrative home rule, states that “every county may exercise any organizational or administrative power, subject only to the constitution and to any enactment of the legislature which is of statewide concern and which uniformly affects every county.” That is

a broad grant of authority to the county of organizational and administrative power. This would appear to be an organizational or administrative issue, shifting appointment authority from one office to another. That authority is limited in that it cannot conflict with a constitutional provision; in this case it does not. The conflict may be with a statutory provision. The question then becomes is this a matter of statewide concern which uniformly affects every county? Not every county has a county administrator. Most counties have an administrative coordinator and some have a county executive. There is an argument for the county board to exercise this organizational or administrative power because the act of transferring the appointment duties would not contradict a statute (59.18), of statewide concern which uniformly affects every county. It affects only a few counties, those with a county administrator. § 59.18 is the more specific statute regarding appointments but due to its limited applicability it is possible the general grant of county authority could be followed.

This appears to be something of first impression; I can find no authority on either side of the question.

A recent decision regarding a possible conflict between county authority and state statutes occurred in Jackson County vs. State Department of Natural Resources. In that situation it was determined that the state's interest was uniformly applicable to every county in the state, the county's actions conflicted with that statute and were thus limited.

The county board's broad home rule organizational and administrative provisions of § 59.03 would seem to supersede the administrative authority granted to county administrators under § 59.18. There is no interpretation of this issue. The county creates the county administrator position and has broad authority to define the duties of that position, it would be my opinion that under its organizational and administrative powers, it could in this instance adopt an organizational and administrative appointment power which may appear to conflict with the statute, 59.18 because that power is not applicable uniformly in every county of the state. Though §59.18 is the more specific. This proposal does not alter appointments made by the administrator except for members who are also county board members thus there is also a practical reason for this change. This is a novel question. I think it may be best to seek some advice from the Attorney General before we proceed.

DEK:bae

RESOLUTION NO. 08-55

AMENDING OZAUKEE COUNTY POLICY AND PROCEDURE MANUAL –
COUNTY BOARD PROCEDURES

RESOLVED, by the Ozaukee County Board of Supervisors that Sections 2.01(2)(g)11 and 2.05(3)(k) be amended to read:

2.01 COUNTY BOARD PROCEDURES

(2) The following items require approval beyond the Standing Committee level:

(g) ~~Establish Boards and Commissions: in keeping with the purposes and objectives of the Committee, to satisfy statutory requirements, and to encourage community involvement~~

1. Non County Board members and citizen appointments to Boards and Commissions, and Ad Hoc Groups shall be:

a. Recommended by the County Administrator per Sec. 59.18(2),(c), Wis. Stats

~~b. Reviewed by the Executive Committee~~

c. ~~Approved~~ Confirmed by the full County Board

~~d. The County Board Chairperson, shall appoint a chairperson and vice chairperson at the first meeting after being established by a Standing Committee unless State statutes prescribe another process~~

2. All appointments, from the County Board membership, to Boards, Commissions, etc. shall be:

a. Recommended by the County Board Chairperson

b. Confirmed by County Board

3. All nominations to County related boards must be authorized by the County Board Chairperson per Section 2.05(3)(k) of this manual

2.05 COUNTY BOARD SUPERVISORS

(3) Duties of County Board Chairperson

(k). Nomination Powers: The County Board Chairperson shall authorize all nominations to County related boards

Dated at Port Washington, Wisconsin, this 4th day of February, 2009.

EXECUTIVE COMMITTEE

YES	NO	ABSTAIN	ABSENT	SUPERVISOR
X	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Robert A. Brooks
X	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Mark A. Cronic
X	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Richard C. Nelson
X	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Donald Dohrwardt
X	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Janice M. Kleinz
X	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	James H. Uselding
X	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Kathlyn T. Geracie