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**TO: MICHIGAN ASSOCIATION OF COUNTY TREASURERS  
WINTER CONFERENCE PARTICIPANTS**

**FROM: BONNIE G. TOSKEY**

**RE: YOUR RIGHTS AS AN ELECTED OFFICIAL/CO-EMPLOYER**

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**I. LEGAL BASIS FOR COUNTY PERSONNEL ADMINISTRATION**

Employees over whom the elected official is given statutory authority to hire, manage and terminate employment are under the control of the elected officer and not under the board of commissioners.

**A. SOURCES OF ELECTED OFFICIAL'S AUTHORITY**

**1. Constitutional**

Const 1963, Art 7, Sec 4, provides:

"There shall be elected for four-year terms in each organized county a sheriff, **a county clerk, a county treasurer, a register of deeds,** and a prosecuting attorney, **whose duties and powers shall be provided by law . . .**" (emphasis added).

**2. Statutory**

**a) TREASURER**

**i) MCL 45.41 provides that the treasurer in counties having a population of more than 50,000:**

**". . . may appoint a deputy or deputies who may perform all the official acts which the officer making such appointment might legally do, and who shall be**

paid therefor from the general fund of the county, such salaries as the board of supervisors of the county shall determine.”

- ii) MCL 45.51 provides that the county treasurer in counties with 500,000+ population has the power:

“. . . to appoint a chief deputy, and all other deputies, clerks and employees employed in the departments of each of the said officers. The number and salaries of the said deputies, clerks and employees herein provided for shall be fixed in the same manner as they are fixed for deputies, clerks, and employees of the other departments of the county government. The salaries of such deputies, clerks and employees shall be payable in the same manner and at the same time that other county employees are paid.”

- iii) MCL 48.37 provides the treasurer with the power to “appoint a deputy who in the absence of the treasurer from the office, or in the case of a vacancy in the office or a disability of the treasurer . . . may perform all the duties of the office . . . **The county treasurer may, however, revoke the appointments at any time.** . . . The treasurer may employ personnel necessary and approved by the County Board of Commissioners . . . .”

b) CASE LAW

UAW v Branch County Board of Comm’r et al., 260 Mich App 189 (2004)

Genesee Co Union v Genesee County, 199 Mich App 717 (1993).

County of Berrien v Teamsters Local 214, 1987 MERC Lab Op 306.

St. Clair Prosecutor v AFSCME, 425 Mich 204 (1986).

B. **SOURCES OF BOARD OF COMMISSIONERS' AUTHORITY AS TO EMPLOYEES OF ELECTED OFFICIALS**

1. Constitutional

Const 1963, Art 7, Sec 8, provides:

“Boards of supervisors shall have legislative, administrative and such other powers and duties as provided by law” (emphasis added).

2. Statutory

1851 PA 156, as amended, MCL 46.11 et seq; MSA 5.331 et seq, confers upon Boards of County Commissioners the power:

\* \* \*

- a) Sec 11 (i) Prescribe and fix the salaries and compensation of employees of the county if not fixed by law . .

\* \* \*

- Sec 11 (p) Represent the county and have the **care** and **management** of the **property** and **business** of the county if other provisions are not made. (Emphasis added)

3. Case Law

UAW v Branch County Board of Comm'r et al., 260 Mich App 189 (2004)

Genesee County Union v Genesee County, 199 Mich App 717 (1993)

County of Berrien v Teamsters Local 214, 1987 MERC Lab Op 306

St. Clair Prosecutor v AFSCME, 425 Mich 204 (1986)

Lodge #141, FOP v Meridian Township, 90 Mich App 533 (1979)

C. BOARD DETERMINES ECONOMIC ISSUES

1. Approves budget, i.e. all economic issues including:

- the number of employees in the department,
- pay ranges
- paid leave policies
- insurance coverage
- retirement
- workers' compensation policies
- unemployment policies
- travel reimbursement policies
- number of paid vacation days
- number of paid holidays
- number of paid sick days
- overtime rates
- longevity policies

2. Board cannot impose County personnel policy on elected officials. (See OAG 5046, 1976)

3. A County Board of Commissioners may require **pre-expenditure**

notification to

- a. ensure that such expenditure is within authorized budgetary limits, and
- b. to effectuate centralized county purchasing functions. (See OAG 5816, 1980)

D. **TREASURER'S DETERMINE NON-ECONOMIC ISSUES**

1. "At-Will" or "Just Cause" standard of employment - Discipline
2. Management rights, etc.
3. Whom to hire
4. Assignment and scheduling of employees
5. Performance evaluations, if any
6. Work rules and regulations, if any
7. Control over employee conduct and work performance
8. Day-to-day operations
9. Unpaid leave policies and procedures
10. Abuse of sick leave policy, if any
11. Promotion policy and procedures
12. Transfer policy and procedures
13. Seniority rights, if any
14. Discipline and discharge
15. Grievance procedure re: non-economic issues
16. Arbitration, if any

E. Cooperation and communication between the elected official and the board is necessary in order to:

1. Develop and implement effective personnel policy
2. Effectively bargain with unions

II. **COLLECTIVE BARGAINING**

- A. Public Employment Relations Act (PERA), MCL 423.201 et seq., requires the co-employers to negotiate in good faith on mandatory subjects of collective bargaining - wages, hours and other terms and conditions of employment.
- B. Demand to Bargain must be submitted by the Union to each co-employer.
- C. Elected officials have the absolute right to fully participate in the bargaining process and are parties to a labor contract. St. Clair Prosecutor, supra.
- D. As co-employers elected officials may not refuse to bargain if a demand to bargain is received.
- E. PERA does not compel either party to agree to any proposal or require either party to make any concession:

1. No presumption of economic increase
2. Bargaining process subject to political and social pressures
3. Strikes prohibited if employer negotiates in good faith
4. How much management control over what terms and conditions of employment is bargained away is determined solely by contract negotiations
5. Union security
  - a. Dues check-off
  - b. Union membership
  - c. Seniority
  - d. Use union security to secure concessions in first contract
6. Management rights provision is bargaining counterpart to union security
7. Mediation, fact finding, Impasse, implementation of LBO

F. Layoffs.

1. The "initial decision" to lay off employees is a management prerogative and not a mandatory subject of bargaining.
2. The "effect" of the decision to lay-off is a mandatory subject and the employer has a duty to bargain on the effect of layoffs. Local 1277/AFSCME v Centerline, 414 Mich 642 (1982)

G. Practical working relationship and bargaining process involving the Board of Commissioners, elected County officials and unions:

1. Commissioners establish salary of elected officials
2. Officials "waive" their right to bargain if don't participate (St. Clair Prosecutor)
3. Officials may delegate authority to bargain to negotiator
4. Officials may be bound by the terms of an agreement negotiated and executed by their predecessors in office. Lake County Sheriff and Lake County Board of Commissioners, 1981 MERC Lab Op 1.
5. Officials should demand that:
  - a. They receive a demand to bargain directly from the union;
  - b. They actively contribute to employer **responses** to union proposals or do their own responses;

- a. They contribute to employer contract **proposals** or do their own proposals;
- b. They contribute to negotiation priorities;
- c. Stand fast on bargaining positions;
- d. Ratify contract and give notice to union and Board.

(County of Wexford and Wexford County Treasurer, 5 MPER ¶ 23059, 1992) and (7) Execute contract. .

6. Key contract provisions:

- a. Disciplinary Standard
- b. Grievance Procedure
- c. Hiring
- d. Promotion and Transfer Rights
- e. Seniority Rights
- f. Bumping Rights
- g. Arbitration
- h. Leave of Absence Rights

7. "Just cause" discipline - the right to discipline and/or terminate employees "at will" has been commonly contracted away and replaced by a "just cause" standard

- H. Supervisory exclusion from rank and file unit and implication for chief deputy. Mecosta Commissioners v AFSCME, 166 Mich App 374 (1988). .
- I. Executive exclusion from rank and file unit. Macomb County and Macomb County Clerk, 6 MPER ¶24027 (1993).
- J. Confidential exclusion from rank and file unit. Wayne County and AFSCME, 1 MPER ¶ 19064 (1988).
- K. Budgets and costing for collective bargaining (vacations, sick leave, holidays, funeral leave, jury duty, personal leave, health insurance, FICA, MESC, workers' compensation, longevity, etc.)

### III. SERVICEABLE LEVEL OF FUNDING

- A. County boards of commissioners are legally required to provide the funds necessary to permit county elected officials to carry out their statutorily mandated duties at a "serviceable level."
- B. The theory of a "serviceable level of funding" was adopted by the Michigan Supreme Court in Wayne Circuit Judges v Wayne County, 383 Mich 10 in 1969, and further defined by the Court of Appeals in Wayne County Prosecutor, et al v Wayne County Board of Commissioners, 93 Mich App

114 (1979).

- C. In 1983, the Court of Appeals found in a case filed by Sheriff William Lucas:

The same reasoning applied to plaintiff's claim that defendants' action interferes with the performance of certain statutory duties. The issue is whether the elimination of the [patrol and investigation] division in question renders plaintiff unable to provide statutorily mandated services at a "minimally serviceable" level, *Cahalan v Wayne County Board of Comm'rs*, 93 Mich App 114; 286 NW2d 62 (1979). As noted in *Cahalan, supra*, a "serviceable" level of funding need not be an optimal level; in order for a level of funding to be deemed less than "serviceable", there must be some showing of an "emergency immediately threatening the existence of the function". 93 Mich App 124.

Wayne Sheriff v Wayne Comm'rs, 148 Mich App 702, 708 (1983).

- D. 46<sup>th</sup> Circuit Trial Court vs Crawford County et. al.