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Manual for County Commissioners



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Introduction

This is the fourth edition of the *Manual for County Commissioners*. Although there are wide variations among Pennsylvania's counties and their governments, there are more things which are common to counties and the job of county commissioners than there are differences. This is a manual for all of Pennsylvania's counties and county commissioners and their home rule counterparts.

The primary goal is to provide an easily-read, comprehensive information source for county commissioners in the performance of their statutory duties. In addition to review of structure and statute, the Manual attempts to cover some of the more common governmental functions assigned by local practice and custom and to describe common approaches in dealing with county operations.

The Manual offers helpful information and suggestions for incumbent and new commissioners and adds to the general descriptions of how county government operates. Its audience is not only county commissioners but also includes other county officials, county employees, the media, and citizens.

The Manual is geared primarily to the County Code which applies to all counties of the third through eighth classes and only incidentally to counties of the first, second, or second class A, although the structure and scope of services in those counties is comparable. Information provided in the Manual should not be construed as legal opinion, although reference is made to the County Code, general state law, and some court cases.

Details of local government operations such as fiscal management, debt management, insurance administration, land use planning, information management, purchasing and taxation are found in other publications of the Department of Community and Economic Development (DCED). Numerous training courses offered by the County Commissioners Association of Pennsylvania (CCAP) and other agencies deal with specific aspects of the commissioners' duties. Learning the ins and outs of county government is mainly accomplished on the job. This Manual is, thus, a supplement to "real world" training.

Counties are widely perceived as the local government of the future. They are the major human services providers in the political system. Counties also have increasing responsibilities in policy areas that have a regional focus: solid waste planning and disposal, land use planning and growth management, economic development, emergency services, and water supply, to name a few.

Pennsylvania's counties are incredibly diverse in terms of size, population density, degree of shared responsibility with other local governments, relations with state government, regional and geographic variations of economic base, political party control, and cultural attitudes. Some are becoming full service regional governments, fueled by modernization, urbanization, and suburbanization. These counties take responsibility for a full gamut of state-mandated services, and are locally involved in highway networks and parks, an array of emergency services, planning, information and coordination, the funding of innovative municipal incentives, and backing up municipalities and councils of government in other ways. Other counties in the state have not felt significant reform, but nonetheless are interested in doing the right things and doing them well.

All of Pennsylvania's counties are in a period of change. Nationwide trends of government reorganization and reform at all levels will mean that new responsibilities may be thrust upon counties, or at least new ways of doing things. Citizen demands for responsiveness, accountability, effectiveness, and efficiency will continue.

As local problems spill over existing municipal boundaries, it makes sense to talk about the counties' emerging role in the governance system. Municipal boundaries were created in a different era; they no longer match demographic and economic realities. The term "governance" captures the interaction by the public, private and non-profit sectors in forging the policies and delivering wanted and needed citizen services to match regional realities, despite outmoded

jurisdictional boundaries. Counties are being looked to as an effective forum for facilitating the cooperation and collaboration needed in a region for the new governance. This manual is designed to help all county commissioners, and other county officials, in the exciting challenges of the new governance.

The DCED Governor's Center for Local Government Services acknowledges the members of CCAP who assisted, encouraged and advised in the process of preparing this Manual. Thanks are also offered to Douglas Hill, Executive Director of CCAP; Brinda Carroll Penyak, Deputy Director of CCAP; Karen Sweigard, Director of Education and Communications, CCAP; Debra Tingley, Director of Communications, CCAP; Rita Reynolds, Chief Information Officer, CCAP; John Sallade, Managing Director, CCAP Insurance Programs; Dr. Bev Cigler, Professor of Public Policy and Administration at Penn State University - Harrisburg; and Erica Hill, MPA candidate at Penn State University - Harrisburg.

I. Pennsylvania County Government

Historically, counties have been perceived as administrative units with responsibilities lying somewhere between the more removed actions of state and national government and the spatially limited concerns of municipalities such as boroughs or townships. Even in terms of the English model of counties, the divisions were created to develop a more immediate governmental presence than could be enforced by the monarchs and their ministers at court. Because county officials lived in the areas they served, they had a greater knowledge of local needs, and hopefully a greater stake in seeing problems solved.

History of County Government in Pennsylvania

The common thread running through county history is the role of county government as an administrative unit of the state. Counties have traditionally taken their grants of authority from the commonwealth and, before the Revolution, the provincial government. In America, the English model for county governments was adopted early on. Pennsylvania's first three counties (Philadelphia, Bucks, and Chester) were created when William Penn arrived in Pennsylvania in 1682.

By various combinations and subdivisions, more counties were created over the next 200 years until the youngest of the 67 counties, Lackawanna, was instituted in 1878.

The earliest responsibilities of counties included the maintenance of the local judicial system and the local prison. Because the prisons were often associated with debtors, counties in a backdoor fashion acquired some responsibilities for human services. The county "poor farm" was an early example that continued into the 20th century. In the early years, the counties also had fairly significant degrees of responsibility for maintenance of what then constituted the local highway system.

Counties' roles saw little change through the 19th century, with the exception of the addition of responsibility for the local school system, particularly in the smaller counties. By that time, the local court systems were well established, as were the county jails. The concept of institution districts had been established for counties to begin a tradition of caring for the poor and the disadvantaged.

County structure had also remained somewhat constant. From the earliest years, counties had been governed by commissioners or some similar office. Counties also had what are now known as row officers, with the earliest being the sheriff, treasurer and auditor. Many of these row offices were delineated in the early Pennsylvania constitutions.

With the advent of the 20th century, the role of county government came to be defined as it is known today. County government now had both state and local dimensions. Its primary responsibilities, traditional in nature, are as an agent of the state for the purposes of the administration of justice, maintenance of legal records, the conduct of elections and the administration of human services programs. Counties have also been granted powers more commonly considered local, rather than state, in character. Some of these powers include parks and recreation, emergency management, solid waste management, and in some cases zoning and land use.

Since the early 1960s, however, county government has experienced explosive growth, especially in human services programs and criminal justice areas. Counties have grown into the role of the primary provider of state and federal social programs. Counties have outgrown their former "caretaker" status and evolved into active providers of services for their inhabitants.

The Constitution, the County Code and other County-Related Laws

In the present Constitution of the Commonwealth of Pennsylvania, approved by the voters in 1968, the Constitutional basis for county government in the state is briefly set forth in Section 4 of the Local Government article, Article IX, as follows:

County Government

Section 4. County officers shall consist of commissioners, controllers or auditors, district attorneys, public defenders, treasurers, sheriffs, registers of wills, recorders of deeds, prothonotaries, clerks of the courts, and such others as may from time to time be provided by law.

County officers, except for public defenders who shall be appointed as provided by law, shall be elected at the municipal elections and shall hold their offices for the term of four years, beginning on the first Monday of January next after their election, and until their successors shall be duly qualified; all vacancies shall be filled in such a manner as may be provided by law.

County officers shall be paid only by salary as provided by law for services performed for the county or any other governmental unit. Fees incidental to the conduct of any county office shall be payable directly to the county or the commonwealth, or as otherwise provided by law.

Three county commissioners shall be elected in each county. In the election of these officers each qualified elector shall vote for no more than two persons, and the three persons receiving the highest number of votes shall be elected.

Provisions for county government in this section shall apply to every county except a county which has adopted a home rule charter or an optional form of government. One of the optional forms of county government provided by law shall include the provisions of this section.

There is also a significant mention of counties in the Definitions section of Article IX, which clearly delineates counties as a separate corporate entity, rather than their historic role as only an agent of the state:

Definitions

Section 14. As used in this Article, the following words shall have the following meanings:

“Municipality” means a county, city, borough, incorporated town, township or any similar general purpose unit of which shall hereafter be created by the General Assembly.

It was not until 1929 that the General County Law was enacted to consolidate some of the tasks counties had acquired on a piecemeal basis over the preceding years. This process of accumulation and consolidation was repeated 25 years later, with the adoption of the Second Class County Code in 1953 and the County Code in 1955.

Another significant change regarding county government structure and administration has been the allowance for home rule in the PA constitution of 1968, and subsequent adoption of the Home Rule and Optional Charter Law in 1972. The constitution guarantees Pennsylvania counties and municipalities the right to adopt home rule charters and exercise home rule powers. To date, seven counties have adopted home rule charters: Allegheny (2000); Delaware (1975); Erie (1976); Lackawanna (1976); Lehigh (1975); Luzerne (2010); and Northampton (1976). Philadelphia, as a combined city and county, also operates under a home rule charter adopted under special legislation in 1949. Further detail on the home rule option is presented in Chapter XVII of this manual.

Since the last rewrite of the County Code in 1955, only two major changes have been undertaken and accomplished in the Code itself, the first being a revision of the Code's contracting and procurement provisions (Act 142 of 2000), and a revision of the Code's financial sections (Act 203 of 2002). Both statutes were designed to bring the Code up to modern practice and technology, and to delete obsolete or anachronistic provisions.

Classification of Counties

The County Code provides for the classification of counties “for the purposes of legislation in the regulation of their affairs.” The main purpose of this classification is to overcome the constitutional prohibition on legislative enactment of “special laws”, or laws pertaining to a single governmental unit. The classification system allows passage of legislation affecting just counties having common interest, based on demographic criteria. Counties are divided into nine classes based on population.

Philadelphia is the only first class county in Pennsylvania, but it does not have a separate county government. All laws applicable to the County of Philadelphia apply to the City of Philadelphia and all functions except election responsibilities that would ordinarily be assumed by a county government have subsequently been assumed by the government of the City of Philadelphia. Philadelphia elects three “city commissioners” for the purpose of voter registration and election administration.

Classification	Classification Criteria	Counties	Population (2010 Census)
First Class	Those having a population of 1,500,000 inhabitants and over.	Philadelphia	1,526,006
Second Class	Those having a population of 800,000 and more but less than 1,500,000 inhabitants.	Allegheny	1,223,348
Second Class A	Those having a population of 500,000 and more but less than 800,000 inhabitants.	Montgomery Bucks Delaware	799,874 625,249 558,979
Third Class	Those having a population of 210,000 and more but less than 500,000 inhabitants.	Lancaster ² Chester York Berks Westmoreland Lehigh Luzerne Northampton Erie Dauphin Cumberland ¹ Lackawanna	519,445 498,886 434,972 411,442 365,169 349,497 320,918 297,735 280,566 268,100 235,406 214,437
Fourth Class	Those having a population of 145,000 and more but less than 210,000 inhabitants.	Washington Butler Beaver Monroe ¹ Centre ¹ Franklin ¹ Schuylkill	207,820 183,862 170,539 169,842 153,990 149,618 148,289
Fifth Class	Those having a population of 95,000 and more but less than 145,000 inhabitants.	Cambria ³ Fayette ³ Lebanon Blair Mercer Lycoming Adams ¹ Northumberland Lawrence	143,679 136,606 133,568 127,089 116,638 116,111 101,407 94,528 91,108

Classification	Classification Criteria	Counties	Population (2010 Census)
Sixth Class	Those having a population of 45,000 and more but less than 95,000 inhabitants and those having a population of 35,000 and more but less than 45,000 which by ordinance or resolution of the Board of County Commissioners elect to be a county of the sixth class.	Indiana Crawford Clearfield Somerset Armstrong Columbia Carbon Bradford Pike Venango Wayne Bedford Mifflin Perry ¹ Huntingdon Jefferson McKean Susquehanna Tioga Warren Clarion Clinton Greene	88,880 88,765 81,642 77,742 68,941 67,295 65,249 62,622 57,369 54,984 52,822 49,762 46,682 45,969 45,913 45,200 43,450 43,356 41,981 41,815 39,988 39,238 38,686
Seventh Class	Those having a population of 20,000 and more but less than 45,000 inhabitants; also those having a population of 20,000 or more but less than the 45,000 which have not elected to be a county of the sixth class.	Union ⁴ Snyder ⁴ Elk ³ Wyoming Juniata	44,947 39,702 31,946 28,276 24,636
Eighth Class	Those having a population of less than 20,000 inhabitants.	Montour Potter Fulton Forest Sullivan Cameron	18,267 17,457 14,845 7,716 6,428

¹ Increase in class from 2000 census.² Increase in class; exercised Act 132 option to remain third class.³ Decrease in class; actually retain current class status as first census under threshold.⁴ Per statute, retain option to increase to sixth class.

Data source: 16 P.S. 210, County Code, Section 210; US Census Bureau, Census 2010.

Notes

1. A county can recede in classification due to population loss only if its population falls below the prescribed limit in the last two preceding censuses. This provision protects a county from a temporary fluctuation in population in a single census.
2. Act 52 of 2011 amended the County Code to change the population ranges for fifth and sixth class counties. Act 132 of 2011 permitted any third class county whose classification would be advanced as a result of the amendment to retain its former classification unless the Board of County Commissioners elects by resolution or ordinance to advance its classification. Lancaster County was able to remain as a third class county despite its population growth to permit its classification as a 2A class county.

II. Office of County Commissioner

The three-member board of county commissioners constitutes the chief governing body of the county. Statutory authority of the commissioners is both administrative and policy-making. The county commissioners are vested with selective policy-making authority to provide certain local services and facilities on a county-wide basis. Administrative powers and duties of county commissioners encompass registration and elections, assessment of persons and property, human services, emergency management, veterans' affairs, appointment of county personnel and fiscal management, among others.

For those counties with established home rule charters, the organizational structure referenced below may not be the same. Further guidance on the defined structure of offices within home rule counties may be found in the county's organizational charter.

Term of Office

The position of commissioner is a county-wide elected office with a term of four years.¹ The three commissioners are elected at the municipal election before the expiration of the terms of the current office holders and their terms run concurrently. The term of office begins the first Monday of January after their election.

Vacancies

Should a vacancy occur in the office of county commissioner, the president judge of the court of common pleas appoints a replacement.² The appointee must be of the same political party as was the person holding the position at the time of his/her election. The appointee completes the remainder of the unexpired term of office of the vacancy. The law vests the authority to fill vacancies with the court, but county tradition often dictates the method in which the court makes determination of the appointee. For example, the county-wide political committee may submit recommendations to the President Judge, although statutorily the judge is not obligated to consider such recommendations.

Qualifications

Any elector (registered voter) may run for commissioner or any other county office provided that they are at least eighteen years of age, a citizen of the United States and a resident of the county for one year prior to the election.³ Exceptions are district attorney and judge, who also must have a Juris Doctor degree and be a member of the local bar association in good standing.

Incompatible Offices

A county commissioner is prohibited from serving, at the same time, as a member of the legislative body of any city, borough, town or township of any class, treasurer or tax collector of any city, borough, incorporated town or township, school director of any school district or member of a board of health.⁴ It is also inadvisable for a county commissioner to be a member of a municipal authority created by the Board of Commissioners⁵

Oath of Office

Normally, the president judge administers the oath for the commissioners and all row officers. The oath involves swearing or affirming that the duties of the office will be carried out in accordance with the constitution and with federal, state and county rules and regulations.⁶ The oath is administered at the beginning of each term and formally allows an individual to start functioning as a commissioner.

Compensation

The salary for all county elected offices (except judge, district attorney and district magistrate, whose salaries are set by the commonwealth) is set by the board of commissioners.⁷ The elected officials' salary schedule must be adopted by the commissioners at a public meeting held between the hours of 6:00 and 9:00 p.m. in a central location in the county, the idea being "to afford the public the greatest opportunity to attend."

The law prohibits commissioners from adopting a salary schedule for elected officials during the calendar year in which the commissioners stand for election, so it is typically recommended that the schedule be adopted in November or December prior to the commissioner election year.

The schedule must be on a percentage basis, and the same percentage must be used for all elected officials (with an exception for the coroner, in certain circumstances). Typically counties adopt a multi-year schedule; a good practice is to adopt a six-year schedule and update it every two years by adding two years to the end, thereby maintaining a schedule that is valid for row offices elected in the municipal election opposite the commissioner cycle. Recent case law (*Buckwalter v. Borough of Phoenixville*, 940 A.2d 617, Pa. Commw. Ct. 2008) establishes that the salary schedule cannot be changed by the commissioners while in office.

Role of the Majority/Minority Member

Under Pennsylvania's county structure, each party nominates two individuals to the office of commissioner, the electorate votes for two, and the top three vote-getters form the three-member board of commissioners. This mechanism assures that each county has minority party representation on its board, creating a de facto check-and-balance within the board. This mechanism can sometimes engender a setting that poses philosophical and political challenges.

The manner in which commissioners express their views and vote on issues can sometimes reflect the philosophy of their political party. This does not mean that the board cannot have unanimous decisions and in fact, most votes are unanimous. Minority members are often pressured by their party to act in opposition to the action recommended by majority members, but this is not required or intended as their role. Members of both parties are encouraged to voice their opinions in a productive, cooperative manner for the benefit of the county.

A respectful relationship results in the ability of individual members of the board to adequately represent their constituents and to achieve reasonable success in individual agendas. It is not uncommon for boards to experience some conflict and division in the course of their operations as members seek to promote their programs of interest. When boards encounter such conflict, it is prudent for the commissioners to find a way to voice their viewpoints and address any differences with other board members in a productive manner. Citizens trust that the commissioners will act in the best interest of the county; political in-fighting and conflict may threaten the public's perception of the board's interests.

It should be noted that the majority/minority role is not determined exclusively by party. Often, personalities and personal philosophies dictate who forms voting blocs.

Conflict of Interest – Ethics

Generally, a conflict of interest is when the elected official or member of his or her immediate family is directly affected by a matter before the governing body. In this respect, commissioners are governed by the provisions of the Public Official and Employee Ethics Act⁸, which delineates the circumstances in which an elected official in such a position may deliberate and vote, or must abstain. The act is administered by the State Ethics Commission, which may also render written advice at the request of the elected official.

Additional considerations should be made with regard to advisors selected to provide advice on financial and legal matters under county management. In the wake of recent federal cases regarding undue influence, and resulting changes in federal law, heightened attention to the scope of advisory roles is necessary.

Personal Liability

Under Pennsylvania's Political Subdivisions Tort Claims law⁹, local governments and their elected and appointed officials have limited exposure to liability for decisions and actions made in the performance of their official duties. The law provides as well that the county is responsible for paying for the successful defense of a tort claim. Note, however, that this protection does not apply to actions brought under federal law (sexual harassment or civil rights violations, for example), and both the county and the elected official can be held liable. In addition, this protection does not extend to allegations of criminal actions or violations of the state Ethics Act.

Each county should have an insurance program that includes Public Officials Liability coverage (often called Errors and Omissions or E&O). Public Officials Liability coverage protects decision makers from having to pay for their mistakes. However, in most policies there will be a statement that coverage will be denied if the action taken was illegal or willful misconduct. For an action to be willful misconduct, there must be proof that the person knew the action was wrong.

Transition to a New Board of Commissioners

Electing a Chair. At the first meeting of the new board in January, a determination must be made as to who will be the chairman and who will be the vice chairman. Any one of the board members may become the chairman. The most common scenario is for one of the majority members to become chairman and the other majority member to become vice chairman. There are instances where the minority member serves as chairman; for example some counties observe a custom of rotating the chair annually. Others have a custom that the member of the majority party who received the most votes in the general election becomes the chairman. Any time that the board wishes to reorganize it may.

Whereas the county commissioners are required to organize only in the first meeting of the new term, the salary board for the county is required to reorganize each year.

Political Hiring/Firing. Pennsylvania has adopted "at will" employment statutes, which allow for greater flexibility for employers in establishing and terminating employment without requiring that just cause be established for actions taken. Nonetheless, to ensure compliance with employment standards and case law, consultation with the county solicitor is encouraged when making offers of employment as well as terminating any staff. Under federal law, "confidential" employees – those who have a confidential relationship with the board – may be terminated at will and without cause. Appointed department heads as well as the solicitor and chief clerk may all be considered "confidential" as they may act in the absence of the board and are expected to carry out the philosophy of the board. Hourly employees and those under collective bargaining agreements generally have greater employment protection under federal labor statutes. Legal guidance is recommended when considering termination of these individuals.

References

1. 16 P.S. 501; County Code, Section 501
2. Ibid
3. 16 P.S. 413; County Code, Section 413
4. 16 P.S. 402; County Code, Section 402
5. 53 P.S. 312 (D); Municipality Authorities Act, Section 10D
6. 16 P.S. 403; County Code, Section 403
7. 16 P.S. 11011-10.1
8. 65 Pa.C.S.A. 1101, see also 16 P.S. 1806
9. 42 Pa.C.S.A. 8541

III. Meeting Management

The board of county commissioners is most visible in commissioners' meetings, where all legislative action and all board decisions occur. In addition to regular commissioners' meetings, there are many other types of meetings which commissioners attend as a board such as the salary board, election board, pension board, prison board and others. Strict rules govern the meeting process, set out in the Sunshine Act¹, must be followed. These rules cover advertising, meeting procedures, types of meetings covered (and those that are exempt), minutes and other records, voting and recordation of votes, public access and comment, and the types of action taken.

Meetings can be time consuming for all involved. Aside from the obvious time spent at the actual meeting, there is a great deal of preparation prior to the meeting and quite often a great deal of work generated as a result of the meeting. The behind-the-scenes work is done by the chief clerk and staff who prepare the paperwork; by the commissioners who must review documents, become conversant on the topics of discussion, and determine what agenda items make it to the meeting; and by department heads, row officers, and outside guests who may make presentations, recommendations, or requests of the commissioners.

It is essential that the commissioners and their staff appear ready for the meeting, confident in their roles, and able to discuss the agenda items. Decisions made too quickly can suggest a lack of preparation or knowledge or that the decisions were previously made in private outside the requirements of the Sunshine Act. A balance must be struck in which agenda items are fairly discussed and after which decisions are expeditiously made. All of this must be accomplished with the entire county watching and making judgments on county performance based upon sound and print bites. Because meetings are the vehicle through which county commissioners reach the public and electorate, a great deal of thought should go into the basics of meetings.

And with the possible exception of smaller, rural counties where few media outlets exist, the meetings are usually covered by the media, with reporters taking notes and asking questions, radio, TV or local cable channels recording, as well as citizens and others present providing commentary on social media.

What is a Meeting?

According to the Sunshine Act, sometimes referred to as the Open Meetings Law, a meeting is any prearranged gathering of an agency attended by a quorum of members held for the purpose of deliberating agency business or taking official action. In counties where there are only three commissioners, two commissioners constitute a quorum, and deliberation – discussion of county business by a quorum for the purpose of making a decision – must be conducted in a properly convened public meeting.

The Sunshine Act, passed in 1986 with amendments adopted during intervening years, is aimed at assuring that meetings are kept open to the public. Open meetings help enhance public faith in the political process.

The Sunshine Act requires that public agencies take all official actions and conduct all deliberation leading up to official action at public meetings. Official actions include establishment of policy, decisions on agency business and votes taken on any motion, resolution, or ordinance.

However, while the law creates a standard that all meetings are open, it does not create a presumption that every time commissioners gather it constitutes a meeting. Rather, the law creates a three part test by defining a meeting as "any prearranged gathering of an agency which is attended or participated in by a quorum of the members of an agency held for the purpose of deliberating agency business or taking official action."²

Taking these tests in turn, the first is prearrangement. Typically this includes the normal advertised regular or special meetings, but can include other meetings for which the members of the agency received advance notice. It does not

include chance encounters, nor does it include other nominally “scheduled” public events such as church services, theater events, and so on. Naturally, however, there is a presumption the agency will not use the opportunity of a chance encounter to conduct agency business.

Second is participation by a quorum. This test is commonly met for most county and township boards, which consist of three members and thus have a quorum any time two are present.

Finally, the meeting must be for the purpose of conducting deliberations or official action on agency business. In this respect, the definitions of either “deliberations” or “official action” must be met. Deliberations are “the discussion of agency business held for the purpose of making a decision,” and official action includes recommendations made by an agency pursuant to statute, ordinance or executive order, the establishment of policy by an agency, the decisions on agency business made by an agency, or the vote taken by any agency on any motion, proposal, resolution, rule, regulation, ordinance, report or order.³

All three tests, each of which is clearly delineated, must be met before the meeting is considered to be open under the provisions of the act, and failure to meet any one of them places the meeting outside the statute. For example, the common practice of new or newly-reconstituted boards of commissioners meeting with agencies under county purview or related to the county to receive information on agency functions and projects meets neither the standard of deliberation nor any of the four standards of official action. However, if in the course of those meetings the board is informed of issues that will require board action, the discussion at that point can go no further than noting it will need to be a future agenda item, to be discussed (“deliberated”) in a properly convened public meeting.

For more information on this subject, refer to the DCED publication *Open Meetings: The Sunshine Act*.

Meeting Arrangements

Role of the Chief Clerk. The chief clerk is responsible for the meeting preparations, with the objective that this interaction between the commissioners and their constituents goes smoothly.

Physical Arrangements. The meeting room should have proper lighting and appear airy and open. Placement of the commissioners, the chief clerk, department heads, row officers (if appropriate) and the press should be planned. Specific locations for resolutions, ordinances and other papers to be reviewed or acted upon must be fixed and known to all. The commissioners should have pads and pencils for note taking or calculations.

Electronics and meeting aids. Any electronic aids must consider both the board and the public – PowerPoint and other video presentations should be visible to the whole room, and conference phones must be audible to the full audience. Many counties are migrating to paperless meetings, so agendas, documents, and other materials furnished to the commissioners on an electronic basis should be made available to the public as well, consistent with the requirements of the Right to Know (open records) Law.⁴ Review with the solicitor which documents and electronic files are to be available before the meeting, which are to be released after the meeting, and which remain inaccessible under the Right to Know Law.

Audience Arrangements. Those appearing before the commissioners must know when they are on the agenda and what the board expects of them. The board is permitted to require those wishing to speak during the public comment portion of the meeting to sign in in advance.

Department and Row Office Arrangement. There should be specific arrangements for department heads and row officers. They need to know what their role, if any, will be at the meeting. When presentations are given, the commissioners should have any exhibits or papers in advance or at their seat.

Media Arrangements. A specific table is often set aside for the media and copies of documents which the commissioners are reviewing should be available. Press releases or similar resource documents may be available at that location. It is usually near the front of the room so that they have a clear and unobstructed view of the proceedings. Electronic media should be informed of any reasonable rules for recording the meetings, including placement of microphones and lights.

Meeting Materials. All materials to be used or referred to at the meeting should be prepared well in advance. Each commissioner should have copies of pertinent documents, and department heads should have those documents which are pertinent to them. In addition, the chief clerk should attempt to anticipate those questions which may arise during the meeting and should have supporting documents which those questions may require. The public should have access to a sufficient number of copies of minutes and agendas as well as other relevant documents.

Notice

Notice requirements for regular and special meetings are set out in the Sunshine Act. The chief clerk is usually responsible for publication and posting of all notices for meetings of the commissioners as well as for hearings, advertisements for bids, and budgetary procedures. In the case of special meetings, the chief clerk notifies commissioners of the time, place, and purpose of the meeting as well as giving public notice. At least 24 hours' notice must be given under the Sunshine Act for special meetings.

Public Notice. Under the Sunshine Act, all formal action of the commissioners, and deliberations leading up to those actions, must be taken at a meeting open to the public at a time and place of which the public has been notified. Public notice must be given by publication in a newspaper of general circulation within the municipality and by posting a copy of the notice at a public building where the meeting is to be held. Special provisions for public notice and public hearings are required if the governing body is to take certain actions under the Planning Code and during the budget adoption process.

Electronic Notice. Most counties augment the required newspaper publication with publication on the county website, and some counties also make regular email notices available on request. However, case law provides that the notice requirement of Sunshine Law is not satisfied by incidental publication and instead the formal printed announcement is necessary.⁵

Executive Session

County commissioners may hold executive sessions, but only under certain circumstances authorized in the Sunshine Act, including consideration of personnel matters, collective bargaining issues, real estate transactions, and pending litigation.

Commissioners must announce their reasons for holding an executive session at the open meeting held immediately prior to or subsequent to the executive session. No vote may be taken on any motion, proposal, resolution, rule, regulation, ordinance, or order during an executive session.

Personnel issues have been clearly defined by the courts to mean matters relating directly to persons employed or appointed by the agency. A mixed trail of decisions make it unclear as to whether or not deliberations on filling a vacancy in an elective office or in the positions of county engineer or solicitor must be at a public meeting.

Agencies may hold executive sessions to consult with their attorney regarding information on strategy in connection with litigation or with issues on which identifiable complaints are expected to be filed. Again, while deliberation may be held in private, any official act based on the discussions must be made in an open meeting. Discussions must be on identifiable complaints which either have been or are expected to be filed.

For more information on this subject, refer to the DCED publication *Open Meetings: The Sunshine Act*.

Agenda

The agenda is a necessary first step toward an orderly, productive meeting, regardless of the size of the county or amount of business to be transacted. The agenda is a written plan of the order and content of a meeting. A prearranged outline for the conduct of business in the most efficient manner, it prevents surprises for commissioners and staff members which result from someone bringing up topics for which not everyone is prepared. Without the discipline of an agenda, a meeting can become long, disorderly and fruitless.

Determining the contents for a meeting and its order of business should follow a procedure established in the board's rules of procedure. The County Code provides that the board adopt rules for the conduct and order of business. A copy must be posted at all times in a conspicuous place in the courthouse "for the benefit of the public."⁶

Preparing the agenda is the responsibility of the chief clerk in consultation with the board chair. The chief clerk should maintain an agenda file which contains material encountered in daily business which might be a subject of a future agenda item. Inclusion of specific items is usually the decision of an appropriate official such as the chair, while the chief clerk is responsible for distributing the agenda prior to the meeting and assembling the necessary supporting documentation.

Minutes and Records

Minutes. The Sunshine Act requires that minutes are to be taken of all public meetings, promptly recorded, and open to public inspection.⁷ The County Code makes the chief clerk responsible for the minutes of official meetings of the board of commissioners.⁸ The chief clerk is not physically required to take minutes, which can be delegated to other staff. While the chief clerk might take notes of important actions, he or she should be free to participate in the meeting to the extent to which the board requests. In any event, the chief clerk must attest to the accuracy of the minutes and is the keeper of the minute book.

Minutes provide legal proof of the official actions of the governing body and its officials, and so accuracy and completeness is necessary. A secondary, but nevertheless important, reason for minutes is to allow citizens who were not in attendance to understand what occurred at the meeting. However, minutes should not be expected to be a verbatim transcript of everything which is said. Instead, at minimum they record the actions taken, how each member of the board voted, and enough reasonable description of the action to allow public understanding of the action.

Pennsylvania courts have long held that the failure to record passage of an ordinance or resolution in the minutes through inadvertence or mistake does not invalidate the action.⁹ The fact of passage can be proven by testimony of those present at the meeting. Actions of a governing body are valid whether duly recorded or not.¹⁰

Recording Meetings. Recording meetings, either with audio or video tape, is common, although most counties use such systems as a review aid to assist the chief clerk with his or her notes, augmenting manual note taking. If taping is done, a procedure for public use and control and destruction of the tapes should be adopted with the assistance of the solicitor. Absence of a formal policy can make tapes a public record, open to the public and subject to record retention schedules.

Content. Every governing body grapples with the question of how complete the minutes should be. Some minutes are too sketchy to be of value, while others are too wordy to be usable. Generally, the minutes should provide a basic guide to the topics that were addressed in the course of the meeting and the outcomes of votes on such topics. The minutes are not required to reflect deliberation that occurs during the meeting. Requirements for the content of minutes may be adopted by the Board of Commissioners. The Sunshine Act does provide for certain minimum requirements for official minutes, including:

1. The date, time, and place of the meeting.
2. The names of members/participants present.
3. The substance of all official actions and a record of roll call votes.
4. The names of all citizens who appeared officially at the meeting and the subject of their testimony.¹¹

A more detailed description of minutes and what should be included in them can be found in the *Manual for County Chief Clerks/Administrators* published by the DCED.

Minute books are permanent records of the county. They can never be discarded. Creation of a backup copy of each volume of minutes, by photocopy, microfilm, or electronic means, is a recommended practice. Original minute books should be stored in the vault where the most valuable records of the county are kept.

Conduct of Meetings

The procedures for meeting management should be in a written form, and should go beyond the Code and Sunshine Act requirements for rules for the conduct and order of business. Procedures should include at least the following:

- The structure of the agenda.
- Rules of decorum, reasonable time constraints and a specific agenda for hearing comments from the public.
- Rules on stipulating how items are placed on the agenda.
- Reasonable rules on recording meetings on audio or video tape, either by the public or the media.
- The steps for the introduction of ordinances and resolutions by board members.
- Any restrictions which may exist on length, timing or content of statements by commissioners.
- The roles, if any, of row officers, the chief clerk and the heads of departments in meetings.
- A restatement of Code and statutory requirements regarding meetings, ordinances, resolutions, open meetings, executive sessions, abstentions from voting, and similar matters.
- Parliamentary procedures to be used and local departures from them.

Parliamentary Procedure. Rules of parliamentary procedure are designed to channel conflicting points of view on issues, expedite the business before the board, and still preserve the right of commissioners to contribute to deliberation. Rules of procedure will also assist in meeting these goals.

At its organizational meeting the board should adopt standard rules of order, such as Robert's, for conduct of the meeting. The standard rules should be supplemented by any necessary local rules; for example, clear indication that the chair may make motions and participate in debate. The supplemental rules should also include reasonable standards (as permitted by the Sunshine Act) for public and media decorum and participation.

Public Comment. The Sunshine Act requires that the public be afforded the opportunity to comment on any meeting agenda item in advance of official action. Some counties allow time for a public comment period at the beginning of meetings while others permit comment as each agenda item arises. Consideration should be made with regard to how general public comment should be included in the meeting's agenda, rules of conduct for any commentators, and procedures for managing the length of public discussion. Reasonable rules can be established to effectively manage a public comment period, including decorum and length.

Quorum. A quorum represents the minimum number of members required to be present in order to call the meeting to order and to conduct business. The County Code stipulates that in counties with three commissioners, two members shall constitute a quorum.

Voting. The Sunshine Act requires commissioners' votes to be individually recorded in adoption of ordinances and resolutions, approving expenditures, awarding contracts and making loans or issuing bonds. Individual votes need not be recorded for actions such as adjournment, assignment of tasks to committee or officers or authorizing actions on a project previously approved in a formal matter.

Absenteeism. Failure of members to attend meetings can hinder or even stop the conduct of county business. The oath of office pledges members to discharge the duties of their office with fidelity, necessarily implying faithful attendance.

When necessary, case law permits a public official to participate in a meeting by some technological means (conference call, e.g.) when physical absence from the meeting is required.¹² Technology permitting the commissioner's participation must be arrayed in a way that the general public sees or hears the commissioner's contributions to the deliberations, and the commissioner can hear the proceedings.

Nonvoting (Abstentions). While commissioners are limited in voting on an issue where there is a conflict of interest, they may sometimes be tempted to abstain from voting on issues where they have no personal interest but instead are simply uncomfortable with taking a public position. Commissioners have a sworn duty to represent the public by deciding matters before the governing body, and while there is no statutory prohibition against withholding a vote, simple refusal to vote is a failure to meet public responsibility. Failure to vote has another consequence; under most rules of order, an abstention is the equivalent of a "no" vote because a majority of the quorum must vote affirmatively in order for a question to pass.

Motions. Often motions come at the end of a long statement with the words "I so move." It is the responsibility of the commissioner to make the motion properly and the duty of the chairman to put the motion to the board in words acceptable to the mover and seconder. Except in the case of simple, routine motions, it is recommended – but not required by law – that the chief clerk should read back the wording of the motion before the vote so that the minutes clearly reflect the action taken.

References

1. 65 Pa.C.S.A. 701.
2. 65 Pa.C.S.A. § 703.
3. Ibid.
4. 65 Pa.C.S.A. 67.101.
5. *Bensalem Twp School Dist. v. Gigliotti Corp.*, 415 A2d 123 Pa Cmwlth. 1980.
6. 16 P.S. 503; County Code, Section 503.
7. 65 Pa.C.S.A. 706; Sunshine Act, Section 6.
8. 16 P.S. 521; County Code, Section 521.
9. *Fisher v. South Williamsport Borough*, 1 Pa. Super 386, 1896.
10. *Jefferson County v. Rose Township*, 129 Atl 78, 283 Pa. 126, 1925.
11. 65 Pa.C.S.A. 706; Sunshine Act, Section 6.
12. *Babac v. Pennsylvania Milk Marketing Board*, 531 Pa. 391, 613 A. 2d 551 (1992).

IV. Legislative Powers

The County Code provides that the “Board of County Commissioners may adopt resolutions and ordinances prescribing the manner in which powers of the county shall be carried out and generally regulating the affairs of the county.”¹ Different types of actions are available to the board to be used for different purposes. The most commonly used are the ordinance, resolution, motion and regulation. The specific type of action used may be determined by a statutory mandate or by the written or unwritten policy of the governing body.

Types of Legislative Action

Ordinance. An ordinance is a local law of general or permanent nature. As a local law, the ordinance stands until amended or repealed by another ordinance. Penalties may be attached and enforced in the courts for failure to obey ordinances.

Various sections in the County Code and pertinent general legislation require adoption of an ordinance for specific actions. Procedures for adopting ordinances are more complex, involving advertising and recording in a permanent manner. While it may be tempting to bypass these procedures by adopting resolutions rather than ordinances, following ordinance procedures guarantees that the actions will be permanent and enforceable with penalties. To do anything less is to invite the courts to invalidate the actions of the board.

Resolution. A resolution is an official policy or statement of the will of the governing body. It lacks the permanent nature and enforceability of an ordinance. Resolutions are particularly useful for actions of temporary nature such as adopting budgets, governing investments, setting salary schedules and awarding contracts. These actions are not intended to be permanent and do not require penalties for enforcement.

Some confusion exists over when to use ordinances rather than resolutions. Some Code provisions specifically require an ordinance. Other laws state that either an ordinance or resolution may be used. The board, with the help of its solicitor, should consider the nature of its action and be aware that when mistakes are made, the more typical error is using a resolution when they should enact an ordinance. Ordinances generally involve legislative actions affecting citizens or their property. They are more permanent and enforceable in nature than resolutions. Consideration of the type of action being taken, in consultation with the county solicitor, should occur when determining whether the proper vehicle is an ordinance or resolution.

Motion. A motion is a method of bringing issues before the board for formal deliberation and decision. A motion is a parliamentary tool and not a legislative form. All ordinances and resolutions are submitted by motion. Motions are also used to determine the will of the board of commissioners on any issue presented to it.

Regulation. A regulation is an administrative, rather than a legislative, instrument. It is used to order the internal administrative affairs of the county. Regulations are the customary tool for exercising the administrative powers of the board of commissioners. Regulations can include the board's own rules of procedure, employee policy, regulations to govern administration of taxes or regulations for prisons or county human services activities. Regulations provide specific procedures to implement general functions.

Ordinance Adoption Procedures

Preparation. Ordinances are usually drafted by the solicitor. While chief clerks or commissioners can sometimes draft an ordinance for consideration by the board, or an ordinance can be copied from another county or from a source of model ordinances, it must be reviewed by the solicitor.

While the solicitor should prepare an ordinance, members can and should submit suggestions, either orally or in written form, to assure that the solicitor understands the intent of the board. In addition, model or sample ordinances from other counties and other entities are often reviewed by the solicitor as a source of ideas and to save time. The final draft presented for consideration should be approved in its entirety by the solicitor and should be tailored for the individual county.

The County Code does not specify procedures for introducing a measure, any time lapse between introduction and final passage, or any number of or nature of readings. Adoption procedure is generally set by policy of the board. Proposals can be introduced, advertised within the required time period, and then passed at a later meeting.

Advertising. All proposed ordinances and resolutions of a legislative character must be published in a newspaper of general circulation within the county not more than 60 and no less than 7 days prior to passage.² Publication is typically a brief summary prepared by the county solicitor. The summary must include all provisions in reasonable detail and indicate a place within the county where copies of the full text can be reviewed. A copy must be supplied to a newspaper of general circulation at the time the public notice is published. Also, if the full text is not included, an attested copy must be filed in the county law library. If substantial amendments are made to the proposed ordinance or resolution at enactment, the ordinance must be re-advertised within 10 days, setting forth a brief summary of all provisions in reasonable detail together with the summary of the amendments. The Pennsylvania Municipalities Planning Code provides additional advertising requirements for some planning related ordinances and should be consulted.³

In the case of ordinances which include maps, plans or drawings of any kind, reference may be made as to where such maps, plans or drawings are on file and may be examined.

Ordinances do not become effective until recorded in the ordinance book of the county.⁴

Codification

Every county commissioner, solicitor, and chief clerk has experienced frustration and anxiety when searching uncodified ordinance books to determine what local legislation is still effective and which version is the most current. Many ordinances and resolutions may have been passed, amended and repealed over the years, sometimes without proper reference to prior enactments.

Codification is the act of placing all ordinances of the county into one easy to read document. A set of codified ordinances provides a table of contents as well as an index. It separates ordinances by type and provides pertinent data relating to the ordinance's legislative history along with appropriate citations relating to its roots. Each subsequent new ordinance is drafted as an amendment to the set of codified ordinances, by reference.

The act of codification is an ordinance itself. Such a code is almost always prepared through a contract with a professional codification firm. Staff participation in the codification process is recommended in order to ensure that all ordinances are included and gaps properly filled. The primary responsibility for codification, however, should rest with the codification firm to mitigate legal risk in the process.

References

1. 16 P.S. 509; County Code, Section 509
2. Ibid
3. 53 P.S. 10101; Pennsylvania Municipalities Planning Code
4. 16 P.S. 509; County Code, Section 509

V. Other County Officers and Officials

While the Board of County Commissioners constitutes the chief governing body of the county, the commissioners must work with row officers and other officials to ensure that all county operations function smoothly and that the citizens of the county receive needed services.

Overall Organization of County Government

The Pennsylvania Constitution provides for nine elective county offices for those counties not reorganized under a home rule charter, including: commissioners, controllers or auditors, district attorneys, treasurers, sheriffs, registers of wills, recorders of deeds, prothonotaries, and clerks of the courts.¹ The Constitution also provides for the appointed office of public defender.

There are also elected officers provided for by statute under the County Code, which include a coroner and in some counties two jury commissioners.²

Powers and duties of all county officers are described by statute, not by the Constitution, and are found throughout the County Code and numerous other general state laws.

It is common for some judicially-related offices to be combined, meaning that two or more offices are held by one person elected to that combined position. The combinations are based on class (size) of county although in some cases special laws apply. In general, in second, second class A, third, and fourth class counties, the offices of register of wills and clerk of orphans' court are combined. In fifth class counties, prothonotary and clerk of courts are each held by one person and register of wills and clerk of orphans' court are combined. In sixth and seventh class counties, prothonotary and clerk of courts are combined and the offices of register of wills, recorder of deeds, and clerk of orphans' court are held by one person. In eighth class counties one person holds the office of prothonotary, clerk of courts, register of wills, recorder of deeds, and clerk of orphans' court. While these combinations are the norm, special laws passed over time provide for different combinations in some counties.

Row Offices

The term "row offices" is often applied to those county officials other than the board of commissioners who are elected to their positions. The basis of the term is unknown, with some suggesting it derives from the fact that these officials appear "in a row" on the ballot, while another view is that it relates to their organization in a row in the hallways of the courthouse.

Row offices are independent elected officials, but have a necessary interrelationship with the county commissioners. While the commissioners cannot directly control any of the activities within the row offices' jurisdiction, they are responsible for the row offices' budgets, personnel administration systems, and physical plant. This has several important implications for the relationship between the commissioners and row offices:

- Legislation and supporting case law require that row officers' budgets must be adequate to perform their statutory duties.
- Commissioners have the right to discuss budget requests related to statutory duties to ensure efficiency and appropriateness of requests.
- Functions that are not statutory duties are open to broader budget negotiations.
- Establishment of positions and pay ranges for employees under the row offices is the responsibility of the salary board, and row offices have the authority to hire and fire to positions so established.

County Controller. All counties of the second through fifth class have the elective office of controller. Subject to the power and duty of the county commissioners to manage and administer the fiscal affairs of the county, in counties having an elected county controller, the controller supervises the fiscal affairs including the accounts and official acts relating thereto. The controller is responsible for gathering budget information, prescribing systems of accounting, approving all bills, claims and demands and preparing their payment. The controller audits books, records and accounts of all county officers and makes financial reports at the close of the year. The controller also has custody of all title deeds to real estate owned by the county, all contracts entered into by or on behalf of the county and all books, documents and papers relating to its financial affairs. The controller's powers and duties are specifically delineated in the County Code.³ While the controller has a statutory authority to disapprove an expenditure based on its legality, it does not extend to judging the propriety of expenditures (i.e. questioning the nature of the purchase).⁴

In most counties, staff reporting to the commissioners are also involved in financial management functions paralleling or complementing those of the controller. These duties and responsibilities are described in some detail in Chapter VI of this manual.

County Auditors. The County Code provides for the election of three auditors rather than a controller in sixth, seventh, and eighth class counties. They perform a post-audit function, not an accounting function, generally reviewing the books on a monthly basis and filing an annual financial report with the Department of Community and Economic Development. Legislation provides that counties of the sixth, seventh and eighth class may establish, through referendum, the office of county controller, and upon so doing the office of auditor is abolished.⁵

County Treasurer. Duties of the county treasurer include receipt, custody and disbursement of all county monies and, as an agent of the state, issuing dog, hunting and fishing licenses.⁶ The office pays all bills on order from the commissioners and must produce vouchers or other documentation and records of transactions for the independent auditors at the end of each fiscal year.⁷ In counties having no controller, the treasurer must render, at least quarterly and more often if required, a statement of transactions.

District Attorney. The district attorney signs all bills of indictment and conducts all in-court criminal prosecution in the name of the commonwealth. Assistants, special assistants, deputy assistants, deputy assistant district attorneys, county detectives, stenographers and clerks are appointed to assist in criminal investigation and prosecution of the cases before the court. Powers and duties of the district attorney are defined in the County Code⁸ and to a greater extent in the Judicial Code. The Code requires the commonwealth to pay 65 percent of the district attorney's salary.⁹

Sheriff. The sheriff serves principally as an officer of the court. The main duties involve delivering and carrying out orders of county courts, including service of writs, processes and other judicial documents and executing sheriff's sales. They may also provide courthouse security, prisoner transport, and assistance in impaneling juries. Aside from transfer of powers from the outgoing sheriff to a successor, the County Code contains no further enumeration of the sheriff's powers and duties.¹⁰ In counties without a Prison Board, the sheriff is also responsible for jail management. While it is common for sheriffs to provide security for county-owned property and facilities, there is no statutory requirement for sheriffs to do so and some counties instead have separate security personnel reporting to the commissioners.

Evolving case law raises questions concerning the capacity of the sheriff to perform law enforcement duties in addition to serving as an officer of the court. The Pennsylvania Supreme Court has ruled that sheriffs are not considered "investigative or law enforcement officials"¹¹ and thereby do not have the explicit right to perform law enforcement duties. They have common law "arrest on sight" powers, including vehicle code citations if properly trained. In some counties, sheriffs have attempted to extend their duties to include patrol, private security, or acting as surrogates for municipal police departments; review by the county solicitor is necessary in these circumstances to assure that any activities comport with case law and to assure that any contractual relationships are established within the purview of the commissioners.

Prothonotary. The prothonotary is the clerk of the court of common pleas, and keeps records of all civil procedures before the courts, signs all writs and processes (such as suits) and files copies of all records and processes. The duties and responsibilities of the prothonotary and other court-related offices are set forth throughout the County Code and other state laws, and in particular the Judicial Code. The prothonotary takes bail in civil actions, enters judgments at the instance of plaintiffs and, upon the confession of defendants, signs all judgments and takes the acknowledgments of satisfaction of judgments or decrees entered on the records of the court. The prothonotary can also administer oaths and affirmations, and is required by state law to maintain the judgment docket. The prothonotary is the commonwealth's agent for the collection of the tax on original writs and other records received and is responsible for records including the minute book for the court of common pleas, trial and argument lists, and similar records.

An important duty of the office is receiving petitions in connection with roads and rights of way, recording the action of members of boards of view, and eminent domain proceedings.

The office obtains information and makes records and arrangements for naturalization court in conjunction with the processing of naturalization papers. Applications for passports can also be obtained at the office of the prothonotary. Recording divorce proceedings is also a duty of the office of the prothonotary.

Clerk of Courts. The office of the clerk of courts is the chief clerk and record-keeper for the criminal courts. The clerk keeps all papers filed under criminal and civil procedures of the courts and is responsible for maintaining the minute book and the records of all similar procedures of the courts.

Register of Wills. The register of wills has jurisdiction over the probate of wills and the granting of letters, both considered to be quasi-judicial powers. The register of wills decides the probate of the will of any resident of the county or of any decedent the bulk of whose estate lies within the county. The register of wills is the commonwealth's agent for the collection of the state inheritance tax, has jurisdiction over the probate of wills and fiduciary accounts, and maintains records on wills, inventory of estates, fiduciary accounts, inheritance tax records, registration of licenses (including marriage licenses) and other miscellaneous records.

Clerk of Orphans' Court. All proceedings relative to estates of incompetents and to adoptions are filed with the clerk of orphans' court. Adoption records are the only records in the office which are sealed and which may not be seen by the public. The office is not independently elected in any county, and instead is performed in most circumstances by the register of wills.

Recorder of Deeds. The recorder of deeds is mainly responsible for the preservation of records relating to real property in the county. The recorder of deeds is required to record and affix a seal on all deeds executed, mortgages, condominium declarations, subdivision plans, and other records of property ownership. The office also records oaths and commissions of all county officers, notaries public and district justices. Fees involved must be paid to the State Treasurer or to the county, depending upon who is designated to receive them.

The recorder makes records of military discharges, agreements of sale, property options, leases, rights-of-way and easement agreements. The county recorder also keeps a permanent record of all property deeds. The records maintained are among the most-accessed in the courthouse, with lawyers, realtors and others seeking information about property sales, mineral rights, and other matters.

Another function of the office is recording plot plans for developments. Highway maps of road construction, and changes and secured transactions attached to real estate, are all kept in the office of the recorder of deeds. The recorder also collects both the state and local taxes on real estate transfers.

Coroner. The coroner investigates deaths of a suspicious or violent nature and is assisted by a coroner jury of inquest when called to determine the cause of death. When inquests are warranted, the coroner is empowered to perform autopsies (performed by a contracted medical examiner when the coroner is not credentialed), subpoena witnesses, administer oaths and compel attendance at an inquest upon threat of imprisonment. The coroner is required to issue a certificate of cause of death when it occurs without medical attention or attendance.

Jury Commissioners. The County Code provides for the election of two jury commissioners. Sitting in concert with the president judge as the jury commission, their duties are to provide a jury panel for the ensuing court year. The president judge, however, is given discretion under the Judicial Code to determine the manner of empaneling juries and consequently in recent years most have developed systems relying on appointed staff to empanel juries and administer jury selection and administration. In those circumstances the office had become obsolete and so under most home rule charters and under several special laws, the office was abolished in a number of counties. Finally, with the passage of Act 4 of 2013, the authority was granted for the county commissioners in any county to abolish the office and most counties have done so.

Chief Clerk

Most of the official business that requires the commissioners' attention is channeled through the office of the chief clerk. While the statutory responsibility of the chief clerk is nominally delineated as managing the meetings and maintaining the records of the commissioners¹², in most counties the clerk serves as the day-to-day administrative staff for the commissioners.

Chief clerks are appointed by the county commissioners. They are appointed for indefinite terms and serve at the pleasure of the Board of Commissioners. They need not be reappointed at each organization meeting.

Significant differences in the office exist from county to county based on local tradition and organizational prerogative. While the County Code does not delineate powers or duties of the chief clerk in any detail, in most cases the chief clerk occupies a position of trust and responsibility, with powers and duties delegated by the commissioners. By tradition and practice, in most counties it has evolved to assume day-to-day functions and administrative duties within the county, sometimes acquiring the title of chief clerk/county administrator or some variant on that title. Each county will take its own approach to the duties of the chief clerk outside of those mandated by statute.

The responsibilities of the chief clerk generally include administrative duties such as developing the annual budget, official keeper of the commissioners' proceedings and serving as the chief purchasing officer. In many smaller counties, the chief clerk also serves as the director of elections.

Informal factors also create wide differences in the status of chief clerks even within the same class of county. Aside from statutory provisions, the status of the chief clerk is affected by preferences of the Board of Commissioners, local legislation and practice, expectations of the general public and administrative actions by national, state and county agencies. Local custom, attitudes and political practice are a principal source for the variety in the role of the chief clerks in county operations.

Solicitor

The County Code authorizes the commissioners to obtain legal counsel as required. The county commissioners at minimum appoint an attorney as county solicitor to represent them in legal matters, and they may appoint one or more assistant county solicitors.¹³ The solicitor can be a member of a law firm on retainer, while some counties have opted to hire a full-time solicitor who is directly employed by the county. Compensation arrangements are whatever the parties agree upon.

There also may be times when an attorney with specific skills or expertise is needed, and so special counsel may be acquired in addition to that available through the designated county solicitor. An example might be medical malpractice, complicated assessment appeals, issuing bonds or handling tax claims.

The solicitor should have some demonstrated experience in municipal law and related matters. The relationship between the board and the solicitor is protected by attorney/client privilege, although the Open Records Law and other statutes govern public access to disposition of legal matters. Generally, counties seek advice of the solicitor in conjunction with deliberations on official action.

County Government and the Relationship with the Courts

The county is the base upon which the unified judicial system of the commonwealth is built. While in some cases two smaller counties are combined in the same judicial district, each county has its separate courts, its own courthouse, and its own set of court officials. The county is responsible for supporting the local court system, including staffing and housing the court of common pleas and the magisterial district judges.

Relationship with the Judges. The judges, who are elected, along with the appointed court administrator and some chief deputies and the magisterial district judges, are commonwealth officials whose salaries are paid by the commonwealth. The remainder of the court staff are county employees, subject to supervision by the president judge.

The county commissioners provide chambers for the judges, either in the courthouse or at another location agreeable to the judge and the county commissioners, and comparable facilities in the community for the magisterial district judges. The county also finances the cost of providing staffing, supplies and overhead costs of the courts. The county commissioners provide facilities and funds for supplying and maintaining a law library for the use of the court, county officials, members of the county bar and the general public.

Under the jurisdiction of the court are the adult and juvenile probation offices and the domestic relations office. The president judge has the authority to select and terminate employees of the court system. The judge may recommend salaries for the court employees but approval of all new positions and pay classifications must go through the salary board. All purchases must be in accordance with the county purchasing process. All budgets for these offices are approved by the commissioners during the county budget process, although there is a wealth of case law that appropriations must be sufficient to allow the courts to adequately administer justice.

Public Defender. The county commissioners are required by law to fund the office of public defender to represent individuals who are unable to afford a private attorney.

Intermediate Punishment. Acts 193 and 201 of 1991 are the Intermediate Punishment (IP) acts. Under these acts, primarily Act 193, counties are authorized to establish and utilize a range of sentencing options that fall outside the traditional sanctions of incarceration and probation. These sanctions can range from electronic monitoring to house arrest to community service to inpatient drug and alcohol treatment. The intent of the acts is to allow the local criminal justice system, county commissioners, judges, prosecutors and treatment providers to develop policies governing the appropriate use of sanctions outside the traditional jail setting that are consistent with community standards and public safety concerns.

For example, Acts 193 and 201 allow sentencing judges to deviate from the mandatory requirements for driving under the influence (DUI) offenders by sentencing DUI offenders to inpatient drug and alcohol treatment programs or a combination of house arrest or electronic monitoring combined with drug and alcohol treatment. These sentencing options can have a dramatic effect on jail populations by moving to a more appropriate sanction.

IP programs may be run out of one of three different county offices or a combination of these. Most typically, the IP programs are administered by the probation department. Second most frequent is the county correctional facility. Sometimes the programs are run from the county Single Count Authority (SCA) or drug and alcohol program.

Probation. The county adult probation and parole office is responsible for supervision of Accelerated Rehabilitative Dispositions (ARD), probationers, and parolees serving county sentences. County probation officers also prepare pre-sentence investigations and pre-parole reports, and in some counties administer the DUI Intervention Program.

Adult probation and parole has two sources of funding to offset the cost to the county. The Pennsylvania Board of Probation and Parole is an independent state agency under the jurisdiction of the Governor. Under Act 501 of 1965 the board administers a grant-in-aid program for the improvement of county adult probation services, the establishment of a state probation personnel and program standards, the provision of training for county adult probation personnel and the

collection, compilation and publication of county adult probation and parole statistical information. Funding is awarded annually to the 65 participating counties to help offset the costs of adult probation and parole salaries. State grants-in-aid presently pay about 36 percent of eligible personnel salary costs.

The second source of funding is Act 35 of 1991, which establishes the Costs of Offender Supervision Programs, requiring counties to collect a \$25 per month supervision fee from county parolees. Counties submit 50 percent of collections of these supervision fees to the Commonwealth Board of Probation and Parole, and it has been the Board's policy to return these monies to the counties on a dollar-for-dollar basis. The fee is to be used to offset the costs of adult probation and parole salaries, benefits and operational expenses. Counties have been successful in the collection of the supervision fees, but the state has used this to offset their grant-in-aid dollars by decreasing the state grant-in-aid in proportion to the counties' collection of supervision fees.

The Act specifies that the remaining 50 percent of the supervision fees collected are to be placed in a separate account and used by the court for the purpose of improving the county adult probation office. In some counties this has led to conflict between the commissioners and the judge, when the judge attempts to use the account to purchase equipment, award bonuses, etc., without the commissioners' approval or salary board action, and outside the budget process. Recently, the Commonwealth Court has ruled that the judge is obligated in these circumstances to follow the provisions and requirements of the County Code.¹⁴

Domestic Relations. Most child support services required under the federal Child Support Enforcement Act are provided by the County Domestic Relations Section (DRS), under the Court of Common Pleas in each of the 67 counties. The DRSs provide the direct Title IV-D services under a cooperative agreement with the Department of Public Welfare (DPW).

The Child Support Enforcement Act is actually a combination of programs undertaken on the federal, state and local levels. While intended to serve all children in obtaining support from absent parents, a major thrust of the Act is directed to cases in which a wage earner is absent from the home, and the children are recipients of public welfare, in the category of Aid to Families with Dependent Children (AFDC) by grants composed of both federal and state funds. Each applicant for or recipient of AFDC is required, as a condition of eligibility for AFDC, to make an assignment of support right to the state. The assignment, which authorizes the court to pay support order proceeds directly to the commonwealth, is referred to the appropriate Domestic Relations Section in which child support will be sought or is being paid.

Currently funding for the Domestic Relations Offices comes from two sources, federal reimbursements and incentives. First, Title IV-D provides 66 percent federal reimbursement of the costs incurred by the county Domestic Relations sections. Second, counties that enforce and collect child support on behalf of the state receive an incentive payment for cases involving an AFDC recipient. The incentive payment provision is a sliding scale percent of the amount of the AFDC collection.

Cooperative Agreements executed by the IV-D agency and the county provide for both the federal reimbursement and any incentive payments which are earmarked for use by the Domestic Relations Section. These funds are required to go into a separate IV-D fund to be used by the court for DRS functions.

Each DRS provides a full range of services to the AFDC families and the non-AFDC cases, including case initiation, case management, expedited hearing process, collections and payment distribution, check processing and distribution, state reporting, location, paternity establishment, order establishment, modification of orders, medical support, income attachments, enforcement and interstate and intrastate case processing.

Juvenile Probation. This topic is covered more fully in the subchapter on Juvenile Justice Services.

Appointed County Officers

The county commissioners are required by law to appoint a chief county assessor¹⁵ and emergency management coordinator.¹⁶ Additionally, the commissioners are authorized by statute to appoint other county personnel such as county engineer¹⁷, various administrators of the human services programs of the county¹⁸, and a director of veteran affairs¹⁹. The commissioners must also appoint a sealer of weights and measures if the county has chosen to retain that function.²⁰ Generally, the commissioners have the broad authority to structure all other agencies that fall under their administrative control.

References

1. Pennsylvania Constitution, Article IX, Section 4
2. 16 P.S. 401; County Code, Section 401
3. 16 P.S. 1702 *et seq.*; County Code, Section 1702 *et seq.*
4. 16 P.S. 1702; County Code, Section 702
5. 16.P.S. 605; County Code, Section 605
6. 16 P.S. 1760; County Code, Section 1760
7. 16 P.S. 1751; County Code, Section 1751
8. 16 P.S. 1402 *et seq.*; County Code, Section 1402 *et seq.*
9. 16 P.S. 1401; County Code, Section 1401
10. 16 P.S. 1201; County Code, Section 1201
11. *Kopko v. Miller*; 892 A.2d 766 (Pa. 2006)
12. 16 P.S. 521; County Code, Section 521
13. 16 P.S. 904; County Code, Section 904
14. *The Board of Commissioners of Bedford County, et al. v. President Judge Thomas S. Ling*, Court of Common Pleas of Bedford County (Commonwealth Court, May 5, 2014)
15. 53 Pa.C.S.A. § 8831
16. 35 Pa.C.S.A. § 7502
17. 16 P.S. 1001; County Code, Section 1001
18. 16 P.S. 2101; County Code, Section 2101
19. 16 P.S. 1923; County Code, Section 1923
20. 3 Pa.C.S.A. § 4122

VI. Budget and Finance

The county commissioners are responsible for the county's budget and finances. To have the necessary understanding of the financial condition of the county, a commissioner must know the general framework for the financial system in which the county operates. Review of reports and financial statements, coupled with judicious questioning, are necessary to proper exercise of this responsibility.

Financial Management

The county commissioners hold primary responsibility for monitoring and guiding the fiscal management of the county government. The commissioners are expected to establish the budget, maintain accurate financial records, and manage the county's funds. The commissioners need to be aware at all times of current financial conditions, including pending bills, upcoming expenditures, cash flow projections, and new expenditures that may not have been included in the budget.

Commissioners should consider the support they require in order to be sufficiently attentive to these fiscal matters. Some counties may establish a finance office to assist the commissioners in gathering the financial data they require, provide support in record management, and monitor organization of expenditures.

Development and administration of a sound budget is a key requirement but in the course of a typical year, changing responsibilities, variable revenues, and changing financial circumstances mean the budget is a working document and guideline, subject to modification to meet those challenges. A budget document with expanded detail, prepared in a format consistent with generally accepted accounting principles, gives clear expectations for departments and program administrators. A budget summary showing budget trends and highlighted for public consumption is also useful.

Financial Records

The base for any budget preparation or analysis is the financial records, their structure, availability and detail. The controller is responsible for establishing and maintaining the financial records of the county. In counties where there is no controller, responsibility rests with the chief clerk. Where there is a controller, the chief clerk must closely cooperate with the controller to assure that the records are structured to reflect all financial transactions properly and accurately.

To meet the County Code requirements as well as current accounting and auditing practices, bookkeeping systems and financial controls must be established to enable reporting in accordance with generally accepted accounting principles of all the fiscal operations of the county, embracing as many accounts, under appropriate titles, as may be necessary to meet Federal and State reporting requirements.¹ Commissioners, as well as any staff who support the fiscal functions of the county, should be familiar with the Governmental Accounting Standards Board (GASB) and have a working knowledge of the standards established by that organization. Recommended fiscal controls, formatting for reports, and accounting systems should be based on the generally accepted accounting principles as well as GASB standards. GASB standards cover current transactions and increasingly include standards for measuring and reporting future liabilities of the county, such as pensions, debt service, accrued liabilities and carry-over benefits for county employees.

As a financial organization grows in complexity, a balance must be struck between specificity and management. All departments must understand how the accounting system works and what their role is in its operation. The system must accurately record transactions and report these transactions to decision makers in a timely and easily understood manner. Monthly status reports of the budget are a minimum requirement. More may be needed, especially at budget time or during tight financial times. Allied reports on such topics as cash management, tax collections, and monies owed to and by state and federal agencies are useful.

Transactions should automatically report against the established budget. Separate funds, typically known as restricted receipt accounts, must be created where required to segregate dedicated-use monies such as liquid fuels, nursing home allocations and the various human services programs, and projects funded by the proceeds from debt.

An additional consideration in regard to the maintenance of financial records is the increasing shift toward electronic means of fund transfer and form submission. While the County Code traditionally had required all financial forms on paper (vouchers, receipts, checks), the Code has been revised to recognize the trend of completion and submission of a greater number of forms, reports, and fund transactions electronically. While requirements for physical signatures remain in some circumstances, the process as a whole has shifted toward the use of facsimile signatures and electronic transactions. This applies most frequently to monetary transactions; fund transfers are increasingly occurring through Electronic Fund Transfer (EFT) systems. The commissioners, in cooperation with the county treasurer and controller, should develop security and fiscal controls for these electronic accounting and financial systems, specifically who has access to what accounts and functions within the system.

Annual Budget Preparation

A budget is a yearly plan that balances revenues and expenditures which the county expects to receive in the year. It is more than a financial document — in its entirety, the budget process should be viewed as an exercise in examining the programmatic priorities for the county in the coming year. It establishes the programs which are to be implemented during the year and at what level and provides the commissioners with the administrative and legislative control over county operations.

Since the budget is so important, it is therefore vital that good planning precede the budget. The budget must be viewed as a comprehensive plan of governmental operations and depends upon accurate figures, sound estimates, and well-understood priorities. The budget is an excellent tool to achieve county goals, but it must be vigorously administered during the year. And while budgeting provides commissioners with the opportunity to identify what needs to be funded for the year and how to utilize the county's funds to pay for those needs, if the needs outweigh the funds available and the budget cannot be further trimmed, it triggers the commissioners' examination of tax revenues and other means to fill budgetary needs.

Commissioners typically delegate much of their preliminary budgeting development to the chief clerk or, in larger counties, finance director. In counties with a controller, the Code requires the controller to prepare a comparative statement of revenues and expenditures for the current and the immediately preceding fiscal years, in such form and detail as the commissioners direct. The preparation of the proposed budget must begin at least 90 days prior to adoption.² The chief clerk should have a budget calendar prepared which delineates when each stage of the budget preparation is to be reached, including placing the proposed budget on the table for a 20-day public inspection and culminating in the adoption of the final budget and tax ordinance no later than December 31.³ If significant material increases, constituting ten percent of the budget or 25 percent of any function, are anticipated to be made to the proposed budget after the public display and inspection period has passed, the revised proposal must be placed on the table for an additional ten day inspection period before final adoption.

In most counties, budget preparation forms are distributed to each row office and department which present the current year's budget figures and current status for all expenditures and revenue items for which the particular department head is responsible. The form requests proposed budget figures for the coming year, in the desired line-item format and, for follow-up purposes, accompanied by a notation of the individual who prepared each revenue and expenditure item. The forms are often returned to the commissioner's finance office, controller, or to the chief clerk. When all initial figures are in, budget planners will have a good general sense of next year's finances. The information is typically requested in late summer or early fall, and usually constitutes the beginning of the 90 day budget clock.

The county must work closely with row offices in budget preparation and administration. Although the commissioners are responsible for adoption of the budget (and taxes), they are obligated to fund each row office to a level that permits each to properly discharge its duties. Note that this does not mean the commissioners are obligated to fund anything the row office requests. First, the commissioners have the ability to negotiate with the row officer to determine more cost effective approaches to providing services. Second, the funding obligation extends to duties but not to powers; while a row office may have the power to undertake a particular function or service, the county's funding obligation exists only if that power or service can be termed a duty.

Budget Monitoring and Amendments

Each county should have in place a system of controls to enable the commissioners to monitor fiscal performance against budget, to assure that objectives are being met and to provide an opportunity to respond to changing service demands or fiscal events. Reports are typically provided by the controller, the chief clerk, the department of administration, and agency heads. The reports should show how each budget category is doing in comparison to the adopted budget. Commissioners must understand both the big picture of the budget so that reports on individual items or programs can be seen in context, as well as the detail of program operations so that financial adjustments, or adjustments in expectations, can be made.

The budget document itself, and particularly its accompanying tax ordinance, may be opened in the year following any municipal election (municipal elections fall in odd numbered years). Therefore, newly elected commissioners have the right, as well as a responsibility, to review and as necessary re-open, the budget and the tax ordinance when they take office. While the prior board still had the requirement to adopt the budget by December 31, the budget reopener gives the new board the opportunity to modify and pass a budget reflecting their priorities for their first year in office.

If reopened, the When a budget or tax ordinance is opened under these circumstances, a new proposed budget or ordinance must be advertised and placed out for public inspection for at least ten days, and must be adopted before February 15.⁴

It is important to note as well that the budget is a working document and, based on changes in the county's financial condition, can be revised during the year. Supplemental appropriations may be made, or transfers can be made within accounts, by resolution in order to reflect changes in funding expectations, shifts in financial priorities, or emergencies. Many times a review is done following adoption of the commonwealth budget, which has a different fiscal year and which has a significant impact on county finances. Counties may need to account for changes in state funding for human services programs or other initiatives funded in part by the state, and adjust the budget accordingly.

The tax ordinance passed in conjunction with the budget is, by contrast, set for the duration of the budgetary year and cannot be reopened except for the small window in the year following a municipal election year.

Capital Budgeting

If sound financial management is principally aimed at securing the most use from available or projected financial, then the capital improvements program and related capital budget are the primary elements of sound long-range financial planning.

Part of an overall budget is for items called "capital outlays." In general terms, a capital improvement is a major facility or project involving a nonrecurring cost which usually requires large capital outlays and brings returns over a long period of time. The county should determine, in consultation with its financial advisors or auditing firm, the types and sizes of projects that it intends to define as capital improvements. Similarly, the county should determine the number of years to be included in the capital improvement budget; five to six years is typical.

Programming a capital budget involves deciding what the county needs most in coming years and devising a schedule to pay for these facilities within the bounds of the county's ability to finance them. Nonrecurring, non-capital items such as major engineering studies may also be included for planning purposes.

Advantages of the capital improvements program include:

- Efficiently implementing the county's goals, objectives and comprehensive plan
- Coordinating plans and policies to avoid overlapping projects
- Maintaining financial stability through minimizing fluctuations in the tax rate

- Lengthening available lead time to avoid last minute delays caused by technical difficulties and
- scheduling of resources
- Increasing the likelihood of an improved credit rating and interest savings
- Enhancing opportunities for state and federal grants

Common elements involved in developing the capital improvements program include determining capital costs, translating capital costs to annual costs, comparing costs with available resources, determining priorities and developing a financial schedule. The two major elements of annual costs are annual debt service or borrowing costs (principal and interest) and costs of operating the facility.

Financing these costs may be accomplished through a number of strategies, including payment in advance from deposits in a special fund or reserve, a pay as you go approach through annual appropriation, the sale of general obligation or revenue bonds or notes or short term loans, donations, grants from state or federal sources, or any combination.

Each year, the capital improvements program should be updated by omitting the first year and adding on a new ending year, with adjustments made based on project completion, new priorities, or changes in financial position.

Capital Reserve Fund

The county commissioners may, annually, appropriate moneys from the general funds, not to exceed ten per centum of the county operating budget, to be paid into the capital reserve fund.⁵ These allocations are separate from any direct capital outlay expenditures in the general fund budget. Establishing and regularly contributing to a capital reserve fund can take the wide fiscal swings out of capital budgeting. Other allocations to the funds might be borrowed or they might be set aside over a number of years from budget surpluses until the reserve fund is strong enough to be used in this manner. Moneys received from the sale, lease or other disposition of any county property may also be paid into the Capital Reserve Fund. Maintaining a commitment to annual appropriations to capital reserve requires great strength of purpose, particularly to resist the temptation not to make a yearly allocation during tight budget times.

Operating Reserve Fund

The County Code also permits the creation of a separate operating reserve fund.⁶ The reserve can be a useful tool for counties anticipating future growth of county operations. The commissioners may annually make appropriations from the general fund but at no time shall the balance in the fund exceed an amount greater than ten per centum of the county's general fund revenue in the current fiscal year (note the difference in limits between capital and operating reserves; the former is the amount that can be budgeted annually, while the latter is the balance itself). The commissioners may make appropriations from the operating reserve fund at any time, by resolution, but only for the following purposes:

- To meet emergencies involving the health safety or welfare of the residents of the county;
- To counterbalance potential budget deficits resulting from shortfalls in anticipated revenues or program receipts from whatever source; and
- To provide for anticipated operating expenditures related either to the planned growth of existing projects or programs or to the establishment of new projects or programs if for each project or program appropriations have been made and allocated to a separate restricted account established within the operating reserve fund.

Borrowing

Counties may need to borrow funds, for one of several reasons: For short-term purposes to resolve cash flow problems, for short-term small capital projects, or for long-term needs for a large project. Borrowing is governed by the Local Government Unit Debt Act.⁷

Tax Revenue Anticipation Notes. Because counties do not bill for property taxes until after the start of the fiscal year, there is often a cash flow problem until tax receipts begin to come in. The situation is commonly addressed with a Tax Revenue Anticipation Note (TRAN), a short-term borrowing for which tax revenues are pledged to repay the loan. The repayment must occur during the calendar year.

Historically, local governments would borrow money at a low rate and reinvest it at a higher rate during the calendar year. This arrangement, known as arbitrage, would provide cash flow protection and often made enough interest so that the process was a net source revenue. Changes in IRS regulations have removed any arbitrage advantage and consequently, TRANs are used only to tide the county over until taxpayers begin paying their real estate taxes.

Small Borrowing for Capital Purposes. Borrowing in this category is typically for smaller purchases or projects, limited to \$125,000 aggregate debt at any one time. Small borrowing can be undertaken by resolution rather than ordinance, and must have a term of no more than five years.

Long-Term Borrowing. Long-term borrowing may be used when a county wants to develop a large project which will provide benefits for an extended number of years, and which is not affordable from reserves or general fund. It can also be used as a strategy to structure payment of large purchases over the course of the purchase's life. Funding is derived either from sale of bonds or execution of a note with a lending institution. In much the same way and for the same reason as described for TRANs, long-term borrowing has become much more sophisticated and remains complicated. All borrowing must be submitted to DCED under the provision of the Local Debt Act for review, with large transactions requiring DCED approval. Forms and model debt statements are available from DCED.

In most circumstances, investment bankers purchase the debt from the county and then resell it to their customers. The price which they will pay depends upon factors outside the control of the county, such as IRS regulations, the interest rate climate, investing trends in the county, and the county bond rating. Factors affecting the price which are in the county's control include the reputation of the county for living within its means, amount and structure of outstanding debt, the caliber of the county management team, and the quality of the county's accounting practices. All of these factors contribute to the county's bond rating, and counties often take measures to improve their appearance to rating agencies regardless of pending debt needs.

A county may choose the investment banker in two different ways. The county may, through negotiations or interviews, simply hire an investment banker to sell the bonds. Alternately, the county may hire a financial advisor who then prepares and asks for bids from various investment bankers. In the first case, the negotiated sale can be put on the street whenever the county feels that the timing is right. In the second case, the county usually receives the bid which is most favorable to the county on a particular day, but the day may not be the best one from the perspective of the bond market.

Skilled financial staff and advisors are the key to making sound decisions when borrowing, regardless of the manner in which the bonds are sold.

Investing Idle Funds

The County Code explicitly provides that the board of county commissioners establishes and implements an investment plan for all county funds.⁸ The chief clerk or financial officer normally recommends the plan and is responsible for its day-to-day implementation, although some counties augment their advice by creating an investment advisory committee that may include the treasurer, controller, and others.

The plan includes determination of investment allocations for general fund and most restricted or segregated funds. In most cases, the Code places limitations on the types of investments available. Given the public nature of the funds, the limitations focus on safety and security and include insured or collateralized investments to reduce or eliminate risk.

Other funds have a less public character and so can be invested more closely in the style of private fund counterparts; for example, funds in the county pension program are permitted a broad asset mix including securities and other more sophisticated vehicles. A primary difference is that these funds are being invested on behalf of the pension beneficiaries rather than the general public.

The county's investment plan should account for the county's normal spending cycle for both operating expenses and capital purchases as well as the availability of funds based on current cash flow. The Code requires that all non-pension deposits be collateralized with U.S. Government securities or some other mutually agreeable collateral. The large cash balances which counties often invest means that the loss of interest earnings from poor investments can be substantial and the loss of principal from improperly backed investments can be devastating.

The Code requires that treasurers be allowed to contribute to the process of selecting fund depositories,⁹ usually interpreted to mean that their role entails the mechanics of handling investments once the investment decision has been made by the commissioners or their designee. A formal process should be established in advance with the treasurer's office so that investments may be made rapidly with no loss of interest. The county's books should reflect the status of investments at any point in time. The county should resist the temptations of overinvesting so that funds are not available to pay ordinary bills when due.

Regular Fiscal and Financial Review

Citizens often will notice taxes increases, unfunded projects, or a bad bond rating long before they notice good services, making it vital that commissioners have a regular and current understanding of the county's financial condition.

Commissioners should utilize and understand the data available through the county's finance and accounting departments to keep abreast of the county's current financial situation throughout the course of the year. Identifying the county's financial needs and opportunities for revenue expansion, or need for remedial action, may be an easier task when clear, current information is made available. Importantly, the Code requires that the county's books be kept in a manner that permits reporting under generally accepted accounting standards, which require at least a accrual-based or modified accrual-based accounting system. Sound accounting systems and financial practices will also display other metrics, including caseloads and other data, which can be predictive of the need for financial corrections.

Budget Reports. The threshold question in fiscal management and reporting is how the actual revenue stream and actual expenditure levels are comparing against the budget. The raw numbers for revenues and expenditures are not enough; at minimum financial reports should include the percentage of each budget allocation which has been spent in relation to the percentage of the year which has elapsed. Preferably, detailed reports developed under accrual based accounting, accompanied by program performance data, give the clearest picture of fiscal condition. In particular, financial and program staff should point out areas where they see a potential for budget variance (over or under) as well as revenue categories which will vary from expectations, to enable commissioners to undertake contingency measures on a timely basis, or take advantage of improved finances.

Staff play a critical role in the financial reports because the scope of the budget and the complexity of the funding streams require that staff point out areas to review, decisions to be made, and problems which have been encountered. Conversely, commissioners must give a clear direction so that staff can anticipate areas of concern. This includes not only staff under the direct supervision of the commissioners, but also those from the various row offices.

Cash Flow. The budget may have adequate revenues, and expenditures may be less than expected, but the county may still have a cash flow problem. Reports analyzing cash flow are vital for commissioners since revenues are not received in a steady flow and expenditures are not the same for each month of the year. Staff should report items such as cash on hand, but they also need to give the commissioners their insight as to how cash flow compares to prior years, how history predicts when large expenditures need to be made, and how cash flow can be positively affected by delaying purchases or by modification in the revenue structure.

Fund Balance. Tied into the budget analysis and cash flow analysis is the fund balance. The fund balance is not simply what the county has in the bank since there are always outstanding bills as liabilities. Fund balances must provide the commissioners with a true understanding of the county's financial situation at any given point in time. With this information, intelligent decisions can be made regarding timing of projects and when capital acquisitions should be made. Evaluations of fund balances should also provide historical data on balances for the same period during previous years for comparison purposes.

Audits

Counties are required to perform a variety of audits of their accounting systems throughout the year. The primary requirement is a federal single audit, which parallels the audit requirements established in the County Code and under state programs. Generally, counties will employ a certified public accounting firm to complete the federal single audit as well as separate audits of special funds. The content of the audit as well as the timeline in which it must be completed is established by the County Code as well as rules governing participation in programs administered from the federal and state level. The commissioners assume responsibility for selecting the auditing firm utilized for this process.

The county controller, or in most fifth through eighth class counties the elected auditors, also performs audits of the county's finances, but these do not meet the arms-length audit requirements established by the federal and state programs. These audits are often used in reporting financial conditions to DCED.

References

1. 16 P.S. 1705; County Code, Section 1705
2. 16 P.S. 1781; County Code, Section 1781
3. 16 P.S. 1782; County Code, Section 1782
4. 16 P.S. 1782.1; County Code, Section 1782.1
5. 16 P.S. 1784.2; County Code, Section 1784.2
6. 16 P.S. 1784.3; County Code, Section 1784.3
7. 53 Pa.C.S.A. 8001 et seq.
8. 16 P.S. 1706; County Code, Section 1706
9. *Ibid.*

VII. Risk Management and Insurance Considerations

County commissioners take risks every day. Any action, or failure to take action, by commissioners or any other public official, county employee or even volunteer can leave the county exposed to potentially catastrophic losses. Losses also occur by natural disaster or civil action of a third party.

To effectively manage the county, and to securely protect the county, five steps must be accomplished:

1. The county's exposures must be identified (risk identification).
2. The county must determine the risks of the identified exposures (risk evaluation).
3. The county must decide how to finance the cost of paying for claims which arise from the exposures (risk financing).
4. The county must purchase insurance or establish a financing mechanism to pay the cost associated with claims (implementation).
5. The county must oversee the results of the decision-making process and ensure that methods are effective (program monitoring).

The process of accomplishing, monitoring and managing these five tasks is called risk management. It is often called "structured common sense." It doesn't necessarily require complex theories or complicated programs. It does not require that the county spend huge amounts of money. It does require thinking about potential losses as an integral part of the operation of county government.

Risk management begins with the realization that the county will eventually suffer a loss of some kind. Recognizing this, counties can take appropriate measures to anticipate losses and to minimize their adverse effects on the county.

Insurance in General

The term risk management often is interpreted to mean acquiring insurance, which is the traditional way counties manage risks. In reality, insurance is just one part of risk management. Insurance provides financial protection against accidental loss. It cannot keep losses from happening. In contrast, by identifying and managing risks, counties can prevent unexpected losses. Insurance is important, but it is just one of several techniques for dealing with losses. While it is the most common method, it is also quite frequently the most expensive.

When insurance is readily available and relatively affordable during a soft market, counties may tend to expect the market to remain that way. In fact, it has been suggested that the easy purchase of insurance undermines sound risk management practices. In addition, over-dependence on insurance can leave a county dangerously unprotected during a hard market when insurance coverage tends to be less affordable and less available.

The Benefits of Risk Management

Properly managing risk allows the county to:

- Make more effective use of public funds — instead of paying for medical claims, liability suits and property damage, counties can put their dollars toward other programs.
- Decrease overall costs and increase productivity — preventing workplace accidents and injuries will reduce workers' compensation costs and medical expenses, as well as other costs related to lost work days, replacement workers and reorganization.
- Reduce losses to the county resulting from natural disasters, lawsuits and other unexpected occurrences.

- Identify exposures the county may prefer to cover through means other than insurance — or avoid completely.
- Make the county more attractive to insurance companies, which may lead to greater insurance availability and lower premiums.
- Reduce overall cost-of-risk so the county can reduce the necessary budget for particular activities or free funds for other services.
- Reduce uncertainties associated with future projects — the county may not consider proposed services or activities to be feasible unless better ways to prevent and pay for accidental losses associated with the proposed activities are identified.

Appointing a Risk Manager

Ultimately the commissioners are responsible for the risk management of the county, in the same way that they are responsible for the financial management of the county.¹ Ideally the commissioners should appoint one person to coordinate all risk management functions. Larger counties may be able to hire a full-time risk manager, but doing so might not be feasible or necessary in a smaller county. Generally, someone with a finance, safety or insurance background is the best candidate to handle risks on a part-time basis.

In addition, the risk manager should ideally be someone in a supervisory position who has direct access to, and support from, the commissioners, and have some authority to make recommendations or to effect changes. Counties that are not able to hire full-time risk managers should consider assigning the part-time responsibilities to the chief clerk, finance director, a department head, or personnel director.

County Safety Committee

Act 44 of 1993 amended the Pennsylvania Workers' Compensation Law, and includes a provision which requires all Pennsylvania employers to establish a safety committee for the purpose of hazard detection and accident prevention.²

Counties should also use the safety committee to examine issues relating to claims and coverage for other types of county insurance. Some of the duties of the committee include:

- Creating a safety policy and safety rules
- Developing an inspection program
- Designing a safety orientation program for new employees
- Creating an accident and claims investigation program
- Reporting safety measures that necessitate major funding
- Investigating fatalities, serious injuries, major accidents
- Reviewing all safety related incidents
- Recommending safety programs or training activities to the commissioners

Governmental Immunity

The scope of a county's liability, especially law enforcement and public officials liability, has expanded greatly in recent years as courts increasingly hold governments responsible for negligent and wrongful acts, personal injuries, property damage and civil rights violations.

The Pennsylvania Political Subdivision Tort Claims Act³ provides limited governmental liability and limits liability to counties for actions brought under the jurisdiction of state courts. The limit of damages from the same action is set at a maximum of \$500,000 plus delay damages (interest). The act states that no political subdivision shall be liable for any damages on account of any injury to a person or property caused by any act or omission of the political subdivision or an employee except for these specific categories of action:

1. Operation of a motor vehicle
2. Care, custody or control of personal property
3. Real property in the care, custody or control of the political subdivision
4. Dangerous condition of trees, traffic controls and street lighting
5. Dangerous condition of utility service facilities
6. Dangerous condition of streets
7. Dangerous condition of sidewalks
8. Care, custody or control of animals

The act also requires counties to defend and pay damage awards against officials and employees who are acting within the scope of their duties.

However, there is not a similarly broad immunity for actions filed in federal court, and this is where increasing numbers of lawsuits against counties are filed. Most allege some type of violation of federal civil rights (section 1983 claims), and there is no cap on awards. Some examples of federal lawsuits are:

- Inmate lawsuits arising out of suicides, strip searches, conditions of confinement, inadequate medical care, failure to protect from assaults, false imprisonment and lack of access to the courts (inadequate law libraries).
- Violation of due process rights of parents when children are taken into custody by Children and Youth workers.
- Wrongful termination and age, sex, race and disability discrimination in employment.
- Violation of the Health Insurance Portability and Accountability Act (HIPAA).
- Risk Identification

County government exposures can be grouped into five broad categories:

Physical Property. This includes real property such as buildings and grounds and personal property such as vehicles, tools, office equipment and furniture, public records and cash.

Loss of Income. Counties receive income through taxes, fees, charges for services, licenses, rents, etc. Any event that causes a temporary or permanent disruption in income would create a financial loss.

Contingent Expense. Some losses force counties to incur additional expenses to function normally or to maintain services. For example, if a county nursing home had to be evacuated due to a fire, the county would not only have to pay to repair the nursing home, but also might incur expenses to clean up debris, relocate and house residents of the home.

Human Resources. Job-related illnesses and injuries can cause losses stemming not only from medical and hospital expenses, but also from costs of replacing the worker temporarily or permanently and from decreased productivity while the worker is gone or until a new employee is trained.

Legal Liability. Every service that the county provides and every action it takes exposes the county to losses from potential lawsuits, not only judgments and negotiated settlements, but also from legal defense costs.

Counties can identify exposures by using checklists or inventory control systems to track property and contents, interviews with county personnel, inspections and site visits, use of accident and hazard reporting forms, use of citizen complaint forms, reviewing program budgets, and reviewing contracts with subcontractors. Insurance agents and brokers, risk management consultants, self-insurance pools and other risk managers can also assist with identifying risks.

Risk Evaluation

Once the county has identified its exposures, the financial risks inherent with each risk need to be determined. By evaluating loss exposures, the county can decide how to handle certain risks, allowing more time to be devoted to those risks that have the greatest financial impact on the county. Another goal should be to determine how much insurance coverage is needed for loss exposures.

Potential financial loss is measured in terms of frequency and severity, in other words, how often a loss is likely to occur, and how severe it could be. The best way to predict the frequency and type of future losses is to study records of past losses, preferably for the past five years. While a local insurance agent or insurer may have records of prior losses, the county should keep its own records. This way the information will be up to date and available even when the county's agent, broker or insurer is changed.

Estimating the severity of future losses is more complicated. Property exposures can be calculated by assigning values to county assets (real and personal property). It is a good idea to base these values on formal property appraisals done by an independent appraisal firm, preferably every three to five years. The severity of liability exposures can be estimated by reviewing the state tort liability law, the county's claims history, liability suits in nearby counties, recent court cases, jury awards, settlements and common defense costs.

For example, Pennsylvania's governmental immunity laws limit county liability exposures to several distinct categories, with a cap of \$500,000. In general this cap has held up well in court. However, since this is a state law, the cap does not apply to cases being tried in federal court. With the proliferation of federal civil rights (section 1983) suits, and with court verdicts often in excess of \$1 million, purchasing just \$500,000 of liability insurance is not sufficient.

Risk Financing

After identifying and evaluating the exposures the county faces, the next step is to examine various ways to handle the county's exposures to loss. Some activities and services carry risks so great that the best way to handle the risks is to avoid the activity altogether. In the strictest sense, this is the complete way to manage risks because it eliminates any chance of loss.

Avoidance may not always be possible, because there are certain services that counties must provide. An alternative to avoiding risks is to transfer them to other organizations by contracting for services and products. This should be done contractually as part of the overall written contract with the service provider, and the county should seek proof on a regular basis that the contractor has purchased insurance to cover their liability. The contract document itself should clearly delineate transfer and assumption of liability.

Still, transferring risk to an entity that has no ability or provision to assume the risk is not effective management. Transferring risks should be seen as a financial transaction in the sense that the county is requiring another entity to finance the risk associated with providing a particular activity or service.

Retention of risk is an option for counties who determine that some or all of a risk can be paid by the county itself, without insurance. For example, the county may decide to pay for all slip-and-fall claims from the general fund, rather than through insurance. Deductibles are also a form of risk retention. Many counties use a large deductible program where the county pays the first portion of a claim (for example, from \$1,000 to \$25,000) and the insurer pays amounts above the deductible.

Another way to transfer risk is to purchase insurance. Commercial insurance is used by many counties. Typically the county will select a program offered through a local insurance agent or broker. Counties should examine in detail the coverages being provided, the insurance company being used, policy limits, deductibles, copayments, exclusions, additional services to be provided and premium costs.

Self insurance is a well-established alternative for Pennsylvania counties. It can involve assuming and funding risks or participating in a public entity risk pool. Counties which individually self-insure any area of exposure should establish separate funds outside the county's general fund to provide adequate resources to pay claims, rather than exposing the general fund to the ups and downs of risk financing.

In making the decision about how much risk to assume, transfer or finance, counties should be careful not to retain more risk than the county can afford to lose, not to assume maximum risks for minimal savings, and not to spend a lot of money for a little protection.

Implementation

One of the most important steps in risk management is the selection of appropriate measures to deal with loss exposures. Unless a risk can be avoided, when the county makes decisions regarding implementation at least one loss control technique and one risk financing technique should be applied to every major loss exposure.

The county should prioritize loss exposures for implementation. Exposures with high frequency and high severity (they happen a lot and cost a lot) should be addressed first. Exposures with low frequency and low severity (they don't happen much, and when they do, are not expensive) may be dealt with last, and may not even need to be insured.

After prioritizing, the next step is to choose what will be the most effective way to implement a loss control technique or risk financing technique. For example, if a major exposure to the county is continual back injuries at the nursing home, one loss control technique would be to teach employees proper lifting techniques. A better way might be to also review lifting practices and make sure that employees do not have to bend, twist or lift awkwardly and that the home has a policy covering how and when one or more employees lift patients.

Some loss control techniques may require that the county expend funds to install and maintain safety devices and programs. The county needs to determine the overall costs of a loss control technique and weigh the costs with the benefits. For example, assume the county has had a rash of citizens and employees tripping on the steps of the courthouse. If the county has a general liability deductible of \$1,000 it may be making some significant payments for medical expenses for multiple claims. If it costs \$2,000 to install a railing on the steps, this may effectively reduce the claims.

Cost benefits also need to be examined when reviewing risk financing options. Insurance requires a cash outflow to pay for premiums, but reserving money (retaining risk) to pay for losses can actually generate income through interest earnings. Some losses are fairly minimal and the county may find it beneficial from a cost standpoint to cover those risks through a funded reserve rather than pay insurance premiums.

Program Monitoring

Once risk management procedures are put into place, the county must maintain some control to ensure that they are effective. The best loss control program will not be a complete success if the county cannot tell whether it is working.

For example, using the previous example of the \$2,000 railing installation on the courthouse steps, monitoring would involve keeping track of how many claims were paid before and after the railing was installed. If costs and the number of claims go down, the county can assume the money spent on the railing was a good investment. If claims are the same or worse, the county needs to determine why. Perhaps the problem is the deterioration of the concrete steps, or poor drainage of water which makes the steps slippery or icy.

The county should also monitor the effectiveness of risk financing techniques. Some questions to be answered include:

- Did the decision to self-insure result in the expected costs savings, compared to commercial insurance?
- Did the decision to change insurers result in cost savings? Better service? Prompter claims payment? Better coverage?

- Did the decision to change local insurance agents result in better service? Cost savings?
- What effect did retaining risk have on the county's budget? The work level of county staff? Investment earnings?

Public Entity Risk Pools

Public entity risk pools can be a highly effective alternative way for counties to finance insurance coverage, and a good way to obtain risk management services. A public entity risk pool is a program, usually created or sponsored by an association, through which members can pool risk, purchase insurance coverage, and receive risk management services. Nationwide, more than 85 percent of local governments buy at least one line of insurance coverage from a public entity risk pool.

Pools were created for three main reasons:

1. The members could not afford or find certain insurance coverages ("hard markets").
2. The members wanted better coverage.
3. The members wanted better control of their insurance coverage and finances.

Pools are analogous to small mutual insurance companies. Members control the program by electing board members, and are shareholders of the pool. In Pennsylvania, public entity risk pools for workers' compensation insurance are regulated by the Department of Labor and Industry.

Counties considering joining a public entity risk pool should carefully examine the finances of the pool, coverage provided, and pool bylaws or trust agreements.

Because public entity risk pools often have unique and broad coverages, counties need to be careful when writing bid specifications for insurance coverage. If specifications are written to reflect traditional "commercial" insurance products, pools may not be able to qualify as bidders.

For more information about public entity risk pools, contact the Association of Governmental Risk Pools (AGRIP), www.agrip.org.

Purchasing Insurance and Bidding

Pennsylvania law does not require counties to bid for the purchase of insurance. Some counties choose to bid insurances from time to time. Typically the insurance contract is intended to be a long term commitment, and responding to a request for proposals (RFP) takes a large amount of work on the part of the agent and insurance company. For these reasons, it is recommended that counties not bid their insurances every year. If the county wishes to establish a bidding cycle, every three years is probably a good minimum interval.

A sample RFP for insurance purchases can be obtained from the County Commissioners Association of Pennsylvania (CCAP), www.pacounties.org.

To construct an effective RFP:

1. Make sure the insurance specifications and requirements are clear and specific. When possible, obtain quotes from different insurance companies. Do not simply copy the provisions of the county's current policies, as this will ensure the only legitimate bidder will be the present insurance company.
2. Allow for optional quotes for deductibles, coinsurance and copayments which might allow the county to reduce premiums and dependence on commercial insurance.
3. Include thorough, up-to-date records of current insurance and loss history, including claims and cost information. These records will be important when negotiating coverage.

4. Avoid duplicate coverage by requiring bidders to examine current policies to determine if any can be eliminated.
5. Retain enough flexibility in the RFP process so the county can choose insurance based on the overall program — not just the price. Some less expensive policies may be so restrictive that they may cost the county more in the long run. Some programs include additional services such as loss control inspections, workshops, safety materials, etc., which can also save the county money by helping to prevent or control losses.
6. Expect services from the county's insurance representatives. Agents and brokers should help the county identify, evaluate and control risks. Insurance professionals who just sell insurance are not doing their job.
7. Supply the insurance company, through the RFP, with materials that convey information about the county's activities, loss control programs, qualifications of employees and required procedures. Make sure the agent or broker is able to effectively represent the county to the insurance company's underwriter. To determine whether or not to cover the county, and for what premium, the insurance company's underwriter needs this information about county operations. Many underwriters fail to understand the scope of county government services, and counties fail to supply the kind of information that would improve their chances of obtaining insurance. Among other criteria, underwriters will consider the county's attitude toward implementing loss control measures, the maintenance of county property and the county's loss experience.
8. Allow sufficient time for response to the RFP, typically two months, with a deadline at least one month before the county's insurance expires. This will leave the county some time to examine the bids, resolve questions, and award the bid.
9. Keep in mind that while it is an RFP process, it is in the county's interest to keep the requirements for responses to the bid as flexible as possible, in order to give the county the ability to explore new products and options not anticipated by the RFP.

Insurance Policies

Insurance policies typically purchased by counties include the following types:

Property. Real property and personal property, protecting the county from actual damage or loss of the property or its ability to generate income.

Liability. General liability, public officials liability, law enforcement liability, automobile liability, and environmental liability coverages protect the county when a loss occurs due to the county's alleged failure to meet certain responsibilities required by law.

General liability covers claims that allege bodily injury, property damage or personal injury such as libel, slander and defamation of character. Public officials liability covers claims that allege injury other than covered under general liability, such as civil rights violations and discrimination. Law enforcement liability covers claims arising from sheriff office activities, other court and law enforcement activities and jail operations. It is one of the few liability insurances in which a county may be held legally liable when there is no physical loss, injury or property damage (for example, false arrest). Environmental liability insurance (or pollution liability) covers claims arising from the operations of landfills, underground storage tanks, pesticide application, road de-icing, and from acquisition of properties.

Fidelity. This includes crime coverage or fidelity bonds, and protects counties from losses due to embezzlement, misappropriation and other loss of money or property from dishonest acts committed by employees or volunteers.

Workers' Compensation. Coverage is required by state law, and provides coverage for medical bills and loss of income due to work related injuries and occupational diseases.

Claims Made v. Occurrence Policies

Insurance policies will always be written either on a claims made or occurrence basis. This refers to the way claims are covered and what policy year the claims are assigned to. Claims made policies only cover claims that are reported during the policy period, even for injuries or losses that occurred many years before coverage started. Occurrence policies cover losses that happened during the policy period, regardless of when the claim is reported. All property insurance policies are occurrence policies.

The biggest potential pitfall between these two different types of policies is created when the county decides to switch from one type to the other. Special “tail” coverage or a “prior acts” endorsement may need to be purchased to make sure there are no coverage gaps between the old and new policies.

Local Insurance Producers

Pennsylvania no longer has a system of insurance agents and brokers. Both of these former terms were eliminated and the correct terminology is insurance producer. Insurance producers work with clients to find the appropriate coverages to protect the client's exposures. Counties are not required to work with a local insurance producer, but many do to take advantage of specialized insurance knowledge.

There are separate licenses required for the two main areas of insurance, Property and Casualty (liability), and Life and Health.

Local insurance producers, public entity risk pools and insurance companies should be valuable resources for the county. Services which they can provide include:

- Contract reviews for insurance implications
- Reviews of all existing insurance policies
- Physical inspection of all properties
- Loss prevention services, including loss analysis and a review of procedures and property conditions
- Safety advice
- Claims processing services
- Educational programs
- Data collection and file maintenance

When working with a local insurance producer, keep communications open and clear. Notify them of any changes in the county's scope of operations, new acquisitions, changes in contractual agreements or changes in organizational structure.

Compensation for local insurance producers has traditionally been done on a commission basis, where the producer receives a percentage of the insurance premium for their services. This is changing, and more counties are moving to a flat fee for services, which removes any incentive issues, such as a producer preferring one company over another due to a higher commission payment.

For more information on this subject, refer to the DCED publications *Insurance Primer for Municipal Secretaries and Risk Managers Insurance Guide*.

References

1. 16 P.S. 1701; County Code, Section 1701
2. 77 P.S. § 1038.2
3. 42 P.S. 8541-8564

VIII. Purchasing and Contracts

Sound contracting and purchasing procedures should achieve two major goals: to enter contracts or purchase materials at the best possible value; and to provide the best possible administrative control over all expenditures.

Contracting and purchasing are related, but not identical functions. While all county purchasing is contractual in nature, contracting also includes the procedure for acquisition of services including, for example, construction and professional services. Commissioners are responsible for oversight of the administration of contracts within their office as well as any of the row offices in the county. Contracting responsibilities may be ceded in some fashion to the row officers, but it must be done in a manner that ensures that appropriate controls are in place and contracting requirements are being met.

Sound contracting and purchasing procedures are critical in large, complex businesses such as county government, although the framework of Pennsylvania county government can make adherence to sound practice even more difficult. In addition to having many departments, county offices are often located in several different buildings and sometimes in different geographical sections of the county. The addition of independent row offices further exacerbates the potential problems. Hundreds of thousands, perhaps millions of dollars' worth of contracts are entered into each year by each county government in the state.

While there are a number of statutes that provide guidance, each county has evolved administrative systems to supplement these statutes. There is no single model system of procedures which can be adopted to ensure a county that it has the best possible system. Any system must be adapted to the needs of the individual county and may look completely different from the county next door.

County Contracting Procedures

General Provisions. The County Code governs contracting by providing specific procedures which must be followed by each county.¹ In addition, it lays the responsibility for contracting squarely on the shoulders of the commissioners by making them “sole contractors” for the county. This is an important point, given the system of row offices; the row officers are not permitted to enter contracts without the approval of the commissioners. While an important tool for budgetary control, it can also be part of a strategy for developing consistent management practices. For example, the commissioners may stipulate that all contracts for technology must, at minimum, allow compatibility and interaction with other county systems.

Under the Code, contracts of an expected value over certain thresholds must be handled by receiving bids or quotes. In 2011 the legislature set the quote threshold at \$10,000 and the bid threshold at \$18,500, each subject to annual adjustment by the Department of Labor based on inflation.² Contracts and purchases below the lowest threshold require no bids. Those between \$10,000 and \$18,500 require three informal quotes, which may be received over the telephone or by electronic means. If bids are informal, appropriate records must be maintained to assure that the price quote provisions are followed. Bids over \$18,500 require a formal, advertised bidding process, and must be awarded to the lowest responsible and responsive bidder.

An area of frequent controversy is lowest “responsible and responsive” bidder. Case law is situational, but tends more toward “responsive” than “responsible”; that is, a responsive bid is one that properly answers the specifications and that gives proper assurance that the contract (including materials, deadlines, service, and related matters) will be fulfilled. Generally, the location of the bidder (e.g., out of state), or the “reputation” of the bidder cannot be relied upon to declare a bid not responsible.

Another potential legal pitfall is bid splitting, breaking a contract down into smaller components to avoid the bidding process. A defense that is sometimes offered is that splitting was inadvertent, or was done in good faith to assure that local vendors have the opportunity to participate in the system, but the process is nonetheless illegal. Care must be

exercised to be certain that bid splitting is not done inadvertently by a decentralized purchasing system, which has a number of departments purchasing relatively small amounts of a commodity which, when combined across the county and throughout the year, is greater than the bid limits.

Exceptions. The County Code contains a list of relatively specific exceptions to the formal bidding process.³ The basis for the exceptions is the recognition that the need for specific products, or specific quality of product, may negate the need for relying on competitive bidding out on the market. For example, professional services such as those of an attorney, consulting engineer, or for insurance, do not require advertising, bidding or price quotations. Repairs and maintenance projects are generally exempted, although each case must be looked at individually.

Copyrighted products that have no peer are also exempted. Contracts with municipal governments and municipal agencies, municipal authorities, non-profit corporations, industrial development agencies, and state and federal governments (including cooperative purchasing, also referred to as piggy backing,) is also exempt from bidding requirements.

When any of the exceptions to the bidding process are used, the county should appropriately note the reasoning for the exception. Although not statutorily required, when contracting under any of the exceptions the county should still encourage a full and open negotiation process, including securing competitive quotes.

Real estate purchases and sales are treated somewhat differently than regular contracts.⁴ The purchase or sale of property or lease of property either as lessor or lessee, is to be at fair market value. If the fair market value of real property is in excess of ten thousand dollars, the county must obtain two appraisals, which can be done by the county assessor, certified broker-appraisers or certified real estate appraisers doing business within the county. An old provision of the law has regained meaning; if the commissioners know or have reason to believe that the property to be sold contains oil, gas, coal, stone, timber or other mineral or forest products of commercial value, then the offer of sale and potential for minerals must be advertised once a week for three consecutive weeks. Additionally, the commissioners have the authority to sell real property together with personal property in one contract (for example, sale of a nursing home).

Contract Provisions

Contract language should be carefully reviewed for legal and risk management issues. Often the county relies upon the contractor to provide a sample contract, which is a document drafted in favor of the contractor and to the detriment of the county. The county solicitor and the county's local insurance producer should also closely review the indemnification provisions and insurance requirements of the contract. Many contractors will attempt to shift liability to the county, which could result in the county waiving its governmental immunity.

Purchasing

Centralized Purchasing. There are no statutory requirements or restrictions on centralized purchasing systems. Under a typical centralized purchasing system, a county purchasing agent or department coordinates and reviews the needs from the various county offices and submits them to the commissioners, on a regular basis, for final approval. Requests under a threshold established by the commissioners (e.g., \$200) are handled by the individual department, subject to review by the purchasing director. Capital items, even though they may be less than the threshold, must also be submitted to the purchasing director prior to the purchase. All requests are compiled into a weekly report which compares the budget for the department against the requests. The report containing the requests is then approved by the commissioners.

Once purchase authorization is received, the purchasing director determines the need for solicitation or bidding and conducts the solicitation or develops specifications. If bidding is required, the director follows any applicable advertising requirements, and sets dates for opening, review and award of the bids. Quantities are consolidated so that all those with combined periodic quantities of greater than a certain threshold in value are bid following the proper procedures. The purchasing director will generally be the leader in finding alternative ways to save money in the bid process.

A central stockroom may be established to store and distribute in a controlled manner the most commonly used items such as paper goods, pens, and custodial supplies. Commodities are purchased in bulk and charged to the department which uses them when they are distributed.

Decentralized Purchasing. In this system, there is no purchasing department, only clerks in the commissioners' office or the finance department who receive requests for purchases from the individual departments and follow the same general procedures of preparing a report for approval by the commissioners and checking the requests against individual categories. In this process, each department is responsible for preparing its own specifications and bidding documents with only technical assistance from a central office. Departments must determine, perhaps with the help of the purchasing clerks, if their purchases will, when combined over the year and throughout the government, be greater than the price quote/bidding thresholds.

A decentralized purchasing system would probably not have a central stockroom. There would more likely be a number of smaller versions of stockrooms within departments or sections of the county government.

Both types of purchasing systems, when functioning properly, have the elements of a sound purchasing process. Each uses the quote and bid process to receive the best pricing, and purchases are approved by the supervisor who manages the budget for that department as well as the county commissioners and their staff who must oversee the budget as a whole. Regardless of the system used, its success depends upon competent staff taking the jobs of purchasing and budget management seriously.

Evaluating the County Purchasing System. There are checklists which can assist a commissioner in grading the effectiveness of the system in a particular county. DCED's *Manual for County Chief Clerks/Administrators* contains a checklist which, although geared towards a centralized system, can be restated for a decentralized system.

Cooperative purchasing. Cooperative purchasing, also known as piggyback purchasing, refers to the use of a state, federal, or pooled purchasing program. Counties are able to purchase, on the same contract, anything that another governmental entity has already bid through the competitive bidding process. There are numerous purchasing programs that may be utilized by counties at a national, state, or regional level. In addition to cost savings, the option saves bidding time and costs.

There are several programs that are frequently utilized at the county level:

- State cooperative purchasing arrangements, often for fleet vehicles or commodities such as salt
- The COSTARS program, coordinated by the State Department of General Services, which includes state bids on behalf of local governments, often for products not used by the state (COSTARS initiated a set of contracts on counties' behalf in 2006 when the Help America Vote Act required replacement of election equipment)
- NACO US Communities program, a national-level program for technology, commodities and office equipment

Privatization

A frequent suggestion for greater efficiency in governmental operations is for the government to privatize various functions. While it can be a valid strategy in some circumstances, care must be taken to research the statutory authorization and restrictions. In general, the dividing line is the question of whether the service is a pure governmental function or a function available in the private sector. Functions that are purely governmental often cannot be delegated, while those that are typical of the private sector can readily be delegated.

Most governmental services today fall somewhere in between. For example, mass transportation and recreation services can just as easily be publicly or privately provided.

Typical of services that are purely governmental is the court system. The court represents the people, and has the ultimate constitutional power to determine the rights of individuals and to restrict the rights of those who violate the social contract. This power cannot be delegated. Similarly, the county cannot delegate administration of voter registration or the conduct of elections.

Comparable arguments can be made about county prisons, although with one distinction. While the county must maintain ownership, control and responsibility for the prison, it can privately contract parts of its administration. For example, it is common to contract for laundry service, medical service or food service. Less common, and closer to the governmental function side of the question, is contracting for overall prison administration.

Some county services are set up in a manner that encourages, and provides in detail, for contracting for private provision of services. The mental health system is perhaps the best example. Some services can be provided with a combination of governmental employees and private providers. Another common example is the county real property assessment function, where county employees maintain the database, but private contractors are brought in to perform major or specialized reassessment projects.

When determining whether to contract privately for services, the commissioners should frame the discussion as “how do we best provide this service?” rather than “should we privatize this service?” Under the former, the decision is based on an objective of service provision, while the latter yields an answer focused only on the bottom line, and can lead to the pitfall of excluding consideration of retention of the service in-house. Giving true consideration to in-house provision as an option often encourages departmental employees to suggest ways to improve and economize on the provision of the service.

It should also be noted that privatization does not remove the county’s liability for the performance of the service, nor will it fully remove the county from secondary liability regarding the provider of the services. Counties need to vigilantly oversee privatized services to ensure all legal requirements are being met and appropriate risk management is undertaken by the provider.

Additional Information

Much greater detail on contracting and purchasing is in the DCED publication *Purchasing Handbook for Local Governments*.

References

1. 16 P.S. 1801 *et seq.*
2. Act 86 of 2011, 16 P.S. 1801
3. 16 P.S. 1802(h)
4. 16 P.S. 2305 to 16 P.S. 2306.1

IX. County Human Services System

Managing human services at the county level is one of the more complex tasks for county commissioners. Done well, human services can be the crown jewel of county government. Done poorly, human services can be a commissioner's worst nightmare.

Counties, for most of their history, have had some nominal responsibility for the indigent. In a formal sense, county human services date back to the earliest years of the commonwealth. The first services were the county poor farm and the county home, where destitute or disabled citizens could live when families could no longer provide.

During the 1930s and 1940s, human services became more formal and consistent across the country as the state and federal governments became more active. Counties were involved in early public support and work development programs during the Great Depression, which began evolution to the more formalized structures of today with the passage of the Social Security Act in 1935.

In the 1960s, President Johnson's Great Society marked the most distinct shift from local charitable community support to a focused governmental provision of services. These included not only public support programs for the poor, but many new state and federal human services programs for special populations. Since the 1960s, Pennsylvania county human services have grown rapidly and consistently.

Consumers/Clients

The consumers for whom counties provide services fall into two broad categories. The first encompasses those persons whose chronic illness or condition requires assistance with activities of daily living for a lengthy period of time, perhaps for the rest of their lives. This category of services is called long-term care and provides services for persons with developmental disabilities, older persons who live at home or in nursing homes, and persons with mental health or substance abuse problems.

The second category consists of children who are neglected, abused or delinquent.

To qualify for county human services a person's circumstances are assessed. Based on specific mandates and funds available, services are provided, directly by the county or through providers with whom counties contract. Provision of services is based on a person's qualification.

Separate from county-administered human services, the state operates other programs in cooperation with the federal government where eligibility is based on income, such as Temporary Assistance for Needy Families or TANF (formerly Aid to Families with Dependent Children, AFDC), medical assistance and general assistance.

Funding

Funding for human services is a combination of federal, state, and county dollars. About 85 percent is federal and state funds, and the remainder is county general fund dollars, although the county share has been increasing with the imposition of new and altered mandates, coupled with stagnant or declining state and federal appropriations.

Categories of Services

The primary programs provided at the county level include mental health, developmental disabilities, child welfare and juvenile justice, aging, nursing homes, drug and alcohol, and adult services. Each of these specialty programs is tailored to meet the needs of the people it serves. The specific services provided fall into a number of categories.

Prevention/Education. Nearly all specialty programs provide the general public with information that can prevent or postpone the need for services. Examples of prevention efforts include parenting classes to prevent neglect and mentoring programs to reduce juvenile delinquency.

Crisis Intervention/Protection. Akin to hospital emergency rooms, these services are generally available 24 hours a day. The purpose of these services is to stabilize the situation until more specific services are available. Examples include hospital detoxification for a person suffering from substance abuse and removing a child from his home in the case of child abuse.

Assistance/Income Transfers. Services are provided primarily at the state level to low-income persons, and include general assistance, Medicaid, Supplemental Security Income (SSI), and Food Stamps. Counties do not provide these services, but many of the individuals served by the county also receive some kind of income transfer assistance.

Treatment. Treatment is designed to reduce or end the condition experienced by the client. Treatment can be provided in any number of settings; examples include speech therapy for a child in a preschool program and in-patient hospitalization for a person with a substance abuse condition.

In-Home Services. These services are designed to assist an individual in staying in his or her own home. Services can be something simple like meals-on-wheels, or something complex like attendant care, where services can include medical equipment and total care for a person who is physically disabled but mentally alert. It is where most people with long term care needs would like to receive services.

Residential/Institutional Care. This level of service always include room and board, but may also include treatment. The simplest form is a personal care facility or a nursing home. A more complex type would be a secure juvenile detention facility for an adjudicated delinquent. Residential and institutional care are the most expensive services to provide.

Coordination Services. Coordination services are designed to improve the efficiency and effectiveness of services provided to individuals or families. They include information and referral, case management, and transportation. Without these services, coordination among programs would be difficult and independence for clients would be impossible.

Organizing for Work

Pennsylvania counties have many options for managing the planning, administration and delivery of human services. Leadership, staffing opportunities, social and political circumstances, as well as funding, are major drivers of the management option adopted by each county. It is understood that there is no best model, and local determination is a valuable principle to maintain in the county's partnership relationship with the commonwealth.

Several counties have developed integrated departments of human services to manage the county's overall human services functions. Saving administrative duplication, developing strong staffing capacities at the county government level, having responsive and accountable relationships to county government leaders, developing approaches to better focus attention on the best use of limited resources and improving coordination are several reasons given for moving to this type of structure.

However, many other counties have not taken the integrated approach and instead have found the answers to these issues by appointing one of the large agencies like child welfare or the nursing home as the lead. Others have hired administrators to work as coordinators for certain functions that cross over program lines. Still others have opted to privatize the majority of the functions through contractual or pass-through agreements with other organizations and to hold direct management of only those services for which they are responsible by law. Many others are in joinder structures for some or all human services. Some counties may have various combinations of these administrative structures, depending on the unique needs of the particular county.

One commonality in counties for flexibility and coordination is the administration of the Human Services Development Fund (HSDF). The HSDF funding stream offers counties funds to fill gaps in the categorical systems, to fund services to low-income adults, to ease the costs of the function of coordination, to implement cross-systems or generic services, and to develop innovative services based on the unique needs of a particular county. The funds are usually administered by the lead human services administrator or department, if there is one, or by a special grants coordinator who works with the categorical department heads. It is monitored and regulated by the State Department of Human Services (DHS).

Even in those systems where a department head or lead administrator is identified, the areas of responsibility vary greatly throughout Pennsylvania counties. Some have incorporated the areas of nursing home management, public health, housing, transportation and other related responsibilities in combination with the traditional human services administration.

Because most human services rely heavily on state funding, and since there is no umbrella state department overseeing human services, there are several policy and regulatory bodies who govern the programs and services under the purview of county human services.

Children and Youth Services

Mission. Each county's Children and Youth Services agency is organized and operates in cooperation with the commonwealth toward the purpose of protecting children. It is the goal of children and youth social services to ensure for each child in the commonwealth a permanent, legally-assured family which protects the child from abuse and neglect.

Legal Basis. In this state-regulated and county-administered system, counties are governed by the Public Welfare Code, the County Code, the Juvenile Act, the Child Protective Services Law (Act 124) and the Pennsylvania Adoption Law.

Administration. Agencies are monitored and licensed by the DHS's Office of Children, Youth and Families (OCYF). Regional field office representatives establish relationships with counties in order to perform their licensing function and to offer technical assistance. County commissioners hire their county's children and youth administrator according to OCYF and Civil Service or county merit hire requirements. The county commissioners also hire the Children and youth staff as recommended by the Children and youth administrator and in compliance with Civil Service or county merit hire requirements. Salaries are established at the county level with reimbursement participation established by DHS fiscal regulations.

Local Children and Youth Advisory Boards provide community input to the administrators.

Services to Children and Families. Abused, neglected, dependent and delinquent children and their families are included among Children and Youth's clients. Services are also provided to children who are at risk of abuse, neglect, dependency or delinquency and to other children who are ordered by the county courts to receive services. The vast majority of children served live with their own families. Other children's home circumstances have caused placement outside of their home environment. Placement may be in agency foster care, purchased foster care, group homes either in the home county or elsewhere, or in a more restrictive residential setting. (Refer to the Juvenile Justice section, for more information on delinquent youth.) Adoption services are provided to children, birth parents, and adoptive families.

It is the purpose of Children and Youth Services to provide children with the least restrictive environment that meets their individual and family needs while assuring their safety. Families participate with casework staff in service planning.

Children and youth agencies must be available to the public 24 hours a day for the purpose of receiving information about child abuse allegations and to investigate abuse reports. The OCYF's Child Line staff in Harrisburg receives calls about child abuse and forwards them to the appropriate agencies for decision-making and action. Also, abuse referrals which originate locally must be managed around the clock.

Funding. The state legislature allocates funds each year through the authority of Act 148 and Act 30 as part of the state budget, based upon needs based budget requests originating in the counties and reviewed and revised by OCYF. Operating costs are also funded by federal sources, including Title IV-B, IV-A, IV-D and IV-E of the Social Security Act. Counties must meet the required match of state and federal dollars with local funds. Fiscal regulations promulgated by OCYF/DHS describe cost centers, invoicing procedures and other pertinent fiscal requirements.

Juvenile Justice Services

Mission. The mission of Juvenile Justice Services is to provide rehabilitation to adjudicated delinquents and to protect society from the inappropriate behavior of juveniles.

Legal Basis. The Pennsylvania Juvenile Act created the basis for juvenile justice services. Many delinquent children and youth are also determined by the juvenile courts to be dependent youth, making them concurrently eligible for services under county children and youth programs.

Administration. The Juvenile Court or Court of Common Pleas in each county has jurisdiction over juvenile justice personnel and the service delivery system. County commissioners generally review with the judges the progress and needs of the courts related to juvenile justice. Some counties house juvenile justice with adult probation, while others have separate juvenile justice departments.

Services to Delinquents and Their Families. Juvenile justice or probation officers provide direct services to adjudicated youth and their families. They perform an intake function when they receive referrals from law enforcement personnel, community social service agencies, parents, and other community members. In all counties, when charges are placed against juveniles, the juvenile justice staff works in cooperation with law enforcement to assure that the community is protected and that the juveniles and their families receive the types of services needed to begin rehabilitation. Youth may be placed on consent decrees or on probation, based upon the charges filed against them and the results of court adjudication, or they may be placed in day treatment, foster care, group homes, detention or open or secure residential facilities.

Funding. Placements of delinquent youth are paid through Children and youth funding sources and county government funds. Staff salaries and other personnel costs are county funded, with the exception of some grant-in-aid funding sources administered by the Juvenile Court Judges Commission. Recently, federal funding has been made available from Title IV-A of the Social Security Act. Juvenile court judges' signatures are required on all county Children and Youth Services' needs-based plans and budgets, and input to this budgeting process is requested from the judges and juvenile justice officers by each county Children and youth administrator.

Long Term Care: Services for Older Pennsylvanians

Mission. All 67 counties are covered by one of the Area Agencies on Aging (AAA), some of which are county operated and some of which are private contractors, and about a third of Pennsylvania's counties are involved in the operation and administration of a nursing home. These organizations and their governing boards are responsible for arranging services to older persons who need long-term care.

Legal Basis. The County Code and the Public Welfare Code form the legal basis for the provision of nursing home care. Numerous laws, regulations and agencies at the state and federal levels review and license nearly every aspect of nursing home operation. Among the state and federal agencies involved in the regulation and licensing of county nursing homes are:

- U.S. Department of Health and Human Services
- Centers for Medicare and Medicaid Services (CMS)
- Social Security Administration
- Occupational Safety and Health Administration
- Pennsylvania Department of Health
- Pennsylvania Department of Public Welfare
- Pennsylvania Department of Aging
- Pennsylvania Department of Labor and Industry
- Pennsylvania Department of Education

The basis for the Area Agency on Aging is the federal Older Americans Act and its companion law at the state level.

Administration. Nursing home administration is extremely complex. All nursing home administrators and many staff of nursing facilities are required to be licensed by the commonwealth. In addition, federal and state regulations set qualifications, and sometimes required numbers of staff, for positions such as nursing, social services, activities, housekeeping, and dietary.

Some counties have the staff to operate their nursing home directly while others contract out for the management of the home. Over the last half century, a steady number of counties have sold or privatized their home.

Area Agencies on Aging services are provided by county governments for two-thirds of the counties. In the remaining one-third they are provided by nonprofit agencies. Joinders of two or more counties are common. The Department of Aging is the state regulatory body for AAAs, and employees in the public agencies are Civil Service certified.

Services to Older Pennsylvanians. Nursing home services are provided to persons who have been assessed as needing medical care unavailable at home. Sometimes the assessment is done by a doctor, but for most of the counties whose residents will be paying with Medicaid, the assessments are done by the Area Agencies on Aging.

Nursing homes provide medical services as well as room and board. The emphasis on rehabilitative aspects of long-term care is increasing, in support of the goal of discharging the residents back to their own homes. The provision of post-hospital acute care in nursing homes requires high-tech specialization as the age and accompanying health problems of the nursing home population increase.

Many facilities are creating special care units for residents with AIDS, Alzheimer's, wound care, ventilator dependency and sub-acute care. Also, many nursing facilities are branching out along what is termed "the continuum of care," adding personal care beds, assisted living and retirement units to their campus of health care.

Although county government's role in long-term care has been traditionally perceived to be the county nursing home, the actual scope of services provided can be much broader. Area Agencies on Aging provide a wide range of in-home services like meals on wheels, homemaker, and home health. This support provides community options to people who would otherwise go into nursing homes. AAAs provide center services as well which include congregate meals and sometimes day care. In addition, AAAs are mandated to provide protective services to older persons who are potential victims of abuse.

Funding. Funding for resident care in county nursing homes is derived almost entirely of Medicaid funds, however operational funds are typically based on county general fund dollars. AAA funding is part federal and part state with a large portion of the state funds coming from proceeds from the lottery.

Mental Health/Developmental Disabilities

Mission. The mission of the Mental Health (MH) program is to provide services to persons with mental illness. Due to limited funding, the state has further set priorities within the program for persons with serious, chronic mental illness. The Developmental Disabilities (DD) program provides a variety of services to Pennsylvanians with mental disabilities. A relatively new program is Early Intervention which is the only mandated entitlement service within MH/DD.

Legal Basis. The authority for MH/DD services comes from the Mental Health and Developmental Disabilities Act of 1966 and the Mental Health Procedures Act. These two laws require all counties to provide MH and DD services. The act set forth the services that must be provided, the financial conditions and the responsibilities of the state.

Administration. Counties administer their mental health/developmental disabilities programs individually or in groups of two or more counties known as "joinders." Counties are assigned to joinders by the Secretary of Human Services and may operate in a variety of ways based upon joinder agreements signed by the commissioners of the counties in a specific joinder. In some joinders, staff members are employees of one of the counties, usually the largest. Other joinders exist as separate entities and hire staff independently, maintaining their own benefit packages and personnel policies.

The program administrator is responsible for overall management of the program; insuring that services required by the Act are available; developing, with the Board, annual plans for the program; submitting plans and budgets to commissioners and to the Department of Human Services; reviewing and evaluating facilities; evaluating and analyzing mental health and developmental disabilities needs of the county; and submitting an annual report to the commissioners and the state.

Service Provision. An extensive range of services is offered through the county MH/DD Program. Some are mandated by the MH/DD act, while others were added later. The mandated services include short term inpatient services, outpatient treatment, partial hospitalization, emergency services available 24 hours per day, consultation and education services to professional personnel and community agencies, aftercare services for persons released from state and county facilities, specialized rehabilitative and training services, interim care for people with developmental disabilities waiting for admission to state facilities, unified procedures for intake for all county services, and a central place providing information and referral services. Other services usually include residential services such as group homes, supervised living and supported housing, crisis intervention, and social rehabilitation. The counties are also responsible for managing emergency involuntary commitments and court commitments.

Early Intervention is an entitlement for pre-school aged children with developmental delays, including developmental disabilities. Counties are responsible for developing a comprehensive array of services for children from birth through age three when responsibility is assumed by local school districts. Services must be mobile, generally provided in the child's home, and specifically designed to meet the individual needs of each child. Some funds have been allocated to counties, and require ten percent match by the county. The county MH/DD system is also expected to generate Medical Assistance dollars to offset costs for this potentially expensive range of services.

Counties and joinders may provide services directly or by contracting with private or public service providers. Most choose to purchase the majority of services by contract with local providers.

Funding. The General Assembly allocates funds to the Department of Human Services which in turn allocates dollars to the county MH/DD program. Allocations are based upon plans submitted by the administrator to DHS's Office of Mental Health and Office of Developmental Programs. These offices establish priorities which counties must follow in order to receive funds, and they also promulgate regulations which counties must follow. With a few exceptions, the commissioners must provide a ten percent match on allocated funds. Some federal funds are also allocated or earned by counties. Providers and counties also earn some Medical Assistance revenue for services rendered to eligible consumers.

Drug and Alcohol Services

Mission. Drug and Alcohol services are provided at the county level through Single County Authorities (SCAs) for the planning, coordination, and administration of the types of drug and alcohol prevention, intervention and treatment services necessary to meet the needs of local citizens. Services are provided based upon county plans prepared in accordance with guidelines prepared by the Department of Drug and Alcohol Programs (DDAP). The decentralized service delivery system reflects an emphasis on locally prioritized needs.

Legal Basis. In response to the Pennsylvania Drug and Alcohol Abuse Control Act (Act 63 of 1972), the commonwealth established a system of Single County Authorities (SCAs) to implement alcohol and other drug abuse prevention, intervention and treatment services through county-based planning and management. The system emphasizes the importance of an integrated system of service delivery, funding, and coordination responsive to the geographic and cultural diversity of the community. SCAs may represent a single county area or a joinder of two or more counties.

Administration. There are several alternative models for the operation of SCAs:

- Operation under the Public Executive Commission model as a department within county government.
- Operation as Planning Councils, administered by the county MH/DD office, but functioning independently from the MH/DD Board.
- Operation as a private Executive Commission under authority subcontracted directly with the Department of Drug and Alcohol Programs. In this model, the service receives no county match for funds.

Service Provision. Any citizen is eligible to receive services funded by an SCA. However, these funds are intended to pay for care only when no other funding is available. Treatment services are generally provided by independent, licensed facilities under contract with SCAs, although most SCAs provide some direct prevention and intervention services. Act 152 of 1988 allows for the payment of services for persons eligible for Medicaid in non-hospital residential facilities. Act 152 operates through a system of regional administrative units (RAUs) covering all 67 counties in the commonwealth. The RAUs contract directly with DDAP and receive all Act 152 treatment dollars for the region, which they distribute to the SCAs.

SCAs coordinate a number of specially funded projects including access to halfway houses, access to special addicted women with children programs, prison-based programs and Treatment Alternatives to Street Crimes (TASC) programs. Some receive funding through the Drug and Violence Free Schools and Communities Act to support school-based Student Assistance Programs (SAPs). The SAP is designed to identify students with drug or alcohol related problems or at risk for suicide or other mental health problems.

Funding. SCAs receive state funds and a federal Substance Abuse Block Grant allocation from DDAP through a contract mechanism. Other public funding includes county funds, Driving Under the Influence fines, Human Services Development funds, Pennsylvania Commission on Crime and Delinquency funds and Pennsylvania Department of Education funds. In addition, some SCAs have been successful in receiving financial support from private foundations and the federal government for special projects in their communities.

Human Services Block Grant (Brinda)

The most significant philosophical and administrative change in human services delivery in recent years is the Human Services Block Grant. The block grant is an alternative administrative model first approved in 2012 on a pilot basis for 20 counties, and is intended to refocus from the traditional categorical delivery of human services to one that combines funding streams in a manner that focuses on the holistic needs of the client rather than the narrow restrictions of the funding category.

The block grant allows eligible and capable counties to combine seven categorical programs – mental health community base, intellectual disabilities community base, county child welfare special grants, homeless assistance program, Act 152 Drug and Alcohol, Behavioral Health Services, and the Human Services Development Fund – into one funding stream, giving those counties flexibility to adjust programming to match local conditions rather than forcing client circumstances to fit into narrow program rules. The block grant enhances county efforts to preserve human services programming for as many clients as possible, allows for streamlining of processes, and maintains an important locally driven focus on human services planning and delivery.

The block grant mechanism also includes system reforms applicable to all counties, regardless of their participation in the pilot. Reporting is streamlined, resulting in a substantial decrease in the volume of paperwork currently submitted by counties. Planning is streamlined into a unified annual county plan to replace the numerous plans previously submitted by counties for each categorical. Inside or outside the block grant, counties are permitted to continue to operate existing joinder arrangements or create new joiners. A number of reforms were also included in timing and mechanism of delivery of funding reimbursements to address cash flow.

Other Services

Many counties have retained the responsibility for other related human services outside of the categorical systems of children and youth, long term care, mental health and developmental disabilities, and drug and alcohol.

Transportation. Some counties provide human services transportation directly. The primary funding sources and clients are Medicaid eligible persons and older adults.

Human Services Development Fund. The HSDF is distributed to each county in Pennsylvania and requires no county match funds. Each county receives an allocation annually and is required to submit a plan for expending the funds within specific cost centers.

Attendant Care. These programs are regulated and funded through the Department of Human Services and the Department of Aging. Attendant care is intended for those who are not able to provide their own personal care without assistance. It is viewed as a support service to retain independence in the community, thus avoiding institutionalization as long as possible.

Homeless Assistance. These programs are not intended to provide permanent housing but rather offer alternatives to those who are homeless or in jeopardy of losing their homes.

X. Corrections

Counties are responsible for incarcerating pre-trial and pre-sentence detainees, all offenders sentenced to two years or less, including those in county intermediate punishment, and some offenders with sentences between two and five years. While the county commissioners have the ultimate fiscal responsibility for the county jail, the day-to-day jail operation and supervision of the warden falls under the responsibility of the county prison board.

The county prison board is comprised of the county commissioners, the president judge or judge designee, the district attorney, the sheriff and the controller. The prison board, sometimes called the board of inspectors, is the designated structure of prisons for counties of the third to fifth class. Counties of the sixth, seventh, and eighth classes may elect either to have a prison board or to maintain the historic sheriff/warden style of management. With the sheriff/warden style, the day-to-day operating responsibility rests with the elected sheriff with little oversight from the commissioners or the judiciary, while the financial responsibility rests with the commissioners. Most of the sixth through eighth class counties, however, have moved to a prison board style of management. Counties of the first, second and second class A have different requirements under the law.

Sixty-two counties have correctional facilities. Five counties, Cameron, Forest, Fulton, Juniata and Sullivan, arrange with other county jails for the incarceration of pre-sentenced as well as sentenced inmates. In the late 20th century, Pennsylvania county jails experienced explosive growth in inmate populations brought on by mandatory sentencing statutes, particularly for drug and DUI offenses. Recent changes in both the sentencing statutes and in the sentencing guidelines have also generated increases in alternative (intermediate punishments) sentencing. The increase in population has pushed county corrections to become one of the fastest growing county budget items.

Unlike some of the other county government functions such as human services, the full cost of operating jails and prisons rests with the county. Counties receive no financial assistance from either the state or federal government for the daily operations of jails and prisons. Counties with excess capacity can offset costs though, in one of three ways: 1) if the county has a contract with the federal Bureau of Prisons, the Immigration Service, or the U.S. Marshall's Service to house federal inmates and detainees, 2) if the county has a contract with the State Department of Corrections to house inmates preparing for re-entry, or certain inmates sentenced in the range of 2 to 5 years, or 3) if the county has a contract with other counties which need additional cells to house male or female inmates. In these cases, the county is reimbursed at a negotiated daily rate for housing such inmates.

Place of confinement is used to describe an inmate's location at a county or state facility while serving a sentence. Pennsylvania is unique in its sentencing practices. A sentence under 24 months is considered a county sentence and sentences of two years or greater are considered a state sentence. Common pleas judges are granted limited discretion to sentence offenders to county jails for terms of two to five years under specific circumstances outlined in Act 84 of 2007. Counties maintaining these state inmates receive limited reimbursement from the state, up to a total commonwealth annual cost of \$2 million dollars.

For paroling purposes, supervising authority for an inmate is also dictated by place of confinement, with those sentenced to county facilities under county parole, and those in state correctional institutions under state supervision. Due to the overwhelming caseloads, state offenders do not receive parole at the time their minimum expires with the same frequency as do county offenders.

While the local prisons are exclusively the administrative and financial responsibility of the county, the county has an obligation to operate the prisons in accordance with applicable state and federal operational standards. The state Department of Corrections conducts graded inspections of facilities and operations, and findings can prompt corrective actions. Counties also have statutory obligations, including the recently-passed Prison Rape Elimination Act (PREA) which has had multiple impacts on facility operations. A significant requirement is PREA's sight and sound separation standard for juvenile offenders.

Health care for inmates may account for almost half of a county's jail budget. Under current state and federal guidelines, offenders placed in county jail and prison lose their Medical Assistance eligibility or veterans benefits as soon as they are placed in confinement. This holds true whether the inmate is sentenced or only a pre-trial detainee. An inmate who is admitted to a hospital may become qualified for Medical Assistance Benefits during the period of hospitalization and, if approved, about half of the costs are covered by the federal portion of Medicaid and the remainder by the county. For inmates who are served by outside medical providers but not hospitalized, state law limits providers to charging for services at the same fee rates paid by the federal Medicare program.

The Affordable Care Act may allow for coverage of some pre-trial inmates under health care exchanges which could result in reduced costs for counties that choose to pay a premium rather than pay for services directly. Efforts are also underway to seek suspension, rather than termination, of Medicaid benefits at the time of incarceration which will result in more rapid restoration of benefits at the time of release. In states where suspension is utilized, improved health outcomes for inmates re-entering the community have resulted, and recidivism rates for inmates with mental health and substance abuse problems have been reduced significantly.

In an effort to contain health care costs, a number of counties have developed their own medical fee-for-service programs, while others have developed specialized insurance coverage with private providers. Several programs and providers are available to contract with the prison to assist in management of health care programs, prescription management, case management, and related services.

Current law gives counties few options for recovery of costs from prisoners. Statute allows the counties to charge room and board to inmates participating in a work release program, but the law is silent on other charges.

Another source of income for county prisons is the commissary fund. Most counties operate a commissary for the inmates to purchase necessities. Some counties contract with an outside vendor to run the commissary and others run it in-house. Profits from the commissary are permitted to be used for supplies and programs for the benefit of inmates.

XI. Elections

Counties are responsible for voter registration and the conduct of elections. The commissioners serve as the County Board of Elections and perform all duties imposed upon them at the state level by the Pennsylvania Election Code and at the federal level by the National Voter Registration Act (NVRA) and the Help America Vote Act (HAVA).

The county bears the full cost of the primary and general elections. The SURE system is funded and maintained by the state. Commissioners appoint a director of elections and other election office employees and assistants to administer election and voter registration. The county board must certify election results and voter registration totals to the Department of State (DOS) as required by law.

Voter registration includes managing the voter registration process, including interface with the Statewide Uniform Registry of Elections (SURE), as well as maintenance and production of the poll books. Tasks include verification of eligibility of registrants, purging poll books to the degree permitted, cross-checking against registrations in other jurisdictions, and maintenance of individuals' voting history.

Election administration includes both development of the ballot and administration of the election process. Ballot development includes distribution and acceptance of nomination petitions and nomination papers, determination of qualified candidates based on petition filings, first-line resolution of challenges to candidates, receiving, maintaining, and making available ethics statements and campaign finance statements for local candidates, certifying local referendum questions to the ballot including development of the accompanying plain-English statement, development of the ballot itself, and issuing certificates to successful local candidates.

Administration of the election process includes determining and as necessary realign voting districts, selecting and equipping of polling places, selecting, purchasing, programming, deploying, and maintaining voting equipment and supplies, assuring each polling place is fully staffed with judge of election and inspectors, issuing watcher's certificates, preparing and publishing notices and advertisements, overseeing the absentee balloting system including timely mailing of ballots, investigating allegations of vote fraud, and announcing election results.

Additionally, the commissioners, as the county board, petition and report to the Court of Common Pleas on issues such as creation of new or consolidation of election districts, appointment of election board officers in the event of vacancy, as well as petitions that concern the election process.

The Department of State houses Pennsylvania's state-level Bureau of Elections, which includes the state commissioner of elections and staff. Counties retain primary responsibility for elections, but DOS fulfills some parts of the election and voter registration processes, with oversight of some specific county election activities. The state Bureau of Elections receives the petitions for state and federal offices and certifies those candidates for the ballot. The bureau is responsible for certification of election equipment used throughout the state – a critical role, as counties may only use election equipment that has been certified by the Bureau. The Bureau also generates campaign finance and ethics reports for state offices, assists with higher-level legal challenges regarding the election process, such as ballot access and litigation regarding the use of voting equipment, and maintains the SURE system.

While the Bureau prescribes duties for the county's election staff, it does not have the authority to enforce its recommendations, inasmuch as the responsibility for the conduct of elections lies at the county level. The Bureau serves to assist voters and candidates statewide with useful website information, publications, videos, and other resources detailing the election code and election process.

When a member of the board of county commissioners is a candidate for nomination or election to any public office, or if a referendum on a county home rule is on the ballot, the president judge of the court of common pleas is required to appoint an elector or electors to serve in the commissioner's stead on the board of elections.

The DOS website, www.votesspa.com, as well as DCED's *Citizen's Guide to PA Local Government* and the *Referendum Handbook* contain additional information on voting and the election process in Pennsylvania.

XII. Taxation and Tax Administration

Tax Assessment

The primary source of counties' locally generated revenue is tax paid on real property. The value assigned to each parcel of land in the county provides the foundation for the county, municipal and school district tax base. The ultimate responsibility for assigning that property value rests with the board of commissioners through the county assessment office.

Citizens often view the county's responsibility for the assessment role as a means to raise revenue, but that is not the county's primary role; rather, its role is to provide a system for equitable administration of the property tax. While the assessment process is often considered to be politically charged, counties that take a leadership role in performing the assessment function are able to divorce this required function from the political consequences often associated with property evaluation.

Valuation of property is, to the extent possible, objective but inevitably contains many subjective elements that make even the best assessment less than exact. Thus the county's focus in the assessment process is generally to identify where inequality or subjectivity may exist and attempt to assess properties in the most equitable way possible.

Assessment of property tax is governed by the Consolidated County Assessment Law (CCAL),¹ a relatively recent legislative enactment that consolidated a prior series of diverse statutes that governed county practice and were often inconsistent from one class of county to another. The legislation helped standardize both law and practice.

Procedurally, the assessment office determines the market value of all property and improvements. Then the board of commissioners, by resolution, sets the predetermined ratio. This is a percentage of the market value that will become the assessed value. For example, a property with a market value of \$100,000 and a predetermined ratio of 50 percent will have an assessed value of \$50,000. All classes of counties may use any percentage up to 100 percent as a predetermined ratio.

Real estate tax monies to be collected is the product of the assessed valuation times the millage set by each governing body – county, municipal, and school – at budget time.

The board of commissioners sit as the board of assessment, and in that context have overall responsibility for the assessment function, including ongoing monitoring of the assessment rolls and serving in a quasi-judicial function to hear appeals on assessed values. In the largest counties, the commissioners typically appoint an independent board, while all counties have the ability to appoint auxiliary boards. Auxiliary boards are most frequently used during a full-scale reassessment, when the appeals workload is greatest.

For day-to-day administration, the commissioners appoint a chief assessor, and the chief assessor in turn assembles the staff and equipment necessary to carry out the functions of determining property values, maintaining assessment records, and preparing required reports. The chief assessor is required by state law to carry a designation of certified property evaluator (CPE) based on testing done by the State Board of Certified Real Estate Appraisers. Training in preparation for the test, along with continuing education, is available from a number of sources, including the Assessors Association of Pennsylvania. While the county may have other assessors that have a CPE, the data they collect and the value they attach to a property is official only when validated by the chief assessor.

State law requires that all property within the county be fairly and equitably valued (assessed), which is a continuing process. New houses are built, barns burn down, property is subdivided, mathematical errors are discovered, building measurements corrected. All of these must be dealt with by the assessment office and approved by the board of assessment on an ongoing basis. It is important that these adjustments be made promptly and fairly because they affect the measures of equity and the fundamental fairness to the taxpayer through this assessment role. Failure to do so exposes the county to a heavy cycle of property value appeals, and even litigation by dependent schools and municipalities seeking county-wide revaluation.

The assessment office determines values, updates records, prepares reports, and prepares the tax duplicates forming the basis of school district and municipal tax bills. In many counties, they also prepare the tax bills and may send the tax bills as well. They also prepare change notices which are sent to affected property owners.

Property Tax Appeals

Property owners may appeal the value that has been placed on their property in two circumstances: 1) when a change in value has been made; and 2) when the assessment rolls are displayed for public scrutiny each year during the month of August. When notice of an appeal is received in writing, the assessment office will attempt to informally settle the matter. If the property owner cannot be satisfied at this level, then the assessment office will schedule a formal appeal before the Board of Assessment Appeals. These appeals are normally heard twice a year, in the spring and in the fall. If the property owner is still not satisfied, they may carry their appeal to the Court of Common Pleas where it will be heard. When an appeal is made, the Court has the power to apply the testimony heard and then may lower the value in favor of the appellant, sustain the value determined by the assessor, or raise the value in light of the testimony heard.

In counties of the fourth through eighth class, the board of commissioners often sit as the board of assessment appeals. However, the commissioners may appoint a three member board to act in their behalf, but an appointed board has limited powers; i.e. to hear and determine appeals from assessments, and to adopt rules of procedure with respect to the determination of appeals.

Tax Exempt Properties

The Board of Assessment Appeals must also deal with the questions of tax exemption. Generally, there are five types of exemptions: constitutional (federal, state, and local governmental properties, technically immune rather than exempt); church property, when used as a place of religious worship; property used for charitable purposes; statutory exemptions (specific types of properties used for specific purposes, such as fire halls, or available to specific classes of individuals such as disabled veterans); and temporary exemptions, such as those through the Local Economic Revitalization Tax Act (LERTA). Liability for taxation is the rule, and exemption is an exception to the rule. Any organization or person seeking exemption has the affirmative burden to prove that it is entitled to exemption.

Being a non-profit organization by itself is not sufficient to qualify for exemption. The constitutional exemption instead applies to properties used for purely public charity, a function which is now framed in tests developed by the PA Supreme Court in the Hospital Utilization Project (HUP) decision² and codified in the Institutions of Purely Public Charity Act. The tests and the act provide that for an entity to qualify as a purely public charity it must possess five characteristics:

1. Advances a charitable purpose
2. Donates or renders gratuitously a substantial portion of its services
3. Benefits a substantial and indefinite class of persons who are legitimate subjects charity
4. Relieves the government of some of its burden
5. Operates entirely free from private profit motive

Even though the properties are immune or exempt from taxes, the county assessment office is required to maintain a roll of values for exempt properties. In practice, most counties' rolls are estimates rather than true valuations as there is no functional use of the roll.

Tax Equalization Division

County assessment offices have data reporting responsibilities to the Tax Equalization Division (TED, an agency within the Department of Community and Economic Development and formerly the independent State Tax Equalization Board or STEB). As a part of maintaining the assessment rolls, the offices are required to obtain data from the county recorder

of deeds on recent property sales. The assessment offices are then required on a periodic basis to upload property sales data to TED through its on-line TEDTrac system. Both the county assessment office and TED make a determination which data is valid, then that data is used by TED to determine the common level ratio (CLR), the coefficient of dispersion (COD), and the price-related differential (PRD), each a separate measure of equity of the assessment roll.

The common level ratio (CLR) is the ratio of assessed to market value of a property. If a county's assessment data is perfectly correct and current, the common level ratio would be identical to the predetermined ratio. However, actual market values invariably move away from assessed values over time, causing the common level ratio to vary from the predetermined ratio. When the ratios vary by more than 15 percent from each other, an appeal of the assessed value of a property will result in the common level ratio, rather than the predetermined ratio, being applied to the property's market value to obtain the new assessed value.

While neither the COD nor the PRD have any legal standing at present, the TEDTrac values and the CLR are used by the Department of Education as a component to equalize the school subsidy formula, by the Department of Revenue to determine tax refunds under the gaming statute, and by property owners when they appeal their property assessment to the county.

Preferential Assessments

The Pennsylvania Farm Land and Forest Land Assessment Act (Act 319)³ and Covenants Preserving Open Space (Act 515)⁴ provide for special use land to be assessed using different criteria.

Act 319, commonly referred to as Clean and Green, promotes preservation of agricultural and forest land by allowing preferential assessment to be based on use value rather than market value. It is extended to owners of agricultural or forest land who covenant to maintain their land solely for agricultural or forest use. The act requires the assessment office to maintain records depicting both market value and use values, ownership changes with continuing agreement, any subdivisions for home building and a constant monitoring to ensure that the use of the land is not in violation of Act 319 regulation. Similarly, Act 515 establishes the manner in which the county commissioners may create an open space covenant with a landowner, for the purpose of providing an incentive for the land owner not to develop the land.

Reassessment

As economic conditions change, the market value of real property also changes. It may occur countywide or in a particular area due to unusual development or loss of a major industry that results in localized increase or depression of values. While it may be technically possible to adjust values for individual properties in order to equalize the assessment, Pennsylvania's constitutional requirement for uniformity requires equal treatment for all properties and so property-by-property changes, called "spot reassessment," is specifically prohibited. Instead, revision to the assessment roll for the purpose of equity must be accomplished and implemented county-wide, and the process is termed reassessment or equalization.

Pennsylvania state statute does not have a clear requirement for counties to reassess on any periodic basis, unlike other states where reassessment may be required every three to five years. Instead, the commissioners have the responsibility to determine when reassessment is called for. The need to do so will vary by county; counties that have a nominally inactive real estate market or changes in county value county-wide may be able to go longer between reassessments. Larger counties and those that have significant differentials in the market over time may find the need to reassess more frequently than is traditionally done. The legislature's Budget and Finance Committee released a report evaluating the assessment process, making recommendations on changes to improve the timeliness and accuracy of assessments.⁵

At some point the equity of the assessment diminishes to the point the county should consider a county-wide reassessment. The intent is to correct for changes in market, to correct errors in the assessment rolls, and to provide the county, municipalities, and school districts with current assessed values. Counties often delay reassessment, however, based on its expense and on the perception of adverse political consequences.

While the first reason is valid, the second does not universally hold true. Both are greatly affected by how the county approaches a reassessment, and more so by the amount of time that has elapsed since the last assessment.

To make any reassessment successful and accepted by the public, the county commissioners should be in agreement regarding the strategy used for assessment and the way in which the assessment will be conveyed to the public. Experience has shown that a county that takes a leadership role in conducting a reassessment can distance itself from political penalty.

Public information plays a critical role in building a positive public perception of the assessment. It needs to be conveyed that the framework of the reassessment is not to raise revenues but to improve the equity and fairness of the property valuation process. Useful public information includes why the county is undertaking the reassessment, how it will be conducted, the certification of those doing assessment, the timeline, how the assessment information will be collected, how the data will be developed compared to market, the public's right to appeal (including informal appeals as well as formal legal challenges), and the prohibition against any governmental entity receiving a windfall as a result of the reassessment. Informing the public early, maintaining an open process, and regularly providing updates are key to quelling public apprehension and opposition.

The most common way to undertake a reassessment is to contract to use a third-party mass appraisal firm. When contracting, the county needs to determine the firm's capacity to conduct the evaluation to the standards of Pennsylvania law, and having CPE designations as a part of their team. The agreement should stipulate the relationship with the county, its assessment office, and the public, and should require standards for the appraisal once delivered, including equity standards. The agreement between the county and the firm should delineate respective responsibilities, such as what the county collects, what the firm collects, and who has the responsibility for public information and reporting.

A second alternative is to conduct an in-house reassessment, which typically can be done less expensively than using a mass appraisal firm. However, while all counties have professional staff who can undertake pertinent parts of the revaluation, time constraints and the need for specialized knowledge for some property classes typically prevent the full revaluation being done in-house. Consequently, counties undertaking an in-house assessment typically contract out for such specialized roles.

A third alternative is to conduct a statistical revaluation. In essence, it involves applying a multiplier to all assessed values to bring them up to current market levels. Statistical revaluations are not specifically provided for in statute, but can pass legal tests if done properly. Most importantly, the county needs to sample data to make sure that the values generated fit properly in different areas of the county and different classes of property, which can become problematic if the equity values of the original assessment were not entirely valid. If the underlying assessment is flawed, corrections should be made, along with adjustments to areas of the county and types of properties that have appreciated at faster or slower rates since the last reassessment.

On completion of a reassessment and application of the anti-windfall provisions, the assessment staff or mass appraisal firm conducts informal appeals, to assist taxpayers in understanding their new values and to resolve errors in data. Property owners still aggrieved may formally appeal to the board of assessment or to auxiliary appeal boards that the commissioners may have appointed for that purpose. It is typical that owners who had undervalued property will pay more taxes (their fair share), and owners who had overvalued property will pay less taxes (their fair share). Usually about a third fall in each category, with the final third paying about the same tax bill post-reassessment.

It is important for the Board of Assessment Appeals to be fair but accurate as they hear appeals. The common stereotype is that if an owner shows up before the Board with an appeal, their property value will be lowered. Reflexive adjustments should not be granted, unless there is true merit in the appeal.

Tax Authorizations

Real Property Tax. Counties may levy up to 25 mills (30 mills in 2A counties) on the assessed value of real property in the county for general fund purposes. Counties of the third through eighth class may levy an additional five mills with court approval. A number of special-purpose levies are also permitted, which must be placed in restricted accounts and used exclusively for the delineated purposes. Additionally, counties are permitted a special millage, with no cap, sufficient to amortize debt. A more detailed listing of special purpose taxes, along with other tax authorizations and their statutory citations, is included in DCED's *Taxation Manual*.

Personal Property Tax. Counties may levy a personal property tax. Unlike the personal property tax in other states, which may be levied on industrial equipment or on individual property (e.g. autos and boats), Pennsylvania's authorization applies to the value of corporate stocks and bonds and privately held mortgages. Inasmuch as it is levied on the value of the holding and not the return, and because it is difficult to collect and equally difficult to enforce, no county currently levies the tax.

Hotel Room Rental Tax. The County Code authorizes all classes of counties to assess a hotel room rental tax. While most counties have a uniform rate of three percent, some counties that either pre-date the general statewide provision or have other specific local circumstances are allowed to levy the tax at a higher rate. In general the receipts can be used only for tourism promotion or, in limited circumstances, projects that enhance the tourism product. Some counties have special authorizations for use outside this general rule.

Nuisance Taxes. So-called nuisance taxes include per capita and occupation assessment taxes, which may be levied by municipalities and school districts and some classes of counties. Counties have the responsibility for maintaining the occupation assessment and per capita rolls. The per capita tax is a flat rate levied against every adult, with some exceptions. The county is responsible for developing and maintaining the roll, although in many cases, because the school is the most likely entity to levy the tax, the school performs this function by arrangement with the county. The occupation assessment tax applies a millage against the value of a person's occupation, and the county is responsible for determining the value to be assessed on each occupation and gathering the list of individuals and their occupations. There is no standard, and so the number of occupational categories that counties use varies from less than ten to several hundred. Regardless of number, all have the same equitable problem of being unable to render a truly fair occupational assessment within the constraints placed on them by the law.

The Homestead Act

The Homestead Property Exclusion Program Act,⁶ also referred to as the Homestead Act, permits the governing body of a political subdivision to exclude from real property taxation a fixed dollar amount of the assessed value of each homestead property and farmstead property in the political subdivision. Qualified homestead and farmstead properties are defined as the domicile of the property owner, and the owner must apply to have eligibility to receive the exclusion if granted by any of the applicable taxing jurisdictions.

The homestead property exclusion can be offered by the county or municipality, and must be offered by the school district under the property tax relief provisions⁷ of the Taxpayer Relief Act. The exclusion cannot exceed one-half of the median assessed value of homestead property in the political subdivision, and the farmstead property exclusion cannot exceed the amount of the homestead property exclusion. The political subdivision is not permitted to offset the exclusion by an increase in property taxes.

Counties are required to develop and maintain the homestead and farmstead rolls in conjunction with the real property assessment rolls. Eligible property owners must apply on forms prepared and provided by the county. County assessors are required to provide sufficient notice to the public regarding the availability of applications, to designate real property as homestead property or farmstead property and to notify the public of all filing deadlines.

The Taxpayers Bill of Rights

The Local Taxpayers Bill of Rights (LTBR)⁸ requires local taxing authorities to adopt notice, disclosure and appeal procedures in conjunction with the administration, collection and audit of certain eligible taxes. Most of the taxes falling into the definition of eligible taxes are those pertaining to municipal governments such as occupation, occupation assessment or occupation privilege taxes, gross receipts taxes, amusement or admissions taxes, and earned income and net profit taxes. However, since per capita taxes also fit into the definition of the LTBR, counties which levy the tax must comply. Except for a provision in the Act that requires political subdivisions to pay simple interest on overpayments of taxes at a rate equal to what the commonwealth pays under the Fiscal Code, the LTBR does not relate to real estate property taxes.

The Real Estate Tax Deferment Program Act

The Real Estate Tax Deferment Program Act⁹ gives Pennsylvania political subdivisions, including counties, the power and authority to grant annual real estate tax deferrals to certain eligible individuals on their homesteads. The term "homestead" is specifically defined in the Deferment Act to include only certain types of residential dwellings. Because the taxes are merely deferred (and not abated), the deferred taxes must ultimately be repaid to the political subdivision granting the deferment as specified in the Deferment Act. Counties, as other political subdivisions, are not required, but have the option, to offer deferrals under the Act.

Shale Gas Impact Fee

Act 13 of 2012 provides for the ability of counties in which unconventional gas wells are drilled to levy an unconventional gas well fee,¹⁰ commonly referred to as the shale gas impact fee. The fee is paid by the producer to the commonwealth. Counties and municipalities hosting shale gas drilling operations receive a majority of the funds collected through the act, distributed on a formula basis. The remainder of the funds are distributed in part to all counties on a separate formula basis, for at-risk bridges and environmental projects, as well as to conservation districts, housing programs, and some state agencies. Funds going to impacted counties and municipalities can be used for a broad array of local services having a nexus to the impacts of unconventional well development.

County Vehicle Registration Fee

Act 89 of 2013, an amendment to the state transportation and vehicle code, allows counties the discretion to institute an optional \$5 fee on vehicles registered in the county.¹¹ The fee is collected by PennDOT at the time of the vehicle's registration and the full balance of all fees collected is remitted back to the county of registrations. Funds received under the county vehicle registration fee program may be used by the county to fund any program or service for which Liquid Fuels fund dollars may be used. Counties must implement the fee by ordinance, and must notify PennDOT of its decision within 90 days in advance of the date the ordinance is to take effect.

For additional guidance on tax and tax assessment issues, refer to DCED's *Taxation Manual* and *Tax Collector's Manual*.

References

1. 53 Pa.C.S.A. § 8801 *et seq.*
2. *Hospital Utilization Project v. Com.*, 487 A.2d 1306, 507 Pa. 1, Sup. (1985)
3. 72 P.S. § 5490 *et seq.*
4. 16 P.S. § 11941 *et seq.*
5. "Pennsylvania's System for Property Valuation and Reassessment," Legislative Budget and Finance Committee (www.lbfc.legis.state.pa.us), 2010
6. 53 Pa.C.S.A. § 8581 *et seq.*
7. 53 P.S. § 6926.301 *et seq.*
8. 53 Pa.C.S.A. § 8421 *et seq.*
9. 53 Pa.C.S.A. § 8571 *et seq.*
10. 58 Pa.C.S.A. § 2301 *et seq.*
11. 75 Pa.C.S.A. § 1935

XIII. Communications

Communications is an essential area of focus for governments at all levels. Primarily, communications efforts involve interaction with the press and other media formats to share information with the community, with the objective of helping citizens better understand the role of county government and the services that it performs within the community. In the past, media relations meant sending out a press release – a top-down message that the county controlled – and hoping for the best: positive news coverage that gets the word out. Today's public relations means dynamically collaborating with and exchanging ideas with various audiences and constituents. Social media now plays a central role in both media and citizen relations and has allowed communication to become a two-way conversation in which response and interaction from the public is emphasized.

Any decision a county commissioner makes will affect the county, other governments, private concerns and the public. Commissioners may face criticism, no matter how competently they perform their duties or how sincere they are in their dedication to the public good. This criticism, however, may be rooted in issues of misinformation or a lack of information about the role and actions of the government. Proper communication can help minimize confusion by providing a steady flow of information to the public. Additionally, the effective use of social media may allow governments to not only provide information but receive feedback from their citizens to determine what further information the public needs or wants.

As a public body, a county must conduct its affairs in public, consider the public interest, make information available to the public and provide a public accounting of its operations. Democratic government is government by consent, but this consent is not easily obtained unless two-way communication occurs; information must reach the public, and county commissioners must stay informed about public opinion and attitudes.

County commissioners should, and often must, report to the public an account of their activities to enlist support for current and future programs. These reports range from detailed annual reports to newsletters to press releases, and are intended for the citizenry, other governments and agencies and the press.

A commissioner should remember that being receptive and encouraging to communication by the public is vitally important. Many constituencies such as the poor, the undereducated, the young and the elderly have little group leadership, and often need help articulating their needs and desires. Information should be given to and received from all groups, both to avoid being cut off from significant portions of the public and to enable the broadest possible consideration of viewpoints. To reach a wide range of constituents, it is necessary for counties to utilize varying media outlets and news sources, ranging from traditional printed newspapers to online news outlets, email, blogs, Facebook, Twitter and other social media.

Media Relations

The first amendment to the U.S. Constitution contains the guarantee of freedom of the press. Under this guarantee it has been both the privilege and the responsibility of the press – including the traditional avenues of television, radio, periodicals and newspapers in addition to social media and internet news sources – to concern itself with government, a role it often equates with being the public watchdog. The concept of responsibility of the press is not an obligation to report news about government to the satisfaction of public officials, but to report it in such a way as to insure that the public is as completely informed as possible. Developing a cooperative relationship with the press may enable the press to gain greater access and insight into the government as well as provide the government with the opportunity to communicate the information it feels is important for the public.

Engaging with the media offers the opportunity to be proactive in controlling the way in which the county's actions are communicated to the public. Active participation in the process is key, as it offers the county the opportunity to craft the information being shared with citizens and to determine how that message is shared. Taking a passive role in communications – allowing the media to gather information and develop a story on its own – may mean that the key information could be lost, inaccurate or skewed when presented to the public. Following are recommendations for developing a positive, cooperative relationship with the media.

Media Relations Tips

Do:

- Be prepared. Be informed about the topic at hand and know the key points you wish to convey.
- Be in control of the interview. Return to the points you wish to convey as often as possible.
- Brief reporters on background information.
- Minimize distractions. Turn off your cell phone or give it to someone else.
- Avoid jargon, industry language, and acronyms. Reporters are communicating the information you give them to the general public. It is important to speak in terms that everyone can understand.
- Be responsive, but always remember your purpose. Respond to the interviewer's questions but remember that you are there to communicate a specific message.
- Respect deadlines. Reporters and editors are always on strict deadlines, especially in today's internet-paced news environment. Return telephone calls or emails promptly. Tighter deadlines require greater vigilance on the part of commissioners to guard against inaccuracies in the news and to be prompt in reporting those that may occur.

Do Not:

- Be afraid of publicity. It can provide a positive opportunity to promote the county and the projects it is engaged in.
- Feud with the press. Strive for a positive, cooperative relationship.
- Speculate, conjecture or guess when discussing information with the media. If you do not know the answer, say so and promise to get it before the reporter's deadline.
- Lie to a reporter. If you cannot explain something, say so and talk about what you are doing to be able to explain it next time.
- Wing it. Be prepared for interviews and know the message that you wish to convey.

News Releases

A news release is a useful way of providing clear, concise, and accurate information for reporters to use not only for the basic story, but also for background and for leads for further information. Releases are perhaps most useful in providing advance announcement of a public ceremony, the text of a speech, a fact sheet about a change in a program, a biography or summarized information on a detailed report that has been prepared by a committee. The use of news releases is encouraged because it is the best opportunity for commissioners to put forth their messages in their terms or to offer commentary on an issue of concern to the public. Sometimes the news story can be written entirely from the release. More often the reporter will prefer to follow up for further information. For this reason, the release must always carry the name, address, telephone number, and email address of the source to be contacted.

Meeting with the Press

Sharing the county's news with the public often involves setting up meetings with various members of the press, from individual reporters to editorial boards at a newspaper. When discussing county business with the press, prepare for the give-and-take of providing information and the search for news. Do not require written questions beforehand, and do not make any off-the-record statements, if possible. Anticipate questions that will be asked, including the need for the project, who benefits from it, what it will cost, who recommended it, its location, citizen reaction, and the nature of federal and state involvement. Developing key messages in advance of any press meeting helps to assure the county position is understood.

Working with the local newspaper may involve meeting with the paper's editorial board. The board may consist of the paper's editor, publisher, or editorial page writers. The editorial board plays an important role in identifying critical

issues for discussion in the newspaper and whether and how those issues will be covered, as well as determining what stance the paper will take on those issues. Discussions with the editorial board give commissioners the opportunity to be the first to provide information on county initiatives and new projects. Because the editorial board controls the paper's message, it can be instrumental in conveying the message that the county desires. County officials need to carefully prepare before any meeting with an editorial board. Preparing means:

- Learning about the people on the editorial board
- Reading past issues of the paper to understand their position on issues of concern to the county or the topic you wish to discuss
- Preparing an outline to follow during the meeting
- Developing materials to be left with the editorial board

Social Media

Social media use has grown exponentially in recent years and will likely continue to play a major role in communications in the future. Governments at all levels are harnessing the power of social media as a tool for efficient, wide-reaching communications with their constituents. Using social media channels offers counties a means of keeping the public apprised of happenings within the area, provides minute-by-minute coverage of events, and becomes a streamlined means of communication in a crisis. It also offers a means for gathering public commentary and concerns.

While it can be a powerful communications tool, it also comes with its own set of challenges. The power of social media lies in the immediacy of the news: information can be shared with the public with just a few keystrokes. Social media by its nature encourages two-way conversations between the government and the public as it offers means for increased interaction. Engaging with the community on social media allows the county to share positive news and information as well as address any negative messaging that may be shared by others. In fact the county should actively monitor popular community sites, in order to amplify positive comments or respond to inaccuracies. Participation in messaging allows the county to have greater control over the information being shared with the public. Many potential crises are avoidable through proactive listening, engagement, response, conversation, and transparency in communications.

Crisis Communication

Communication with citizens is especially critical in the event of a crisis. It is important to determine the media avenues that will be utilized in such emergencies, and to do so well in advance of need. Commissioners, in conjunction with county support staff, should develop a crisis communications strategy that coordinates with emergency preparedness plans.

In addition to traditional media, social media is an emerging tool for distributing a message quickly and to a wide number of people in an emergency situation. Electronic communication outlets such as Facebook, Twitter, YouTube, blogs and Real Simple Syndication (RSS) feeds should be considered as avenues for effective and efficient communication during a crisis.

A crisis communication plan should include:

- Phone and email listing for anyone who would be involved in communications in an emergency
- Training for any staff involved on interactions with the media during a crisis
- Pre-approved statements that can be shared with the public
- Information on emergency personnel who should be included in crisis communications
- Identification of key county personnel who would be in charge of managing communications

Training staff members on the crisis communications strategy as well as conducting drills to practice how communications would be handled provides the county with an opportunity to test its readiness.

County Spokespeople

In counties without a designated spokesperson position or Public Information Officer, it is important to identify the individual or individuals who will be expected to speak with the media on matters of county government. Some counties utilize their county commissioners as spokespeople, providing each commissioner with assigned topics on which they should be knowledgeable and able to speak with the media. Other counties may assign some media relations duties to the chief clerk. It is important to delineate in advance who will be assigned roles as a spokesperson, what topic areas they should be prepared to address and, particularly if a staff person is given spokesperson responsibilities, any clearances on message, timing, or content that may be necessary.

Recognizing the growing need for communications and public relations strategies, many counties are creating specialized positions to meet these needs. Public Information Officers (PIOs), as many of these positions are known, are the messengers for county government. They are responsible for planning and holding press conferences, coordinating with media outlets, developing key messages, disseminating information, building relationships with the local media, and developing press releases or other communication tools such as tweets or Facebook postings. The PIO also plays a key role in developing crisis communications strategies to ensure that the public can quickly and efficiently be informed in the event of a county emergency.

Further information on communications at the county level, including resources on social media and crisis communication, is available through the National Association of County Information Officers (NACIO) at www.nacio.org.

XIV. Other County Functions

This chapter presents some basic information on other governmental functions in which a few, some, or many Pennsylvania counties are involved. It is important that the county commissioners understand how some of these functions are carried out at the county level.

Public Works

The term public works, when broadly defined, takes in a great deal of functional territory. Most recently public works has become somewhat synonymous with the term infrastructure. There are few references to either term in the County Code, but in any specific action there may be any number of functions organized under the heading of public works:

- Streets and highways
- Street signage
- Traffic engineering
- Sewage treatment
- Engineering
- Building maintenance
- Equipment maintenance
- Bridges
- Snow removal
- Water treatment
- Storm water management
- Solid waste management
- Park maintenance

Not all counties provide all of these functions. In most counties, they are provided by municipalities, authorities, private utilities and private firms. In certain places, the described service may not be available at all. While each county develops its own definition of the public works function, it is important for county commissioners to develop some level of knowledge on all of these areas, given the intergovernmental and regional planning implications.

Engineering. Engineering encompasses most areas of public works and typically includes:

1. Consulting: studies, reports, design, specifications
2. Construction contracts: roads, bridges, building renovation
3. Inspection
4. Records and data: grants/financial reporting

The County Code authorizes the commissioners to appoint a professional civil engineer whose duties include preparation of plans, specifications, and estimates and surveying.¹ While some counties have engineers on staff, many do not and they must obtain professional engineering work through private firms. Even the counties that have engineering staff will occasionally find themselves in the market for a consulting engineer. The most important reason for hiring a consulting engineer is to acquire the expertise needed for a specific job without having to buy that expertise on an ongoing basis.

Planning. A capital improvement program is essential to systematically predict and plan for the purchase or construction of major facilities, assets and projects. Costs associated with each improvement include architectural and engineering fees, land acquisition, construction and costs for related furnishings and equipment.

Property Management. County commissioners must make investments for the purchase and maintenance of property and equipment. It is better to spend small but adequate amounts on maintenance of these assets annually than to defer maintenance and find the need to spend large amounts later due to neglect. Unfortunately, when budget cutting is required, maintenance is too frequently red-lined. But under a responsible maintenance program, preventive maintenance can be a cost saving measure. If performed diligently, preventive maintenance can reduce overall maintenance and repair cost. Fleet maintenance is an example; a schedule should be developed for servicing and records kept on each vehicle.

Bridges. Under federal guidelines, state highway departments must biennially inspect the conditions of all public bridges that are twenty feet or longer. Bridge inspections can take hours or days, depending on the bridge type, what it spans, the traffic it carries and its condition. A sufficiency rating (SR) is applied to each, with a sufficiency rating of greater than 80 meaning that a bridge does not require replacement or rehabilitation or weight limit postings. The states can do the inspection work themselves, or pass down the responsibility to cities and counties.

There are nearly 23,000 bridges in Pennsylvania, and counties are responsible for approximately 6,800 bridges or 29.3 percent of the total.

Day-to-day inspection and maintenance work on county bridges is in most cases coordinated by the county's designated engineer and performed by a contractor. Work is done in accordance with the published PennDOT standards. The work is subject at all times to the inspection of the engineer who should have free access for inspection. The contractor should furnish all materials, tools, labor, and work incidentals. The work should at minimum include:

- Sweeping bridge decks
- Removal of debris
- Pothole repair
- Tree and shrub trimming
- Signs
- Cleaning and sealing deck joints
- Repairs to bridge structure
- Painting bridge floor
- Rock replacement

Act 89 of 2013, Pennsylvania's comprehensive transportation and highway funding act, provided increased funding for infrastructure, including special programs for county and municipal bridges. While the law represents a significant investment, counties continue to employ a number of strategies to maximize funding, including new designs and construction techniques using timber, modular concrete and retrofitted railroad cars. Additionally, PennDOT permits less expensive design standards for low volume bridges. A new construction management technique, bridge bundling, also holds promise of reducing engineering and construction costs while shorting rehabilitation and replacement timelines.

County Roads. In Pennsylvania, counties have responsibility for fewer than 700 miles of roads, so have only a limited role in road administration.

Permitting. In all instances where a bridge or highway project has state or federal funding, counties must obtain project approval for highway projects from the PennDOT, and sometimes special permits from other state agencies (Department of Environmental Resources, Historical and Museum Commission) and meet state and federal standards.

Transportation

County transportation systems are usually comprised of a network of state and local agencies, clients, and public and private providers. While large counties are the predominant participants in fixed route mass transit systems, smaller counties' transportation services are typically established from the need to transport seniors and mental health/mental retardation clients, commonly known as demand-response, shared ride, or paratransit.

County commissioners have the ultimate responsibility for setting the level of paratransit service to be provided to county residents. Determining the amount of transportation services to provide in an area requires a difficult trade-off between the wants and needs of residents and the financial and cost-effectiveness criteria imposed by local officials and funding agencies, coupled with vehicle, driver, and dispatching considerations. Service level is defined as the number of days of service provided, the daily hours of service, the number of vehicles operated and the number of trips provided.

County transportation plans are developed to transport as many clients as possible, usually within an eight- to ten-hour day. Because of the special needs of the clients, transportation needs sometimes extend after working hours. To address this, health providers (for example, a mental health center) are sometimes sold, given or loaned vehicles through county agencies so that individual needs can be met. Funding for the program includes block grants, Department of Human Services (DHS) grants and lottery grant programs through the Department of Aging.

Fare Structure. The state requires some paratransit services to maintain a nominal fare structure. An examination of the nearly 100 shared-ride transportation providers statewide reveals a wide range of fare structures, each suited to the local conditions, and no one fare structure is correct or ideal. All should be simple to understand and administer, be equitable and enable the coordinator to recover all costs including direct operating costs and coordination costs. A revised fare structure should allow for the sharing of administrative and coordination costs among all service providers rather than charging them all to the trips provided directly by the coordinator.

Billing System. In many cases, the rider is required to pay a portion of the cost of the ride. Some counties have the driver actually collect the money while most are shifting to a daily recordkeeping system which includes invoicing the rider, which results in better auditing and accounting controls.

Drivers. The term “driver” on the surface implies duties typical of a bus driver or taxi driver. In actuality, county drivers are required not only to drive vehicles on an extremely tight time schedule, they must in many cases assist the client onto the vehicle and at all times insure the safety of the rider. The driver is often dealing with a rider with special needs. It is extremely important for the drivers to have a commercial driver's license, know CPR, and have first aid training.

Record Keeping. Because the county receives state funds for transportation services, the county must show that rides are given in the most cost-efficient manner possible. A functional record keeping system must be used, clearly showing how individual trips are billed and money is received.

Public Transportation. County governments, particularly, in metropolitan areas, have become increasingly involved in the issues of commuter railroads, buses, air and other forms of transportation. Demands for air transportation services are constantly rising since the capacities of existing airports are overburdened or strained. The number of persons commuting into business centers from surrounding areas of the county or from adjacent counties is also steadily increasing. It could be argued that the problems of the commuter typically cannot be solved by the actions of a county government on its own. In fact, given the high cost of mass transit projects, multicounty coordination would seem most appropriate and is incentivized by PennDOT.

Intermodal. Changes in manufacturing and commercial supply line management, including in particular just-in-time delivery, has led to close coordination among transportation modes. County economic development efforts, coupled with county comprehensive land use plans, are recognizing the interfaces among ports, rail systems, truck terminals, and arterial and interstate highways. Proper planning can put in place intermodal systems that can make the county attractive to business and commerce, while concurrently addressing regional highway pressures.

Public Safety

Public safety is commonly considered to include fire and police services. In Pennsylvania, these are typically provided by municipalities and the Pennsylvania State Police. County sheriffs are primarily officers of the court, providing service of process and prisoner transport. While case law gives them limited on-sight arrest powers, in general they do not have authority to exercise the full range of police powers of their municipal or PSP counterparts.

County Property. The county commissioners are responsible for providing for security of county property and facilities. While in many counties this duty is vested with the sheriff's office, many counties appoint or contract for separate security forces.

Emergency Communications. Counties have primary responsibility for providing 911 emergency calling services to the residents of the commonwealth, under the 911 Emergency Communication Services (formerly the Public Safety Emergency Telephone Act).²

Calling 911 from any communications device – wireline, wireless, VoIP or other emerging technologies – provides telephone access to a county operated emergency dispatch center or PSAP (Public Service Answering Point), with the dispatcher obtaining the location and nature of the emergency and then dispatching the appropriate responder. Enhanced 911 (E-911) offers computerized assistance in determining the physical location of the caller, even if somehow incapacitated or incapable of answering the questions.

The law creates a fee structure, paid by telephone subscribers, to pay for certain nonrecurring, maintenance and operating costs of establishing and operating a 911 system. The Pennsylvania Emergency Management Agency (PEMA) establishes guidelines and application procedures, reviews and approves county 911 plans, and sets, reviews and approves technical standards.

The system faces continuing challenges to meet the needs created by technological advances, both with devices able to place 911 calls, and with operational technologies to receive and manage calls, provide for system efficiencies and redundancies, and maintain sound dispatch systems that interface with multiple police, fire, and emergency services agencies.

Emergency Management. Counties serve as the lead agency for all-hazards emergency response planning, governed by the Emergency Management Services Code.³ Under the Code, the county develops the plan in conjunction with its political subdivisions, within the planning guidelines of PEMA. PEMA, the county, and each political subdivision has defined responsibilities under the plan for emergency management, response and recovery within the territorial limits of that county or political subdivision.

Each county appoints an emergency management coordinator, subject to endorsement by the director of PEMA, and appointment by the Governor. The coordinator is responsible for bringing together county and community elected officials, municipal emergency management staff, and emergency responders for development of comprehensive and coordinated inter-governmental planning, training and communications. Planning that incorporates training, effective integrated communications, and unified incident command procedures, is essential to Pennsylvania's statewide response capability.

In addition to maintaining the emergency management program, many counties utilize their emergency man–management office to coordinate similar or related programs. Common examples include fire service and emergency medical services training and public safety communications and hazardous materials planning.

Legislation such as the Emergency Telephone Act and the Hazardous Material Emergency Planning and Response Act⁴ has had significant impact on the roles and duties of the emergency management coordinator of each county.

Homeland Security/Counter-Terrorism Preparedness. For many, September 11, 2001 marked the beginning of terrorism preparedness in this nation. However, counter-terrorism preparedness has been a challenge for the emergency management community for years. The World Trade Center bombing in 1993 and the attack on the Murrow Federal Building in Oklahoma City in 1995 demonstrated the country's vulnerabilities. Security levels at public buildings changed following these events, as did the emphasis on crisis preparedness.

Counter-terrorism is divided into two broad areas of activity: crisis management and consequence management. Crisis management is a law enforcement intelligence function. It concentrates on the detection and prevention of a terrorist event. Consequence management addresses plans and procedures for response to such an event should it occur. This is the role of the emergency management community at the federal, state, county and municipal government level.

For counter-terrorism preparedness purposes, Pennsylvania's 67 counties have been grouped into nine counter-terrorism regions under Act 227 of 2002.⁵ The Regional Counter-Terrorism Task Forces develop plans and procedures for response to events involving weapons of mass destruction. This includes chemical, nuclear and biological threats and incidents. The regional organizational structure also provides the mechanism to channel federal Homeland Security/Counter-Terrorism first responder funding to community-based assets.

Land Use

Land Use Planning. In Pennsylvania, land use planning is governed by the Municipalities Planning Code (MPC).⁶ Because Pennsylvania tradition places heaviest emphasis on land use controls at the municipal level, counties' primary responsibility is development of the county-wide comprehensive plan.

Comprehensive plans are guidance documents and serve to advise the county and municipal governing bodies. The plans provide useful reference to local municipalities and form a basis to promote general consistency of local plans as well as general guidance for land use patterns that go beyond municipal boundaries.

The county plan, which is to be updated every ten years, must identify:

- Land uses as they relate to important natural resources and appropriate utilization of existing minerals.
- Current and proposed land uses which have a regional impact and significance, such as large shopping centers, major industrial parks, mines and related activities, office parks, storage facilities, large residential developments, regional entertainment and recreational complexes, hospitals, airports and port facilities.
- A plan for the preservation and enhancement of prime agricultural land and encourage the compatibility of land use regulation with existing agricultural operations.
- A plan for historic preservation.
- A plan for the reliable supply of water, considering current and future water resources availability, uses and limitations, including provisions adequate to protect water supply sources.

County planning commissions are to prepare advisory guidelines that promote general consistency with the adopted county comprehensive plan. These guidelines are to promote uniformity on zoning terminology and common types of land use regulations. While it is to be consulted by municipalities in development of their own plans and zoning and subdivision ordinances, it is not a controlling document. In absence of local municipal or multi-municipal zoning, counties can exercise zoning and subdivision, although county ordinances are pre-empted by enactment of a local or multi-municipal zoning ordinance.

All counties in the commonwealth have planning agencies which, in addition to developing and administrating the county comprehensive plan, are also required to comment on and review all municipal plans, zoning and subdivision and land development ordinances and well as proposals for land development, which includes subdivision plats and plans.

Storm Water Planning. Counties have the primary responsibility for storm water planning under the Storm Water Management act.⁷ The act requires counties to develop plans on a watershed basis in consultation with the municipalities in the watershed. Municipalities are obligated to incorporate the provisions of the county plan in their land use ordinances, and state permitting and funding is tied to the plans.

Solid Waste

The Municipal Waste, Planning, Recycling, and Waste Reduction Act, best known for providing for mandatory and voluntary recycling programs at the municipal level, also gives counties responsibility for developing solid waste plans for the proper disposal of all municipal (garbage), residual (industrial processes) and infectious (medical) waste generated within the county.⁸

For counties with approved plans, implementation includes, at a minimum, assuring that municipalities within the county have adopted any ordinances and procedures which the plan may require. The Act gives the county flexibility to rely on private or municipal facilities or to develop its own.

Grants are available from the Department of Environmental Protection (DEP) for development of plans and for the hiring of recycling coordinators. Counties operating their own facilities may levy tipping fees, and counties may also negotiate a host county fee levied against waste disposers within the county. Finally, the Act gives counties discretionary authority to develop household hazardous waste collection programs.

Agriculture

Counties partner with the Department of Agriculture in supporting the Agricultural Conservation Easement Purchase Program, under which counties purchase development rights to prime agricultural land, thus assuring their continued agricultural use. Counties also deal with the Department on surplus food programs. Counties may also have involvement with nutrient management, land application of biosolids, on-lot disposal systems, West Nile detection and mitigation, and black fly spraying.

Director of Veterans' Affairs

The county commissioners appoint a Director of Veterans' Affairs (DVA) whose duty is to provide assistance to veterans in accessing services, and carrying out other designated county responsibilities for veterans and their families.⁹ The director is required to obtain and maintain accreditation from the US Department of Military and Veterans Affairs.¹⁰

The Director of Veterans' Affairs becomes the contact for all matters concerning active duty military personnel, ex-military personnel and certain survivors. The DVA also maintains liaison with the various veterans organizations within the county.

The DVA will assist veterans in the filing of claims such as service record changes, disability claims, and others. At the time of a veterans' death, the DVA will assist the family in filing claims for the death benefits, including burial expenses and appropriate grave markers.

The county has an obligation to maintain a record of where each veteran is buried within the county and other data pertaining to their military service. This compilation is known as the Veterans Grave Registration Record. The county is also required to decorate each veteran's grave with a US made flag on Memorial Day and to insure that all veterans' grave sites are maintained.

At the discretion of the county commissioners, allowance is also made for counties to expend public money for reimbursing costs of military-related organizations in observing Memorial Day, Flay Day, Fourth of July and Veterans Day observances.

Libraries

To improve county citizens' quality of life and to meet citizens' needs for lifelong education and literacy, counties often support public library services. Public library services ensure that citizens have free access to books, high-speed Internet services, digital collections and library programs for citizens of all ages, especially youth, families and older adults. Public libraries also provide trained staff to assist citizens with the use of these resources.

Public library services are governed by The Library Code (24 PA C.S.), defining what a public library is and how it is governed, including the responsibilities of the library's board. Service may be provided by local nonprofit agencies or in conjunction with school districts or as local municipal services.

Regardless of the service delivery method chosen, counties may provide support through direct funding or in-kind services to a county wide or multi-county system of libraries that serves all residents at no charge; or by providing funds or in-kind services (e.g. facility or technology support, health insurance) to a single designated county library that provides free service to all residents. In addition to allocating county general funds or providing in-kind services, counties may levy a separate library tax millage, by ordinance of the county commissioners or by voter referendum.¹¹

Under The Public Library Code, libraries and library systems are governed by a board of directors that has exclusive control of all moneys received to provide library services. Counties that maintain or support library services may appoint a majority of members to the county designated library or library system board of directors.

The Public Library Code establishes a system of state subsidies for public library service. The Office of Commonwealth Libraries, within the Pennsylvania Department of Education, establishes service standards and administers this program. Eligible public libraries use state aid to defray the day-to-day costs incurred in providing public library service. On average, state aid provides about 18% of public library income in Pennsylvania.

In order to qualify for aid, libraries must meet a set of service standards set out in the Library Code, which address service aspects such as collection size, hours of service, staff certification, and participation in the Statewide Card Program (ACCESS PENNSYLVANIA).

The Public Library Code establishes seven categories of state subsidy, three of which are directly affected by the level of county support:

1. Quality Libraries - Aid granted to a local library or library system on a per capita basis whose minimum level of local funding is at least \$5.00 per capita
2. Incentive for Excellence Aid – Matching aid granted to a local library or library whose local funding levels are greater than \$5.00 per capita
3. County Coordination Aid – Matching aid paid on a percentage of the county appropriation according to the class of county

The State Subsidy program's intent is to supplement local dollars, not replace them with state dollars. By law, the annual expenditure of local dollars must equal or surpass the amount spent in the previous year, for those libraries that earn Incentive for Excellence Aid. Also, local government income (from county, municipal, school district, or other specially designated district) cannot decrease from the previous year.

Funds from counties to support library services may also qualify the county library agency for County Coordination Aid from the Pennsylvania Department of Education, State Library agency. The matching amount is based on the class of the county: Five percent for 2nd class, 30 percent for 2A and third, 50 percent for fourth and fifth, and 100 percent for sixth through eighth.

In addition, county funding also contributes towards the library agency's maintenance of local effort which is used to generate additional state aid in the form of Public Library Subsidy funds. Libraries must maintain the level of support received from all local government agencies from year to year in order to continue to qualify for state aid, although there are exceptions for economically distressed areas.

Tax Collection

In the majority of counties, municipal tax collectors collect county real estate, per capita and occupation taxes. Under special legislation, county taxes in Allegheny County are collected by the county treasurer. Other special local laws make the county treasurer the collector of county taxes in Beaver, Bedford, Chester, Fulton, Greene, Lawrence and Washington counties.¹² In Bedford and Fulton counties, the county commissioners have voted to have local tax collectors collect the county taxes. Counties adopting home rule charters may opt to collect the county taxes. Additional information on tax collection can be found in the DCED's *Taxation Manual* and *Tax Collector's Manual*.

Weights and Measures

Counties share responsibility with municipalities and the state for assuring the accuracy of commercial weights and measures under the Consolidated Weights and Measures Act.¹³ The State Bureau of Standard Weights and Measures in the Department of Agriculture maintains the state standards, keeps the Weights and Measures Laws, and tests the large capacity weighing and measuring devices that cannot be economically certified periodically by county sealers.

Appointment of a county sealer had been a statutory requirement, but with changes in markets and recognition of inefficiencies in local systems, county participation in weights and measures is now discretionary. If the county chooses not to participate, or to disband its weights and measures department, the responsibility falls back to the Department of Agriculture. The act, however, gives the Department options to permit device owners to contract with independent certified inspection companies to have their device inspections performed.

For counties that maintain weights and measures responsibilities, the county enters a memorandum of understanding (MOU) with the Department, dividing county and state certification responsibilities. Typically, the MOU stipulates that the county sealers carry out the inspection responsibilities from small and medium capacity scales and motor vehicle dispensers (gas pumps), while state inspectors handle large capacity scales, jewelers scales, packaged commodities and vehicle scales, among others. The MOU's are not uniform, however, and many counties have assumed responsibilities beyond the basic ones mentioned.

Conservation Districts

Conservation Districts in Pennsylvania are a subdivision of a state government acting under the supervision of the State Conservation Commission. Conservation Districts have a major responsibility in natural resource management, coordinating the efforts of all state, federal and local agencies involved in the conservation of our natural resources.

Conservation Districts in Pennsylvania are county-based, and the programs are guided by a volunteer Board of Directors appointed by the county commissioners. There are districts in every county except Philadelphia. Environmental education, whether it be school students, municipal leaders, contractors, developers or others, and assisting the public in complying with environmental regulation are two major focal points of districts.

The majority of district operating funds come from the county, although funding is now also dedicated from the unconventional gas well fee (impact fee). The State Conservation Commission assists with funding for administration and for hiring staff.

The district may be involved in a variety of programs and delegated duties, including overseeing the erosion and sedimentation pollution prevention program (Chapter 102 of the Clean Streams Law), permitting of stream and wetland encroachments (Chapter 105), AgLand Preservation and the purchase of development rights, the Chesapeake Bay Program, the 319 Clean Water Act, P.L. 566 flood control, Resource Conservation and Development, and others.

Penn State Cooperative Extension

Penn State Cooperative Extension Offices, located in each of the commonwealth's 67 counties, offer county commissioners an entry to the resources of Penn State University. Because they are funded through a cooperative partnership of federal, state and county appropriations, Cooperative Extension's informal education programs for both youth and adults are available in every county.

Cooperative Extension programs are based on critical issues identified by citizens who serve on program planning committees at the local county level. Historically, emphasis was placed on programs in the area of production agriculture and the rural community, but today's extension programs are for all people, including those in urban and suburban areas. While continuing the land-grant mission of helping people solve their problems based on research based information, extension programs have evolved to include both youth and adult resources stressing individuals and families.

The Extension focuses on four broad educational goals:

1. Strengthen families, enhance the development of children and youth and build caring, safe and healthy communities
2. Foster the development and maintenance of productive, profitable and competitive businesses and a sustainable food system in Pennsylvania's changing economic climate.

3. Ensure the long-term vitality and sustainability of Pennsylvania's natural resources and local environments
4. Enable people to reach informed public judgments on complex issues by fostering public dialogue

A variety of delivery methods and strategies are used to deliver education programs including the use of satellite down link equipment for conferences and presentations at county offices, meetings, demonstrations, tours highlighting application of research findings, publications, radio, television, use of computer technology and personal consultation.

Programs vary from county to county and are based on specific needs of residents within the county. County commissioners should contact their County Extension Director for information about programs and resources offered through the Penn State Cooperative Extension Office.

References

1. 16 P.S. § 1001; County Code, Section 1001.
2. 35 Pa.C.S.A. § 5301*et seq.*; Emergency Telephone Act
3. 35 Pa. C.S.A. § 7101 *et seq.*
4. 35 P.S. § 6022.101 *et seq.*
5. 35 P.S. § 2140.101 *et seq.*
6. 53 P.S. § 10101 *et seq.*; Municipalities Planning Code
7. 32 P.S. § 680.1 *et seq.*; Storm Water Management Act
8. 53 P.S. § 4000.101 *et seq.*; Municipal Waste Planning, Recycling and Waste Reduction Act.
9. 16 P.S. § 1923; County Code, Section 1923.
10. 51 Pa.C.S.A. § 1731
11. 24 Pa.C.S.A. § 9315
12. 1851 P.L. 317
13. 3 Pa.C.S.A. § 4101 *et seq.*; Consolidated Weights and Measures Act

XV. Human Resources

County relationships with their employees are only nominally delineated in the County Code, and instead have most of their statutory base in federal and state statutes. But statutes only provide the framework, so what is described in this chapter are important elements for a system designed to enable the county to best provide service through its human resources. While a human resources system may be less formal in a small county, the elements of sound personnel practices are important nonetheless. Commissioners should be aware of these elements and promote their adoption and use.

The county objective should be to ensure the continuance of effective and efficient employee recruitment and administration, professional development, staff relations, employee classification, administration and payroll, and to ensure compliance with pertinent federal and state laws relative to human resource administration.

Personnel costs can easily consume the majority of a county's total operating budget. Despite an ever-increasing level of technology, government operation remains people-intensive. The degree of citizen satisfaction with county government depends as heavily on how services are performed as on what is performed, and thus effective utilization and management of personnel is a must if a county is to provide effective and efficient services.

Many counties have a human resources department, but in those that do not, the responsibility often falls to the chief clerk or county administrator. The existence of a human resources department, however, does not lessen management responsibility for human resources administration; the department is simply an additional resource to aid in carrying out this responsibility. Anyone in management – the administrator, department head or supervisor – is concerned with the human resources of the agency and therefore should be engaged in effective and uniform human resource administration. This is particularly important in complex and fragmented organizations such as counties.

Human Resource Management

Human resource management is the utilization of people to accomplish the county's objectives as effectively and efficiently as possible. Those who manage personnel must know how to recruit, select, train, evaluate, promote, discipline and dismiss employees, and deal with volunteer personnel. They must be adept at motivating, counseling and bargaining with workers. In addition, they are called upon to classify positions, develop compensation plans, measure productivity and handle grievances and complaints. They must know and follow applicable state and federal statutes, such as the Fair Labor Standards Act, the Public Employee Collective Bargaining Act (Act 195), and the Health Insurance Portability and Accountability Act (HIPAA).

Human resource management is concerned with developing, utilizing and accommodating the county's human resources. Implicit in this list of obligations is the view that the personnel function is responsible for motivating employees and ensuring that they make a productive contribution to the organization's mission. This set of tasks presupposes that human resource management is an activist, future-oriented, and organization-wide function.

Personnel, then, supports all aspects of management, and therefore should be considered part of general management and integrated into the overall management function. Integration requires three interrelated objectives:

1. Preparation of specialists in the various functional areas of human resource administration
2. Design and implementation of human resource systems and techniques that protect and support administrative and managerial processes
3. Familiarization of managers with the knowledge and skills that human resource specialists may contribute to the effort to solve a wide variety of organizational problems

Today's personnel demands require that the chief administrator have both the detailed knowledge and rational capabilities needed to comprehend and actively address a broad range of personnel problems and processes. In addition, it is reasonable to conclude that human resources management activities would have to be continuously interrelated and coordinated with the many other facets of the public administrator's role.

Policy Manual

A policy manual contains statements of human resource policies and procedures. The objective of the policy manual is to increase understanding and eliminate inconsistencies and unfairness in personnel matters. Employees cannot be expected to obey regulations they do not know exist or are unevenly applied.

The policy is a statement of the relationship between the county and the employee, but in most circumstances, does not constitute a contractual relationship and so can be changed and, within reasonable bounds, interpreted by the commissioners. For the employees' and the county's benefit, the county must make sure that the county employee is aware of county rules and regulations. Written, well thought out, policies are needed. Additionally, evolving trends in human resources and employment, as well as changes in law and case law, require that the manual be regularly reviewed and updated.

Following are items that are typically included in human resource manuals, although not intended to be an all-inclusive list of contents:

- Introductory Statements — Purpose, objectives, disclaimer, establishment of authority, chain of command
- Nondiscrimination — Equal opportunity, accommodations for persons with disabilities, sexual harassment
- Conditions of Employment — Political activity, outside employment, residency, appearance, smoking
- Ethics
- Probationary Periods
- Hiring Policy
- Nepotism
- Work Habits — Lunch periods, rest periods, overtime
- Performance Evaluation — Purpose, form, responsibility, merit pay
- Discipline — Just cause, types of discipline, categories of offenses, criminal charges
- Leave — Vacation, sick leave, sick leave pool, bereavement leave, compassionate leave, personal leave, all-purpose leave, maternity leave, parental leave, family and medical leave, military leave, civil leave, leave of absence, holidays
- Job Descriptions
- Pay Rates
- Travel Expenses
- Employee Assistance Programs
- Training
- Safety
- Grievances and Issue Resolution Procedures
- Benefits — Eligibility, insurance, pensions, worker's compensation, disability income, self-insured benefits, COBRA, benefits for part-timers
- Drug-Free Workplace
- Personnel Records — Contents and access

DCED has sample language for all of these human resource policy topics. The inclusion of particular policies in the county's human resources policy manual is dependent on the needs and desires of each individual county.

Hiring

Employing qualified persons within the county requires cooperative action on the part of both the department heads and those directly responsible for personnel, namely the commissioners' office. Both should work on recruitment. Both should cooperate in the development of valid examinations and screening devices and both should strive to make government careers as appealing as possible.

Dealing with public image should be a priority. Simply stated, the more favorable the image of the government, the easier the recruitment. One way of addressing this is to make the recruitment process a positive one. An applicant should not feel that the process is a series of faceless interactions and a lot of red tape. Information should be given freely by phone or email, and questions about employment should be answered promptly.

Market. A word about the “market:” Perhaps the most frustrating aspect of personnel and pay is dealing with the local employment market. Many argue that to adequately develop a pay plan, first consideration should be given to what people are making in the private sector. Instead, many times positions are compared to similar positions in other counties, often resulting in a comparison of apples and oranges. Generally, it can be difficult to compete with the private sector in salaries and benefits, which can result in hiring and retention difficulties. In addition, if a county cannot compete with other counties, it may conceivably become a training ground. Unfortunately, the diagnosis is easier than the cure. The best a county can do is to recognize the impact of the market and, given fiscal restraints, develop a pay plan accordingly.

Selection. The three basic ingredients for a good selection program are:

1. Knowledge of what skills are really needed to perform the work
2. Candidates who have these abilities
3. Some means to accurately measure necessary abilities

Interaction with departments is essential, and particularly so given the distributed nature of the county hiring process in which row offices and the judiciary are granted independence in hiring decisions. Other caveats are that a county legally cannot impose non-job related restrictions on citizenship, age or sex. Residency requirements can be used, although may limit the applicant pool. Merit hire requirements may be applicable.

Finally, there is importance in checking the candidates’ claimed background and qualifications. Many costly and embarrassing stories arise regarding the failure to check the validity of employment and education information. However, there are changing standards regarding the use of references, including potential liability claims, and so a policy should be developed in conjunction with the solicitor.

Application Form. A good application form requests nondiscriminatory, relevant information about the applicant that has a bearing on the applicant’s suitability for employment. The application form should take into account federal and state prohibitions on discriminatory practices, and should focus on the specific requirements of the position. The application form typically asks for a description of:

- Education
- Employment experience
- Previous employment with county
- Special skills and qualifications (computers, office machine, special drivers licenses, second language)
- Availability for work
- Availability for travel
- Criminal record
- Veteran status
- Language fluency
- Signature of applicant verifying information
- References, including telephone numbers and addresses

The county solicitor or a professional consultant must periodically review the application form and the application process to ensure compliance with changing regulations and requirements, and whether the requested information comports with current statutory and case law on bona fide qualifications; questions regarding criminal record and veteran status are good examples.

Pay Plans

A pay plan lists all the position classes in the county, together with the pay rates or ranges assigned to each class. The orderly groupings of positions resulting from the position classification plan will enable management to develop a systematic and equitable salary structure. A well-constructed pay plan has a number of objectives:

- Set salaries which are equitable in relation to the complexity and responsibility of the work performed
- Make sure that pay rates do not discriminate on the basis of race, sex, national origin, or other factors unrelated to the duties performed
- Maintain a competitive position in the employment market to attract and retain competent employees
- Provide data needed in budgeting, payroll administration and other financial and personnel management activities
- Make information on pay rates and practices available to employees and interested citizens
- Stimulate and reward high-level performance
- Provide an orderly program of salary policy and control

A pay plan generally includes a series of different pay ranges, with each range including a minimum, or hiring rate, a maximum, or top rate, and several intermediate steps that provide the basis for merit raises. The range structure must be realistic, with an adequate spread between the minimum and maximum salary to differentiate among performance levels. Other factors to consider in developing a pay plan include the relation of the pay scale to general pay levels in the community, the type and cost of fringe benefits which are provided, and the present and future ability of the county to finance additional pay and fringe benefits. These determinations often require considerable research, and consulting assistance may be warranted. A thorough analysis of pay administration may reveal problems that have developed in the system from decisions based on expediency.

Salary Board

To deal with the balance-among-equals between the commissioners and the row offices, the County Code provides for a salary board that includes the three of commissioners and the county controller in counties where there is a controller, or the county treasurer in counties where there is no controller.¹

The salary board, subject to limitations imposed by law, determines the compensation of all appointed county officials, and the number and compensation of all deputies, assistants, clerks, and other persons paid out of the county treasury. Whenever the board considers the number or salaries of the deputies or other employees of any county officer or agency, the officer or executive head of such agency sits as a member of the board as long as any matter affecting that particular office or agency is under consideration.² The chairman of the board of county commissioners serves as the chairman of the salary board. In most counties, the interpretation of the role of the salary board is to establish the range for each position rather than the specific salary for each individual, and then the row officer or agency head is granted authority to place an individual in that range as appropriate. There is no requirement for the salary board to approve individual hires, although in some counties by custom a report of hires is presented and approved.

Civil Service and Merit Hire

County programs for which the county receives state or federal funds are required to maintain an agreement with the state departments of Health, Human Services, and Aging to follow state salary guidelines and to hire employees using selection procedures administered by the State Civil Service Commission or approved by the Commission. The state has established a salary range of recognized positions with a maximum salary allowed. Counties can exceed these state maximums, but programs will not reimburse for the amount of salary over the maximum. Each year county human service agencies are required to submit a compensation plan for state approval.

In the alternative, counties are permitted to develop their own merit hire systems, to be approved through an application process to the relevant state agencies. Standards in a county merit hire system have to be sufficient to meet federal requirements.

Benefits

As part of the overall compensation package, counties typically provide at least some fringe benefits to employees. The package is designed to meet county fiscal and market objectives while helping to meet employee needs and desires. The county must combine economic realities and social responsibilities with attracting and retaining competent personnel. Employees want, for example, an appropriate standard of living, recognition of performance and individual worth, protection against medical expenses, and retirement income. Typically, benefits include some of the following:

- Leaves of Absence
- Vacation
- Sick Leave
- Family Medical Leave
- Military Leave
- Bereavement
- Longevity Pay
- Holidays
- Personal Days
- Employee Assistance
- Workers' Compensation
- Deferred Compensation
- Hospitalization
- Major Medical
- Vision Care
- Dental Care
- Prescription
- Short and Long Term Disability
- Life Insurance
- Retirement
- Uniform Allowance
- Tuition Reimbursement

Recent Trends. Benefit programs are effective only if they keep pace with the marketplace. Some forces that affect benefit programs are demographic changes (e.g. minorities in the workforce, an aging workforce), competitive pressures, mandated benefits, and growing costs. To help keep a program up-to-date, the human resources administrator may need to expand or modify existing benefits, or drop benefits that are no longer appropriate for the work force. The county may want to offer new benefits, move into cost sharing, or shift to a flexible benefits plan.

Cafeteria Plans. To make available dollars more meaningful for employees, some counties are providing cafeteria plans. These IRS-qualified plans allow employees to select the combination of cash and fringe benefits that they want. Some are structured as cash allowances, while others are established in context of Health Savings Accounts (HSAs). Proponents of this approach assert the employee will have greater satisfaction with compensation because pay comes in fringe benefit flexibility as well as actual cash. For many counties, flexibility results in a more attractive benefit plan at lower cost to the county. A plan should obtain an IRS qualification so that employee "purchases" are pre-tax.

Affordable Care Act. The Affordable Care Act (ACA) has defined effects on county benefits policies. Most counties meet all of the requirements for basic health care, and so the issue is typically at the other end of the health care spectrum where generous health care policies, more typically in collective bargaining environments, trigger the provisions of the "Cadillac tax."

Position Classification

Position classifications should produce equality and impartiality, and should be able to accommodate changes that occur as new duties are added, as agencies expand or contract, as reorganizations take place, and as new equipment, tools and methods are introduced. Position specifications, which provide information about the complexity of positions, are used to measure jobs against a common group of factors, including the kind and level of work, required knowledge, skills and abilities, the extent of supervision given and received, training and experience requirements, and special working conditions to determine a fair pay range. Position classification provides the basis for giving equal pay for equal work.

A number of points should be noted in reviewing pay programs. When evaluating position classifications, care should be exercised not to confuse an established position with the employee who occupies it. The position is classified, not the employee. Similarly, the position should be evaluated for its own value, not on how well or how poorly the employee performs. Finally, many pay programs fail because they are not kept up-to-date; the programs fail to address realistic changes in the economy brought about by inflation, competitive wage rates, changes in the nature and scope of jobs, and market demands. Human resource experts advise a complete professional review every five or six years, with nominal updates annually.

In establishing rates of pay, positions are organized into classes, series and grades. The term class means a group of positions which are sufficiently similar in duties and levels of responsibility that each position in the group requires the same education and experience, can be filled by the same tests of ability, and is of a similar level of job worth and therefore deserves the same salary range. (For example, Department Clerk I)

A series of classes is a grouping of two or more classes on the basis of type of work and levels of difficulty. This grouping reflects different and ascending levels of responsibility. The different levels of responsibility in a series of classes represent normal lines of promotion. (Department Clerk I, Department Clerk II, Department Clerk III, Administrative Assistant)

A grade includes all positions which are sufficiently comparable to warrant one range of pay rates. (Pay Grade I: Department Clerk I, Dietary Aide, Nursing Assistant, Housekeeping Aide)

Development of classification process is complex and a detailed description is beyond the scope of this manual. Typically the process includes determining the scope and method of the study, the position descriptions, data gathering, job analysis and desk audits, preparation of class specifications, and installation and administration of the plan.

Job Descriptions

Job descriptions are used by individuals throughout an organization – recruiters, managers, trainers and career planners – and therefore it is important that the job descriptions be clear and concise so that everyone who uses them has the same picture of what the jobs involve. Typical steps in writing a job description include:

1. Planning, including definition of what the job is trying to achieve, how the person tries to do the job, and how job performance is measured
2. Gathering enough information in order to place the job in the context of other related jobs
3. Use the gathered data to drafting the job description, in a fashion that will give the same picture of the job to everyone who reads it. Typical job description headings include General Definition; Examples of Work; Required Knowledge, Skills and Abilities; and Minimum Education, Training and Experience.
4. Validating the job description, with the job holder and supervisor both agreeing on the content of the description.

Performance Evaluation

Formal performance appraisal is one of the least understood and most often neglected personnel techniques. There are a broad array of personnel evaluation techniques, and the system chosen should be compatible with the primary objectives to be achieved. Some systems are primarily designed as an aid in administrative decisions – promotions, layoffs, performance goal setting or salary increases. All are intended to make sure that the rater does not overlook, and thus fail to act on, pertinent aspects of the employee's performance.

Perhaps the most common form is the rating scale in which a number of traits are listed, with the rater required to check the degree of satisfaction on each trait for each employee. Quality and quantity of work, reliability, and dependability are common traits for rating.

Disciplinary and Grievance Procedures

In order to insure the integrity of county policies, management practices and the ability for employees to be legitimately heard, formal disciplinary and grievance procedures must be in effect and consistently followed.

Generally, policies carry with them a step-by-step approach to follow in dealing with a performance problem or grievance. An employee who is disciplined should be subject to progressive disciplinary action for additional occurrences. The county should reserve, however, the right to impose stricter discipline or immediate termination for severe infractions. In a comparable way, employee grievance procedure calls for a matter to be discussed through a chain of command, from immediate supervisor to the board of commissioners.

It is the county's responsibility and duty to insure that the established steps are followed in accordance with the policy. The county needs to document all aspects of a disciplinary action or grievance. Failure to do so will compromise the county's ability to justify its actions and subject it to costly, time-consuming litigation, and the possible continuation of personnel problems.

Employee Protections

Fair Labor Standards Act. The Federal Fair Labor Standards Act (FLSA) provides a number of workplace protections for employees. Its most frequent application is hours worked, requiring an employer to remunerate an employee who works more than 40 hours in a work week at time and one half, either in pay or, in limited circumstances, in compensatory time off. Under the Act, certain employees are exempt from its provisions and consequently the employer is under no obligation to provide any remuneration beyond their established salary. Exempt employees typically include elected officials, attorneys, and certain other managerial positions that fall within the "executive professional" or "administrative" definitions of the Act. In most Pennsylvania county situations, the chief clerk would fall into the exempt category.

Any employee who is subject to the FLSA in any workweek must be paid in accordance with its provisions for all hours worked. In general hours worked includes all time that an employee is required to be on duty, or on the employer's premises, or at a prescribed workplace for the employer, and all time during which the employee is required or permitted to work for the employer.

Hours worked have been established by the courts as including at least all time spent in "physical or mental exertion (whether burdensome or not) controlled or required by the employer and pursued necessarily and primarily for the benefit of the employer or his business." It includes any work which the employee performs on or away from the premises, if the employer knows or has reason to believe that the work is being performed.

The FLSA requires that both the regular rate and overtime pay, or compensatory time in lieu of overtime pay due an employee, be computed on the basis of the hours worked in each workweek. An employer cannot average the hours of work of an employee over two or more workweeks.

The FLSA authorizes the federal Department of Labor to investigate any allegations involving a violation of the FLSA. Any employee may bring suit to recover back wages and an equal amount in damages plus attorney's fees and court costs. The Secretary of Labor may file suit on behalf of the employee for back wages and an equal amount in damages, and the Secretary may obtain a court injunction to restrain any person who violated the FLSA. Employers who willfully violate the law may face criminal penalties, including fines and imprisonment. A two-year statute of limitations applies in the recovery of back wages except in cases of willful violation, in which a three year statute of limitations is applicable.

Clearly, the development and implementation of written payroll policies and procedures, fair evaluation of exempt or covered status, coupled with detailed record-keeping, is essential in order to preclude any potential liability under the FLSA.

Americans with Disabilities Act. The Americans with Disabilities Act (ADA) of 1990 and the ADA Amendments Act (ADAAA) of 2008 provide comprehensive civil rights protection to individuals in the areas of employment, state and local government services, public accommodations, and telecommunications. Title II prohibits discrimination on the basis of disability within all local government services, programs and activities, including employment. Together with its regulations, it provides standards for compliance and implementation.

Under the ADA, for an individual to be considered as having a disability, that individual must satisfy at least one of three conditions. He or she must:

1. Have a physical or mental impairment that substantially limits one or more of his or her major life activities;
2. Have a record of such impairments; or
3. Be regarded as having such an impairment.

Title II, in its regulations, requires all local jurisdictions with 50 or more employees, and cities, counties, towns and townships, regardless of size, to undertake a self-evaluation and then if necessary to develop and implement a Transition Plan, covering local public services, policies and practices. A Transition Plan is a plan for correcting the physical obstacles requiring structural changes which were identified as being necessary during the self-evaluation process. The plan includes a year-by-year schedule of structural changes that will be made and the order in which they are to be accomplished.

The self-evaluation is a process to identify changes in practices and policies needed to comply with Title II. Some of these changes will be structural and others non-structural. A structural change is a physical or architectural modification required in a building, or in providing access to a building, in order for people with disabilities to be able to gain access to the services or activities conducted on the premises. Changes which require structural modifications form the basis for developing the Transition Plan.

Non-structural changes needed for opening up programs, services, and employment opportunities should be identified and made during the self-evaluation process, and the ADA encourages creative, non-structural modification wherever possible. These good-faith efforts are generally termed "reasonable accommodations."

When differences arise over interpretation or implementation, the ADA encourages the parties to come together, negotiate, and find a mutually acceptable solution. Private parties may bring lawsuits to enforce their rights under Title II of the ADA. Complaints may also be filed with any federal agency that provides financial assistance to the local program in question. Written complaints or inquiries may also be filed with either the U.S. Equal Employment Opportunity Commission (EEOC) or with the U.S. Department of Justice, depending on whether discrimination occurs in employment or in access to government services.

Family and Medical Leave Act. Title I of the Family and Medical Leave Act of 1993 (FMLA), makes available to eligible employees up to 12 weeks of unpaid leave per year under particular circumstances that are critical to the life of a family. Leave may be taken upon the birth of the employee's child, upon placement of a child with the employee for adoption or foster care, when the employee is needed to care for a child, spouse or parent who has a serious health condition, or when the employee is unable to perform the functions of his or her position because of serious health conditions.

To be eligible for leave, an employee of the county must have been employed for at least 12 months and must have worked at least 1,250 hours during the 12-month period preceding the commencement of leave.

If the county provides paid leave for which the employee is eligible, the employee may elect or be required to substitute the paid leave for any part of the 12 weeks of leave to which the employee is entitled under the act. When the need for leave is foreseeable, the employee must provide reasonable prior notice, and make efforts to schedule leave as not to unduly disrupt the county operations.

The county may require medical certification to support a claim for leave for an employee's own serious health condition or to care for a seriously ill child, spouse or parent. For the employee's own medical leave, the certification must include a statement that the employee is unable to perform the functions of his or her position. For leave to care for a seriously ill child, spouse or parent, the certification must include an estimate of the amount of time the employee is needed to care for the child or parent. An employer may require a second medical opinion and periodic recertification at its own expense. If the first and second opinions differ, the employer, again at its own expense, may require the binding opinion of a third health care provider, approved jointly by the employee and the employer.

An employee needing leave because of his or her own serious health condition or the serious health condition of a child or parent may, if medically necessary, take leave intermittently or on a reduced leave schedule that reduces the employee's usual number of hours per workweek or per workday. An employee taking leave to care for a newborn child or a child who has been placed with the employee for adoption or foster care may not take leave intermittently or on reduced leave schedule unless the employer and the employee agree to such an arrangement.

During leave, any pre-existing health benefits provided to the employee by the county must be maintained. The county is under no obligation to allow the employee to accrue seniority or other employment benefits during the leave period. Upon return from leave, the employee must be restored to the same or an equivalent position. Taking leave may not deprive the employee of any benefit accrued before the leave, nor does it entitle the employee to any right or benefit other than that to which the employee would have been entitled had the employee not taken the leave.

Rights established under the Family and Medical Leave Act are enforceable through civil actions. A civil action for damages or equitable relief may be brought against an employer in any Federal or State court of competent jurisdiction by the Secretary of Labor or by any employee.

Sexual Harassment. Title VII of the Civil Rights Act of 1964 prohibits employment discrimination on the basis of race, color, sex, age or national origin. Sexual harassment is included among the prohibitions.

Sexual harassment, according to the Federal Equal Employment Opportunity Commission (EEOC), consists of unwelcome sexual advances, request for sexual favors or other verbal or physical acts of a sexual or sex based nature where submission to such conduct is made explicitly or implicitly a term of an individual's employment, an employment decision is based on an individual's acceptance or rejection of such conduct, or such conduct interferes with an individual's work performance or creates an intimidating, hostile or offensive work environment.

It is also unlawful to retaliate or take reprisal in any way against anyone who has articulated any concern about sexual harassment or discrimination, whether that concern relates to harassment or discrimination against the individual raising the concern or against another individual. Examples of conduct that would be considered sexual harassment or related retaliation include:

- Physical assaults of a sexual nature
- Unwanted sexual advances, propositions or other sexual comments
- Sexual or discriminatory displays of publications in the work place
- Retaliation of sexual harassment complaints

Sexual harassment is unlawful, and such prohibited conduct exposes not only the county, but individuals involved in such conduct, to significant liability under the law. Employees should treat other employees respectfully and with dignity in a manner so as not to offend the sensibilities of a co-worker, and the county must be committed to developing and vigorously enforcing a sexual harassment policy at all levels.

Employment At-Will

Unless otherwise provided for in a labor agreement or personnel policy, county personnel are hired on an “at will” basis. In other words the county has the authority to terminate employment at any time for any reason. There are in practice, however, many limitations on employing at will. These include labor relations laws, equal opportunity laws, local agency laws, and civil service requirements, as well as state and federal laws and court decisions affecting personnel practices. Management must know these protections and insure that policies provide for due process for any action taken against an employee.

Political Considerations

While there is often an assumption that electoral change in the board of commissioners means that employees close to the former board will potentially be terminated, case law in general trends against hiring decisions based solely on political considerations except where the employee is of a confidential nature. A paid solicitor is a prime example. While it might be intuitive that a chief clerk or county administrator also meets the test, in reality because the clerk or administrator reports to a bipartisan board the position may not fall within the definition.

Labor Relations

Under Pennsylvania Law, public employees have the right to organize or join unions for the purpose of negotiating terms and conditions of employment. Management is required to bargain with duly elected employee representatives and to put any agreements reached in writing. Act 195 governs collective bargaining for non-uniformed employees, and Act 111 covers uniformed employees. In a county context though, not all employees in uniform (sheriff deputies, jail guards) meet the definition of law enforcement, and so fall under Act 195 instead.

Negotiating teams vary from county to county. Some commissioners do it themselves; some retain a consultant or labor counsel. It is important to prepare, know the law, and develop and maintain good liaison with those involved.

Importantly, if the employees are organized, the County Code provides that the commissioners are the exclusive bargaining agents on behalf of the county,³ even regarding employees in row offices. While the commissioners are the exclusive bargaining agents, case law also requires them to consult with the judge or row officer when the bargaining unit falls under their jurisdiction.⁴

Payroll

Payroll Procedures. A complete payroll procedure consists of five operations:

1. Authorizing payroll additions and changes
2. Recording time and amounts paid
3. Preparing authorizations for pay
4. Paying employees
5. Distributing charges for personal services to the proper accounts

Deductions. Employers face an increasing demand to make payroll deductions. Deductions are of several types: those required by law, charter or ordinance; those for the benefit of employee or private agencies; and those for public purposes. Examples of deductions required by law are taxes and retirement system contributions. Deductions for group health insurance, life insurance, deferred compensation and U.S. Savings Bonds are for the employee's benefit. Some counties may withhold union dues and charitable fund pledges which are examples of deductions for the benefit of a private group and for a public purpose respectively.

Job Enrichment

There are a number of techniques which can be used for enriching jobs, which should be a part of any comprehensive human resources management plan.

Change. Perhaps anyone who has been in a supervisory position can offer a story about an employee's resistance to change. Evolving work environments, work force, and technologies create the need to adapt, with employees or even whole departments required to change. Fear of change relates a great deal to uncertainties about who is affected (personal security), why the change is taking place, and what specifically will happen. Addressing these concerns requires an able supervisor who communicates well and involves employees in the entire change process, beginning with planning. Close involvement has proven to reduce anxieties and in many cases enhances the success of the change.

Training. Many counties have a difficult time hiring highly capable personnel due to fiscal constraints. In addition, positions many times are filled from within. Each condition creates the need to provide opportunities for personnel to improve their capabilities. The employee who is placed in a supervisory position is an example; a skilled worker does not naturally become a skilled supervisor, and it is incumbent on the county who places the employee in a supervisory position to provide an avenue for the employee to learn supervisory skills. This can be accomplished through seminars, group learning sessions and programs such as tuition reimbursement.

Orientation. In a large, fragmented organization employees often are hired, placed in a department and then left to their own devices. To enable the employee to transition into the organization and in order to understand the purpose and result of their duties, an orientation program is useful. Setting aside time to describe job responsibilities, work rules and benefits, to introduce co-workers and key officials, and to explain how the county operates is key to starting the employee off on the right foot.

Employee Assistance Program. Many organizations, public and private, recognize that employees bring home problems to work with them, and take work problems home. Addressing these problems helps the employee and at the same time improves an employee's productivity at work. Most counties have instituted Employee Assistance Programs (EAPs) which provide confidential counseling sessions to employees with problems, both personal and professional.

Communication. Today's employees are no longer satisfied simply to be told what to do. They want reasons, explanations and an opportunity to contribute ideas and ask questions. They are concerned about the personal and social implications of their work. Mechanisms should be in place for the commissioners to make their decisions known, inform the employees of the work to be done, and obtain information from employees to help formulate workable plans and policies. There are a significant number of techniques that can be used in effectively communicating. Some counties have established employee newsletters and intranet sites that assist in getting information out to the employees. Simply stated, it is important to have a handle on adequate communications; if commissioners do not originate the information flow, someone else will.

Retirement Plans

Pensions. In every county but Philadelphia and Allegheny, the county establishes a retirement plan governed by Act 96 of 1971, the County Pension Law.⁵ The plan is a hybrid plan, with a defined benefit component funded by the county, and a smaller defined contribution plan paid by employee payroll deduction.

The system is administered by the county retirement board, consisting of the three county commissioners, the county controller, and the county treasurer.⁶ In counties having no elected county controller, the chief clerk of the county is the fifth member of the board. The chairman of the board of county commissioners is the board chair.

Benefit levels for the defined benefit side are established by the board, and are computed as a fraction (1/120 to 1/60) applied against final average salary times years of service. Because there are relatively few options, the plans generally are not subject to collective bargaining. Taken together, the limits on benefits and the non-bargainable nature mean that county plans are not typically as generous as their municipal counterparts, and typically are better funded than their municipal counterparts.

The retirement board is responsible for all aspects of fund administration, including determination of investment policy and, at least once every three years, determining whether to grant a cost of living increase to current beneficiaries. Typically, administrative, accounting, actuarial, and investment services are contracted out.

Post-retirement benefits. Counties are not required to offer post-retirement benefits, but are permitted to do so. Almost all counties offer the governmental form of deferred compensation, a 457 plan; most 457 plans are self-directed, and unlike private sector plans the county does not have authority to match employee contributions.

References

1. 16 P.S. 1622 *et seq.*
2. 16 P.S. 1625
3. 16 P.S. 1620
4. *Troutman v. American Federation of State, County, Municipal Employees, District Council 88, AFL-CIO*, 87 A.3d 954, Cmwlth.2014, as amended
5. 16 P.S. 11651 *et seq.*
6. 16 P.S. 11654

XVI. Information Technology

Information Technology (IT) has become a vital component of every county's service delivery systems. Given the rapid rate of change, governmental leaders are now required to be more technology savvy than ever before. As constituents demand more from their government, strategic planning and direction requires the alignment of organizational goals with technology assets and plans to deliver cost-effective services that can meet objectives and improve operations. Vision and leadership is required from elected officials as well as technology professionals. New skill sets are required to be innovative, including knowledge of software products, business process analysis, hardware environments, telecommunication services, emerging trends, and more.

Information Technology in County Government

The growing dependence on technology has prompted many counties to assess their current capacities to handle IT services within their existing organizational structure. Some counties have opted to respond with the creation of new positions such as Chief Information – or Innovation – Officer (CIO) or Information Technology Director. Other counties have opted for contracts with third-party IT vendors to meet their needs. The utilization of either strategy promotes the centralization of the IT function within the county, which is an important step toward the successful management of the county's technological needs.

The establishment of a centralized IT position or department within the county may promote more streamlined coordination of systems utilized by the county commissioners, row offices, and other administrative functions. A dedicated CIO may help the county look past basic IT operations to see the potential for innovation in service delivery, communication, or other functional areas in the scope of the county's operations.

For county governments, information technology is a mission-critical task. Encompassing functional management, database development and usage, and interface with state and federal systems, modern county government operations require a comprehensive, computerized infrastructure. To succeed, the information technology function must begin as a service function, dedicated to providing quality service. It must be recognized as the means to a critical end. It is imperative that this is understood by county leadership, the information technology staff, and the users of the data and systems.

Although other options exist, nearly all of the successful information technology systems function under the control of the office of the county commissioners, since that office already deals with the fiscal and personnel matters of the county. This can create conflict between the commissioners and the row offices, who may want to choose proprietary or segregated systems that are not compatible with the county's primary technology systems. Integration is promoted though, through the County Records Improvement Fund¹ which provides for fees on each instrument recorded by the recorder of deeds, which in turn go into a dedicated technology fund, to be spent based on a plan recommended to the commissioners by the row offices. Additionally, some individual row offices have separate statutory technology fees that are available for upgrades specifically within those offices.

Although most conventional county functions will fall under the jurisdiction of the county commissioners, court related functions are overseen by the president judge. In some counties this means that there may be separate technology resources overseen by the courts. The judicial system provides statewide systems that the judges, clerk of courts, court administrator, prothonotary and district attorney access. Because of higher security and regulations, a different type of IT expertise is needed, which may or may not be available through the county IT department.

Technology advancements have also occurred with state agencies. Most human services programs, the court system, and the voter registration system all contain data sharing components that make information available to the commonwealth and other counties. Many of these are state-developed and supported.

The careful selections of software programs can allow for expanded application and access, not just beyond the individual department, but beyond the county government as well. A service, properly created, can be sold to lawyers, realtors, appraisers, engineers, and others as a means to cover part of the system costs. Outside professionals are typically willing to pay fees for online access to records, which saves them time and cost overall. An example is the county's creation of a geographic information system (GIS), which stores extremely detailed survey data maps for all land in the county. This information is invaluable for the county's emergency management, assessment, elections, planning, and human services offices. However, it is similarly attractive to lawyers, realtors, appraisers, engineers, and developers.

The Right to Know Law permit user fees specifically for enhanced electronic access to public records, but only to the extent the enhanced electronic access is in addition to making the public records available under the act.² Similarly, it permits sale of complex databases at prevailing market rates. A word of caution, however: Any system offering data to multiple county users and to outside customers must have state-of-the-art security in place to prevent alteration or misappropriation of data. Counties that provide enhanced electronic access to public records on a fee basis may also wish to consider how the county's public library high-speed Internet access may be used to provide access to those who have limited funds or are unable to visit the courthouse during normal office hours.

Counties that outsource all or part of IT management functions need to exercise due diligence on usability, security, and ownership of data. The commissioners might consult with other counties that have already undergone the process. They should also be wary of proprietary systems that restrict the software choices to a single manufacturer or render the dataset readable only on a proprietary format. Another consideration when seeking technological expertise might be contracting with the local development district (LDD) or council of government (COG) to which the county belongs. The LDD or COG staff may be able to advise and to acquire, and to do both with attractive savings to the county.

Counties may use the commonwealth's ITQ (Invitation to Qualify) process to develop and acquire computer related services. A list of approved vendors is viewable at www.itqrp.state.pa.us/ITQ/ITQ/default.aspx.

Shared Services

The increased availability of technical systems and solutions to all government organizations and the advancement of new technologies, like cloud computing, has increased the potential for adoption of shared services among governmental entities. Benefits include reduction in system development and data center costs, improved business continuity and disaster backup services, and new and innovative approaches to complex business problems. Integrated criminal justice systems is an example of current municipal/county shared services that can minimize infrastructure costs and improve services.

Cloud Computing

Cloud computing provides the opportunity using Internet-based technology to deliver dynamic services without some of the traditional technology infrastructure costs and limitations. Potential benefits include more responsive methods to deliver technology services with less technical personnel, better control of IT infrastructure costs by limiting technology procurement and refresh strategies, and improvement in operations by delivering required services on demand, regardless of location or device being used.

Consideration of county-wide objectives and a review of current practices and future need is essential in developing a cloud-computing strategy. Cloud computing opportunities are currently available for office productivity software, enterprise resource planning (ERP) software, business solution software, and automated network provisioning. Consideration and planning must be done with a cloud technology platform just like other technical decisions. Network bandwidth to deliver the appropriate level of service and the security of data over a public network are examples of issues that need to be addressed in a cloud computing environment.

Information Security

The proliferation of technology, as well as the potential for cyber-attacks, has increased the attention to and importance of all aspects of information security. County governments must plan for and incorporate internal security, both technological and physical, as well as protection from outside intrusion. Employees need to be trained in proper use of security, and standards of personal conduct and responsibility need to be in place and enforced.

Statutory requirements also affect system security design. The Health Insurance Portability and Accountability Act (HIPAA) creates specific requirements to protect the personal information of constituents, business partners, and employees. Counties are also included among the agencies covered by the Breach of Personal Information Notification Act,³ which requires furnishing timely notice to any resident of the commonwealth whose unencrypted and unredacted personal information was or is reasonably believed to have been accessed and acquired by an unauthorized person.

County Records Management

A sound county records management program can decrease the costs of managing information and delivering services to the public and can also increase employee productivity. The County Records Act⁴ authorizes county officers to dispose of records according to retention schedules developed by the commonwealth's County Records Committee. The Pennsylvania Historical and Museum Commission (PHMC) is responsible for administering the program through its Division of Archival and Records Management Services.

The County Records Manual, published by PHMC, contains retention schedules for most county records. The retention schedules promulgated by the County Records Committee authorize and recommend, but do not require, the disposal of records after the approved retention period expires. Records that have continuing administrative, legal or historical value must be retained permanently.

In order to destroy records listed as nonpermanent in the schedule, a records disposal log form must be maintained. Copies of the records disposal log form must be submitted on an annual basis to PHMC. Written consent is not necessary when destroying nonpermanent records listed in the schedule. Written permission from PHMC must be obtained before destroying records scheduled for permanent retention which have been reformatted in compliance with Committee standards, before destroying records not listed in the schedule, or before transferring records to the State Archives. County officers who dispose of records in accordance with the County Records Act cannot be held liable because of such disposal.

The Pennsylvania Supreme Court is responsible for promulgating records schedules for the records of the unified judicial system. The Pennsylvania Rule of Judicial Administration 507 (RJA)⁵ defines three classes of records, and disposal requests for each class of records are handled differently.

RJA 507 (a) lists offices schedules by the County Records Committee, including prothonotaries, clerks of courts, clerks of the Orphans' Court, registers of wills, district attorneys, sheriffs, coroners and jury commissioners. These offices must comply with the regulations promulgated by the County Records Committee and submit requests directly to the PHMC using the County Records Disposal Certification Request form or the records disposal log form.

RJA 507 (b) lists those offices with schedules provided by the Supreme Court, including appellate courts and district justices, personnel of the Unified Judicial System, and related staff that support the courts of the Commonwealth of Pennsylvania. For information on retention schedules promulgated by the Supreme Court and disposal forms and regulations, contact the Administrative Office of Pennsylvania Courts.

Unless otherwise noted on the retention schedule, original copies of permanently valuable records may be disposed of after microfilming in accordance with standards and procedures approved by the County Records Committee. Archival security copies of permanent records must be created when those records are microfilmed. The security copies must be created and stored in accordance with standards set forth in the County Records Manual and the Standards for Microfilming County Records.

In order to ensure the proper preservation of security microfilm copies of county and state judicial system records of permanent value at the lowest possible cost, PHMC will store such copies at a private Commission vault leased from Iron Mountain/National Underground Storage, Inc. at its underground facility in Boyers, Pennsylvania (Butler County). The service is available to prothonotaries, clerks of courts, registers of wills, clerks of the Orphans' Court, recorders of deeds, sheriffs, district attorneys, coroners, jury commissioners, controllers and auditors, treasurers, and boards of county commissioners. A one-time processing fee is charged for this service.

The County Records Committee has also approved guidelines for the management of records copied onto electronic imaging systems, records created in an electronic format, and records created on email systems. County officers should refer to the Policy and Guidelines for the Retention and Disposition of Original Records Copied Onto Optical Imaging and Data Storage Systems, the Standards and Procedures for Electronic Records, and the Retention and Disposition of Records Created on Electronic Mail (E-mail) Systems, which are included in the County Records Manual.

Over the past two decades, the PHMC has worked to promote the establishment of effective county records management programs, including the development of space-efficient central records storage areas or records centers. Many county records become semi-active before their retention period expires. Semi-active records are those which are no longer required for the day-to-day activities of an office but which must be retained to meet the full retention period. These records are stored most inexpensively and efficiently in an area or facility set aside for this purpose and operated in accordance with specific policies and procedures designed to ensure the timely destruction of records when they have met their full retention period, and to provide quick access to appropriate government information.

Utilizing a records storage area is less expensive than storing semi-active records in high-rent office space, and is safer and more efficient than storage in attics or basements. The ideal records center should be an individual building convenient to county offices. If the records center must share space with other occupants, precautions should be taken to eliminate fire hazards. Standard steel records center shelving should be used. Records centers can reduce the cost of storing paper-based information by as much as 90 percent and can also virtually eliminate the hidden but very expensive personnel costs resulting from searching for disorganized or inaccessible files.

PHMC staff members offer valuable assistance and expertise in various areas of records management including retention and disposition schedules, records storage and reformatting. In addition, PHMC prepares and issues the *County Records Manual*, which is also available in the agency web site at www.phmc.state.pa.us.

Public Inspection

The Right-to-Know Law (RTKL)⁶ provides every citizen of the commonwealth the right, at any reasonable time, to examine any public record. This includes the right, under reasonable rules and regulations, to make extracts, copies, photographs or photostats under the supervision of the custodian of the records.

This right of access extends to all commonwealth citizens, regardless of the nature or extent of their interest. Prompt, courteous and helpful compliance on the part of county staff provides a source of good public relations and goes a long way toward building public confidence in the county government. Failure to comply may result in a citizen's appeal to the courts, which can order compliance if the denial lacked just and proper cause.

The RTKL sets a presumption that records held by a public agency, including electronic records, are open records unless closed under a provision of the RTKL or another state or federal statute. Agencies covered under the act must adopt written fee schedules and access policies based on the act, and penalties are prescribed for failure to comply.

Counties may wish to consider how the county's designated public library or public library system facilities and/or web site may be used to make public documents available for examination or distribution beyond normal courthouse operating hours.

For more information, consult the Office of Open Records, openrecords.state.pa.us.

References

1. 42 P.S. § 21052.1
2. 65 P.S. § 67.1307
3. 73 P.S. § 2303 *et seq.*
4. 16 P.S. 13001; County Records Act
5. 42 Pa.C.S.A. 4321; Pa. Rules of Judicial Administration
6. 65 P.S. § 67.101

XVII. Home Rule Option

A new local government article was added to the Pennsylvania Constitution in 1968, which included the guarantee that all Pennsylvania counties and municipalities have the right to adopt home rule charters and exercise home rule powers. The change was hailed as a watershed in the history of local government in Pennsylvania, with proponents seeing local control as opening a new era of effective and responsive local government. Opponents warned of chancy experiments in untested legal areas. The years of experience have shown home rule to be neither a panacea nor a bane for local governments. Home rule has proven to be an effective tool for reorganizing local governments for increased effectiveness and citizen participation and has enabled a modest local initiative in procedural and substantive matters. Home rule has not revolutionized local government operation, nor has it entangled counties in legal difficulties or imprudent activities.

The concept of home rule is relatively simple. The basic authority to act in county affairs is transferred from the County Code, a statute of the General Assembly, to a local charter, adopted and amended by the voters. This basic point has been explained by government study commissions to their voters: "Home rule means shifting of responsibility for local government from the State Legislature to the local community ... a county choosing home rule can tailor its governmental organization and powers to suit its special needs." A charter is often likened to a local constitution for the county.

But home rule does not set a county adrift from the rest of the state. It is still subject to restrictions found in the United States and Pennsylvania constitutions, in state laws of general applicability (e.g. human services statutes, the Election Code, the Municipalities Planning Code) and in state laws specifically applicable to home rule local governments. Local autonomy under home rule is a limited independence, but the thrust has been changed. Local governments without home rule can act only where specifically authorized by state law; home rule local governments can act anywhere except where they are specifically limited by the state law.

The Home Rule Law establishes the procedure for adoption of a home rule charter.¹ The voters of a local jurisdiction approve a referendum creating a government study commission and, at the same election, elect the members of the study commission.

The commission is charged with studying the existing government, exploring alternatives and deciding whether or not to recommend change. If the commission decides to recommend home rule, it drafts a charter, or recommends adoption of one of the optional plans provided for in the Home Rule Law. The charter or optional plan is then presented to the voters for their decision. Adoption of a home rule charter comes only with the approval of a majority voting in a referendum.

The Home Rule Law also contains restrictions on the exercise of home rule powers. In addition to prohibiting abrogation of any law of statewide applicability, home rule local governments cannot enact new subjects of taxation, but they can exceed any statutory rates in effect for existing taxes. That rule alone has made home rule more popular among municipalities than counties; while municipalities can raise the income tax to reduce their reliance on their property tax, counties have no other tax base against which to balance the property tax.

For counties, the two almost-universal changes are to replace the three-member board of commissioners with either a larger board, or a larger board combined with an elected executive, and to abandon the elected row office structure in favor of a purely administrative structure for the same services.

As of publication of this manual, there are eight counties that have home rule charters. Those approving charters are: Allegheny, 2000; Delaware, 1975; Erie, 1976; Lackawanna, 1976; Lehigh, 1975; Northampton, 1976, and Luzerne, 2012. The Philadelphia charter adopted in 1951 governs its consolidated city-county government.

More county charter proposals have failed than have succeeded, however. More than a dozen counties have approved study commissions but did not approve proposed charters or optional plans. At least two counties approved study commissions which returned recommendations to keep the same government. Ballot questions on the first step – creation of the study commission – failed in at least ten counties.

The changes in governmental structures brought about through the charter adoption in the six counties range from minimal in Lackawanna County, where the three commissioner form was retained, to executive-council governments in Allegheny, Erie, Lehigh and Northampton counties. The Delaware and Luzerne charters provide for an elected board and an appointed county executive/manager. Almost all of the home rule counties have jettisoned almost all of the row offices (with the exceptions of controller, district attorney and sheriff). The clear trend is consolidated government, and a separation of executive and legislative powers in the same manner as the commonwealth.

Examples of reform-based charter provisions include mandate for a personnel merit system, modernization of financial system requirements such as capital budgeting and CPA post auditing, greater checks and balances in purchasing and contracting, and limited citizen initiative.

County Exercise of Municipal Powers. A concern about possibility of county home rule taking over traditional municipal functions was addressed in the Home Rule law with a provision requiring municipal assent before a county could exercise a municipal function.² In practice, the concern has not been proven to be a real problem, since home rule counties find that they have enough to do with limited revenue resources. At the same time, most county home rule charters contain provisions preserving the powers of municipal units, usually as part of their general powers clause. At least one county government study commission concluded that this guarantee provided protection not previously available to local governments.

The DCED publication *Home Rule in Pennsylvania* provides additional details.

References

1. 53. Pa.C.S.A 2901, Home Rule Charter and Optional Plans Law
2. 53. Pa.C.S.A. 2963, Home Rule Charter and Optional Plans Law

XVIII. Future of Counties

*By Dr. Beverly A. Cigler, Professor of Public Policy and Administration
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To meet their service delivery and policy responsibilities, counties face a series of challenges. A county's fiscal capacity and flexibility depend on the appropriateness, variety, and productivity of its revenue sources. Flexibility results from having authority over revenue sources that can be varied in response to new and changing demands for services. County tax reform, a perennial state legislative agenda item, holds center stage for determining the future of the state's counties.

Beyond fiscal authority, counties also need increased flexibility in dealing with mandates and regulations and this issue is receiving increased legislative attention. Partnership development, working with stakeholders, analyzing impacts, information disclosure, and meeting performance requirements, are all part of the "tool kit" associated with flexibility. The national and state government, as well as citizens, require performance accountability. Counties must also become more adept at strategic planning and visioning processes, bench marking, and engaging residents. Along with flexibility and accountability comes the need to make equitable decisions that serve the broad public interest.

The trend toward regionalization of services places counties in the forefront. Their unique geographic, economic, and demographic qualities make them best suited to undertake solutions to emerging problems. A prime example is land use, where Pennsylvanians face regional sprawl resulting from individual, business, and community land use decisions. Sprawl is generally supported by public subsidies for roads, sewers, water lines, mortgages, and tax breaks. It is also encouraged by a transportation system that includes affordable personal vehicles, low fuel consumption, good roads, and free parking at many employment and commercial destinations. Land use legislation over the last decade gave counties a strong role in bringing municipalities together to find solutions to regional land use problems.

Many problems are more complex than in the past, with crime rates tied to drug use, an increasing number of children and families at risk, environmental pollution and climate change, and the need to site locally unwanted land uses, for examples. This means that problem-solving increasingly involves collaboration across sectors (public, private, non-profit) and governmental levels (state-local, county-municipal). It also means that counties must develop integrated service delivery approaches. County officials must be facilitators, conveners, brokers, enablers, catalysts, and capacity-builders in helping to develop new relationships across people and groups. Especially important is the county role in enabling municipalities to work collaboratively. New strategies, systems, and processes must be developed. Holistic approaches to complex problems, with regional approaches to service delivery, are necessary for service delivery improvement and for meeting competition.

Changing demographics yield more elderly in need of long-term care, an expanding crime rate among the young, and a more diverse workforce lacking in basic skills. All these influence a county's demographic trends. Eligibility for costly services, high standards for performance, changing mandates, court decisions, and the devolution of some programs means that counties will be required to respond to change more quickly and be adept at using newer technology and telecommunications. Structural reform of county government will command more attention and will be driven by calls for more professional management, cost efficiency, program effectiveness, and accountability, all with less duplication.

Pennsylvania counties must continuously work to build their capacity – financial, managerial, technical, political and collaborative – to address what people need, want, and expect their governments to do. Simply put, in the future county officials must build their abilities to do whatever they need to do, i.e., they must anticipate change, make sound decisions and develop programs to implement those decisions, manage resources wisely and evaluate their actions.

Increasingly, building capacity requires strategic approaches that utilize innovations. Encouraging and making use of pilot programs and grant opportunities can lead to future county successes. Adaptation and creative thinking, political

will and continuous dedication to change are keys in adapting to new realities. So, too, are finding ways best suited to delivering services that involve shared arrangements with municipalities and other counties. There is little that cannot be done collaboratively if the political will or capacity is there to work together from a belief in “shared destiny.”

County Commissioners Association of Pennsylvania

The County Commissioners Association of Pennsylvania (CCAP) is a valuable resource for counties striving to meet today's problems. Established in 1886, CCAP's purpose is to promote the common interests of counties. CCAP does this by encouraging a dialogue among elected county officials and a better understanding of county government by federal, state, and local officials as well as by private citizens. The Association represents county government on issues before all branches of the state and federal government. It fosters far-sighted, innovative and responsive county service delivery, policy decisions, and use of public resources.

CCAP has contractual agreements, termed “affiliations”, with a number of independent associations and organizations having ties to county government including:

- Assessors Association of Pennsylvania (AAP)
- Juvenile Detention Centers and Alternative Programs (JDCAP)
- Pennsylvania Association of County Administrators of Mental Health and Developmental Services (PACA MH/DS)
- Pennsylvania Association of County Affiliated Homes (PACAH)
- PA Association of County Drug and Alcohol Administrators (PACDAA)
- Pennsylvania Association of County Human Services Administrators (PACHSA)
- Pennsylvania Children and Youth Administrators Association (PCYA, Inc.)
- Society of County Human Resource Professionals of Pennsylvania (SCHRPP)
- County Planning Directors Association of Pennsylvania (CPDAP)

The overall intent of the affiliation process is to have mechanisms whereby these groups and CCAP can arrive at common policy positions. These affiliations also provide CCAP with the opportunity to augment its staff with expertise in specific functional areas.

CCAP provides services and educational opportunities for its membership, so that county officials can better administer the affairs of their offices to the benefit of the general public.

For additional information contact:

County Commissioners Association of Pennsylvania
PO Box 60769
Harrisburg PA 17106-0769

Phone (717) 526-1010
Fax (717) 526-1020
www.pacounties.org

National Association of Counties

The National Association of Counties (NACo) works to insure that the county message is heard and understood by national leaders in Washington. NACo does this by providing its members with lobbying, conferences, research, and member services.

Contact:

National Association of Counties
25 Massachusetts Avenue, NW
Washington, DC 20001

(202) 393-6226
www.naco.org

Pennsylvania Department of Community & Economic Development
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Commonwealth Keystone Building

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