



HANDBOOK

Ohio County Commissioners

Published by: County Commissioners Association of Ohio

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CHAPTER 1

BASIC STRUCTURE OF COUNTY GOVERNMENT

**Latest Revision
November, 2002**

The General Assembly shall provide by general law for the organization and government of counties, and may provide by general law alternative forms of county government....
(Ohio Constitution, Article X, Section 1, in part)

1.01 INTRODUCTION

County government predates statehood. Indeed, by the time Ohio was admitted to the Union in 1803, nine counties had been established under the provisions of the Northwest Ordinance of 1787. Washington County was Ohio's first county, established in 1788. Ohio now contains 88 county governments.

The roots of county government can be traced back as far as 603 AD to an area of Southern England where the King divided the land into "shires". Shires were controlled by the monarchy who appointed a local governing official. The term shire was used until the 15th century when the term "county" was adopted. County government evolved in England over several centuries and was brought to the United States with the English colonizers. American independence fostered various changes to American government, including the strengthening of state governments and a more defined role for counties. Yet, the Saxon influence is still evident in county government today.

The Ohio Constitution, as cited at the beginning of this chapter provides authority for the organization and governance of counties. This chapter will discuss the general statutory form of county government. Chapter 2 will discuss county charters and the alternative form of county government as authorized by the Ohio Constitution and codified in Chapter 302 of the Ohio Revised Code (ORC). The General Assembly has no authority to provide separate forms of government for individual counties.

1.02 COUNTY ELECTED OFFICIALS

Each Ohio county organized under the general statutory law has eleven elected officials consisting of three county commissioners and an auditor, treasurer, prosecuting attorney,

clerk of courts of common pleas, engineer, coroner, recorder and sheriff. There is no chief executive officer; each elected official possesses some executive authority. A brief description of the duties of each elected official will be given later in this chapter.

1.03 COUNTY POWERS

County government does not possess home rule authority. That is to say, county officials may act only when and as specifically authorized by state law. An 1857 Supreme Court case established a general theory of the status of counties which is still relevant today. The court stated:

"Counties are local subdivisions of a state, created by the sovereign power of the state, of its own will, without the particular solicitation, consent, or concurrent action of the people who inhabit them.... With scarcely an exception, all powers and functions of the county organization have a direct and exclusive reference to the general policy of the state, and are, in fact, but a branch of the general administration of that policy. (*Hamilton County v Mighels, OS 109*)."

In addition, other court rulings have defined the nature of county government in Ohio. County government is viewed as "a constituent part of the plan of permanent organization of the state government (*State ex rel Godfrey v O'Brien, 95 OS 166*). Another court viewed counties as "serving as a mere agency of the state for certain specified purposes (*Cincinnati W.E.Z.R. Co. v Clinton County (1 OS 77)*). Many county officials who are concerned with the problems of state mandates become enraged when they are reminded that one court stated that "the county is a creature in the hands of the state as its creator, subject to be molded and fashioned by the state as the exigencies of the situation may require" (*Blacker v Wiethel 16 OS (2d) 65*).

Contrast these statements by the courts defining the basic nature of a county with Article XVIII, Section 3, of the Ohio Constitution, the Municipal Home Rule Amendment of 1912:

"Municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such police, sanitary and other similar regulations, as are not in conflict with general laws."

While the concept of municipal home rule is complex and has been defined over the years by a myriad of court rulings, the distinction is clear. Counties, not possessing home rule or powers of local self-government, may perform only those governmental functions specifically authorized by state law and in the manner specified in law. If the ORC is silent on the subject, counties do not possess the authority to act.

Municipalities, on the other hand, are generally free to act in areas where counties may not. The Home Rule Amendment to the Ohio Constitution grants municipalities almost unlimited authority to exercise powers of local self-government. In addition, municipalities may enact police, sanitary, or similar regulations if they do not conflict with general laws of the state. The courts have interpreted the constitutional provision "as are not in conflict with general laws" as applying only to "police, sanitary and other similar regulations" and not to "powers of local self government". The adoption of a municipal charter is not required in order to obtain home rule powers because municipal home rule is a direct constitutional grant of power.

For example, county commissioners are without authority to license and control cats, as

they do dogs, because the ORC is silent on the subject. Municipalities, however, are free to enact an ordinance requiring licensing of cats.

1.04 RESPONSIBILITIES OF COUNTY ELECTED OFFICIALS

Several chapters of the ORC must be consulted in order to gain a good understanding of county government. The following chapters of the ORC contain basic information on all county elected officials:

| Officials | ORC Chapters |
|------------------------------------|---------------------|
| A. Board of County Commissioners | 305, 307 |
| B. Auditor | 319 |
| C. Clerk of Courts of Common Pleas | 2303 |
| D. Coroner | 313 |
| E. Engineer | 315 |
| F. Prosecutor | 309 |
| G. Recorder | 317 |
| H. Sheriff | 311 |
| I. Treasurer | 321 |

No county elected official's office is established in the state constitution. The offices of all county elected officials are established by legislative act as are the duties of the various officials. Following is a summary of the major responsibilities of the county elected officials:

A. Board of County Commissioners - ORC Chapters 305 and 307

All Ohio counties organized under the general statutory law have three county commissioners, two being elected at the time of the presidential election and one at the time of the gubernatorial election. The county commissioner elected at the gubernatorial election takes office on January 1st, and the two elected at the presidential election take office on January 2nd and 3rd. Candidates for these two commissioner positions must file for either the January 2 or 3 position (ORC 305.01).

The organizational meeting of the board of county commissioners occurs on the second Monday of January each year by the election of one of its members as president (ORC 305.05). The commission must hold 50 regular meetings per year (ORC 305.06) and as many special meetings as necessary to conduct their business (ORC 305.07).

County commissioners make up the general administrative body for county government. As indicated above, they can perform those duties which are specifically authorized by the General Assembly and no more. They are the county government taxing, budgeting, appropriating, and purchasing authority. They hold title to county property. Individual

commissioners have no power to act independently. All formal and official actions must be taken by the board of county commissioners acting as a body by majority or unanimous vote.

Commissioners also have a myriad of other responsibilities including hearing and ruling on annexations, approving drainage improvements through the petition ditch process, establishing water and sewer districts and making improvements, and providing for solid waste disposal.

Commissioners also appoint department heads of offices for which they have responsibility and also appoint members to a variety of boards and commissions, and also serve on some boards such as the board of revision, the county records commission, and the planning commission.

Commissioners must work with all other county elected officials and with judges to assure that they are properly funded to perform their statutory duties.

But it is the non-statutory duties of county commissioners that make them different from other county elected officials. By necessity, county commissioners must take a broad view of actions necessary to make the county a better place to live and work. Many commissioners are thus active in promoting public/private partnerships in human services, economic development, health, and infrastructure development. Other commissioners take an active role in improving the environment, promoting job training programs, and improving agriculture in their counties.

County commissioners must be astute and have good business sense. Perhaps the most important attribute of a county commissioner is the ability to lead, to listen to the needs of the citizens and other elected officials, to compromise, and to develop a consensus on priority issues to improve the county.

B. Auditor - ORC Chapter 319

The county auditor is the only elected official, aside from the one commissioner, that is elected in the gubernatorial election year. All other county elected officials are elected in the presidential election year. If the commissioners do not appoint a clerk, the auditor is, by statute, the clerk of the board of county commissioners.

The auditor is the chief fiscal officer of the county. As the county's chief fiscal officer, the auditor has the responsibility to keep the official record of all county government receipts and disbursements. The auditor is a very important office from the perspective of county commissioners because it is the responsibility of the office to certify to the commissioners an estimate of available revenue that they may appropriate for county agencies and departments. When the county makes a purchase or enters into a contract, the auditor must certify that funds are available or in the process of collection from the appropriate account. This assures that no agency spends more than the commissioners appropriate for various purposes. In addition, the auditor issues warrants to pay county bills, and serves as the "paymaster" for all county employees. The auditor prepares a detailed annual report of all revenue and expenditures by fund under rules of the state auditor.

Another major responsibility of the auditor relates to the administration of Ohio's property tax law. As the appraiser of real property, the auditor must assure that every parcel of land and buildings and improvements are fairly and uniformly appraised and then assessed for

tax purposes. The auditor directs a general reappraisal of real property every six years with an update being performed during the third year after the reappraisal.

In administering Ohio's real property tax law, the auditor must maintain accurate records of real property including the transfer of deeds, new construction, new parcels and lot splits, oil and gas wells, homestead exemptions, and special assessments.

Every year the auditor prepares an abstract of real property, an abstract of property exempt from taxation, an abstract of current agricultural use (CAUV) property, an abstract of tax rates, and the general tax list and duplicate. After taxes are collected by the county treasurer, the auditor distributes taxes and special assessments to various political subdivisions and county agencies or boards. The auditor also certifies a list and duplicate of delinquent taxes and must publish the list. The treasurer then pursues these delinquencies.

The auditor also has a variety of other significant responsibilities including:

- a. To distribute funds to various political subdivisions. This includes distributions of motor vehicle license taxes, gasoline taxes, estate taxes, fines, personal property taxes, and state local government fund monies to counties, townships, municipalities, libraries and certain park districts.
- b. To serve as an agent for the state Tax Commissioner for administering Ohio's tangible personal property tax law.
- c. To administer Ohio's manufactured home law by assessing manufactured homes, preparing a tax duplicate, and distributing manufactured home taxes in the same manner as real property taxes.
- d. To serve as an agent for the state Tax Commissioner to process estate tax returns of decedents who had residence in the county, including the inventory of safe deposit boxes. The auditor then distributes monies collected from the estate tax to the state and township or municipality of the decedent.
- e. To serve as the sealer of weights and measures by inspecting such devices as scales and gas pumps to protect the consuming public.
- f. To issue various licenses including licenses for dogs and kennels, vendors licenses, and cigarette licenses.

Finally, the auditor serves critical functions on certain county boards and commissions. The auditor is the secretary of both the county budget commission and the board of revision, and is the chief administrator of the automatic data processing board if the county commissioners have established one. He or she also serves on the board of trustees of the county sinking fund. The functions of these boards are detailed in other chapters of this handbook.

C. Clerk of Courts - ORC Chapter 2303

The principal duty of the clerk of courts is to keep journals, records, books, and the papers pertaining to the court of common pleas and the court of appeals. The clerk's responsibilities involve not only the filing, docketing, indexing, and preserving of all

pleadings, but also with arriving at decisions regarding the procedures required by law and the issuance of writs including summons and subpoenas.

The clerk of courts is also responsible for issuing titles for motor vehicles and watercraft. As a part of this responsibility the clerk collects the sales tax on automobiles and remits this money to the state. In this regard, the clerk also issues memorandum copies of titles, duplicates, notations of licenses on vehicles and watercraft and fees associated with these responsibilities.

Some clerks also perform the duties of administrator for juvenile and probate courts, and a few serve as the clerk of the municipal or a county court. Clerks also generally accept passport applications and accept applications for hunting and fishing licenses.

Finally, the clerk of courts has the responsibility for collecting or disbursing millions of dollars in court costs, witness fees, juror fees, fines, appraisal fees and other costs. Clerks also file real estate sales persons and brokers licenses, optometrists licenses, coroners reports, and notary public commissions.

D. Coroner - ORC Chapter 313

The coroner is an important part of the criminal and civil justice system. The coroner has the responsibility to investigate the cause of any death resulting from criminal or violent means, accidents, or in other situations where someone in good health dies, or where a death is suspicious or unusual. In auto accidents resulting in a fatality, the coroner must determine the blood alcohol content of the person killed in the accident.

The coroner works with law enforcement agencies and the county prosecutor in preparing cases for trial; may conduct inquests to ascertain the exact cause of death; performs autopsies, x-rays, toxicology tests; and often testifies as an expert witness on the cause and manner of death in court. Larger county coroners maintain morgues with professional pathologists to conduct autopsies, as well as laboratory facilities. These services are often utilized on a fee basis by smaller counties.

The coroner or his or her designee also must serve on a county or regional Child Fatality Review Board established under ORC section 307.622. For more information on the county coroner see chapter 104 of this handbook.

E. County Engineer - ORC Chapter 315

The county engineer is the county's surveyor and civil engineer. The primary duty of the county engineer is to plan, design, construct, and maintain the county road system, including county bridges. The engineer also has responsibility for township bridges and for bridges within municipalities on through routes. Unlike most other county elected officials offices, the engineer is primarily funded with dedicated motor vehicle license and gasoline taxes.

The engineer is also responsible for maintaining the auditor's tax maps including reviewing deeds, land transfers, lot splits, and annexation petitions for proper boundary descriptions.

In addition, information from property surveys and surveying monumentation is also filed with the engineer. These functions are paid from the general fund.

The engineer also serves as the engineer for all townships, and in some counties provides assistance to the planning commission, building regulation department, zoning commission, or may be appointed as the county sanitary engineer by the county commissioners. In many counties the engineer spends considerable time on drainage improvement projects under Ohio's petition ditch law. For additional information on drainage and road and bridge functions see chapters 29 and 30 of this handbook.

F. Prosecuting Attorney - ORC Chapter 309

The prosecuting attorney is the county's criminal and civil attorney. While the prosecutor is best known to the public for prosecuting criminal actions in the name of the state, the office is also critical to county government because it is the legal advisor to the board of county commissioners and to "the board of elections, and all other county officers and boards....." (ORC 309.09). The office also represents libraries, townships, and county school districts (ORC 3313.35) with the exception of city school districts. These civil responsibilities include the rendering of opinions, prosecuting and defending the county or agency, and the review and approval as to form of all contracts. The prosecutor of the most populous county comprising a joint vocational school district also represents the district. A county prosecutor also has the responsibility to prosecute all juvenile cases including child neglect, dependency, and abuse along with juvenile felony, misdemeanor, and even traffic violations.

The prosecutor is often involved in child support cases including interstate criminal non-support cases and often enforces child support under contracts with the county child support enforcement agency (SEA). Finally, the prosecutor serves as a member of the county budget commission and works with the county treasurer to collect delinquent property taxes.

G. Recorder - ORC Chapter 317

The county recorder is the county's official keeper of records. The function of the office is to provide protection to persons and property by recording a variety of legally essential documents. Many of the instruments recorded by the county recorder relate to real estate transactions. The recorder accepts for recording deeds, mortgages, mechanic liens, powers of attorney, recognizance bonds, Internal Revenue Service liens, corporate franchise liens, partnerships and other instruments. In some counties land is registered under the Torrens system which is also administered by the recorder.

Under revised Article 9 of the Uniform Commercial Code (UCC), as amended by Senate Bill 74 of the 123rd General Assembly, which became effective July 1st, 2001, the vast majority of financing statements that are not related to real estate are now filed centrally with the office of the Secretary of State and are no longer filed at the county level with the recorder's office. The county recorder continues to record subdivision plats and records all county and township zoning resolutions and amendments. If the county commissioners have established a county microfilming board, the recorder serves as its secretary and as the chief administrator of the microfilm center. See chapter 131 for additional information on the county microfilm board.

H. Sheriff - ORC Chapter 311

The sheriff is the county's chief law enforcement officer, with duties to maintain the peace, operate the jail, attend the courts, investigate crimes, and execute processes. More

detailed information concerning the office of sheriff may be found in chapter 100 of this handbook.

I. Treasurer - ORC Chapter 321

The treasurer is the county's banker. This office has custody of the county's money from the time it is collected, invests county funds, and redeems county warrants issued by the auditor.

The treasurer bills and collects taxes on real and personal property, manufactured homes, estate taxes, and vendors and cigarette licenses.

The office also receives all county monies whether they are received by the treasurer or by another county office. Pay-ins from other county officers are certified to specific accounts by the auditor and deposited by the treasurer.

When the auditor issues a warrant for the payment of a county obligation, the treasurer redeems the warrant and posts it to the proper account, thus providing a check and balance with the auditor. Total receipts, disbursements, and remaining funds must balance between the auditor and the treasurer monthly.

The treasurer serves as the county's investment officer under strict legal guidelines. Working with the county investment advisory committee, which the treasurer serves on with two county commissioners, idle county funds are invested to earn revenues for the county general fund. In many counties investment earnings are the third or fourth single largest source of income to the county general fund.

The treasurer also has primary responsibility to collect delinquent taxes. Working with the county prosecutor, special funds are available to pursue delinquent taxes, and help is available to taxpayers to avoid foreclosure actions. In certain counties treasurers have established real estate escrow programs that allows taxpayers to spread their tax payments over a six-month period. Others administer a linked deposit program that makes low cost loans available for small businesses to protect and create jobs in the county.

Under House Bill 493 of the 123rd General Assembly, which became effective on October 27th, 2000, treasurers have greater flexibility in collecting delinquent taxes and are authorized to accept, under specified circumstances, partial payment of taxes.

Like the auditor, the treasurer serves on the county budget commission, the board of revision, the automatic data processing board, and the board of trustees of the county sinking fund. Along with two of the three county commissioners, the treasurer also serves on the county investment advisory committee established under ORC section 135.341.