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Staff Paper

County Government Administration: Legal Basis and Options

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Summary: "Increasing complexity of county government's function contributes to the need for centralized management. Offers statutory background, process of converting to centralized administration, and questions to consider" pgs. 15

County Government Administration

Introduction

County government is best described as a "patchwork quilt", with a variety of constitutional, statutory departments and agencies delivering a broad range of services to county citizens. Counties display a wide variance in the number of agencies and departments, as well as, exhibiting diversity in the capacity and quality of services delivered to county residents. County government can also be described as "governments within government". Outsiders to county government often postulate that the management and delivery of county services could be improved with the adoption of the private sector model of management featuring a strong central leadership position which has oversight responsibility of line agencies or departments. Critics of county government point to the streamlined management arrangement of city government featuring a city manager and appointed department heads as the model to be adopted by county government. The home rule or charter status of city government represents a distinct difference between city and county government, since home rule provides the flexibility of self-determination and aligning the city government structure to maximize administrative control, an option not provided to county government except under the Charter County Act which thus far has only been adopted by Wayne County.

Newcomers to county government are perplexed and frustrated at the perceived resistance and the non-workability of the line department concept commonly used by private firms. What is unique about county government that differentiates the public entity from profit seeking firms? If the private sector management model provides efficiency in management and product organization, why haven't counties adopted the model? The answer to the administrative management questions is found in the legal basis for county government. While the county board of commissioners as the legislative body for a county has the responsibility for establishing county policy, each of the county departments and agencies operate within a framework of constitutional and statutory law. The constitutional county offices (clerk, treasurer, register

of deeds, sheriff, prosecutor, drain commissioner and the courts) are headed by a publicly elected officials and as such maintain a degree of autonomy from the county board of commissioners. [Note: Counties may have an elected or appointed drain commissioner, approximately thw-thirds of Michigan counties elect a drain commissioner.] The county board of commissioners sphere of influence centers around the budget allocation process, personnel policies, allocation of employee positions and wage setting. The courts have termed constitutional county officers as being co-employers, meaning that the county officers may, if they so choose, be part of union negotiations and contracts. County courts in some cases have taken the position that as co-employers they have the authority to establish wages and working conditions for court employees.

The county board appoints many of the county department heads such as, equalization director, public health director, emergency services coordinator, animal control officer, veterans' affairs officer and the planning director to name a few. Still other department heads or agency directors are appointed by boards and commissions or other institutions. For example, the mental health director is hired by the community mental health board. The MSU extension service director is a staff member of Michigan State University and is hired and supervised by the university but the county provides funding for the office, support staff and operating budget.

Therefore, county government is anything but a line organization. While variance is observed in who appoints the department and agency managers, an equal amount of variation is noted in how the various departments and agencies are funded which adds to the patchwork nature of county government. The compensation for judges is established and provided by the state supreme court. The mental health agency receives anywhere from 85-90% of their funds from state funding, service fees or third party payment. The state provides a mix of funding support for public health activities under various statutory programs. Some county offices generate revenue for rendered services while other offices provide services without the generation of monies for the county. Over the years, constitutional and statutory changes added

to the role and responsibilities of county government, increasing the complexity of county government. The added complexity provided incentives to county government to move away from the traditional administrative arrangement (clerk, treasurer and county board) for managing the day-to-day operations to adopting various forms of centralized administration.

The Development of Centralized County Administration

Through the years of statehood, the Michigan legislature has provided for the transaction of county business through increasingly complex and often conflicting arrangements. The early statutes most notably Public Act 156, 1851 set forth an expanded lists of powers and duties of boards of supervisors. Authority was provided to county boards to hire employees to assist the board in carrying out the day-to-day county business. The act was later amended to provide the authority for the hiring of administrative assistants. An Attorney General Opinion (AGO No. 31, 1947-48, p.172) interpreted this section to mean the a person hired to provide administrative support could not lawfully supervise or usurp functions of other county officers and may not assist them in the performance of their duties without their consent. The opinion recognized that duties specifically granted by the constitution or by statute cannot be reassigned by the county board under such general language. The opinion protected statutory duties of all officers from encroachment by employees hired under P.A. 156, 1851 (amended). The term officers refers to the constitutional officers cited in the preceding section.

The county clerk, county treasurer, the county board's statutory finance and the various standing board committees serve as the administrative support group for counties without an identifiable central administrative position. Twenty six counties have adopted a central administrator position in the past fifteen years. Presently, 23 counties in Michigan presently have not established a central administrative position. A list of counties and administrative form is displayed in the Appendix of the paper.

Administrators in county government are known by a variety of names with varying statutorily assigned duties. Currently, the following administrative job titles are present in Michigan county

government: administrative assistant; board of auditors; county administrator; county coordinator; county controller; county administrator/controller; county executive; and director of finance and administration.

While citizens, public officials, county employees and the news media often use the job titles interchangeably, it is important to recognize the legal differences between the various administrative titles.

Administrative Options

County Board of Auditors

In 1913 the legislature adopted a general statute which provided the authority for the county electorate to approve an administrative system called the board of auditors (P.A. 275, 1913) [1]. Since the county board only met three to four times per year during the early years of Michigan county government, the board of auditors could approve payment of bills, address personnel matters and assist the county board in developing and administering the budget. The act provided that the county clerk would serve as the clerk of the board of auditors. An amendment provided for either appointed or elected board of auditors. At present in Michigan, no county operates under the board of auditors act, although Monroe County has the position of Auditor combined with the county administrator position. It is unlikely that counties will look to the board of auditors as a viable administrative position in the future and such boards will become part of Michigan's rich county government history.

County Controller

The legislature in 1927 authorized the board of supervisors in counties with a population of 70,000 or more to appoint a county controller (P.A. 257) [MCLA 46.13]. The county controller act was amended in 1969 with the enactment of P.A. 49 which removed the population requirement. The county controller form of administration requires the county board of commissioners to adopt a resolution establishing the position of county controller. The controller is hired by a majority vote but the dismissal of a controller requires a two-thirds vote. Unlike the general personnel act, P.A. 156, 1851, the controller act assigns specific duties to the controller.

1. The controller ***shall*** be the chief accounting officer of the county and ***shall*** have charge and supervision of the accounts and accounting of every office, officer and department of the county.
2. The controller ***shall*** make all purchases, except those ordered by the board of supervisors by resolution, thus making the controller the chief purchasing officer of the county.
3. The controller ***shall*** be the custodian of all county buildings and grounds.
4. The controller ***shall*** perform other duties assigned by the board as long as those duties do not usurp the statutory or constitutional duties of county officers.

Some county clerks questioned the extent of the accounting authority granted under the controller act. These questions are based on claims that the statutes making the county clerk the chief keeper of the county's accounts (general ledger) were not amended when the controller act was adopted. Two cases related to the authority of the controller to assume responsibility of the general accounting functions have reached the courts. In *Gogebic County Clerk v. Gogebic Board of Commissioners* (102 Michigan App 251 [1980]), the court ruled that "organizing under the controller act did not repeal the clerk's responsibility to maintain the books and accounts as stated in the law (2). The Michigan Supreme Court held in the *Ottawa County Clerk v. Board of Commissioners* (428 Mich 300 [1985]) that the "law does not mandate county clerks to perform the accounts payable function in county government. Rather, the board of commissioners may decide whether the clerk or county controller processes accounts payable and writes checks. A board decision to assign these responsibilities to one office or the other is not inconsistent with the statutes" (3). The result of the two court cases has provided varying results in counties with a county controller, however in most cases, the accounting function has remained in the controller's office.

In recent years, a number of counties have developed or merged the position of County Administrator and County Controller. The advantage in the combined position is for clarification of accounting function and denoting the position of day-to-day operation of county government. Additional responsibilities assigned to the county controller often include personnel functions, budget preparation and

monitoring and collective bargaining.

County Administrator, County Coordinator, Administrative Assistant, Director of Finance

The establishment of county administrative support positions by county boards of commissioners accelerated in the mid-1970's and throughout the 1980s with the adoption of positions under P.A. 156, 1851. The administrative positions were created by the county boards adopting a resolution to establish the position with the individual administrator hired and dismissed by majority vote. Unlike the county controller position, a county administrator, county coordinator, administrative assistant or director of finance, does not have specific statutory duties. The board of commissioners may assign administrative duties to the position that are not specifically assigned by statute. For example, if the county clerk concurs, the accounting function may be transferred to the administrators office, however, statutorily the accounting function resides with the county clerk.

Duties commonly assigned to the administrative positions under P.A. 156, 1851 are: chief budget officer; budget development and monitoring; personnel officer; collective bargaining representative; information officer; county ombudsman; purchasing officer; grant seeker; and other duties specific to the county situation. The position(s) derive their authority from being able negotiators, conflict resolvers, a team player and maintaining a high degree of integrity. The individual has to be able to maintain close working relationship with the county board and the various county department/agency heads.

Positions created under P.A. 156, 1851 provide a flexible arrangement to the county board of commissioners in matching the administrative needs of the county to the individual hired. The process utilized to create the administrative support position is often critical to the success of the position. A discussion of the importance and suggested procedure for exploring administrative options will follow in a later section.

Optional Unified Form of County Government

The Michigan legislature adopted P.A. 139, 1973 (MCLA 45.551-45.573), the optional unified

form of county government. The act provided county government with the option of establishing a strong central administrative option. The option provides two options, an **elected county executive** or an **appointed county manager**. The choice of establishing an executive or manager is an elective question, meaning county voter approval is required.

The county executive is a partisan position with the individual elected to serve a four year term. The act gives the county executive veto power for board resolutions and budget line items. Except for 27 offices or agencies, the executive has the authority to reorganize county departments, enforcing rules and ordinances, proposing an executive budget, approving bills for payment, appointing department heads except those headed by an elected officer, and other county management activities .

A county manager has powers similar to those of an elected county executive with the exception of the veto power accorded the executive. Although four counties have voted on the question of a county manager, no county has yet to gain voter approval. Once county voters approve the county manager form, the county board of commissioners appoint the county manager by majority vote and may dismiss by a simple majority. Two counties, Oakland and Bay, currently operate under the optional unified form of county government.

County Home Rule

The 1963 constitutional convention recommended that the legislature adopt a statute providing home rule for counties (*Michigan Constitution, Art VII, Sec 2*). In 1966 the legislature enacted P.A. 293, the county home rule act. The act provided little distinction between a charter or home rule county and a general law county. The act was amended in 1980 (MCLA 45.501-45.521) which substantially modified the county home rule act by providing more local determination for what a charter could include (4). The amendment provided that counties with populations less than 1.5 million must provide for an elected county executive in the county charter. Voter approval is required on the question of adopting the charter form of government. An election is held to appoint member to a charter commission charged with the responsibility

of drafting a charter to place before voters for adoption.

The charter defines the authority and powers of the county executive including the span of control over offices not headed by an elected officer. The county charter defines whether or not the executive possesses veto power. The establishment of the county executive under county home rule essentially removes administrative functions from the county board of commissioners, with county board becoming a purely legislative body. The charter county act upon adoption by Wayne County created a legal challenges over the limits of the authority of the county executive in county reorganization. Several court cases have defined the specific limits of both the county executive under the optional unified and county charter form of government which will not be detailed here. Suffice it to say that both forms initially generate controversy but provide county voters with the option of establishing a strong executive form of county administration.

Adopting Centralized County Administration

As mentioned in the preceding discussion, the process implemented to adopt a centralized form of county administration is critical. Since the adoption of an administrative position directly impacts how a county administers the daily affairs of county government, the involvement of county department heads and agency directors need to be included in the decision and structure of the administrative position. County boards may select from several administrative options, each which will have differing impacts on the management of the county. Elected county officers often view the creation of an administrative position as placing limits on their management authority.

The county board of commissioners should insure that a thorough exploration of alternative administrative forms precedes the establishment of a central administrative position. The development of educational sessions at which both the needs for central administration and the options being considered are discussed. The appointment of an administrative committee comprised of representatives from the county board, elected and appointed departments, unions and non-union employee groups and county citizens has

been found to be an excellent strategy. The committee is generally charged with the responsibility of exploring the various administrative options, making visits to counties that have adopted the various administrative forms, soliciting input from the various courthouse employee groups, developing a draft of a job description and finally making a recommendation to the county board of commissioners. The decision of which option to adopt and the final job description is the responsibility of the county board. Either the county board or citizen petition may place the optional unified form of county government before voters.

Summary

The increasing complexity of county government has contributed to the need for the establishment of centralized county management. While the appointment or election of administrative support personnel, be they county controllers, coordinators, administrators, assistants, finance directors or executives, is not a total solution to administrative challenges faced by county government, such positions, have the potential to make a positive contribution to managing the affairs of county government. Controversy surrounding administrative positions can be minimized or at least controlled by a thorough exploration of alternatives and planned involvement of courthouse employees, department officials and the county board. The selection of the individual to fill the created administrative position, as is the case in all personnel decisions, represents a critical decision. Each year counties throughout the state change the administrative form. Administrators are dismissed, controllers fired, administrative support positions eliminated for a variety of reasons. New commissioners are elected every two years that bring their own ideas to the commission chambers concerning the appropriate administrative structure. In the long run after the political dust has settled, administrative positions are re-established and normal business resumes. Successful county administration is generally not a function of the administrative form established but rather the type of individual hired to fill the position. The possession of strong interpersonal skills related to negotiation, conflict resolution, effective listening and communication, and financial management skills are a prerequisite to being an effective administrator.

Type of County Administration By County

COUNTY	ADMINISTRATIVE FORM	COUNTY	ADMINISTRATIVE FORM
Allegan	CA	Lapeer	CCR
Alpena	CC	Leelanau	AA
Antrim	CC	Lenawee	CA
Arenac	AA	Livingston	CA
Barry	CA	Macomb	DFA
Bay	CE	Manistee	CCR/CA
Berrien	CC	Marquette	CA
Branch	CA	Mason	CA
Calhoun	CA	Mecosta	CA
Cass	CCR/CA	Menominee	CA
Chippewa	CCR	Midland	CCR/CA
Clinton	CA	Monroe	CA
Clare	CA	Montcalm	CCR
Crawford	CCR	Montmorency	Sec. to Bd.
Delta	DFA	Muskegon	CCR/CA
Dickinson	CCR/CA	Newaygo	CCR
Eaton	CCR	Oakland	CE
Emmett	CCR	Oceana	CA
Genesee	CCR	Otsego	CC
Gogebic	CA	Oscoda	AA
Grand Traverse	CA	Ottawa	CA
Gratiot	CA	Saginaw	CCR
Houghton	CCR	Sanilac	CA
Ingham	CCR	St. Clair	CCR/CA
Ionia	CA	St. Joseph	CCR/CA
Iron	CA	Shiawassee	CA
Isabella	CCR	Tuscola	CCR
Jackson	CA/CCR	VanBuren	CA
Kalamazoo	DFA + CFA	Washtenaw	CCR/CA
Kalkaska	CC	Wayne	CE
Kent	CCR	Wexford	CCR/CA

Key: AA - Administrative Assistant CA - County Administrator
 CCR - County Controller CC - County Coordinator
 CE - County Executive DFA - Director of Finance/Administration

Source: Lynn R. Harvey, Professor 12/98

Footnotes

1. House, Al and Lynn R. Harvey, **Development of Central Administration In Michigan County Government**, Staff Paper No. 87-95, October 1987, Revised March 1990, Department of Agricultural Economics, Michigan State University, East Lansing, MI 48824. p. 1.
2. VerBurg, Kenneth. **Guide To Michigan County Government**, Community Development Programs, Michigan State University, East Lansing, MI 48824. p. 68.
3. Ibid, p. 68
4. Ibid, p. 77-79.

County Government Administration Questions to Consider

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Introduction

Adopting a form of central administration or changing the current form of current administration requires forethought, consensus and a concise agreed upon course of action. If a county is contemplating moving to a more centralized form of administration, a critical question is "why", what has changed in the county environment which has prompted the discussion of centralized administration. If the "why" question cannot be adequately answered, proponents of centralized administration will be frustrated in their attempts to convince colleagues that such a move improves the day-to-day operation of county government.

There exists a host of reasons, why adopting some form of central administration may make sound policy sense. The reasons include: increasing complexity of county government; changes in the composition of the county board of commissioners with the new board unable to devote the amount of time to manage the details of county government(micro-management); a majority turnover of the county board with new commissioners having limited experience in county government; the need to develop a county personnel and purchasing system; a desire on the part of the county board to develop or improve the current budgeting and budget reporting system; an expressed desire on the part of county clerk and treasurer to be less involved in the budgeting and accounting system; and perceived need to develop a more "managed approach" to county government. Each of the identified reasons (there may be more since the list is not exhaustive) have merit. However, it must be remembered that introducing another actor into the county government scene impacts commissioners, department heads, county agencies and county employees. Therefore, before a decision is reached as to the form of county administration, the distributional consequences of such a change must be considered if successful adoption of centralized administration is to be achieved. Following is a process which counties have adopted and has proven successful over time.

Identifying the Need For Centralized Administration

With or without central administration, managing the administrative details in county government is accomplished in every county. The task of managing day-to-day operations in counties without central administration is generally accomplished through the joint efforts of the county clerk, county treasurer, the board's statutory finance committee, board secretary and other county department heads. The passage of the state's Uniform Accounting and Budget Act required county board's to appoint a chief fiscal officer annually to manage the development of the county's annual budget. Often the budget development process is often an unwelcome but a shared task in the courthouse which may consume an inordinate amount of time and generally left to the last minute. Several indicators can be used to assess whether a county could benefit from establishing a position to serve in a staff function to the county board and county departments.

- (1) Do county commissioners spend more time on micro-management issues as compared to policy formulation and management?
- (2) Is the budget development process left to the last minute and departments or the board's finance committee scurry around in late December attempting to develop a balanced budget?

- (3) Do county departments frequently overspend their departmental budgets and seek additional funds annually, usually in December?
- (4) Does your county frequently get presented with "surprise" expenditure items?
- (5) Does your county lack both a capital and public improvement budget?
- (6) Does there exist general confusion related to the county's personnel system?
- (7) Does the county board frequently find the need to postpone decisions on proposed board actions due to the lack of information or the need to obtain additional information before a decision can be reached?
- (8) Does your county lack a purchasing system, an equipment inventory system complete with depreciation schedule or a renovation and maintenance plan for county facilities?
- (9) Does managing labor contracts and vendor contracts appear to be an area where the county never seems to be ahead of the game and always running to catch up?

If you answered yes to any of the above or to several of the questions, then your county is probably in a position to explore central administration. A frequently asked question is "do only large counties have central administration?". The answer is no, central administrative positions are not correlated to county population size or the size of the county general fund. Counties which have adopted some form of county administration range from very small rural counties to metropolitan counties.

Forms of Central Administration In County Government

Early discussions of county administration are generally beset with confusion as to title and form of the position. Commissioners, department heads, the press and outside County Administration groups use a variety of titles in an attempt to describe an administrative position. Terms such as executive, manager, administrator, controller, coordinator, comptroller, finance director, etc. are used interchangeably in conversations and press releases. Does a title make a difference? Yes, especially since there exists several different state statutes which govern the creation and adoption of a county administrative position. Each of the above mentioned job titles have a different statutory base, requires different action by the county board and has differential impacts on the courthouse operation. It is not unusual for a courthouse employee to make reference to a county manager when actually they mean county controller or commissioners refer to a county comptroller when they mean a county controller. Therefore before stirring up the courthouse caldron, a clear and concise meaning needs to be garnered for each of the alternative administrative forms from which the county may choose. The need for courthouse education on the forms of county administration is the first step.

Exploring the Administrative Alternatives

When county employees and commissioners are "swimming in a sea of uncertainty" it is difficult to achieve consensus as to function and form of county administration which will best match the needs of the county. It behooves the county board to sponsor an educational meeting or meetings, the sole purpose of which is to explore the legal and practical options for central administration. Such a meeting entails examining the statutory base of each option, the impact on county operation and the procedure required to adopt each form. The educational meeting should be offered at times which affords each and every person

in the county system the opportunity to attend and become informed on the potential impact if an administrative position is adopted in the county. Many counties have found it advantageous to sponsor a meeting open to the public in the evening. The Cooperative Extension Service is ideally suited to assist the county board in sponsorship of such a meeting and has the option of securing university personnel to conduct the meeting to provide an objective overview.

Assuming the courthouse personnel are informed as to the choices from which the county may choose an administrative form, the next step involves the county board appointing an ad hoc county administrative committee by board resolution. The task of the committee is to conduct further investigation of the alternative forms of county administration and the adaptability to the county's environment. The committee should be charged with the responsibility of meeting with county departments and agencies, unions, external groups and with other counties who have adopted a specific administrative form. In addition, the committee should identify key tasks that may potentially be assigned to the county administrator and develop a suggested job description. The committee's findings need to be developed in report form and presented to the county board for consideration. The county board has the option of accepting the report and disbanding the committee, accepting the report but sending it back to the committee for further revision or accepting the report and referring to one of the county board's standing committees for recommended action. Total rejection of a committee report can lead to disastrous relations in the courthouse and insure the lack of cooperation on the next joint board/department task.

Composition of the Ad Hoc Administrative Committee

The goal of the board should be to obtain a representative balance on the ad hoc administrative committee. Following is a suggestion based on experiences in other counties who have established administrative committees: two commissioners, two elected department heads, two appointed department heads, representative from courthouse employee group(s), a township supervisor and two citizens at large. The citizens at large could be a representative from business/industry, newsmedia, League of Women Voters or other interested community groups. While the committee's composition at first glance may appear to be too large, it must be remembered that the representatives serve as the conduit back to their respective groups to keep their members apprised of developments. In addition, if the committee elects to make site visits to other counties to inquire as to the operation of a specific form of county administration, the site visits can be divided among the group to minimize time involved. To achieve unanimity as to the form of county administration to be recommended by the committee while an admirable goal is probably unrealistic. Views and opinions will vary, the best that can be hoped for is to reach consensus. Consensus assumes that everyone has had their say and based on the evidence provided through analysis and research a recommendation is developed that appears to be most appropriate for the county situation.