



COUNTY OF MARATHON

COURTHOUSE - 500 FOREST STREET - ROOM B134

WAUSAU, WISCONSIN 54403-5568

OFFICE OF CORPORATION COUNSEL

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July 9, 2010

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Wisconsin Department of Justice
Attention: Attorney General J. B. VanHollen
P.O. Box 7857
Madison, WI 53707-7857

RE: County Administrator's Authority to Appoint and
Supervise the Director of Solid Waste Management Department

Dear Attorney VanHollen:

The Marathon County Solid Waste Management Board and the Marathon County Administrator have asked that I request your review and opinion regarding an issue that has arisen in Marathon County. The issue is whether a county administrator has the authority to appoint the director of the Solid Waste Management Department and to administer that department as with other county departments. I have attached a copy of my opinion on the subject addressed to the Marathon County Director of Employee Resources.

In 1988, in OAG 21-88 (April 29, 1988), the Attorney General's Office rendered an opinion to Brown County addressing the relationship between the county executive and the Solid Waste Management Board. The Attorney General concluded that:

DEPT. JUSTICE- It is my opinion that the Solid Waste Management Board is restricted to the performance of "advisory or policy-making functions" regardless of whether or not that board is a "board or commission" under §59.031(2)(br), Wis. Stats.
12 JUL 10 9:17 My opinion is based on the recent statutory changes expanding the administrative authority of the county executive.

The attorney general then further cited §59.031(2) and §59.07, Wis. Stats. regarding the powers and duties of the executive as well as organizational powers of the county board. These statutes have been renumbered since 1988 and are set forth in full below.

The question addressed to the attorney general at this time is whether the differences between the powers and duties of a county executive and the powers and duties of a county administrator result in a different role and relationship with the Solid Waste Management Board?

Attorney General J. B. VanHollen
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the pleasure of the county executive unless the department head is appointed under a civil service system competitive examination procedure established under s. 59.52 (8) or ch. 63.

The duties and powers of the county administrator are set forth in §59.18(2):

DUTIES AND POWERS. The county administrator shall be the chief administrative officer of the county. The county administrator shall take care that every county ordinance and state or federal is observed, enforced and administered within his or her county if ordinance or law is subject to enforcement by the county administrator or any other person supervised by the county administrator. The duties and powers of the county administrator shall be, without limitation because of enumeration, to:

(a) Coordinate and direct 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.]

(b) Appoint and supervise the heads of all departments of the county except those elected by the people and except where the statutes provide that the appointment shall be made by elected officers; but the county administrator shall also appoint and supervise all department heads where the law provides that appointment shall be made by a board or commission, by the chairperson of the county board or by the county board. Notwithstanding any statutory provision that a board or commission supervise the administration of a department, the department head shall supervise the administration of the department and the board or commission shall perform any advisory or policy-making function authorized by statute. Any appointment by the county administrator under this paragraph requires the confirmation of the county board unless the board, by ordinance, elects to waive confirmation or unless the appointment is made under a civil service system competitive examination procedure established under 59.52(8) or Ch. 63. Any department head appointed by a county administrator under this paragraph may be removed at the pleasure of the county administrator unless the department head is appointed under a civil service system competitive examination procedure established under s. 59.52(8) or Ch. 63.



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ASSISTANT CORPORATION COUNSEL

MEMORANDUM OPINION

TO: Frank Matel, Employee Resources

FROM: Scott M. Corbett, Corporation Counsel *S McC*

DATE: December 16, 2008

RE: County Administrator's Authority to Appoint a Director
Solid Waste Management Department

You have requested an opinion regarding the county administrator's authority to appoint a director to the Marathon County Solid Waste Management Department. The question has arisen because of language contained in §59.70(2), Wis. Stats., which indicates that the Solid Waste Management Board may employ a manager for the Solid Waste Management System.

However, the duties and powers granted to the county administrator under §59.18(2), Wis. Stats., supersede those of a board, committee or commission in counties with a county administrator. Section 59.18(2), Wis. Stats., states as follows:

"The county administrator shall be the chief administrative officer of the county. The county administrator shall take care that every county ordinance and state or federal law is observed, enforced and administered within his or her county . . . The duties and powers of the county administrator shall be, without limitation because of enumeration, to: . . .

(b) Appoint and supervise the heads of all departments of the county except those elected by the people and except where the statutes provide that the appointment shall be made by elected officers; but the county administrator shall also appoint and supervise all department heads where the law provides that the appointment shall be made by a board or commission, by the chairperson of the county board or by the county board. Notwithstanding any statutory provision that a board or commission supervise the administration of a department, the department head shall supervise the administration of the department and the board or

1988 Wisc. AG LEXIS 18, *

OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF WISCONSIN

OAG 21-88

1988 Wisc. AG LEXIS 18

April 29, 1988

SYLLABUS:

[*1]

CAPTION:

In counties with a population of less than 500,000 having a county executive, a solid waste management board established by the county board pursuant to section **59.07(135)**, Stats., is restricted to performing advisory, policy-making or legislative functions, and the county executive is responsible for the administrative functions set forth in the statute.

REQUESTBY:

Mr. Kenneth J. Bukowski
Corporation Counsel
Brown County Courthouse
Post Office Box 1600
Green Bay, Wisconsin 54305-5600

OPINIONBY:

Donald J. Hanaway, Attorney General

OPINION:

You advise that the Brown County code of ordinances provides for the creation of a solid waste management system and a Brown County solid waste management board, pursuant to section **59.07(135)**, Stats. You also point out that recent significant statutory changes expanding the administrative authority of the county executive over county "departments" have been enacted by 1985 Wisconsin Act 29, including section 59.031(2r), since renumbered by 1985 Wisconsin Act 176 as section 59.031(2)(br). The latter statute limits the authority of "boards and commissions" over such departments to "advisory of policy-making" functions. Since your county has a executive and [*2] you conclude that at least some of the powers granted your solid waste management board are more than advisory or policy-making and are in fact administrative in nature, you request my opinion on the following question: "Is a Solid Waste Management Board established by County Board ordinance pursuant to Section **59.07(135)**, Wis. Stats., a 'Board or Commission' as denominated in Section 59.031(2)(br), Wis. Stats."

It is my opinion that the Solid Waste Management Board is restricted to the performance of "advisory or policy-making functions," regardless of whether or not that board is a "board or commission" under section 59.031(2)(br). My opinion is based on the recent statutory changes expanding the administrative authority of the county executive.

Section 59.031(2) (intro.), as amended by 1985 Wisconsin Act 29, now expressly provides that "[t]he county executive shall be the chief executive officer of the county" and shall take