

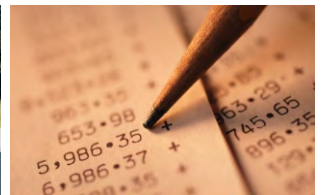


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Manual for County Chief Clerks / Administrators

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Manual for County Chief Clerks/ Administrators

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Introduction

The position of county chief clerk is unique in Pennsylvania and varies as much as do the Commonwealth's 66 county governments. Depending on county size, type, location, organizational structure and tradition, the duties and responsibilities of chief clerks can include supervision of a large staff or can be such that they function virtually alone. But, they are almost always the central administrative functionary, the hub around which the often complex machinery of county government revolves.

In a number of counties in Pennsylvania, the traditional position of chief clerk has been expanded and the position title changed or expanded to include the word "Administrator" as in "Chief Clerk/Administrator" or "County Administrator." We have attempted to construct this Manual broadly enough so that officials with these expanded duties and titles are served also. In recognition of this, we ask readers to include these titles in their thinking when the term "Chief Clerk" is used. We feel that reference to chief clerk alone will ease the readability of this Manual.

The user of this Manual should understand that some of the responsibilities, systems, tasks, relationships discussed may not apply to all chief clerks; it is doubtful that all will apply to any chief clerk. But as the hub of county government, the chief clerk should be aware of these things even if not responsible for them.

The Manual has been prepared with primary reference to the County Code which applies to all counties of the third through eighth classes and only incidentally to counties of the second, or second class A. The Department of Community and Economic Development (DCED) hopes, however, that some of the general information in the Manual will be of interest to officials of all counties.

Although references in the Manual direct readers to the County Code, general state laws or court cases, these are for information purposes only. Statements in the Manual should in no way be construed as legal opinion.

Further details of county operations such as financial management, land use regulation and purchasing are found in other publications available from DCED. Numerous training courses offered by DCED, the County Commissioners Association of Pennsylvania and other agencies are directed to specific aspects of the chief clerk's duties. Learning the ins and outs of county government is chiefly done on the job, benefitting from the knowledge of experienced officials and professionals employed by the county. This learning experience should always be sought out and this Manual should be used as a supplement to that.

DCED is indebted to the chief clerks and former chief clerks who advised, helped and encouraged the process. It is doubly indebted to those county officials who contributed sections to the Manual and whose bylines appear in those sections. Lastly, we thank Doug Hill, Executive Director, and other staff members of the County Commissioners Association of Pennsylvania. Their help was generous and significant.

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I. The Pennsylvania County

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.

In America, the English model for county governments was adopted early on. Pennsylvania's first three counties (Philadelphia, Bucks, Chester) were created when William Penn arrived in Pennsylvania in 1682. By various combinations and subdivisions, more counties were created over the next two hundred years until the youngest of the 67 counties, Lackawanna, was instituted in 1878.

Just as counties were sometimes formed from portions of other jurisdictions, so too were county responsibilities. It was not until 1929, however, 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.

Since that time, 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.

Additionally, counties were written into the home rule provisions of the 1968 constitution, and the related 1972 implementing statute.

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.¹ The governor has the authority to change a county's classification when its population has risen or fallen according to the census.

Classification of Counties, 2000 Census

Classification	Classification Criteria	County	Population 2000 Census
First Class	Those having a population of 1,500,000 inhabitants and over.	Philadelphia	1,517,550
Second Class	Those having a population of 800,000 and more but less than 1,500,000 inhabitants.	Allegheny	1,281,666
Second Class A	Those having a population of 500,000 and more but less than 800,000 inhabitants.	Montgomery, Bucks, Delaware	750,097 597,635 550,864

Classification	Classification Criteria	County	Population 2000 Census
Third Class	Those having a population of 210,000 and more but less than 500,000 inhabitants.	Lancaster, Chester, York, Berks, Westmoreland, Luzerne, Lehigh, Erie, Northampton, Dauphin, Lackawanna	470,658 433,501 381,751 373,638 369,993 319,250 312,090 280,843 267,066 251,789 213,295
Fourth Class	Those having a population of 145,000 and more but less than 210,000 inhabitants.	Cumberland, Washington, Beaver, Butler, Cambria, Schuylkill, Fayette	213,674 202,897 181,412 174,083 152,598 150,336 148,644
Fifth Class	Those having a population of 95,000 and more but less than 145,000 inhabitants.	Monroe, Centre, Franklin, Blair, Lebanon, Mercer, Lycoming, Lawrence, Northumberland	138,687 135,758 129,313 129,144 120,327 120,293 120,044 94,643 94,556
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.	Adams, Crawford, Indiana, Clearfield, Somerset, Armstrong, Columbia, Bradford, Carbon, Venango, Bedford, Wayne, Mifflin, Pike, McKean, Jefferson, Huntingdon, Warren, Susquehanna, Clarion, Tioga, Greene, Clinton, Elk	91,292 90,366 89,605 83,382 80,023 72,392 64,151 62,761 58,802 57,565 49,984 47,722 46,486 46,302 45,936 45,932 45,586 43,863 42,238 41,765 41,373 40,672 37,914 35,112

Classification	Classification Criteria	County	Population 2000 Census
Seventh Class	Those having a population of 20,000 and more but less than 45,000 inhabitants and those having a population of 20,000 or more but less than 45,000 which have not elected to be a county of the sixth class.	Perry, Union, Snyder, Wyoming, Juniata	43,602 41,624 37,546 28,080 22,821
Eighth Class	Those having a population of less than 20,000 inhabitants.	Montour, Potter, Fulton, Sullivan, Cameron, Forest	18,236 18,080 14,261 6,556 5,974 4,946

Data source: 16 P.S. 210, County Code, Section 210; U.S Census Bureau, Census 2000.

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 107 of 2001 amended the County Code to change the population ranges for third, fourth and fifth class counties. The act also permitted any 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. Cumberland County was able to remain as a fourth class county despite its population growth to permit its classification as a third class county.

Philadelphia is the only first class county in Pennsylvania, but it does not have a county government. All laws applicable to the County of Philadelphia apply to the City of Philadelphia and all functions that would ordinarily be assumed by a county government have subsequently been assumed by the government of the City of Philadelphia.

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.

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. 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 has 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 zoning, parks and recreation, emergency management and solid waste management.

Since the early 1960's, however, county government has experienced explosive growth, especially in human services programs and courts and corrections-related 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.

Reference

1. 16 P.S. 210; County Code, Section 210.

II. Office of the Chief Clerk/Administrator

“The county commissioners shall appoint a Chief Clerk.”¹ With these words the Pennsylvania General Assembly provides for a person who frequently operates as the administrative assistant to the county commissioners and as an administrator of the general functions of county government. Most of the official business requiring the commissioners’ attention is channeled through the office of chief clerk who functions as a coordinator between the commissioners and department heads in the county government. The chief clerk is in reality the right arm of the commissioners.

County chief clerks are both public officers and employees of the county. A county officer occupies a permanent position of trust and responsibility, with definite powers and duties. As an appointed public office, the chief clerk’s formal status is defined in state laws, local ordinances, resolutions and policies. Significant differences in the office do exist from place to place because of variations in law and local action.

One difference which is readily obvious is in the title of the position itself. Chief clerks sometimes carry the title chief clerk/administrator or some variation of the joint title. Usually, the use of the word “administrator” in the title indicates a wider range of responsibilities, although this is not uniformly true. The use of “administrator” in the position title is totally an option of the county commissioners as the title is not mentioned in the County Code. The exception is where the county has adopted a home rule charter mandating such a position. A great deal of the discussion in this Manual may or may not apply to the position or similar positions set forth in home rule charters. It depends on the charter language itself and on the language of implementing administrative codes and ordinances. There is a brief discussion on county home rule in Chapter XV of this Manual.

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

Appointment

Chief clerks are appointed by the governing body of the county, 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.

Oath. All county employees and appointed officers, including chief clerks, must swear or affirm to support, obey and defend both federal and state constitutions and exercise the duties of office with fidelity. The County Code contains other specific provisions for the oath relating generally to ethical standards. Oaths of all officers must be filed with the prothonotary.²

Bond. State law specifically requires chief clerks to be bonded. The Code gives the board of commissioners discretion in determining the amount of the bond. It is a general rule of thumb that the bond amount should be equal to the total amount of county funds in possession of the officer being bonded at any one time.³

Dismissal from Office

The County Code provides that the chief clerk, as an appointee to county office, is subject to removal at the pleasure of the commissioners. Such removal may be without cause, as well as without notice. Protections of the Local Agency Law do not apply to appointive offices held at the pleasure of the appointing authority.⁴ Additionally, the Code states that appointed officers shall be removed on conviction of misbehavior in office or of any infamous crime.

Qualifications

There are no statutory qualifications for the office of chief clerk. The Pennsylvania Constitution provides that no one may be appointed chief clerk who has been convicted of embezzlement of public monies, bribery, perjury or other infamous crimes.⁵ There are some informal qualifications often applied to chief clerks by local practice. Citizenship is not required, but this is virtually universal in fact. Residence is also the common, if not universal, rule. The duties and powers of the chief clerk as set forth in the Code appear to suggest some knowledge of books and accounts and office procedures.⁶

Incompatible Offices

The General Assembly has authority to declare by law what offices are incompatible, and in some instances it has done so. In 1962, the previously exercised power of the courts to declare incompatibility on the basis of common law was held to be completely abrogated by Article VI, Section 2 of the Pennsylvania Constitution.⁷

Chief clerks may hold any other public office not declared incompatible. The County Code specifically states that no federal official or employee, except members of the armed forces reserve not on active duty, may hold any county office.⁸

Additionally, chief clerks and their deputies shall be ineligible to hold the office of county controller while they are in office and for two years after leaving office.⁹

Deputy Chief Clerk

The County Code has no specific provision for the appointment of a deputy or assistant chief clerk, but the salary board could do so or provide for the appointment by the commissioners or chief clerk under its authority to fix the number of all deputies, assistants, clerks and other persons whose compensation is paid out of the county treasury.¹⁰

Compensation

Compensation for chief clerks is fixed by the salary board of each county created under the provision of the County Code.¹¹ The salary board consists of the three individual members of the board of county commissioners and the county controller, in counties where there is a controller, or the county treasurer in counties where there is no controller. The chairman of the board of commissioners is the chairman of the salary board, which meets and organizes on the first Monday of each year. At this annual meeting, the board revises the salary schedule so far as it deems the action necessary. From time to time between annual meetings whenever required by any county officer, the number of county employees can be considered and their compensation set.

Expenses. The County Code provides that the commissioners may by resolution authorize any county official

or employes to attend meetings of professional associations and organizations, or study or training sessions, and pay all or any specific portions of the necessary expenses incident to the attendance of these meetings or sessions. Chief clerks should submit to the controller, or to the county commissioners in a county having no controller, an itemized account of the expenses including travel expenses or mileage, which the commissioners have agreed to pay.¹² All county officials and employes may, when authorized by the commissioners, be reimbursed at a uniform mileage rate for the use of their personal vehicle when discharging their official duties. The uniform rate is set by the board of commissioners.¹³

It is reasonable to cover all legitimate expenses of officers or employes while engaged in public business. Expenses are usually justified if the purpose is directly in the interest of the county, is related directly to the duties of the office and is reasonable in amount based on local standards. In most cases, unusual expenses should be approved in advance by the county commissioners.

Retirement. Chief clerks of all jurisdictions must be covered by social security under federal law if not covered by a retirement plan.¹⁴ Chief clerks are required to become members of the county retirement system when first taking office.¹⁵ The county may also offer deferred compensation.

Sick Leave. The chief clerks of counties may be granted sick leave by local regulation.¹⁶ Practice varies throughout the state. Sometimes the amount of sick leave with pay is based on the length of service, while elsewhere uniform leave is applied equally to all appointive officers and employees. Some counties pay full compensation for a fixed period and partial for a specified additional number of days often supplemented by or paid from short or long term disability insurance.

Military Leave. Under state law, all officers and employes of any political subdivision who are members of the military services are entitled to 15 days paid military leave each year.¹⁷

Insurance. County employes are covered by unemployment compensation insurance and workers' compensation. In addition, the county can provide life, health, hospital, medical and surgical and accident insurance. Coverage may include dependents of employees.

Vacation. Under authority to fix compensation, salary boards may provide as benefits vacations, holidays and special or emergency leave, with or without pay, or allow compensatory time off.

Extent of Authority

The chief clerk is a county officer and possesses only authority and powers conferred by state law, local ordinance or other county provisions. The chief clerk's duties are both ministerial and discretionary. Ministerial duties are mandated by law or ordinance and give no choice as to whether or not the chief clerk will perform them.¹⁸ Thus, when a statute or ordinance requires the chief clerk to record and file the proceedings of the county commissioners, keep the books and accounts of the board, attest to all orders and voucher checks issued by them and perform all other duties pertaining to the office of chief clerk, or submit reports to state agencies by specified date, the chief clerk must do so or suffer the consequences.¹⁹ An example of a discretionary duty is to maintain an inventory of office supplies. When given that responsibility, the chief clerk must exercise personal judgment to determine when and in what amounts the supplies should be purchased under criteria set by the governing body.

Many chief clerks exercise only duties specifically mandated by law and routine clerical duties. But commissioners increasingly rely on their experienced chief clerk to exercise legal responsibilities of the board. The question is where the line should be drawn. No governing body may legally delegate any of its legislative power. Administrative authority, such as the authority to make certain purchases without prior approval, may be delegated, as may the authority to formulate regulations within the scope of guiding standards.

Chief clerks should exercise caution in making and carrying out decisions which may exceed or border on exceeding their authority. Reliance on the chief clerk's ingenuity or personal knowledge of what the board of commissioners will tolerate is a hazardous approach. Certainly, if chief clerks perform and act without explicit prior approval, at least they should seek assurance the act will be officially ratified at the next meeting. Better still, the chief clerk should obtain prior approval where possible.

Supervision of the Chief Clerk

As chief clerks are appointed and are removable by the board of commissioners, chief clerks justifiably presume they are responsible directly to and take orders only from the governing body collectively. There is no problem when an order to perform a given act is directed to the chief clerk in the form of a motion recorded in the minutes. The problem arises, however, when orders are given in the interim between meetings of the board. Who, then, has the authority? The chairman? Individual commissioners? Department heads? What does the chief clerk do if the orders of any two are in conflict?

The problem seems to have been solved in different ways. Most commonly, chief clerks make their own decisions as to who is boss on the basis of circumstances and knowledge of local practice. But the problem is not aided by continuing to act as though it does not exist. The best solution is to face the issue immediately upon appointment, or when the composition of the board of commissioners changes, by talking it out and reaching an understanding clear to everyone. This policy should be set out in the minutes, procedural rules, administrative code or local policy manual.

Penalties for Violation of Duty

For violation of duties, a chief clerk is subject to penalty as are all public officers. No sections of the Crimes Code deal exclusively with chief clerks, but some sections are particularly applicable to public officers and employes.

As a county officer, the provisions of the County Code relating to penalty for neglect or refusal to perform duties apply to the chief clerk. The chief clerks can be found guilty of a misdemeanor for neglecting or refusing to perform mandated duties, and upon conviction, be sentenced to pay a fine not exceeding \$500.²⁰ The Code also provides that the office of any county officer absconding from the county shall be vacant.²¹ These code sections are to be read in conjunction with the Crimes Code, especially in regard to the type of penalty prescribed. For instance, there are minor penalties for failure to file certain reports when due. Penalties for other actions sometimes entail heavy fines and/or imprisonment.

Chief clerks may also be held personally liable for damages in tort actions for which counties may not be held liable, in which they personally caused the injury and the act constituted a crime, actual fraud, actual malice or willful misconduct.²² In other cases, the county must defend the chief clerk from suits arising out of acts performed in the course of their duties.

Following is a completed position classification questionnaire which shows the tasks performed and time spent performing the tasks for one Pennsylvania chief county clerk/administrator, as well as a sample job description.

POSITION CLASSIFICATION QUESTIONNAIRE

1. Last Name	First	2. Job Title	3. Department - Bureau
		Chief Clerk/Administrator	Commissioners

4. Work Schedule

Full Time or Part Time

Daytime or Other Shift (Describe in 5.)

5. Important: Describe below the work that you do. Describe the work as completely as you can, using words that can be understood by a person who is unfamiliar with your work. In the column at the left, list the approximate part of your time spent on each major duty (expressed in %, hours per week, etc.)

TIME	WORK PERFORMED
Daily	I see that policy, orders, ordinances, resolutions and regulations promulgated by the Board of Commissioners are executed.
1 or 2 Days/Week	I attend all regular meetings of the Board of Commissioners and discuss policies, priorities and recommend any measures I consider expedient.
1 or 2 Days/Week	I make arrangements and plans for all regular meetings of the Board of Commissioners and oversee the preparation of the agenda.
1 Day/Week	I keep records of all the Board of Commissioner's meetings and oversee the preparation of meeting minutes.
Daily	I confer with any person concerning the affairs of County government and provide feed back to the Board of Commissioners.
1 Day/Week	I make recommendations to the Board of Commissioners concerning any office, department or employee of the County.
Daily	I review management operations and methods in order to improve work flow, simplify office procedures and practices, review office layouts and suggest performance standards and cost reduction plans to create new management systems and controls.
1 or 2 Days/Week	I prepare reports upon the direction of the County Commissioners and with general policy guidance provide objectives to officials and department heads.
75% of Time for 3 Months	I prepare and submit to the Board of Commissioners an annual budget delineating and justifying requests for expenditures for all new programs.
Daily	I review and approve all requests for budgeted purchases of materials supplies and equipment to carry out the business of the County.
Daily	I keep the Board of Commissioners informed of the budget expenditures financial condition and future needs of the County and make such recommendation that I consider expedient.
3 Days/Week	I oversee the preparation and execution of all insurance programs, leases and other lawful contracts on authority of the Board of County Commissioners.
Several Days/Quarter	I assist with the preparation and submittal of grant applications for the receipt of outside funds for county programs. I work with federal and state officials to provide information necessary to receive annual funding.
Daily	I serve as a public relations or information resource for county government through public speaking, press releases to various news media and a county newsletter.
Daily	I perform any other duties that may be required or authorized by the Board of Commissioners.

6. Name and title of your immediate supervisor

CHIEF CLERK/ADMINISTRATOR

General Definition of Duties

This is a highly responsible administrative and supervisory position whose duties are defined by statues of the Pennsylvania County Code and the Elected Board of County Commissioners. As Clerk of the County Government this position is responsible for the recording, attesting and preservation of County Records and the administration of oaths

Duties include directing the completion of all actions required by the Board of Commissioners which includes for illustration Budgetary and Fiscal Operations, Personnel Matters, Staff and Liaison support to the Board and other Commissions and other general Administrative duties.

This position requires a significant degree of discretion and judgment with moderate oversight by the Commissioners. This position typically requires some knowledge of governmental operations and a significant degree of ability in communication and facilitation.

(The above paragraphs provide possible wording for the definition portion of a job description, more details should follow based on the duties and responsibilities in the particular county. These could be similar to those suggested on the previous pages. DCED can provide additional suggestions based on a survey of tasks performed.)

References

1. 16 P.S. 520; County Code, Section 520.
2. 16 P.S. 403; County Code, Section 403.
3. 16 P.S. 420; County Code, Section 420.
4. 16 P.S. 450; County Code, Section 450 (b).
5. Pennsylvania Constitution, Article II, Section 7.
6. 16 P.S. 52; County Code, Section 521.
7. Pennsylvania Constitution, Article VI, Section 2; *Commonwealth ex. rel. Fox v. Swing*, 186 A.2d 24, 409 Pa. 241, 1962.
8. 16 P.S. 402(b); County Code, Section 402(b).
9. 16 P.S. 602(b); County Code, Section 602(b).
10. 16 P.S. 1623; County Code, Section 1623.
11. 16 P.S. 1620; County Code, Section 1620.
12. 16 P.S. 446; County Code, Section 446.
13. 65 P.S. 371; 1979 P.L. 156. No. 51, as amended.
14. 65 P.S. 206; 1952 P.L. 1833.
15. 16 P.S. 11660; County Pension Law, Section 10.
16. 53 P.S. 632; 1971 P.L. 116 (1).
17. 65 P.S. 114; 1935 P.L. 677, Section 1.
18. 53 P.S. 521; County Code, Section 521.
19. 53 P.S. 411; County Code, Section 411.
20. 53 P.S. 412; County Code, Section 411.
21. 53 P.S. 412; County Code, Section 412.
22. 42 Pa. C.S.A. 8550.

III. Working with Other Officials

Pennsylvania county government is complex and as a key administrative functionary the commissioners often rely upon the assistance of the chief clerk in maintaining the communication link between themselves, the other elected officials and the department heads of the county government. The purpose of this chapter is not only to provide new chief clerks with an outline of the relationships they should strive to maintain, but also to provide a checklist for the more experienced clerks — a list they can refer to occasionally to self-assess this important aspect of the job. Additionally, in a very basic sense, the chapter can provide a rough diagram of the structure of Pennsylvania county government as an aid to understanding for citizens as well as for new county officials.

Overall Organization of County Government

The Pennsylvania Constitution provides for nine elective county offices for those counties not adopting a home rule charter. These include: Commissioners, Treasurer, Controller or Auditors, Sheriff, Prothonotary, Register of Wills, Recorder of Deeds, Clerk of Court, District Attorney.¹

In addition, the state Constitution provides for appointed offices of public defender and, under the County Code, there are statutorily elected officers which include a coroner and two jury commissioners.² Consolidation of certain elected offices is provided by statute in the fifth through eighth class counties.³ Judges are elected as well. All other county offices are appointed, mostly by the county commissioners. The County Code authorizes the appointment of deputies, and solicitors, and in some instances specifies certain duties and responsibilities.⁴ 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.

County Commissioners

The three county commissioners constitute the chief governing body of the county. Statutory authority of the commissioners is primarily of an administrative nature with legislative or policy-making powers.⁵ Administrative powers of county commissioners include voter registration and elections, assessment of persons and property for tax purposes, human services, veteran affairs, appointment of county personnel, fiscal management, economic development, emergency management and land use planning.

The commissioners are elected for four-year terms, with the terms of the three commissioners running simultaneously.⁶ The three candidates who receive the highest number of votes in the general election are named commissioners. Since no party may nominate for more than two persons, the voting process normally results in the election of two majority and one minority party representative.

Chief Clerk's Relationship with County Commissioners

In most counties, the commissioners rely upon assistance of the chief clerk, and the effectiveness or ineffectiveness of the chief clerk in performing the central administrative function usually depends upon support and confidence gained from the board of commissioners.

In a survey of selected Pennsylvania chief clerks, the unanimous opinion was that the chief clerk should maintain a thoroughly professional relationship with each member of the board of county commissioners, but at the same time operate with the philosophy that the clerk is appointed, and so is responsible to the board of commissioners as a whole. One chief clerk responded by saying that the party affiliation does not enter into the picture at all and that politics has no place in the everyday professional routine of the chief clerk's job.

Another respondent said that he maintains an open and frank relationship with the board of commissioners and is involved in all aspects of decision making. One chief clerk said that the board as a whole sets standards, goals and objectives for the chief clerk to achieve and maintain, and that they expect the chief clerk to run the Commissioners' Office in a professional manner, meeting the standards, goals and objectives.

A chief clerk from a relatively small county wrote that her "professional relationship with the majority and minority commissioners are one in the same." She concludes, "Politics does not enter into the every day professional routine of the work of the office."

Another survey respondent, in addressing the chief clerk's relationship with a minority commissioner, described it as very businesslike, although sometimes strained. He adds, however, that at all times he attempts to retain a professional approach. In most of the survey forms, the word professional was used frequently. Another respondent stated that he attempted to limit his work for the board to issues involving internal business matters and that "while political considerations are a necessary part of every decision, I attempt to approach the issue in a manner that does not divide the board."

A fine summary of the ideal chief clerk/commissioner relationship can be found in the words of another respondent. "I provide support to the Board of Commissioners to the extent of the law and job responsibilities in a timely, confident and professional manner."

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 term probably derives from the fact that these officials appear "in a row" on the ballot. These include the following.

County Controller or Auditors. In counties having an elected county controller, the controller is the chief financial officer of the county and is responsible for gathering budget information, prescribing systems of accounting, approving all bills, claims and demands and preparing and authorizing their approval. Subject to the power and duty of the county commissioners to manage and administer the fiscal affairs of the county, the controller audits books, records and accounts of all county officers and makes financial reports at the close of the year. The controller also shall have 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.⁷ The controller's powers and duties are especially provided for in the County Code.⁸ Some counties elect three auditors rather than elect a controller. They perform a post audit function, not an accounting function. This option is available in sixth, seventh and eighth class counties; however statute provides that counties of the sixth, seventh and eighth class may establish, through referendum, the office of county controller⁹ and upon doing so the office of auditor is abolished.

The chief clerk in many counties is also heavily involved in financial functions paralleling or complementing those of the controller. As the administrative arm of the county commissioners, the chief clerk assists in discharging their duty to supervise the fiscal affairs of the county. These duties and responsibilities are described in some detail in Chapter 6 in this Manual.

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.¹⁰ The office pays all bills on order from the commissioners and must produce vouchers or other documentation more adaptable to electronic accounting systems, and records of transactions for the auditors at the end of each fiscal year.¹¹ 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, 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 Code to a greater extent.¹²

Sheriff. The sheriff serves principally as an officer of the court. The main duties involve delivering and carrying out orders of county courts. Sheriffs serve various writs, processes and other judicial documents, and assist in impaneling juries and executing sheriff's sales. 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.¹³

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 maintains 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. 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 right of way, recording the action of members of boards of view and eminent domain proceedings.

A service which requires considerable time is processing naturalization papers. The office obtains information and makes records and arrangements for naturalization court. 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 reputed to be one of the oldest in the state. This officer is the chief clerk and recordkeeper 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. In most counties, the register of wills also serves as the clerk of orphan's court.

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; record 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 office is one of the busiest in the courthouse, with lawyers, realtors and others looking up information about property sales.

Another function of the office is recording plot plans for developments. This has become an important job in recent years. 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, 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. The powers and duties are specified in the county code.¹⁴

Jury Commissioners. The County Code provides for the election of two jury commissioners. Their duties are limited to providing a jury panel for the ensuing court year. They are authorized to appoint a clerk to assist them in performing this function. In certain counties of the third class, the office of jury commissioner may be abolished by referendum at the option of the county¹⁵ or by action of the Commissioners.

Chief Clerk's Relationship with Row Officers

In the previously mentioned survey of selected chief clerks, responses concerning the chief clerks relationship with the row officers ranged from "little professional contact" to "close relationship." One chief clerk responded that he makes it a point to visit each and every row office once a week to see if anyone has any problem. He states that by doing this it helps with the rapport between that office and the commissioners' office. Another chief clerk responded by saying that she tries to treat matters involving row officers in the same way that she will treat any department heads, qualified somewhat by the recognition that they are elected and that the office allows some prerogatives that department heads do not enjoy. Another states that his role is to make every effort to accommodate the needs of the row officers within established policy or, without policy guidelines, in a fair impartial manner without regard to the particular officials.

In general, in the relationship between the commissioners' office and the row offices, the commissioners' role might be characterized as the greater among equals. While the commissioners do not 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, so some level of positive working relationship is important.

"The goal in each case is to solve the issue at a level below the commissioners' level whenever possible" is the response of another chief clerk. Again, as in the case of the county commissioners, the use of the word "professionalism" was extensive when describing the relationships.

County Government and the Courts

The county supports the courts of justice. The county is the base upon which the judicial system of the Commonwealth is built. While in some cases two smaller counties are combined in the same judicial district under one judge, each county has its separate courts, its own courthouse, and its own set of court officials.

The judges, elected in the several judicial districts and their court administrator, are Commonwealth officials whose salaries are paid by the Commonwealth. The sheriff, prothonotary, clerk of courts and register of wills are county officials and are paid by the county as is the support staff of the judges. Fees collected by each of these offices go into the county treasury or to the Commonwealth as directed by law.

The county commissioners provide chambers for the judges at the county seat, either in the courthouse or at another location agreeable to the judge and the county commissioners. The county also finances the cost of supplies and janitorial services in the maintenance of the judges' office and to assist in the discharge of their

duties. 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 bar of the county, and general public.

Chief Clerk's Relationship to Court Personnel

Again, survey results range from little contact to fairly extensive contact, most typically through the court administrator. One chief clerk indicated that he attempts to offer "a little extra effort" in his relationships with the judges and their employees as in the past there have been "rocky roads." Another chief clerk describes the relationship as "cold" and distant, saying a cooperative effort is made by both parties to work together, but that a guarded approach is used in dealing with the courts as sometimes they take a position that they are above the jurisdiction of the commissioners' office. All in all, the survey results indicate that the chief clerks, where appropriate, work hard at maintaining a productive relationship with the judges and their employees. This effort seems to be required since the other branch of government is involved with its own duties and responsibilities, and yet must rely on the legislative responsibilities of the county commissioners and the chief clerks in some fiscal and other housekeeping responsibilities.

Appointed County Officers

The county commissioners are required by law to appoint, in addition to a chief clerk, a county solicitor,¹⁶ chief county assessor,¹⁷ and a public defender.¹⁸ Additionally, the commissioners are authorized by statute to appoint other county personnel such as a county engineer,¹⁹ various administrators of the human services programs of the county,²⁰ a director of veteran affairs²¹ and one or more assistant county solicitors.²² The commissioners may also appoint a sealer of weights and measures, if the county retains that function.

As the commissioner's right hand for administrative functions, the chief clerk is often called upon to work closely with other appointed officials. This can vary depending on the nature of the appointed position. For example, the chief clerk sometimes supervises department heads in areas such as data processing, purchasing or budgeting. In these cases, the relationship is one of direct line supervision. In other cases, however, such as the positions mentioned in the paragraph above, chief clerks must be aware they are acting as a functionaries of the county commissioners.

One chief clerk puts it this way: "I have by necessity a different relationship with the department heads who report directly to me than I do with other department heads. However, my fundamental approach to all heads is quite similar. I want to know every impending matter that would likely affect the commissioners, the budget or any major county procedure. We give great discretion to department heads and most do not report to me directly, so to protect my role as conduit to the commissioners, there must be some assistance to these people or they would simply find a way around this office."

Another chief clerk in the survey said that the appointed officials meet monthly and the chief clerk's office is always available to them to help with problems. Many call weekly or daily with issues to be discussed and possibly brought before the commissioners.

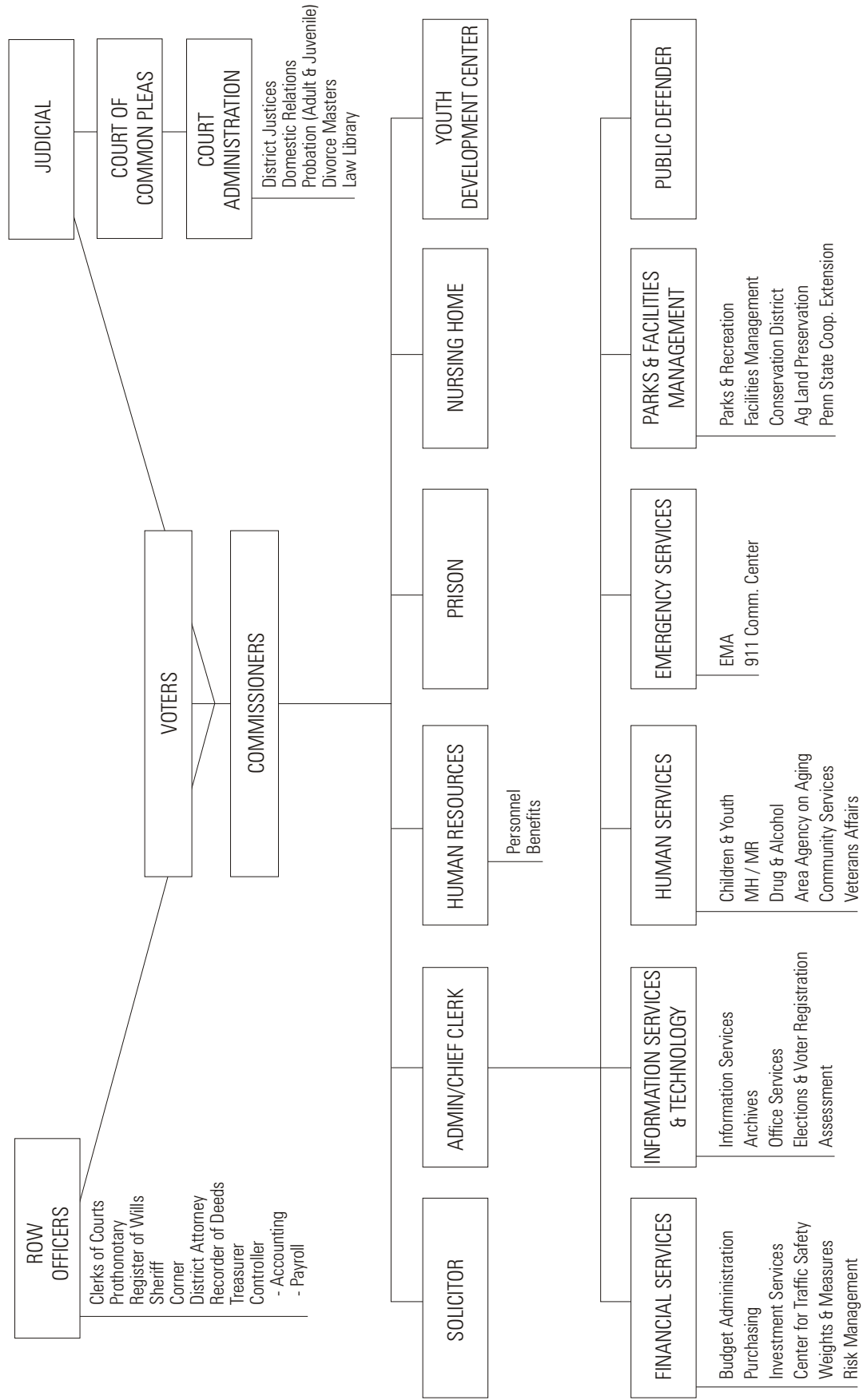
Finally, perhaps half facetiously, another chief clerk reports his professional relationship with the appointed officials is about the same as with the row offices and traditional officials: "It has now gotten to the point that if anything happens, anything at all, they call me first. In fact, if anything goes wrong, the plumbing, someone stuck in the elevator, an injury, they call on me."

On the following page is an organizational chart for a typical Pennsylvania county government.

References

1. Pennsylvania Constitution, Article IX, Section 4.
2. 16 P.S. 401; County Code, Section 401.
3. 16 P.S. 1303; County Code, Section 1303.
4. 16 P.S. 408; County Code, Section 408.
5. 16 P.S. 509; County Code, Section 509.
6. 16 P.S. 501; County Code, Section 501.
7. 16 P.S. 1704; County Code, Section 1704.
8. 16 P.S. 1702 et seq., County Code, Section 1702 et seq.
9. 16 P.S. 605; County Code, Section 605.
10. 16 P.S. 1760; County Code, Section 1760.
11. 16 P.S. 1751; County Code, Section 1751.
12. 16 P.S. 1402 et. seq., County Code, Section 1402 et. seq.
13. 16 P.S. 1202; County Code, Section 1201.
14. 16 P.S. 1232 et. seq., County Code, Section 1232 et. seq.
15. 16 P.S. 401; County Code; Section 401.
16. 16 P.S. 901, County Code, Section 901.
17. 72 P.S. 5453.51; Fourth to Eighth Class County Assessment Law, Section 501.
18. 16 P.S. 9960.4.
19. 16 P.S. 1002; County Code, Section 1001.
20. 16 P.S. 2101 et. seq; County Code, Section 2101 et. seq.
21. 16 P.S. 1923; County Code, Section 1923.
22. 16 P.S. 904; County Code, Section 904.

TYPICAL COUNTY GOVERNMENT ORGANIZATIONAL CHART



IV. Meetings Administration

County chief clerks are deeply involved in preparing for regular and special meetings of the board of commissioners. This includes publishing notices, preparation of materials for members and preparing and distributing the agenda. The chief clerk performs or is responsible for a series of clerical functions during the course of the meeting. These include reading or presenting written copies of the previous meeting's minutes, recording attendance, recording minutes of the proceedings, reading communications, resolutions or ordinances and supplying various reports. Participation in open discussion before decision making by the chief clerk can vary from complete nonparticipation to participation as complete and privileged as that of members, except for the right to vote.

As a matter of practice, all chief clerks are required to attend official meetings of the board of commissioners and such other meetings as required, unless excused by the board. There is a wide diversity of practice for chief clerks in attending administrative sessions or committee meetings. In some places regular attendance is required, in some only on invitation and in some the chief clerk is excluded.

Advance Preparations

Meetings of governing bodies are not productive unless careful preparations are made, and most of this responsibility rests with the chief clerk. The duties of the chief clerk as the aide and recorder for the board of commissioners include responsibility for at least the ministerial aspects of meeting preparation. Although much activity is compressed into the day or two before the meeting, many preparations should be made as early as the conclusion of the previous meeting. The amount and type of preparation varies with local practice. Some critical elements are listed below.

Distribution of Minutes. The County Code sets forth as a ministerial duty of the chief clerk the recording and filing of the proceedings of the board of commissioners.¹ Since the minutes of one meeting contain orders for actions affecting the next meeting, they should be prepared and distributed as soon as possible after the meeting, rather than just before the next meeting when they will be approved. Early distribution ensures prompt circulation of orders or directions to appropriate officials and employees. It also gives the commissioners an early opportunity to check the accuracy of the minutes while their memories are still fresh.

On the basis of information in the minutes, the chief clerk should prepare a checklist of orders or actions to be taken by officials and employees. A procedure for reporting completed actions back to the chief clerk should be established so the proper reports can be made at the next meeting.

Agenda File. The chief clerk should set up and maintain a separate agenda file or folder to contain any matter encountered in daily business and considered as a possible subject for the next meeting. These can include a variety of items, including those having a particular deadline, monthly recurring items, pertinent written communications or suggestions or directives of the presiding officer, other officials or committee chairs. An agenda file can become quite voluminous, but a few moments culling at agenda preparation time eases the chief clerk's burden, and helps ensure nothing important is left off the agenda for the coming meeting.

Materials for the Meeting. Communications received by the chief clerk addressed to or intended for the board's attention should be date stamped and filed. Some chief clerks note how the communication was received. Many chief clerks participate in preparing committee reports to the board. Sometimes they physically participate in meetings, or else they help arrange meetings, prepare information and assist in compiling and duplicating committee reports or preparing briefs or summaries for inclusion in the agenda. Other records or documents required for the business of the meeting should be assembled, prepared or obtained by the chief clerk well in advance of the coming meeting. Last minute efforts in this regard usually create problems.

Forms For Use In Meeting. Chief clerks are usually very busy at meetings of the board of commissioners. Consequently, experienced chief clerks have evolved a variety of forms for reducing the amount of writing required to record actions at meetings. These range from small index cards or half sheets of paper with penciled or typed headings of various anticipated actions to elaborate printed or duplicated forms. Listed below are sample types of forms used by chief clerks.

1. Roll call forms with preprinted names of commissioners and columns for yeas and nays for easy checking.
2. Attendance forms for recording attendance of commissioners and other officials by checking their names.
3. Forms for disposal of reports to the proper file, or to officials or committees for action.
4. Lists of officers and committees in order to refer matters to them.
5. Forms for approval of minutes.
6. Forms for recording motions and other actions taken.
7. Forms for tabulating bids.
8. Forms for noting informal suggestions or requests arising during discussions.

Checking Physical Arrangements. It is common for chief clerks to assume this responsibility, either by direction or because they feel personal responsibility. Checks can include last minute contact with officials such as the presiding officer, committee chairpersons or administrative officers. They can include last minute checks on the arrangement of records and documents, testing recorders or microphones, heat and lighting, providing pads and pencils and accommodation for the public

Notice

The County Code and the Sunshine Act require that all meetings, regular and special, of the county commissioners and of all boards and commissions created by or operating as agencies of the county, are to be open to the public at all times.² The chief clerk is usually responsible for publication and posting of notices for meetings of the commissioners, public hearings, advertisements for bids and budgetary procedures. In case of special meetings, the chief clerk notifies commissioners of the time, place and purpose of the meeting as well as making public notice.³ At least 24 hours notice must be given under the Sunshine Act.⁴

Public Notice. Under the Sunshine Act, all formal actions of the commissioners 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 publishing once in a newspaper of general circulation within the county and posting a copy of the notice at the public building where the meeting is to be held. Public notice of the first regular meeting of each calendar year must be given not less than three days in advance of the meeting and must include the schedule of its remaining regular meetings.⁵ Special provisions for public notice and public hearings are required if the governing body is to take certain actions under the Municipalities Planning Code and during the budget adoption process.⁶

Executive Sessions

County commissioners may hold executive sessions, but only under certain circumstances. These exceptions to the open meeting requirement include consideration of the following:

- personnel matters,
- collective bargaining issues,
- real estate transactions,
- litigation matters and
- other business protected by the confidentiality provisions of various laws and court decisions.⁷

Commissioners must, however, announce their reason 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. One can find additional and very helpful information on this subject in the *Open Meeting/Open Records* publication by the Governor's Center for Local Government Services.

Agenda

Chief clerks are probably more aware than anyone else of the potential for confusion, unproductivity and frustration in a meeting conducted in a haphazard manner and without preparation by commissioners and other officials. An agenda is the first step toward orderly, productive meetings, no matter how large or small the county. 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. Without the discipline of an agenda, meetings of commissioners tend to become long, disorderly and fruitless, as well as frustrating to the interested citizen.

Preparation. Preparing the agenda for upcoming meetings is usually the responsibility of the chief clerk. Determining the actual contents of the meeting and the order of business should be established in the board's rules of procedure. The County Code provides that the board shall adopt rules for the conduct and order of business. A copy must be posted at all times in a conspicuous place in the court house "for the benefit of the public."⁸ Inclusion of specific items is usually a decision of an appropriate official such as the chairman. The chief clerk is responsible for preparing the final format, writing or assembling supporting information and duplicating and distributing the agenda prior to the meeting. The chief clerk is often included in discussions on the items to be covered. At this point the chief clerk's agenda file will prove valuable to the commissioners in reviewing potential issues for the meeting.

Format. The physical appearance of the agenda will depend on factors such as the size of county operations, number and character of business items and provisions for public participation. The agenda should be typed and duplicated, and the number of pages kept to a manageable number. Specific items should be arranged under the appropriate order of business and headings clearly identified.

The agenda can contain at least briefs or short summaries of reports covering items listed. These may include reports of officials, committees and boards and commissions. Including complete reports makes the agenda too cumbersome and complicates preparation and duplication, including enough copies for distribution to citizens attending the meeting. Copies of full reports can be made available after submittal.

Order of Business. Most counties do follow a general order of business at official meetings. This may be established in the rules of procedure adopted by the commissioners at the organization meeting, usually by resolution. In some cases, informal rules are followed by joint consent. Orders of business can vary widely depending on local needs and practice, although the Open Meetings law does require the opportunity for public comment prior to official action.⁹ A common order of business appears below.

1. Call meeting to order.
2. Roll call.
3. Action on minutes of previous meeting.
4. Public Comment.
5. Reports of officials and committees.
6. Unfinished business.
7. Ordinances or resolutions.
8. Action on bills.
9. Written communications.
10. New business.
11. Miscellaneous business.
12. Public Comment.
13. Adjournment.

An established order of business can help assure systematic conduct of the work of a meeting, but it is only the general framework around which a complete and effective agenda is constructed for each specific meeting. A complete agenda includes the specific items of business to be considered at each meeting, together with supporting data and information arranged under the appropriate headings in the order of business. Effective organization work by the chief clerk will ease the work of the board by providing them the background material needed for the meeting and fitting in all the items to be considered at the appropriate place.

Distribution. If the agenda is only a skeleton listing of the standard order of business, unchanging from month to month, it can be provided at the meeting. However, if the agenda is a well-developed and detailed plan of business with supporting information, it should be distributed far enough in advance for the commissioners to read and digest the information so they can come to the meeting prepared. A cutoff date before the meeting for items to be included on the agenda should be set so the appropriate officials can make the necessary decisions and the chief clerk can compile, duplicate and distribute the agenda.

The time of distributing the agenda varies in practice from as much as five days before the meeting to as little as a few hours before, or even when the meeting opens. Setting the distribution at two days before the meeting allows the members sufficient time to study and react to the material, yet permits a cutoff date late enough to include timely items.

Preparing the agenda two days before the meeting allows the county to provide a copy to the local news media in time for publication of stories anticipating business to be handled at the meeting. This is excellent for media relations, and also provides a valuable service in keeping citizens informed of matters to be discussed at each upcoming meeting. This alerts them to actions in advance and can be effective in building goodwill, public confidence and understanding.

Some counties post the agenda at the courthouse, or make copies available to citizens attending the meeting. Some counties advertise abbreviated agendas with the time and place of the meeting.

Minutes

The County Code makes the chief clerk responsible for the minutes of official meetings of the board of commissioners.¹⁰ While it is the usual practice for the chief clerk to physically take notes at the meeting and type the minutes, in some counties the chief clerk has been freed from this task. A subordinate may take the minutes, or a stenographer can be hired or electronic equipment used to record the meeting, and the chief clerk only attests to the minutes prepared by a subordinate. In all cases, the chief clerk is identified as the keeper of the minute book.

The Sunshine Act requires minutes of all public meetings to be taken, promptly recorded and to be open to public inspection.¹¹ While the chief clerk and board members may take notes of discussions of closed sessions, there is no written public record of any kind. Use of formal written minutes is restricted to official public meetings.

A basic purpose of minutes is to provide legal proof of the official actions of the governing body and other officials. This purpose stresses the need for accuracy and completeness. There are occasions when, under pressure of action-packed meetings or lack of clarity in the form of a motion, omissions or errors can occur in the minutes. Obviously, while extreme care should be taken to avoid this situation, such an error is not fatal.

Pennsylvania courts have long held the failure to record passage of an ordinance or resolution in the minutes through inadvertence or mistake does not invalidate the action.¹² 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.¹³

Method of Taking Minutes. The most common method of recording actions in a meeting is manual note taking, with or without the use of prepared forms. Abbreviated notes are taken either with shorthand notes of the entire meeting, others exclude extended discussions among those speaking. Tape recording of meetings is growing in popularity. Some counties combine note taking with complete tape recording to provide a complete and accurate record and to give the chief clerk a review aid in compiling the written minutes for recording in the minute book. Experienced chief clerks develop and use prepared forms at meetings to record such actions as roll calls, minimizing the amount of writing required. These forms also help the chief clerk prepare the final typed minutes.

Chief clerks should be scrupulously accurate in taking minutes. Although the governing body has the power to amend its minutes to make them accurately correspond with what occurred, such amendments should not be necessary.¹⁴

Contents. A problem common to all chief clerks is the decision of what to include in the minutes and how detailed they should be. Some minutes are too sketchy to be of real value, while others too wordy to be usable. Although requirements for inclusion of material in the minutes can be outlined in the procedural rules of the board of commissioners, few boards actually have done this. Under the Sunshine Act, minutes must include: the date, time and place of the meeting; the names of members present; the substance of all official actions; a record, by individual board members of the roll call votes taken and the names of all citizens who appeared officially and the subject of their comments.¹⁵ Chief clerks should use the role of the minutes as legal evidence and their value in directing county programs as the guiding criteria in determining their contents. Adherence to these criteria may ease uncertainties to some degree. It is always better to err on the side of including too much, rather than leaving out essential elements. Some of the basic contents for any set of minutes are listed below.

Legal Verifications. The minutes should evidence conformance to legal requirements by establishing the date, hour and place of the meeting, whether it is regular, adjourned or special. If it is a special meeting, the minutes should contain a statement of the notice to commissioners and to the public.

Attendance. The minutes should record the attendance of commissioners and other officers and the time of appearance or departure for any commissioner not present through the entire meeting. Excused absences of commissioners should be noted in the minutes.

Minutes. The minutes should record official approval of the minutes of the preceding meeting, together with any additions or corrections by the commissioners. The vote of the board to accept the minutes validates their accuracy and completeness.

Communications. Minutes should note the identity of persons appearing to make oral presentations to the board and their subject matter. Petitions and other written communications should be noted by source, subject, date and disposition.

Reports. Reports to the board by county officers and committees should be identified by reporter, subject, date and disposition by the board.

Ordinances. Ordinances and resolutions should be identified by number and title. Unless specifically required by law or advised by the solicitor, it is unnecessary to enter the full text of ordinances on the minutes. Neither the full text, nor a digest in the minutes is good evidence in courts. Only the original text is acceptable evidence. The minute book entry does serve the vital purpose of establishing the action of the board on the ordinance and its adherence to legal requirements, such as advertising the public hearings, if required. Votes of members should be carefully recorded.

Contracts. Minute entries on awarding contracts should include the subject of the purchase, identification of all bidders and amounts and a statement establishing the fulfillment of legal requirements. Votes on contracts should be accurately recorded.

Oral Statements. Minutes should accurately reflect what occurs at a meeting, but unless minutes are to be a verbatim record, oral expressions of opinions, remarks or statements should not be included. It is legally dangerous to record in the minutes less than complete statements. This is both impractical and expensive and may create injury by omission or inaccuracies. Requests by commissioners to have their statements recorded in the minutes are legitimate, but the decision to approve the request lies with the chairman or the entire board under the governing body's rules. Should approval be granted, the chief clerk should be sure to secure the member's approval of the form and contents of the remarks entered.

Motions. Often motions come at the end of a long statement with the words "I so move." It is the specific 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, the chief clerk should insist on reading back the wording of the motion before the vote. This procedure will protect both the chief clerk and the commissioners.

Yeas and Nays. General practice and the requirements of the Sunshine Act indicates commissioners' votes are individually recorded in adoption of ordinances and resolutions, approving expenditures, awarding contracts and making loans or issuing bonds. Votes are not recorded for actions such as adjournment, assignment of tasks to committees or officers or authorizing actions on a project previously approved in a formal manner. Careful discrimination can save time at meetings and ease the chief clerk's work. Requirements for roll call votes should be included in the procedures of the board and should be consistent with the requirements of the Sunshine Act.

Format and Disposition. Meetings conducted with a written agenda provide the chief clerk with a ready-made outline for writing the minutes. Meetings without an order of business raise problems, because actions of a similar nature may be taken up at different stages of the meeting. These actions should be organized under common headings to ease the problem of later locating information.

The Sunshine Law requires minutes of public meetings to be promptly made available as a public record. It is advisable to make sufficient copies for distribution to each commissioner, appropriate county officials, the news media and interested citizens. Copies should be distributed as early as possible following the meeting so commissioners may check them while memories are still fresh and news media can use them for timely stories.

Minute Book. In boroughs and townships, minutes must be recorded or transcribed in a mechanical post binder book capable of being permanently sealed with consecutively numbered pages with a security code printed on them and a permanent locking device with the municipal seal impressed on each page, or into a bound book with numbered pages. Although not required by the County Code, the same procedures are recommended for counties. Minutes are valid if typewritten, printed, photostated or microfilmed and may be stapled, glued or taped to the pages of such books, if the seal is impressed upon each page to which the pages of minutes are attached. The seal impression must cover both a portion of the attached page of minutes and a portion of the page of the book to which it is attached. It is not necessary for officers or the county clerk to sign minute book entries, but this is a common and sensible practice.

It should be recognized that Rule 124, Pennsylvania Rules of Appellate Procedure, provide that the size of any documents to be entered into the courts during any litigation is not to exceed 8 ½ by 11 inches. Minutes and ordinances recorded in their respective books should be in compliance with this rule.

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

Indexing minutes is difficult and may seem time-consuming, but it can be rewarding and will save time in the future. Many chief clerks become frustrated trying to find needed information in an accumulation of unindexed minutes. Once an index system is established and tailored to local needs, officials will wonder how they survived without it.

References

1. 16 P.S. 521; County Code, Section 521.
2. 16 P.S. 460; County Code, Section 460; 65 Pa.C.S.A. 704; Sunshine Act, 1998 P.L. 729, No. 93, Section 4.
3. 16 P.S. 503; County Code, Section 503.
4. 65 Pa.C.S.A. 709; Sunshine Act, 1998 P.L. 729, No. 93, Section 9.
5. *ibid.*
6. 53 P.S. 10101, et seq.; Municipalities Planning Code; 16 P.S. 1782; County Code, Section 1782.
7. 65 Pa.C.S.A. 708; Sunshine Act, 1998 P.L. 729, No. 93, Section 8.
8. 16 P.S. 503; County Code, Section 503.
9. 65 Pa.C.S.A. 706; Sunshine Act, 1998 P.L. 729, No. 93, Section 6.
10. 16 P.S. 521; County Code, Section 521.
11. 65 Pa.C.S.A. 706; Sunshine Act, 1998 P.L. 729, No. 93, Section 6.
12. *Fisher v. South Williamsport Borough*, 1 Pa.Super 386, 1896.
13. *Jefferson County v. Rose Township*, 129 Atl 78, 283 Pa. 126, 1925.
14. *Ontelaunee Township Annexation Case*, 92 A.2d 262, 172 Pa.Super. 71, 1953.
15. 65 Pa.C.S.A. 706; Sunshine Act, 1998 P.L. 729, No. 93, Section 6.

V. Legislative Action

As the chief aide to the board of commissioners, the chief clerk will be intimately involved in the process of enacting local legislation. The degree of involvement ranges from purely ministerial activity in places with strong elected leadership to almost total involvement in the process, except for voting, where members rely on the skill of a veteran chief clerk.

Types of Legislative Action

The County Code provides that the “board of 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 A governing body can only take official action as a body. Directions of a single member have no legal standing. Different types of actions are available to the board to be used for different purposes. The most commonly used types are 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.

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 for failure to obey ordinances and enforced in the courts.

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. Some counties may be tempted to bypass these procedures by adopting resolutions instead of ordinances, but if they wish their actions to have permanent effect and be enforceable with penalties, they cannot shortcut the ordinance adoption procedures.

Resolution. A resolution is an official policy or statement of the will of the governing body. It lacks the permanent nature and the enforcement ability of an ordinance. Resolutions are particularly useful for actions of a temporary nature, particularly those governing county government activities, 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.

Motion. A motion is the method of submitting issues to the board for formal deliberation and decision. 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. A motion is a parliamentary tool, not a legislative form.

Regulation. A regulation is an administrative, rather than a legislative instrument. It is used to order the internal administrative affairs of the municipality. Since the board of commissioners exercises administrative as well as legislative powers, the chief clerk will be involved in formulating and enacting regulations. These can include such matters as the board’s own rules of procedure, employee policies, regulations to govern administration of taxes or regulations for prisons or county human services activities. Regulations provide specific procedures to implement general functions.

Some confusion exists over when to use ordinances or resolutions. Some Code provisions specifically require an ordinance. Other laws state either ordinance or resolution. The board, with the help of its solicitor, should carefully consider the nature of their action and be aware that it can be easy to err on the side of using a resolution when they should enact an ordinance.

Ordinance Adoption Procedures

The role played by the chief clerk in the process of enacting ordinances is defined both by law and by local policy. The chief clerk plays a ministerial role in carrying out statutory requirements for adopting ordinances, and at times, acts as unofficial parliamentarian advising the board on correct procedure. Ordinances do not become effective until recorded in the ordinance book of the county. Recording ordinances is a ministerial duty of the chief clerk.

Preparation. Occasionally chief clerks or commissioners will attempt to draft ordinances for consideration by the board. This practice is fraught with danger, particularly if the measure is adopted without the review of the solicitor. An equally unwise practice is adopting without change an ordinance copied from another county without review by the solicitor.

Only the solicitor should prepare ordinances. Of course, members can submit oral or written suggestions concerning the desired measure, but the proposals for consideration should be drafted solely by the solicitor.

The chief clerk often assists the solicitor by obtaining model ordinances, gathering and formulating the views of the commissioners on what is desired in the measure and checking related ordinances to determine if any existing measures need repeal or amendment to conform to the new proposal. Ordinances should be sequentially numbered, a task usually performed by the chief clerk.

The County Code does not specify procedures for introducing a measure, any time lapse between introduction and final passage, nor any number or the nature of readings. Adoption procedure is generally set by written or unwritten policy of the board. Although proposals can be introduced and adopted at the same meeting, they are usually introduced, then advertised within the required time period and then passed at a later meeting.

In some counties, measures are introduced, then referred to task forces or considered by the board as a whole. In addition, some measures require public hearing before they are enacted, and in some cases, commissioners will hold public hearings even if not required by law. Arrangements for the public hearings, including notice and agenda, are usually the responsibility of the chief clerk.

Advertising. All proposed ordinances of a legislative character must be published in a newspaper of general circulation within the county not more than sixty nor less than seven days prior to passage.² Publications must include either the full text, or the title and 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 the copies of the complete proposed ordinance can be examined. If the full text is not included, a copy shall 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 shall be filed in the county law library. If substantial amendments are made in the proposed ordinance upon enactment, the ordinance must be re-advertised within ten 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 different 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, instead of publishing these as part of the ordinance, reference may be made to where such maps, plans or drawings are on file for examination.

Parliamentary Procedure

The chief clerk should be familiar with the rules and procedure for conducting business at meetings and the mechanics of voting on legislative matters. Rules of parliamentary procedure are designed to channel conflicting views on issues and expedite business, yet preserve the right of each commissioner to contribute to

deliberations. All boards should adopt formal written rules of procedure or adhere to Roberts Rules of Order, amended as necessary to conform to local practices. In many cases, procedural rules are unwritten and fixed by practice. As long as an ordinance meets statutory requirements, it will not be invalidated because the board of commissioners did not follow its own rules of procedure. Having voluntarily adopted or adhered to them, the board may also waive or alter them at any time.

Quorum. A quorum is the minimum number of members of a legislative body required to be present to conduct the business of the body. The County Code specifies that two members shall constitute a quorum.⁴ Where optional forms of county government with more than three commissioners comprise the board, the number required for a quorum is generally a simple majority. It is the duty of the presiding officer to declare the existence of a quorum so business may commence.

Extraordinary majorities may be required to pass certain types of legislation as specified in the Code or other state legislation. These requirements should be checked before the proposed action comes up for a vote.

Absenteeism. Failure of members to attend meetings can hinder or 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 at meetings. The ministerial duties and oath of the chief clerk also indicate that faithful attendance at meetings is a requirement. However, there is case law, *Babac v. Pennsylvania Milk Marketing Board*, 531 Pa. 391, 613 A. 2d 551 (1992) and *Finucane v. Pennsylvania Milk Marketing Board*, 531, Pa. 391, 613 A. 2d 551 (1992), that indicates a public official may participate in a meeting by some technological means (conference call, e.g.) when physical absence from the meeting is required. This mechanism should be used only when necessary, and only with the concurrence of the county solicitor, and the technology permitting the commissioner's participation should be arrayed in a way that the general public sees or hears the commissioner's contributions to the deliberations.

Nonvoting. Board members are limited from voting on an issue when there is a conflict of interest, and they sometimes abstain from voting on issues where they have no personal interest. Apart from their sworn duty to represent the voters by helping decide matters before the governing body, failure to vote when there is no legal reason for abstaining has another unfortunate consequence, particularly in the three-member boards of most Pennsylvania counties. Under most Parliamentary rules, abstention is actually a no vote. Since the member helps make up the quorum and any action requires the approval of a majority of those present, the failure to vote for a measure is in effect adding to the number opposed to it. There may be circumstances in which the chief clerk could subtly influence a commissioner to cast a vote.

Veto

The veto power under the County Code does not exist since legislative and executive powers are combined within one body. County home rule charters can, of course, provide veto powers for an elected executive.

Recording

Proper and adequate certification and recording of legislation passed by the board is a central facet of the chief clerk's duties.

Certification. No ordinance is valid unless the original has been signed by at least two of the commissioners and attested by the chief clerk who shall affix the county seal.⁵ Signatures of elected officials are not required for the ordinance copied into the ordinance book, but this copy of the ordinance must be certified by the chief clerk. Actual forms of certification vary, but the following form is a good sample.

I hereby certify that the foregoing ordinance was advertised in (name of newspaper) on (date), a newspaper of general circulation in the county, and was duly enacted and approved as set forth at a regular (or special) meeting of the (Board of Commissioners) held on (date).

Seal

Signature of Chief Clerk

Minutes. Recording of the full text of ordinances in the minutes is not a recommended practice. It entails unnecessary duplication of work and expands the minutes beyond the point of manageability. The minute book should refer to the bill or ordinance by title or number and subject, accurately show the action taken, and record the yeas and nays of the members.

Indexing. The Code does not require chief clerks to index ordinance books or make annual compilations of ordinances. But because of the obvious advantages, counties are increasingly instituting this practice. This task is usually assigned to the chief clerk, sometimes under the supervision of the solicitor.

Effective Date. To be effective, all ordinances must be signed by the appropriate officials, attested by the chief clerk and entered into the ordinance book. Special types of ordinances may carry different effective dates.

Court Proceedings. Accuracy is necessary in keeping minutes and recording ordinances. If proper procedures are not followed, evidence loses its validity in court proceedings. Copies of the proceedings of the commissioners and of all records in their possession, certified by the chief clerk under the county seal, shall be admitted as evidence in any of the courts of the Commonwealth.⁶

Codification

Every solicitor, chief clerk or other county official has experienced frustration and anxiety when searching uncodified ordinance books to determine what local legislation is currently effective. Ordinances on many subjects have been adopted, amended and repealed at various times over the years, often without adequate reference to prior legislation. Both officials and citizens are uncertain just which ordinances remain effective. As an informal practice, some chief clerks pencil out or note provisions changed by later ordinances, but such a practice is highly questionable and even somewhat dangerous.

County ordinance codification is not the rule in Pennsylvania counties. Sometimes it is undertaken as a result of encouragement or insistence by the chief clerk who is in the best position to see the need for such an action. Codification of ordinances is not necessarily within the duties of a chief clerk. It should be done by the solicitor or a contracted specialist. The chief clerk should participate in assembling materials for the job and acting as liaison if it is done by an outside firm.

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. 504(a); County Code, Section 504(a).
5. 16 P.S. 504(b); County Code, Section 504(b).
6. 16 P.S. 505; County Code, Section 505.

VI. Information Management

Information Technology in County Government

For county governments, information technology is a “mission-critical” function. Modern county government operations require a comprehensive, computerized system.

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 both the information technology staff and the users of the data.

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. Note that there is a dedicated funding source for technology procurement; the Recorder of Deeds Fee Law provides for additional fees on each instrument recorded which go into a 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 within those offices.

Although most conventional county functions will fall under the jurisdiction of the county commissioners, a county data center also allows for the creation of sophisticated applications for the comprehensive court system, covering the need of the clerk of courts, domestic relations officer, prothonotary, court administrator, register of wills, recorder of deeds, district attorney, probation officer, divorce master and sheriff.

An emerging area of technological interaction is 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, not just beyond the individual department; but beyond the county government as well. The service, properly created, can be sold to lawyers, realtors, appraisers, engineers, etc. These outside professionals, who value time as money, can all save considerable time with direct access to the county’s data bank. An outstanding example of this symbiotic relationship might be 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 office, assessor’s office, and planning office. However, it is similarly attractive to lawyers, realtors, appraisers, engineers, developers, etc. The fees, which these “outsiders” willingly pay, must be reasonable and based on actual costs incurred in providing the service, and may not be used as a revenue generator. Section 7 of the state’s new Open Records Law (Act 100 of 2002) does 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. Counties contemplating creating a user fee system should consult Act 100 and their solicitor. A word of caution, however; any system offering data to multiple county users and to outside customers must be protected from theft. Therefore, user identification and other facets of a computer security system must be part of the initial installation of such a system.

If the county does not have the in-house expertise to develop a properly computerized system of government, the commissioners should use extreme care in obtaining that service elsewhere. 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. Once a county has modernized its information management system, it can never return to the old methods of having many employees handling all of a county's information; so it is important to make sound choices at the outset. 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 acquire, or both, with attractive savings to the county.

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

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 Act of 1963, as amended, 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 this 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 received 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 Supreme Court of Pennsylvania is responsible for promulgating records schedules for the records of the unified judicial system. The Pennsylvania Rule of Judicial Administration 507 (RJA) defines three classes of records. Disposal requests for each class of records are handled differently. RJA 507 (a) lists offices schedules by the County Records Committee. These include 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. The RJA 507 (b) lists those offices with schedules provided by the Supreme Court. These include 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. These 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. The original camera microfilm, or master negative, should be designated the archival security copy. Diazo or silver-gelatin duplicates may be made from the master negative for reference use.

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). This service is available to the following county and Common Pleas Court Officers or their home rule equivalents: 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 electronic mail 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 fifteen years, 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 filing cabinets 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, and 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.

The most valuable resource for setting up or improving a county records management program is PHMC. Commission staff members offer 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. The mailing address is:

Pennsylvania Historical and Museum Commission
Division of Archival and Records Management Services
350 North Street, Harrisburg PA 17120-0090
(717) 787-3913 or 783-9874

Public Inspection

Every citizen of the Commonwealth must be given the right, at any reasonable time, to examine and inspect every public record.¹ This includes the right, under reasonable rules and regulations, to make extracts, copies, photographs or photostats under control of the custodian of the records.

This right extends to all citizens, regardless of the nature or extent of their interest.² Prompt, courteous and helpful compliance on the part of the chief clerk in this matter provides one of the best sources of good public relations and goes a long way to build 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 was not for just and proper cause.

The Open Records Law includes public records open to examination accounts, vouchers or contracts documenting the receipt or disbursement of money or purchase, lease or sale of services or supplies, and any minute, order or decision affecting the personal or property rights, duties or obligations of any group.³ County officials are not required to allow public inspection of reports or communications disclosing the progress of official investigations, any document where public access is prohibited by law or court order, any document which would operate to impair a person's reputation or personal security, or any document which would result in the loss of federal funds. Act 100 re-wrote the Open Records Law in 2002 to include new requirements for non-Commonwealth agencies, including counties, to provide access to public records, including electronic records. 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. For more information, the reader is directed to *Open Meetings/Open Records*, another publication from DCED.

Legal Notices

Whether specifically required by statute or directed by the board of commissioners, the chief clerk usually devotes considerable time to publishing legal notices and providing other types of official notice. Legal notice may be by general publications, by personal service to individuals or their agents or tenants or by posting handbills. Personal service may be delivered by an authorized officer, such as a deputy sheriff or constable, or by certified or registered mail. Notices may be published in one or more newspapers, authorized trade journals or in the county's legal newspaper. In some cases, notices are posted.

Specific types of notices are prescribed to protect the interests of particular individuals, the general public and the county. Unless the proper procedure is scrupulously followed, serious consequences may occur to one or more of the interested parties. Questions arising in notice procedure in any given instance should be immediately addressed to the solicitor.

Computing Time. The method of computing time for notices or other legal procedures affecting counties is defined in the Statutory Construction Act.⁴ Whenever a period of time is specified, it is computed by excluding the first but including the last day of the period. If the last day falls on a Saturday, Sunday or legal holiday, it is omitted from the computation. Successive weeks means successive calendar weeks. Publication may be made on any day within the calendar week, but at least five days must elapse between each publication, and at least the number of weeks specified must elapse between the first publication and the date of the event.

Publication. The Newspaper Advertising Act prescribes a uniform set of qualifications for publication where legal advertisements and publications can be made. When the County Code requires a notice to be published in one newspaper, it must be one of general circulation both printed and circulating within the county.⁵ If there is not a newspaper meeting both requirements, a newspaper circulating generally in the county is an acceptable alternative.⁶ The Newspaper Advertising Act requires official or legal advertising involving a road, highway, bridge, municipality or boundary to include the common, local or general usage designation so the advertising can be readily understood by the people of the area involved.⁷

Proof of Publication. County actions requiring notice are not binding and effective unless supported by proof of publication.⁸ This requirement is not satisfied by the common practice of chief clerks simply clipping notice from newspapers. The Newspaper Advertising Act does not set minimum requirements for legal proof of publication. However, the Act does require a proof of publication to be filed as a part of the record in a proceeding where notice is required.

Notice by Mail. Whenever a statute or ordinance requires service of personal notice by mail, it should be sent by registered or certified mail with a return receipt requested. This assures the subject party has actually received the notice. Whenever a law specifically indicates registered mail, certified mail may now be used instead.⁹

References

1. 65 P.S. 66.2; 1957 P.L. 390 Section 2.
2. *Wiley v. Woods*, 141 A.2d 844, 393 Pa. 341, 1958.
3. 65 P.S. 66.1; 1957 P.L. 390, Section 1.
4. 1 Pa.C.S.A. 1908, 1909 and 1910; Statutory Construction Act.
5. 16 P.S. 110; County Code, Section 110.
6. 45 Pa. C.S.A. 101; Newspaper Advertising Act.
7. 45 Pa. C.S.A. 309; Newspaper Advertising Act.
8. 45 Pa. C.S.A. 307; Newspaper Advertising Act.
9. 1 Pa. C.S.A. 1991; Statutory Construction Act.

VII. Budget and Finance

This chapter discusses the possible role of the chief clerk in the various fiscal considerations that confront boards of commissioners on a scheduled or unscheduled basis. Depending on the administrative structure in place in any particular county, the chief clerk's responsibilities will vary. But it is important for the chief clerk to be aware of these issues to ensure that the county's organization is prepared to manage these matters in an effective manner. This guideline will address the process and technique for different fiscal issues and it is left to the respective chief clerks to sort out the who and when.

Financial Records

The base for any budget preparation or analysis is the financial records, their structure, availability and detail. In counties lacking a controller, the chief clerk is directly responsible for establishing and maintaining the financial books of the county. Where there is a controller's office, the chief clerk must work closely with the controller to insure that the records are structured to reflect all financial transactions properly and accurately according to the wishes of the commissioners. Counties are in a unique position among units of local government in Pennsylvania. Since a large proportion of county revenues are state and federal grants, the person setting up the books must thoroughly understand the regulations governing each grant.

To meet the County Code requirements and modern accounting and auditing practices, the records must be established 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. Transactions should automatically report against the established budget. Separate funds and accounts should be created when required, such as for a nursing home, the liquid fuels tax program, and the various human service programs. When desired, additional funds may be created to identify special areas of interest or concern, such as capital reserve funds or capital projects, especially when these projects are funded from proceeds of debt. A chart of accounts should be created and maintained on a current basis which depicts all funds, accounts, sub accounts and other divisions of account types to ensure control over the bookkeeping structure.

As the financial organization grows in complexity, care must be exercised to avoid undue complexity in the account structure as there is a trade off between specificity and management. The desire to create a separate fund or series of sub accounts in order to show certain financial transactions more clearly must be balanced with the ability of all operating departments to accurately depict their work along the lines dictated by the account structure. An example is the desire to reflect payments for overtime separately on the payroll system. While this is valuable information to both the department head and the budget analyst, it can work only if department heads and payroll clerks fully understand how overtime works. The overtime sub account must be budgeted, the rules and policy affecting overtime must be uniformly defined for all cases, and department heads must be made to understand that such information is a tool for better management, not just a meddlesome or bureaucratic complication of an otherwise routine task. Another example is investing idle cash. As more funds are created, the simple purchase of a certificate of deposit or other investment instrument becomes more complicated. The lesson here is that the creation of an account structure cannot be done with indifference to its effect on how departments accomplish their mission. These issues should be understood and addressed when creating the financial reporting system.

A financial system must not only accurately record transactions, it must report these transactions to decision makers in a timely and easily understood manner. The chief clerk must insure that the financial status of the county, in whatever detail, is portrayed at least monthly; more often at budget time. These reports should be at

the line item or sub account level of detail and compare with current activity of the budget and should be presented in a format consistent with generally accepted accounting principles. Monthly activity, as well as year-to-date cumulative data, are necessary to understand how the county got to its present status and are vital for projecting the cash balance and expenditure rates in each fund.

Annual Budget Preparation

A budget is a yearly plan outlining the revenues a county expects to receive and the ways it will spend them. A budget is more than a financial document. It is a vital element in policymaking. It establishes what programs are to be implemented for the year and provides a way to exercise administrative and legislative control over governmental operations.

The heart of a sound budget is careful planning. Minimal or shoddy planning reduces a budget to a mere formality to fulfill the legal mandate. To be an effective tool, the budget must be viewed as a comprehensive plan of proposed county operations, based on factual information and well-considered priorities. Vigorously administered, the budget is a tool to achieve county goals for the year.

The role of the chief clerk in preparing the county budget will vary depending on the administrative structure in place. In those counties with financial administration centralized into a separate department, the chief clerk will likely be engaged in organizing and advertising for public budget meetings, along with the follow-up budget/tax ordinance and necessary notice. If the chief clerk is the chief financial officer of the county, the duties will vary with respect to the scope of budget participation undertaken by the commissioners. Even in a situation where the commissioners involve themselves with the consideration of every line item, the chief clerk must ensure the information used by the commissioners is current and accurate. Items such as current and projected cash balance, tax collections and the status of state and federal grants should be confirmed during budget planning. The process of creating the subsequent year's budget must be initiated with critical dates in mind. The preparation of the proposed budget must begin at least 90 days prior to adoption. The process should be geared to culminate in a final budget document and accompanying tax ordinance that is passed at a commissioners' public meeting no later than December 31.¹ This can only occur after a tentative budget is adopted and placed on public display for twenty days.²

Early in the budget process, forms should be prepared and sent to row officers and department heads to complete and return to the budget director. Some department heads must be made specifically responsible for each revenue and expenditure line item. Department heads should be provided a report showing the current status of all revenue and expenditure line items for the respective department. The format of these budget request forms can be a combination of line item and program depictions. Program format should always be used for major capital projects funded outside the general fund, and when the program is funded with state or federal grants requiring separate and autonomous accounting. Usually, whole departments are considered a single program for budget purposes since their mission is generally single purpose.

In counties with a controller, the controller transmits to the commissioners a comparative statement of revenues and expenditures for the current and the immediately preceding years. These statements shall be in such form and detail as the commissioners direct. The chief clerk or finance director in counties without a controller should do likewise. In some counties with a controller, this function is the responsibility of the chief clerk or finance director. When this initial document is available, budget planners will have a general sense of next year's finances. Clearly, it is valuable to prepare this initial view as early in the process as possible in order to allow for lengthy or complex financial planning, should it be necessary.

At this time, department heads and row offices should be invited to review and defend their budget submissions. If the commissioners participate in these discussions, they must be held publicly and advertised. The county solicitor should be consulted on all aspects of the application of the Sunshine Law during budget

discussions. These discussions and deliberations will result in a tentative budget document which, after refinement, should be presented to the public no later than early December. In some circumstances revisions will be made during the twenty-day public display period, but care should be taken to avoid revisions so substantial as to result in a second tentative budget. This could push the review and final adoption time into the new year.

A separately prepared budget document with expanded detail can be much more useful for internal purposes and more informative for the public. A budget summary showing budget trends and highlights for public consumption is also useful.

The county must also 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 and second, that the 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 Analysis and Amendments

From time to time throughout the year, the chief clerk or finance director should review the status of the budget and all county finances. These reviews are to ensure that the budget still represents the real world and that it is being followed. Many times this review is done following adoption of the Commonwealth budget, which has a different fiscal year and which has a significant impact on county finances. The most important task is checking current and predicted end-of-year cash balances against projections. When the budget must be altered, it can be accomplished by making additional appropriations or by transfers from one account to another. In either case, proposed changes must be presented to the commissioners at a public meeting. If approved, the budget document should be updated to reflect the changes. This may be the job of the chief clerk or the controller, depending on local custom.

Capital Budgeting

Part of the overall budget is for items called capital outlays. Capital items are high cost, non recurring purchases to provide a permanent improvement; such things as a new courthouse, land for a park, and purchasing a computer system. It is impossible to prepare a capital item list applicable to all counties. Most people agree on what constitutes a capital improvement at the upper end of the cost scale, but as you approach the lower end of the scale capital items vary from place to place. In some counties, a \$10,000 computer is considered a capital purchase, but a \$100 office machine is not. As an initial step in capital budgeting you should define the term as it will apply in your county.

Since a county usually needs more high cost items than it can afford in any one year, capital budgeting should be based on a capital improvement program. This program is essentially a schedule of planned major improvements extending several years into the future. After initially formulating a capital improvement program, capital budgeting becomes a process of annually updating the program — dropping the current year and adding a new year to the schedule. This usually entails adding some items, perhaps deleting some, and adjusting priorities.

As compared with the overall budget, the capital budget will ordinarily include a relatively small number of items; however, the costs involved may approach or even exceed the annual expenses for operations and maintenance. Decisions regarding these major expenditures should not be made in haste. Because of special financing arrangements required to pay for a project, you may need time to obtain public support for a special tax levy or a bond issue.

For these reasons, you will find it wise to begin considering the needs for capital improvements somewhat earlier than the more routine matters constituting the greater portion of the budget. A timetable for unhurried consideration of capital improvements follows:

June - July	Solicit ideas for new projects.
Aug. - Sept.	Review fiscal position and update capital improvement program.
Oct.	Tentatively approve capital items to be included in annual budget.
Dec.	Formally approve capital outlays as part of overall county budget.

Of course, you can either start earlier or compress the schedule to suit the needs of your own county.

Capital Reserve Fund

It is possible, although often difficult, to develop and place money into a capital reserve fund so that such a fund would purchase the capital items and the operating budget(s) would reimburse it with a dollar figure which represents an average yearly outlay over a long term period. The county commissioners may annually appropriate moneys from the general funds, not to exceed 10 per centum of the county operating budget, to be paid into the Capital Reserve Fund. This mechanism takes the wide fiscal swings out of capital budgeting. Initially, 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. Strict budgeting may also allow transfers to the Capital Reserve Fund each year through a specific budget allocation in addition to ordinary capital outlays. Such a procedure usually requires a great strength of purpose, since it would be tempting to not make a yearly allocation during tight budget times. Moneys received from the sale, lease or other disposition of any county property may also be paid into the Capital Reserve Fund.⁴

Operating Reserve Fund

In order to help minimize future revenue short falls and deficits, provide greater continuity and predictability in the funding of vital government services, minimize the need to increase taxes to balance the budget in times of fiscal distress and aid in long-range financial planning, the commissioners can create a separate Operating Reserve Fund. They may annually make appropriations from the general fund but at no time shall the fund exceed an amount greater than 10 per centum of the county's general fund revenue in the current fiscal year. The commissioners may, at any time by resolution, make appropriations from the operating reserve fund for the following purposes only:

- 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.
- 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.

This Operating Reserve Fund must be invested, reinvested and administered in a manner consistent with sound business practice.⁵

Borrowing

There are two common reasons counties seek funds through borrowing. When taxes and other revenues are not expected to be received until well into the fiscal year, a county may be well advised, or may have no option but to consider a tax or revenue anticipation note (TAN). Due to the ever increasing complexity and rigorous

scrutiny that these notes are subject to from the IRS, it is a challenge to qualify for them. It is especially important to plan for this debt well in advance so that the proceeds are available when needed, usually on January 2. The entire note must be repaid during the fiscal year in which it was issued.

The other reason to borrow money is to fund capital expenditures, either through the issuance of bonds, or by executing a note with a lending institution. Expertise is necessary when issuing debt to avoid having to rebate excess interest earnings and to insure compliance with federal regulations.

There is a choice in how to procure the services of investment bankers. A county is legally able to simply select one but some counties prefer to bid for these services. A study by the Government Finance Officers Association revealed little difference in the net cost of bonded indebtedness when comparing negotiated arrangements versus procurement through a bid. An important consideration as shown by the research, however, is that the level of experience by county fiscal officers was quite important in procuring efficient bond sales. Either way, expertise is clearly necessary to prepare the issuance to achieve the best combination of the lowest possible interest rate with the highest and longest earning potential.

All debt instruments must be approved in advance by DCED. Model debt statement and ordinance forms are available from DCED.⁶

Risk Management and Insurance Considerations

All levels of local government have in recent years, rediscovered the truth in an old maxim; “There is no such thing as a free lunch.” During the late nineties, the low cost of commercial insurance reduced the apparent need to manage exposures or to consider the retention of risk. Commercial insurance was easy to find and cheap, and financial protection and peace of mind could be quickly procured to cover almost any circumstance.

The juxtaposition of rapidly escalating liability awards from juries, the loss of investment earnings by insurance companies, and a flurry of new laws and court cases in the area of civil rights and environmental rights caused a catastrophic reduction of insurance coverages and an extraordinary increase of premiums, all within a short time span. Today, chief clerks can easily spend 10 percent to 25 percent of their time submitting insurance applications, analyzing commercial/self insurance options, and administering the risk management and loss control program.

The subject of risk management is much too broad for this Manual as it considers all county activity from a risk measurement point of view. The common sense approach requires a key administrative person, commonly the chief clerk, to identify and understand the various types of risk, and to seek to mitigate their potential impact in the various county programs and functions. This may include a formal review of contracts with contractors and agencies, the establishment of worker safety programs, a disciplinary board to review vehicle accidents, a review of health insurance plans with an eye toward bidding, or an architectural review of structural hazards such as slippery floors, poorly lighted stairs, or insufficient electrical capacity or availability. The list is endless, but the point to be made is that a formal approach to the many exposures facing your county is a must. For those who are lacking experience in these matters there are many organizations available to assist. Membership and attendance in the meetings of the state or national PRIMA (Public Risk and Insurance Managers Association) organization is helpful.

The risks and exposures facing the county should be understood and measured before the procurement of insurance is considered. The chief clerk should consider expenditures for insurance as only one tool to protect the financial integrity of the county. Self-insurance, not to be confused with no-insurance, is another tool that works hand in glove with many insurance considerations.

By law, county insurance is exempt from public bidding requirements, but bidding insurance coverages or at least seeking alternate quotes should be considered if the county has been with the same agency or carrier for

several years.⁷ Generally, it is counterproductive to change insurance carriers more often than every three or four years without cause, but this rule will change as the insurance market and insurance availability fluctuates. A change of agents is always a difficult decision especially if the current level of service is satisfactory. The prompt handling of claims, quick response to simple inquiries, and the availability of knowledgeable people at the agency is a must.

Counties normally carry the following forms of insurance other than employe benefit and statutorily required coverages:

1. Property: including real, personal, valuable papers, data processing hardware and software and moveable.
2. General liability: including personal injury.
3. Boiler and machinery: a special liability and property form.
4. Fleet automobile.
5. Blanket bond: for employe honesty and faithful performance.
6. Police professional: to cover the liability of sheriffs, prison guards and detectives.
7. Criminal loss: commonly known as 3-D insurance, includes coverage for financial loss due to robbery, burglary or mysterious disappearance.
8. Errors and omissions: sometimes called officers and directors insurance.
9. Excess insurance: additional insurance, sometimes called umbrella coverage, applying above the general liability or other coverage limits.
10. Other specialized professional liability coverages: such as for employes of day cares, children and youth caseworkers, or mental health workers and nursing home medical malpractice.
11. Legal malpractice for the district attorney, public defenders and other legal staff.
12. Liability for special exposures such as emergency dispatchers, landfill operations and other environmental exposures, or HAZMAT response teams.

The chief clerk should become familiar with not only the forms of these policies, but must be in a position to recommend specific coverage levels from among alternative levels of co-insurance. The chief clerk must know how the Political Subdivision Tort Claims Act⁸ affects the county's exposures. The chief clerk or advisors must consider how well the county could handle a serious claim or a series of minor claims which may be only partially covered by insurance. They must balance the cost of insurance against the "savings" of leaving exposures uncovered.

The Tort Claims Act has changed the way county exposures are analyzed. It establishes a limited liability for actions brought against the county. The Act defines certain categories of activity within which counties may be held responsible, and sets a statutory limit of \$500,000 for any claim. It authorizes local governments to procure insurance jointly, and, along with the authority found in Act 180, of 1972 (The Intergovernmental Cooperation Act),⁹ it allows municipalities to pool their exposures and collectively fund a reserve to handle claims and claims administrator. The Tort Claims Act does not protect the county completely because many county activities may be challenged in federal courts far from the purview of a state statute. Most notably, questions of civil rights, employe rights, due process and U.S. constitutional rights are initiated at the federal bench. It is not coincidental that many insurance policies routinely exclude recovery in these areas.

In recent years, the concept of pooling among local governments has become fashionable due to the spectacular rise of rates for commercial insurance. Pooling is simply a special example of the broader concept of insurance; it spreads a collective risk among many. There are no Pennsylvania regulations specifically governing pooling arrangements among political subdivisions except in the area of workers compensation. So while there is little in the way of government regulation to hinder the establishment of pools, there is little else beside the collective wisdom of all pool participants to protect each pool member from every other member. Care must be exercised that all pool members adopt strict risk management policies and practices and adhere to them rigorously.

The prudent chief clerk will consider self-insuring certain exposures and partially self-insuring many others. This would include raising the deductibles on certain existing policies. However, the concept of self-insurance is sometimes confused with no-insurance. The Tort Claims Act also specifically allows self-insurance, but only if it is funded annually with appropriate reserves established. There is much debate on the finer points of just what constitutes a true self-insurance program. The chief clerk is well advised to procure the services of a competent actuary before embarking into a major self-insurance program.

Investing Idle Cash

The County Code explicitly requires the board of commissioners to establish and implement an investment plan for all county cash and separate standards for the investment of pension fund assets.¹⁰ The chief clerk or financial officer is normally in the position of recommending an investment plan and, after adoption, executing investment decisions on a day-to-day basis. Many, if not most, county retirement boards have employed outside investment administrators and the chief clerk rarely assumes this role.

The chief clerk should become familiar with the types of investments permissible under the County Code and should insist on a definitive statement from the board of commissioners as to their investment philosophy and objectives. The Code requires that all deposits be collateralized with U.S. Government securities or some other mutually agreeable collateral. All investments should likewise be backed.

With pension investments, decision makers need to be conversant with evaluations of risk versus return and fund diversification. The key is to become familiar with the whole investment process which occurs outside the courthouse, at the bank or at the broker's office. Letters from investment institutions should be obtained detailing their collateralizing process. Periodic reports should be requested showing the actual securities collateralizing county funds.

The County Code requires that treasurers be allowed to contribute to the process of selecting fund depositories.¹¹ This has been commonly interpreted to require their involvement in the investment process, once the investment decision has been made by the commissioners, or their designee. It is necessary to establish a formal process with the treasurer's staff in advance so that investment transactions can occur rapidly with no time-consuming entanglements regarding jurisdiction or authority. The books of the county should reflect the status of investments at any given time to avoid either over-investing or under-investing. Funds may be co-mingled for investment purposes but separate audit trails (including all reation of earnings) must be maintained. When cash is tight, funds should not be invested for long fixed periods unless one has engaged in precise cash projections.

References

1. 16 P.S. 1781; County Code, Section 1781.
2. 16 P.S. 1782; County Code, Section 1782.
3. 16 P.S. 1783; County Code, Section 1783.
4. 16 P.S. 512; County Code, Section 512.
5. 16 P.S. 513; County Code, Section 513.
6. 53 P.S. 6780-351; Local Government Unit Debt Act, Section 801.
7. 16 P.S. 1802; County Code, Section 1802.
8. 42 P.S. 8541; Political Subdivision Tort Claims Act.
9. 53 Pa. C.S.A. 2301 et seq.; Intergovernmental Cooperation Act, Section 2301 et seq.
10. 16 P.S. 1706; County Code, Section 1706.
11. Ibid.

**The first edition of this chapter was prepared by former Chief Clerk Robert W. Cyphert of Beaver County.*

Tax Sources - Counties

<i>Potential Tax Sources</i>	<i>Legal Limit¹</i>	<i>Citation</i>
General Purpose Tax Levies		
Real Estate:		
Second Class Counties	25 mills	16 P.S. 4970
Second Class A Counties	40 mills	16 P.S. 4970
Third-Eighth Class Counties	25 mills ²	16 P.S. 1770
Personal Property:	4 mills	72 P.S. 4821
Per Capita Fourth-Eighth Class or counties only	\$5	16 P.S. 1770
Occupation	20 mills	
Special Purpose Taxes		
Debt Service	no limit	16 P.S. 1770,4970
Lease Rental Payments to Authorities Third-Eighth Class Counties	10 mills	16 P.S. 1770
Institution Districts		
Second Class Counties	10 mills	62 P.S. 2257
Second Class A Counties	15 mills	16 P.S. 4970.1
Third Class Counties	10 mills	62 P.S. 2257
Parks and Playgrounds		
Third-Eighth Class Counties	no limit	16 P.S. 2507
Second & Second Class A Counties	3 mills	16 P.S. 6007, 6035
Libraries	no limit	4 P.S. 4401
Roads and Bridges	6 mills	16 P.S. 2707, 2724, 2733,5901,5902,5903
Memorial Hall	no limit	16 P.S. 2366,5571
Tuberculosis Hospital	no limit	16 P.S. 2118, 5315, 5324
Bridges	no limit	16 P.S. 2675, 5734, 5778
Community Colleges	(3)	24 P.S. 19-1909-A
Hotel Room Rental	(4)	
Municipalities financial Recovery Program	no limit	53 P.S. 11701.141
Vehicle Rental Tax		
First Class Counties	2 percent	P.L. 182, Section 2398

1. Counties adopting home rule charters may set rates higher than the limits provided in state law for property taxes and for personal taxes levied on residents. They may not create new subjects of taxation. Home rule counties as of January 1, 2001 are: Allegheny, Delaware, Erie, Lackawanna, Lehigh and Northampton.
2. Five additional mills available with court appeal.
3. Local sponsors may levy any tax permitted by law to support a community college. The tax cannot exceed 5 mills of the market value of real estate. Except for first class cities and first class school districts where it cannot exceed one mill of the market value of real estate.
4. Legal limits vary according to class and/or specified population size of county. A detailed break down can be found in the "Manual for County Commissioners" produced by the Governor's Center for Local Government Services.

VIII. Purchasing and Contracts

Every political subdivision, regardless of size, is faced with the task of procuring supplies, materials, equipment and contractual services necessary to carry on its various activities. Such purchases represent a very substantial part of any governmental budget and demand the careful attention of local officials everywhere.

Two objectives are involved in purchasing for a local government. First, the most suitable services and commodities should be purchased at the lowest price. Second, purchasing procedures should provide a channel to exercise administrative control over expenditures.

There is no model system of purchasing which may be adopted by every county to meet these objectives. Such factors as the size and location of the county, services rendered, legal framework and organizational structure all have some bearing on the purchasing procedures to be followed.

County Contracting Procedures

County contracting and purchasing procedures are governed by Article XVIII of the County Code. This article gives the commissioners the responsibility as sole contractors for the county.

As the key in the county administrative process, the chief clerk should not only be familiar with the system, but also participate in it by actual administration or through oversight as the commissioners' agent. It is conceivable that a chief clerk can most easily see weaknesses in the system and be able to recommend changes.

Purchases and contracts over \$4,000 must be handled by quotes or bids. Purchases between \$4,000 and \$10,000 require at least three quotations from qualified and responsible vendors. These may be telephone bids if appropriate records are kept. Purchases over \$10,000 require formal, advertised public bids and must be awarded to the lowest responsible and responsive bidder. Advertising must appear in a newspaper of general circulation at least two times at intervals of not less than three days. The first advertisement must be published not less than ten days prior to the date fixed for the opening of bids. Bids must be received by the county controller or chief clerk if no controller and opened and read at an advertised public meeting. Overseeing the county's purchases must be done with diligence to ensure the proper use of public funds. A well organized purchasing procedure can also be used as an effective method of keeping county departments within budget.

The following is one example of how a county purchasing procedure could operate. It is only one example, but the main elements of a good purchasing process are there.

The purchasing department/or agent coordinates and reviews the needs from the various county offices and submits them to the commissioners on a regular basis for final approval. Requests for under \$200 are handled by the individual departments, subject to review by the purchasing director. (Capital equipment and contracts are exceptions to this general rule; all requests for these items must be submitted to the purchasing department prior to the purchase occurring). Requests for over \$200 must be submitted to the purchasing department and are reviewed as they are received by the purchasing director. These requests are compiled into a weekly report, which compares the requests against each department's budget, and are then considered for approval at the county commissioners' meetings.

A central supply stockroom can be established. The stockroom could contain items that are commonly used by various departments throughout the county (office supplies, paper goods, etc.). These items are purchased in bulk and are distributed by the purchasing department as needed and are charged to the department that receives the items.

Counties should pursue methods of getting reduced prices by buying in bulk. One method would be to join a COG (Council of Governments) or create one in which counties or a county and municipalities pool their buying power. There are also a number of cooperative purchasing programs available through state and national groups. By doing so you are able to go out for a larger bid and thereby usually get better prices.

Surplus items can also be disposed of by the purchasing department/agent. They could be collected and stored at a central location and then disposed of according to Section 1805 of the County Code, which requires selling the items to the highest bidder.

As with any rule, there are exceptions to the bidding requirements and these are detailed in Section 1802(h), of the County Code. Some examples are repairs and maintenance, software, patented and copyrighted products, professional services, and piggybacking on state and/or federal contracts.

Exceptions to the bidding requirements and your purchasing procedure should be reviewed in detail by the county solicitor to ensure that legal procedures are being followed. There are some grey areas in the interpretation of some of the purchasing/bidding requirements and in these areas guidance should be given by the solicitor. If there is a question on the legality of your process, the solicitor must be ready to defend it.

Evaluating the County Purchasing System

Specific systems will differ from county to county and some purchasing system guidelines may not be followed in some Pennsylvania counties for a variety of reasons. For example, the degree of centralization of purchasing can be questioned more appropriately in counties with complex inter-relationships among the commissioners, courts and row officers. The fact remains, however, that county purchasing procedures under law are the sole responsibility of the board of commissioners and it is important that they and the chief clerk be aware of the strengths and weaknesses of their particular system.

The following is a guideline to an effective purchasing system in the form of questions to be applied to your county's purchasing practices and procedures:

1. Do you have a centralized purchasing office and does it buy, without exception, for all departments of county government?
2. What is the personnel composition of the purchasing office? Who supervises the purchasing officer?
3. Has the board of county commissioners adopted a resolution officially adopting a centralized purchasing system?
4. Has the county prepared a position description for the purchasing agent?
5. Has a purchasing manual setting forth regulations, policies and procedures been prepared and adopted?
6. Are forms in place that include: (1) requisitions, (2) purchase orders, (3) report of goods received that ensure proper controls and centralization?
7. Do department heads project purchasing needs on a quarterly or annualized basis?
8. Have you standardized throughout all departments the use of supplies and equipment to minimize the number of separate purchases and realize the advantages of bulk buying?
9. Do you purchase cooperatively with other governmental units (state piggybacking, school districts, counties, municipalities, authorities)?
10. Have you developed specifications for those items most commonly used by the various departments in the courthouse, county home and county prison?
11. Does the county maintain a comprehensive vendor file with appropriate detailed information? Are efforts made to expand the list?
12. Does the county maintain a comprehensive commodity file with appropriate detailed information?
13. Does the purchasing system provide for a minimum of emergency purchase orders but facilitates such orders when they are necessary?

14. Is the use of supplies and materials adequately controlled through a central stores system? Are adequate inventory records maintained?
15. Do you avoid overdrafts in appropriations by having all purchase commitments and other documents approved by the controller or finance director as to availability of funds before such orders, contracts or other documents are delivered to the vendor?
16. Have you installed procedures controlling payment of invoices not covered by purchase orders and for emergency purchase of supplies?
17. Is there an established system for receiving goods and for inspecting deliveries to see if they conform in price, quality and quantity to bid specifications and purchase orders?
18. What steps are taken to ensure compliance with state law on competitive bids?
19. Are requests for proposals obtained for items that do not require bidding under law such as, professional services, insurance and banking?
20. Does the county conduct training for officials and employees on administrative procedures including purchasing?
21. Has the county authorized petty cash accounts? Are uniform procedures followed when using petty cash that ensure proper internal controls?
22. Has the county established procedures for the sale of real and personal property?
23. Are purchase orders prepared for small purchases? Is a cutoff amount established? How do you handle commodity purchases?
24. Are any department heads given authority to purchase on their own up to a fixed amount without approval of the purchasing agent?
25. What expenditures are excluded from purchase orders? Utilities, insurances, others?
26. Who signs requisitions, purchase orders, receiving slips, approval of invoices?
27. What sanctions are enforced against employees who purchase without following required procedures?
28. Does the county interface the purchase order system with the accounting system? Has a formal encumbrance system been established where outstanding purchase orders are charged against appropriation accounts?

Additional Information

DCED has developed and will distribute free of charge an excellent guide to local government purchasing: *Purchasing Handbook for Local Governments*. Rather than repeating the detailed information contained in this handbook here, it is strongly suggested that chief clerks obtain the handbook. It includes discussions on the following:

- Negotiated or Nonbid Purchases
- Conflicts of Interest
- Bidding Procedures
- Special Purchasing
- Withdrawal of Bids
- Intergovernmental Purchasing
- Types of Purchasing
- Contract Contents
- Purchasing Controls

Note that counties enjoy some contracting provisions not generally available to other governmental units, such as Best Value Procurement.

Contact:

Publication is available on-line by accessing **www.newPA.com**.

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IX. Personnel

There are few provisions in the County Code related to personnel. This in no way diminishes the importance of the subject. What is described in this chapter are important elements for a system designed to best provide service through its human resources. For a small county, some of the discussion may not sound pertinent. On analysis, however, the elements should in some way be present, informally perhaps, if not formally. And, as key county officials, chief clerks should be aware of these elements and promote whenever possible, their installation and use.

Personnel costs can easily consume 70 percent 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 personnel department but in those that do not, the responsibility often falls to the chief clerk. The existence of a personnel department, however, does not lessen management responsibility for personnel administration. Such a department is simply an additional resource to aid in carrying out this responsibility. Anyone in management, the chief administrator, department head or supervisor, is concerned with the human resources of the agency and therefore should be engaged in personnel administration. This fact is particularly important in complex and fragmented organizations such as counties.

Personnel Management

Personnel 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. 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, Act 195, and HIPAA. Personnel administration clearly involves all aspects of managing the county's human resources, including the use of volunteer personnel.

Generally, the chief clerk's role in terms of personnel is to recommend policies to the commissioners, and to work closely with department heads to ensure that the county is properly organized to handle personnel demands. Effective managers, which includes the chief clerk, must have at least some influence on certain personnel policies and practices. Effective management also requires an appreciation of contributions of supervisors and employees from all levels of the county structure.

Personnel 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. These tasks presuppose that personnel management is an activist, future-oriented, and organization-wide function.

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

1. The preparation of specialists in the various functional areas of personnel administration.
2. The design and implementation of personnel systems and techniques that protect and support administrative and managerial processes.
3. The familiarization of managers with the knowledge and skills that personnel specialists may contribute to the effort to solve a wide variety of organizational problems.

Today's personnel demands appear to 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 these 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 personnel policies and procedures. It is designed to accommodate, review, modify and change. The object 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. For the employee's and the county's benefit, the county must make sure that the county employee is aware of county rules and regulations. Well-thought-out written policies are needed.

Shown below are items that are typically included in personnel policy manuals. It is not intended to be an all-inclusive list of contents.

Personnel Policy Manual Content Examples

- 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
- Benefits – eligibility, insurance, pensions, worker's compensation, disability income, self-insured benefits, COBRA, benefits for part-timers
- Drug-Free Workplace
- AIDS
- Personnel Records – contents and access

DCED has sample language for all these personnel policy topics. The inclusion of particular policies 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 and should cooperate in the development of valid examinations and screening devices 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 mail and questions about employment should be answered quickly.

A Word About the "Market." Perhaps the most frustrating aspect of personnel and pay is dealing with the market. Many argue that to adequately develop a pay plan, first consideration should be given to what people are making in the private sector. Many times positions are compared to similar positions in other counties. This often results in a comparison of "apples and oranges." Generally, it can be difficult to compete with the private sector in salaries and benefits. This results 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 you can do is to recognize the impact of the market, and given your fiscal restraints, develop your 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.

As stated previously, interaction with departments is essential. A few caveats should also be mentioned. One should not, and legally cannot, impose non job-related restrictions on citizenship, age or sex. On the subject of residency requirements, check with the solicitor as some positions may require residency, others not. Finally, check the candidates' credentials! Many costly and embarrassing stories exist regarding the failure to check the validity of employment and education information with past employers. However, there are changing rules regarding the use of references. A policy should be developed in conjunction with the solicitor as issues of liability have recently arisen in the courts.

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 requirements prohibiting discriminatory practices. The application form typically asks for a description of:

Previous employment
with county
Availability for work
Availability for travel
Criminal record
Veteran status
Language fluency
Signature of applicant
verifying information
Education

References, including
telephone numbers
and addresses
Employment experience
Special skills
and qualifications
(computers, office
machine, special drivers'
licenses, second
language)

The county solicitor or a professional consultant should periodically review the application form and the application process to ensure compliance with changing regulations and requirements.

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:

1. Set salaries which are equitable in relation to the complexity and responsibility of the work performed.
2. Make sure that pay rates do not discriminate on the basis of race, sex, national origin, or other factors unrelated to the duties performed.
3. Maintain a competitive position in the employment market to attract and retain competent employees.
4. Provide data needed in budgeting, payroll administration and other financial and personnel management activities.
5. Make information on pay rates and practices available to employees and interested citizens.
6. Stimulate and reward high-level performance.
7. 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 between 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. Considerable research must be done. A thorough analysis of pay administration may reveal problems that have developed in the system from decisions based on expediency.

Salary Board

The salaries and compensation of all appointed officials and employees paid from the county treasury are fixed by the salary board. In most counties this is taken as establishing the range for each position rather than the specific salary for each individual and then the supervisor is granted authority to place an individual in that range as appropriate. No case law exists and the solicitor should make the determination when there is a question on whether the salary board is responsible for fringe benefits. The board is charged with periodically revising the salary schedule whenever the number or compensation of positions is proposed to be established or changed. The salary board consists of the three individual members of the board of commissioners and the county controller in counties where there is a controller, or the county treasurer in counties where there is no controller. Whenever the board considers the number or salaries of the deputies or other employees of any county officer, this officer sits as a member of the board while any matter affecting that particular office or agency is under consideration. This applies only to elected officials and the public defender although there is case law that allows some agency heads to sit as the fifth member. The chairman of the board of county commissioners serves as the chairman of the salary board.

Civil Service

Counties provide human service programs and receive state or federal funds and are required to maintain an agreement with the state Departments of Health, Public Welfare, and/or 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 will not be reimbursed for the amount of salary over the maximum. Each year county human service agencies are required to submit a compensation plan for state approval.

Benefits

As part of the overall compensation package, counties typically provide at least some fringe benefits to employees. This package is designed to meet certain county needs while helping to meet employee needs and desires. The county must combine economic realities and social responsibilities while attracting and keeping 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	Deferred Compensation
Vacation	Hospitalization
Sick Leave	Major Medical
Maternity/Paternity Leave	Vision Care
Military Leave	Dental Care
Bereavement Leave	Prescription
Life Insurance	Longevity Pay
Retirement	Paid Holidays
Uniform Allowance	Personal Days
Tuition Reimbursement	Employee Assistance
Workers' Compensation	

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

Cafeteria Plans. Some organizations are providing cafeteria plans for their employees. These plans allow employees to select the combination of cash and fringe benefits that they want. Proponents of this approach assert the employee will have greater satisfaction concerning compensation because pay comes in many different kinds of fringe benefits as well as actual cash. For many counties, this flexibility results in a more attractive benefit plan at lower cost to the county. However, since many benefit carriers require a minimum number of enrollees to qualify for a reduced rate, a cafeteria plan makes some benefits unaffordable. A plan should obtain an IRS qualification so that employee "purchases" are pre-tax.

Position Classification

Position classifications should produce equality and impartiality. Therefore, the classification plan 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.

Important points should be noted in reviewing positions. Don't 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 realistically changes in the economy brought about by inflation, competitive wage rates, changes in the nature and scope of jobs, and market demands. Personnel experts advise a complete review every five or six years, with annual updates.

In establishing a rate 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 responsibilities 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).

The classification process is indeed complex and beyond the scope of this Manual. Typically the process includes (1) determining the scope and method of the study, (2) the position description, (3) development of data gathering, (4) job analysis and desk audits, (5) preparation of class specifications and (6) installation and administration of the plan.

Job Descriptions

Job descriptions are used by individuals throughout an organization — recruiters, managers, trainers and career planners. 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. Some major steps in writing a job description follow.

1. Planning – Define what the job is trying to achieve, how the person tries to do the job, and how job performance is measured.
2. Gathering information – Enough information should be gathered in order to place the job in the context of other related jobs.
3. Drafting the job description – Use the gathered data to create a description that will give the same picture of the job to everyone who reads it. The following headings are typically used: General Definition, Examples of Work, Required Knowledge, Skills and Abilities; and Minimum Training and Experience.
4. Validating the job description – The job holder and supervisor must both agree on the content of the description.

Performance Evaluation

Formal performance appraisal is one of the least understood personnel techniques. There are a myriad 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 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 his satisfaction on each trait for each employee. Quality and quantity of work, reliability and dependability are common traits for rating.

Disciplinary and Complaint Procedures

In order to ensure the integrity of county policies, management practices and the ability for employees to be legitimately heard, formal 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. An 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 ensure that these 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 seriously compromise the county's ability to justify its actions and subject it to costly, time-consuming defense, and the continuation of possible personnel problems.

Current Topics

Fair Labor Standards Act. The Federal Fair Labor Standards Act (FLSA) requires an employer to remunerate an employee who works over 40 hours in a work week at time and one half, either in pay or in compensatory time off. Under this Act, certain employees are exempt from these provisions and consequently the employer is under no obligation to provide any remuneration beyond their established salary. These exempt employees 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 suffered or permitted to work for the employer.

"Hours worked" have been established by the Supreme Court 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. For example, assume that an employee works 30 hours in one week and 50 hours in the next week and the employer claims that since it is within the same pay period it amounts only to an average of 40 hours per week. Under these circumstances, 10 hours of overtime or compensatory time would accrue unless FLSA exceptions pertain.

Section 11(a) of the FLSA authorizes representatives from the Department of Labor to investigate any allegations involving a violation of the FLSA. Any employee may give 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; the Secretary may obtain a court injunction to restrain any person who violated the FLSA.

Employees 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 coupled with detailed record-keeping in connection therewith is essential in order to obviate any potential liability under the FLSA.

Americans With Disabilities Act. The Americans with Disabilities Act (ADA) of 1990 provides 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 the following three conditions. He or she must either:

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.
3. Be regarded as having such an impairment.

Title II, in its regulations, requires all local jurisdictions (cities, counties, towns, townships, etc, regardless of size) to undertake a self-evaluation and then to develop and implement a Transition Plan. The regulations call for completion of the self-evaluation, covering local public services, policies and practices.

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 "non-structural" and others "structural." Non-structural changes needed for opening up programs, services, and employment opportunities should be identified and made during the self-evaluation process. The ADA encourages creative, non-structural modification wherever possible. 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.

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. All structural changes had to be made as soon as practical, but no later than January 26, 1995. Governments with 50 or more employees must prepare and maintain a written Transition Plan.

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. The remedies available are the same as those provided under Section 504 of the Rehabilitation Act of 1973.

Complaints may be filed within 180 days of an alleged discrimination 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.

Equal Employment Opportunity Commission
1400 L. Street, N.W.
Suite 200
Washington, DC 20005

Coordination and Review Section
Civil Rights Division
U.S. Department of Justice
P.O. Box 66118
Washington, DC 20507
(202) 514-0301 (Voice)
(202) 514-0381 (TDD)

Family Medical Leave Act. Title I of S.5, the Family Medical Leave Act of 1993, 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: (1) upon the birth of the employee's child; (2) upon placement of a child with the employee for adoption or foster care; (3) when the employee is needed to care for a child, spouse or parent who has a serious health condition; or (4) 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 employee 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, this 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 which 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. The taking of 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.

It is unlawful under the act for any employer to interfere with or restrain or deny the exercise of any right provided under the act. It is also unlawful for any employer to discharge or otherwise discriminate against any individual for opposing a practice made unlawful under the act, or for participating in any inquiry or proceeding relating to rights established under the act.

To ensure compliance with the Family and Medical Leave Act, the Secretary of Labor is given investigative authority parallel to the authority provided to the Secretary with regard to enforcement of the Fair Labor Standards Act of 1938. Employers are required to make, keep and preserve records pertaining to compliance with the Family and Medical Leave Act, but the Secretary may not under authority of the act require employers to submit their books or records to the Secretary more than once during any 12-month period unless the Secretary has reason to believe that the act has been violated or is investigating a complaint of violation.

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, except that any employee's right to bring such an action is terminated if the Secretary files an action seeking relief with respect to that 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: (1) submission to such conduct is made explicitly or implicitly a term of an individual's employment; (2) an employment decision is based on an individual's acceptance or rejection of such conduct; or (3) 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 of or discrimination against the individual raising the concern or against another individual. Examples of conduct that would be considered sexual harassment or related retaliation are set forth as follows:

1. Physical assaults of a sexual nature.
2. Unwanted sexual advances, propositions or other sexual comments.
3. Sexual or discriminatory displays of publications in the work place.
4. 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 at all times should treat other employees respectfully and with dignity in a manner so as not to offend the sensibilities of a co-worker. Accordingly, the County must be committed to developing and vigorously enforcing a sexual harassment policy at all levels.

Employee Protection

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, civil service requirements, other 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.

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. Negotiating teams vary from county to county. Some commissioners do it themselves, some retain a consultant. It is important to prepare, know the law, and develop and maintain good liaison with those involved. Note as well that if employees are organized the commissioners are the exclusive bargaining agents (even employees of row offices) and pay schedules set by contract are not subject to salary board actions.

Payroll

Payroll Procedures. Some chief clerks perform payroll duties for their county, so a few comments may be appropriate. A complete payroll procedure consists of the following five operations: (1) authorizing payroll additions and changes; (2) recording time and amounts paid; (3) preparing authorizations for pay; (4) paying employees; and (5) distributing charges for personal services to the proper accounts.

Deductions. Municipalities have faced an increased demand to make more and more payroll deductions. Deductions are of several types: those required by law, charter or ordinance; those for the benefit of employees 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. The average county could make six to ten deductions.

Job Enrichment

There are a number of techniques which can be used for enriching jobs. These should be a part of any comprehensive personnel management plan:

Change. Perhaps anyone who has been in a supervisory position can offer a story about an employee’s resistance to change. Ever-changing environments, work force and technologies create the need to adapt, with employees or even whole departments requiring change. Fear of change relates a great deal to uncertainties about who is affected, 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 including planning. This involvement has proven to reduce anxieties and in many cases enhances the success of the change.

Training. Many counties have a difficult time in hiring highly capable personnel due to fiscal restraints. In addition, positions are filled many times from within. Both conditions create the need to provide opportunities for personnel to improve their capabilities. The employee who is placed in a supervisory position is an

example. It is incumbent on the county who places the employee in a supervisory position to provide an avenue for this employee to learn supervisory skills. This can be accomplished through, for example, 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. So that the employee feels a part of 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 coworkers and key officials, and to explain how the county operates is key to starting the employee off on the right foot. The chief clerk's involvement is key in explaining the nature of county administrative work and as a symbol of the commissioners' involvement in this type of program.

Employee Assistance Program. Many organizations, public and private, are beginning to recognize that employees do bring to work with them problems from home. They also take work problems home with them. Employers are recognizing that helping to solve these problems will help the employee and at the same time improve an employee's productivity at work. Some counties have instituted Employee Assistance Programs (EAP) 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 that assist in getting information out to the employees. Simply stated, it is very important to have a handle on adequate communications; if you don't control the information flow, someone else will.

Retirement Plan

A retirement system has been established for county employees by resolution of the county commissioners in most counties of the Second Class through Eighth Class. The retirement system shall be established on the first Monday of January of the year succeeding the one in which the resolution of the county commissioners was adopted.

The system, when established, shall be administered by a county retirement board, consisting of five members, three of whom shall be the county commissioners, the county controller, and the county treasurer.¹ In counties having no elected county controller, the chief clerk of the county shall be a member of the board. The chairman of the Board of County Commissioners shall be the board chair. Each member of the board shall take an oath of office that he will diligently and honestly administer the affairs of the board, and that he will not knowingly violate or permit to be violated any of the provisions of this act. Such oath shall be subscribed by the member taking it, and shall be filed among the records of the board. The members of the board shall not receive any compensation for their services, but shall be reimbursed for all expenses necessarily incurred in the performance of their duty.

The board shall be permitted to contract with any insurance company which has qualified and is authorized by the Insurance Department of the Commonwealth of Pennsylvania to transact business in Pennsylvania, or with any bank, savings and loan association or trust company approved by the Department of Banking of the Commonwealth of Pennsylvania, or with any investment advisor registered pursuant to the Federal Investment Advisers Act of 1940 which is registered as an investment adviser by the Pennsylvania Securities Commission and which agrees to conduct itself in accordance with 20 Pa. C.S. Ch 73 (relating to fiduciaries investments) to

be designated as a deposit administrator. The deposit administrator may be given the power to administer the funds in its entirety, including the power to receive and invest all moneys deposited in the fund and such other power as are vested in the board.² In addition to the options provided in the act upon retirement, disability withdrawal or death of a contributor, the deposit administrator, if an insurance company, may provide additional options to the contributors or beneficiaries.

Legislation specific to counties of the Second Class and Second Class A provides for monthly retirement allowance increases based solely upon the actuarial valuation of the retirement system and an actuarial indicator known as the "Total Funded Status Ratio."³ Other classes of counties are required to consider cost of living increases at least every three years.

Summary

Responsibility for personnel management in a county does not belong exclusively to any single group or individual. Concern for a comprehensive personnel program is shared with the commissioners, the chief clerk or administrator, row officers, the department heads, the personnel department, the employees and the public. Objectives of the chief clerk should be to ensure the continuance of effective and efficient employee recruitment and administration, professional development, staff relations, employe classification administration and payroll and to ensure compliance with pertinent federal and state laws relative to personnel administration.

Personnel problems that must be addressed range from very simple to very complex with many small problems being a symptom of a bigger problem. Absenteeism or lateness, for example, may be an indicator of a very serious motivational problem brought on by poor communication or poor job design. No problem is too small, however, and in most cases a network of problem solvers is required.

Technical Assistance

Pennsylvania's counties, like all other local governments, face increasing demands for new and expanded services. A county's ability to react or plan for these demands is seriously jeopardized if the role of personnel management is not taken seriously. Internally, it is difficult to maintain professional capabilities and thus adequate service levels because of a lack of adequate resources. These conditions indeed challenge the management techniques utilized by counties.

To address adequately these demands and develop capabilities counties should look internally and externally for technical assistance which may be found in many areas.

1. The Department of Community and Economic Development
2. Private consultants
3. Supervisors and line managers
4. Functional specialist or generalists employed by the organization in staff or support roles.
5. Those holding positions on regulatory commissions and merit system protection board or appeals bodies
6. Elected and appointed government leaders including legislators
7. Community leaders
8. Labor-management organizations
9. Colleges and other educational institutions
10. County Commissioners Association of PA (CCAP)
11. National Association of Counties (NACO)

The point being made is that because the boundaries of personnel management are broad, so is the availability of assistance. The effective chief clerk should acknowledge and take advantage of these opportunities in order to keep up with changing demands and possible solutions being developed.

**The first edition of this chapter was primarily prepared by former Chief Clerk/Chief Administrator William E. Dennis of Cumberland County*

References

1. 16 P.S. 11654.
2. 16 P.S. 11679.
3. 16 P.S. 4708(e)(i).

X. Communications and Information

In most counties, the commissioners rely upon the assistance of the chief clerk in the performance of their communications and information responsibilities, although an increasing number of counties have a separately designated public information officer

These responsibilities for the chief clerk vary in each county and depend upon the administrative, legislative or policy making duties assigned by the board of commissioners. The chief clerk's effectiveness or ineffectiveness usually depends upon the support and confidence gained from the board. The chief clerk, like and the municipal secretary serves as the primary focal point of contact for information and communication at the county level. The chief clerk is the primary person in county government for directly communicating with other government officials, citizens and groups regarding procedures and actions required by state and county laws, ordinances and regulations. Also, as the official county source for communications and information, the chief clerk's role often requires to be the major interpreters of county policy because of their advisory and leadership position when the board of commissioners is out of the county on official or business ventures. This critical responsibility of the chief clerk mandates close personal contact and relationship with the commissioners in order to keep them fully informed of responses to service and program inquiries.

The Reporting Function

In the chief clerk's role as the communications link between the county government and the citizenry, they act as the information center of the county government both in the courthouse and by contacts with the public. This communication includes reports to the commissioners, memoranda to elected officials and department heads, newsletters to the public and releases to the various news media.

The responsibility for routinely reporting to the board of commissioners is the first consideration of the chief clerk in promoting communication and information sharing. Needless to say, sharing or releasing information to the public or press before presenting it to the commissioners, either formally at a meeting or informally by telephone, is to be considered only in emergency situations. Chief clerks must use their own discretion in deciding what needs to be shared with the commissioners and what does not depending upon the nature of the information, the situation under which it is received and the immediacy of action required. This process again indicates the need for the close personal relationship between the chief clerk and the commissioners. Further, as the communication link between the commissioners, elected officials and department heads, the chief clerk must maintain a reticence and terseness in both oral and written communication to avoid emotionalism, irrelevancy, confusion and other detriments to enhance understanding what is said or intended on complex problems and issues.

In dealing with the general public or press (newsletters and/or news releases), interaction with the commissioners should precede the release of complex or controversial issues or directives. Again, precise writing with concise visual graphics ensures the information is read and understood with comfort and ease. The chief clerk must strive to gauge the tenor of the board of commissioners on each issue within the circumstances surrounding the issuance of each directive, release or account.

Citizen Relations

Some county governments place such great value upon positive public communications that they create offices of public information with full-time professional directors and staff. The position, in addition to media relations, also often serves as the clearinghouse for public inquiries on services and programs. Obviously,

under this planned and controlled professional approach to public information, the chief clerk plays a more subordinate role in the overall public relations program. However, the chief clerk, because of the close ties and personal relationship with the commissioners, must come into contact with the press and public on a daily basis. The chief clerk must project the orderly and businesslike image reflecting the ideals and values of the governing board to constituents.

In direct dealing with the public, nothing reflects as negatively upon the image of the county and its officials as an inability by citizens to transact county business with the appropriate official with a minimal amount of difficulty and within a reasonably short period of time. The chief clerk, as the county administrator and center of the communications network, has prime responsibility to exemplify the openness and responsive nature of the commissioners' public relations policy. The chief clerk should stand firmly behind citizens' legal right to examine any public record under reasonable reviewing conditions prescribed under the Right to Know Law.

Major complaints should be dealt with by the board of commissioners, but minor complaints considered as requests could be resolved at the departmental level, if the chief clerk is authorized to take action to eliminate refusal, reluctance or delay by designated officials to public requests for information under reasonable circumstances. Acceptance of the chief clerk's management ability and command of county functions and policies could serve to reduce the confusion and lost time in resolving general misunderstandings or problems between citizens and county officials. This immediacy of attention to honest complaints (requests) of citizens fosters a friendly and accommodating rapport between the board of commissioners and county taxpayers.

Media Relations

Chief clerks should not assume the title or position of a professional public information specialist unless they are trained or experienced in this particular specialization. Still it is important to understand that the very nature of the chief clerk's or administrator's job is to aid the commissioners in day-to-day contacts with media representatives. Commissioners do rely heavily upon the chief clerk to establish a positive program of public relations and information sharing with the public through the media. Media activities involving the commissioners office include: weekly agenda setting meetings; advance agenda for commissioners business meetings; prepared press releases; formal and informal press conferences to permit follow-up questioning or to announce new programs or services; internal and external newsletters to inform staff, volunteers, appointees or general public on county matters; special reports and annual public forums designed to inform and/or explain county opinion or policy concepts to citizens.

The county commissioners should formulate a positive public information policy with input from staff and representatives of the media. Such a policy will permit the chief clerk to maintain direct and friendly relationships with reporters and eliminate charges of secrecy and favoritism against county officials who may be reluctant or unwilling to risk releasing sensitive or untimely information. An example of some cause for such recalcitrance by officials is succinctly stated in DCED's *Manual for Municipal Secretaries* as follows. "Officials and reporters alike are unaware or forget they are both responsible to the public. They have no inherent responsibility to each other. Friction arises then in interpreting the public interest, as officials withhold information or the reporter writes a story reflecting negatively on actions of the officials".¹ The chief clerk could be the interpreter of the commissioners' public information policy to county officials and reporters. The chief clerk should work to resolve friction and conflict between county officials and reporters by promoting mutual respect for each other's responsibility to the public and to do their job fully respecting the other's honesty and integrity. The chief clerk should establish the channels and routines to be followed in the communications process and conduct all sharing sessions accordingly, remaining congenial and positive throughout.

General Administration - Outreach

To inform or communicate effectively with diverse organizations and individuals in continuous contact, the chief clerk has to present a positive and congenial attitude about the county and its programs and services.

It is within this area of communications and information that a Rutgers University survey has identified three basic issues leading to successful and professional administration of county government outreach activities. These issues are: (1) Does the county government regularly conduct public surveys to identify programs or problems that the public feels need special attention? (2) Has the county government used focus groups (with in-depth interviews of small groups of citizens by professional surveyors) in order to determine citizen attitudes toward county government and the specific programs it provides? (3) Is there a regular countywide newsletter or publication released at least twice a year to alert citizens to county activities and services?²

References

1. *Manual for Municipal Secretaries*, Pennsylvania Department of Community and Economic Development, Harrisburg, Pennsylvania.
2. *Management Techniques and Administrative Methods for the Professionalization of County Government*, The Rutgers University Survey of County Governments, Department of Political Science, Camden Campus Camden, New Jersey.

**This chapter was prepared by Harry A. Seyler, former Chief Clerk/Administrator of York County.*

XI. Human Services/Health Care Administration

In today's Pennsylvania county, the provision of human services is a function of county government which ranks in importance along with servicing the justice system, supervising elections and processing and preserving records. In terms of personnel and resources, human services provision may rank first in many counties.

County human services are activities of county governments designed to provide help to those in need, because of personal or social hardships. This definition applies to county activities such as social services for children and youth, services for the aging, mental health and retardation programs, drug and alcohol programs and adult and juvenile probation. A broad interpretation of the term could also apply to the provision of public health services, although the traditional public health function is usually not included in a discussion of county human services. While there is an entire article in the County Code related to public health¹ which includes authorization to provide many of the human services referred to above, the actual term human services is used little if at all in the code.

Recognizing the importance of human services in county government in the Commonwealth, it is necessary that the county clerk have some understanding of the process and system. Of course, this is another area of county government which varies in how it is handled from one county to another, and again it would not be possible to discuss all variations.

The provision of Pennsylvania's public human services is divided between the state and county governments. The state is responsible for operating state mental health and retardation institutions and the income maintenance programs through state operated county assistance offices. Counties are responsible for operating, under state supervision, county nursing homes, mental health and retardation programs, children and youth agencies, the majority of the area agencies on aging and drug and alcohol programs. In addition to this core set of services, counties also frequently provide human services transportation, attendant care, day care and information and referral services.

The present organization of human services has evolved over the years. Originally human services existed only by action of counties or cities. The county dole, poor farm, asylum, and almshouse were all used to describe the system. As the state became more involved, funds and regulations began to flow from the state and federal governments to the counties, leaving a county-operated, state-supervised system.

Differing administrative and program structures are common, due to the way services have expanded. Services have followed shifting priorities and funding, and have been implemented at different times and for different reasons. Little thought was given to the overall human services structure, and as a result, nearly every service has different regulations, match requirements, payment plans and reporting requirements.

Over the last several years a growing consensus has been building about the need for a human service system that is less fragmented and more coordinated. What follows is a discussion of the system of human services delivery in one county; it involves a coordinated approach in an effort to provide the most comprehensive coverage at the most reasonable cost.

The Role of the Human Services Director

Many counties throughout the state have opted for the establishment of a human services director, coordinator or lead agency model system of management of human services. Local officials have recognized the increasing complexity in the levels and sources of public funding and the authority and accountability they must accept for the delivery of human services. This management structure recognizes the need for manageability of human services at the final point of implementation at the local level.

Coordination of existing and new human services resources achieves increased effectiveness and efficiency. Service coordination is developed to make the system more accessible and responsive to the clients in need. Coordinated human services planning efforts have assisted boards of commissioners in meeting and solving social problems of localities, improved the operations and accountability of the human services delivery system, and increased the capacity for local government officials to make rational and informed decisions regarding the funding and management of human services.

A coordinated human services effort does not necessarily involve the dismantling of existing service delivery systems through major reorganization. The primary focus is process and service oriented, rather than structure oriented. Management activities have emphasized interagency relationships and functions to facilitate cooperative contributions from multiple sources.

This approach to service coordination can best be described as incremental — moving forward in improving the total human services system by selectively implementing a variety of processes and procedures to improve various segments or components of the system.

The incremental approach has provided an opportunity for meaningful growth to occur while, at the same time, permitting adjustments to be made to enhance the service delivery system. A county can draw upon the experiences of other counties and its own experiences. This can lead to gradual organizational changes through a participatory management process. The incremental approach may delay the achievement of some objectives, but it offers the most judicious course for planning for change, as it allows for adaptation, modification and early recognition and response to unanticipated consequences.

Major goals and objectives for counties involved in human services coordination efforts include the following.

The first is to continue to develop, implement and improve the coordinated planning and budgeting process for major human service providers in the county. This includes cooperative and participatory arrangements with private and other public agencies. Most human services directors develop a close working relationship with the local United Way and community action agency to enhance human services coordination efforts. Close working relationships have also been developed with churches, organizations, charities and food banks.

The second major goal is to maximize service capabilities and to improve efficiency and cost effectiveness by developing, implementing and improving the coordinated human services delivery system in the county. One major objective of this goal is development of interagency working and coordination agreements between public and private agencies to clearly delineate areas of service responsibility, define referral relationships and eliminate service gaps and duplication.

The third major goal involves developing, implementing and improving accountability and management of the human services delivery system. Counties with designated human services directors have assigned to the director administrative monitoring responsibilities for all human services programs. This has greatly relieved boards of commissioners from the day-to-day administrative responsibilities for human services. In reality, the human services director has become the commissioners' watchdog for overseeing county human service agencies. Most counties with human services directors have established a clear chain of command from the board of commissioners to the human services director to the county agencies. Human services directors also meet the agency heads individually on a regular basis to ensure such things as compliance with existing regulations, as well as to thoroughly review and understand new or proposed regulations that affect the agency. This relieves the county commissioners of the task of trying to keep abreast of the continuous flow of regulatory changes affecting human services agencies. The human services director commonly schedules workshops with the commissioners to review plan submission, present pending new contracts and requests for proposals, renewal of budgets for categorical programs and special grant programs.

Human services directors have established a variety of working committees to facilitate sound administration. These include fiscal representative committees to resolve common fiscal concerns; data processing committees

to share experiences while ensuring compatibility within the county systems; and ongoing planning committees to continue the development, refinement and updating of a coordinated plan involving all human service agencies. Most human services directors also have any number of task forces working in a variety of areas to refine individual agency programs, as well as to identify where linkages between agencies and programs need to occur. All county human services directors have assumed the administrative responsibility for the Human Services Development Fund (HSDF) Grant and other special grants (Food Grant, Emergency Shelter Grant, Homeless Assistance Service Programs Grant) relating to human services.

Several questions have been raised regarding funding of the human services director's office. In all counties having such a position, some portion of the cost is totally funded by the county. The percentage ranges from 20 to 50 percent, with the balance being absorbed through an indirect cost allocation process. Human services director's staffs sometimes include a designated planner, fiscal officers, and clerical support. Some counties have additional staff, such as specialist in prevention programs, assigned to the human services director's office, to ensure coordination of all prevention program activities within the agencies.

In all counties, the human services director reports directly to the chief elected officials of the county. In some counties, the human services director does have a citizen advisory board appointed by the board of commissioners.

County Health Departments

Public health services in Pennsylvania, in contrast to human services, are primarily the responsibility of the state and certain county/municipal departments. The Pennsylvania Department of Health administers the Local Health Administration Law, which provides reimbursement to counties and municipalities which meet the requirements under this legislation. As of January 2001, six counties and four municipalities participate in this program: Allegheny, Bucks, Chester, Erie, Montgomery and Philadelphia Counties and municipalities of Allentown, Bethlehem, Wilkes-Barre and York City. A substantial amount of state funding is provided to these county/municipal-operated public health agencies. There are certain minimum program and administrative requirements that must be met by participating county/municipal health departments.

The relationship of the counties in this program to the State Health Department is of a fiduciary and program nature. Specifically, the state must approve the county/municipal budgets for funding and make certain that the intended purposes are in accordance with the Act and related regulations, review and approve program plans, conduct on-site reviews of program activities, approve job classifications for management and operating staff, make certain that candidates for these positions meet minimum requirements, provide consultation and coordination of program efforts and hold routine meetings with the Health Department directors to exchange information and address areas of concern.

References

1. 16 P.S. 2101 et. seq.; County Code, Chapter XXI.
2. 16 P.S. 12001 et. seq.; Local Health Administration Law of 1951.

**A major portion of this chapter was originally prepared by Ralph Moyer, former Human Services Director for Dauphin County.*

XII. Other County Governmental Functions

Elsewhere in this Manual, the position has been presented that the chief clerk is at the center of county administration and is the right arm of the board of commissioners. This chapter presents some basic information on other governmental functions among Pennsylvania counties. Whether or not it is the role of chief clerks to be directly involved, it is important that they understand how some of these functions are carried out at the county level and how they impact on the commissioners' office and the chief clerk's job.

Public Works

**The Public Works and Transportation sections of this chapter were initially prepared by William E. Dennis, former Chief Clerk/Chief Administrator, Cumberland County.*

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 jurisdiction there may be any number of functions organized under the heading of public works. These include the following.

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

Not all counties provide all of these functions. Most are provided by municipalities, quasi-public agencies, private utilities and private firms. In certain places, some services may not be available at all. While each county develops its own definition of the public works function, it is important for chief clerks 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 the following:

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 engineer¹ whose duties include preparation of plans, specifications, and estimates and surveying. Some counties have engineers on staff while many do not and 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. Each county will find itself making large 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 trimming is required, maintenance is typically 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 inspect the conditions of all public bridges that are twenty feet or longer. 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.

The Pennsylvania Department of Transportation (PennDOT) spends millions of dollars annually to inspect state maintained bridges. About 2.5 percent of inspections are double checked to ensure that conditions are interpreted uniformly. Bridge inspections can take hours or days, depending on the bridge type, what it spans, the traffic it carries and its condition. Bridges must be inspected at least every two years and a sufficiency rating (SR) applied. Sufficiency ratings of greater than 80 mean that a bridge does not require replacement, rehabilitation, or weight limit posting.

Inspections and maintenance work performed by counties in most cases are coordinated by the county's designated engineer and performed by a contractor. Work is done in accordance with the Standard Specifications of PennDOT, Publication 408, dated 2000, as revised and supplemented by PennDOT. The work is subject at all times to the inspection of the engineer who should have free access for inspection.

Regarding the scope of contractual work, the contractor should furnish all materials, equipment, tools, labor and work incidentals. The work prescribed should include, as an example, the following items:

- sweeping bridge decks
- removal of debris
- pothole repair
- tree and shrub trimming
- signs
- sealing deck joints
- repairs to bridge structure
- painting bridge floor
- rock placement

It could be argued that the problems Pennsylvania is experiencing with bridges comes from decades of neglect and the underfunding of bridge rehabilitation and replacement. The solution would therefore be tighter inspection and more money which is obviously a difficult solution given federal, state and local budgetary hardships. Another issue is efficiency. It is hard to justify a \$250,000 bridge that serves ten vehicles a day, but the people affected think it is important. To solve this problem, new designs and construction techniques use timber, modular concrete and retrofitted railroad cars. Additionally, there are less expensive design standards on low volume bridges.

County Roads. In Pennsylvania, counties have a limited role in road administration. There are only 685 miles of county roads in the Commonwealth. All county roads are on the federal-aid system. Pennsylvania counties are responsible for construction and maintenance of county roads. They are responsible for special district roads, but not Commonwealth highways and bridges.

In some instances, counties must obtain project approval for highway projects from PennDOT. When county projects are funded with federal highway dollars, state or federal standards and approval of projects are imposed. When spending state liquid fuels taxes, counties sometimes have complete discretion in choice of projects and at other times are required to obtain approval of projects and meet state 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 many transit systems, smaller counties transportation services are typically established from the need to transport seniors and mental health/mental retardation clients.

County commissioners have the ultimate responsibility for setting the level of paratransit service to be provided to county residents. Service level is defined to be the number of days of service provided, the daily hours of service, the number of vehicles operated, and the types of trips provided. County transportation programs will typically provide paratransit service to any resident of the county who is eligible. Paratransit refers to shared rides of more than one person in the vehicle. 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.

A major concern of county officials as well as of funding agencies (Aging, MH/MR) is the impact of service expansions on the cost-effectiveness of the transportation services. Criteria used to evaluate alternative service levels include:

1. Needs of county residents
2. Efficiency/cost/effectiveness
3. Operational requirements
4. Financial/budget

Another consideration is what impact these alternatives would have on the organization(s) directly providing the service. What additional vehicle, driver, dispatching requirements are imposed because of the proposed service change?

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 clients, transportation needs sometimes occur after working hours. To address this, health providers (for example, a mental health center) are sometimes sold, given or leased vehicles through county agencies so that individual needs can be met. Funding for the program includes but are not limited to lottery grant programs, medical assistance block grants, Act 26 and Act 3 State Funds and Federal 5307 Funds.

Fare Structure. The county transportation department will be asked by the state to maintain a fare structure that results in a countywide structure. No one fare structure is correct or ideal. An examination of the nearly 100 shared-ride transportation providers statewide reveals a wide range of fare structures, each suited to the local conditions. 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/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 have developed a daily record keeping system which includes invoicing the rider. County auditors prefer this latter arrangement.

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 and sometimes must deal with the worst. Drivers should be required to have a commercial driver's license, CPR and 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 in some counties. It could be argued that the problems of the commuter typically cannot be solved by the actions of a county government alone. In fact, given the high cost of mass transit projects, multi-county coordination would seem most appropriate.

In considering transit alternatives, coordination is needed in terms of land use, coordination with local governments, environmental concerns, surface versus air, and the costs and benefits of economic opportunity. The value of having a comprehensive transportation plan is certainly underscored. This blueprint is a notice to local governments regarding projected demands on all aspects of municipal services. It also provides a regional approach to developing transportation alternatives.

Public Safety

Public safety in the local government context means primarily fire and police services. In Pennsylvania county government, however, direct participation in providing these services is more focused when provided at all (for example, court house guards, county detectives, sheriffs and their deputies). There are several public safety functions where Pennsylvania counties play a key role and chief clerks should be aware of these.

Emergency Communications. The key development in this area has been the passage of the Public Safety Emergency Telephone Act in 1990.² Implementation of the act and subsequent amendments provides a mechanism to make available a toll-free number to every individual in the Commonwealth for the purpose of summoning emergency services, such as fire, ambulance and police.

Basic 911 simply provides telephone access to an emergency dispatch center or PSAP (Public Service Answering Point), with the dispatcher required to obtain the location and nature of the emergency by questioning the caller and then dispatching the appropriate responder. Enhanced 911 (E-911) offers computerized assistance in locating the caller, even if somehow incapacitated or incapable of answering questions. One enhancement, called ANI, or Automatic Number Identification, displays the caller's telephone number as soon as the call is answered. ALI, or Automatic Location Identification, provides the dispatcher with the caller's street address.

Since the Commonwealth implemented the Public Safety Emergency Telephone Act of 1990 (ACT 78) 911 emergency telephone service has grown to the point of providing this most important service to over 95 percent of the residents of the Commonwealth. This has placed Pennsylvania in the forefront as a recognized leader in the field of emergency communications.

The law authorizes counties, and certain second and third class cities and other political subdivisions to assess a fee against telephone subscribers to pay for certain of these recurring and nonrecurring, maintenance and operating costs of an established 911 system. First, second and second-class A counties are authorized to

charge up to \$1.00 per phone line; third, fourth, fifth, \$1.25; sixth, seventh and eight, \$1.50, with specific rate reductions for multiline subscribers.

The Pennsylvania Emergency Management Agency (PEMA) establishes guidelines and application procedures, reviews and approves county 911 plans. The Pennsylvania Public Utilities Commission (PUC) reviews and approves proposed contribution rates. The county commissioners (or officials of political subdivisions or authorities empowered to provide emergency services) must designate a local coordinator of the proposed 911 system, and they:

- Must make arrangements with local phone companies to provide exchange to telephone services.
- Must develop and submit a proposed county plan to both PEMA and the phone company.
- Must execute contracts and agreements to implement the plan.
- Must hold public hearings to notify the public of the intention to levy fees on telephone subscribers and to disclose the proposed rates.

Counties that already have 911 systems may establish fees to offset some nonrecurring and operating costs of maintaining that system. Regional or multi jurisdictional systems are not excluded. If counties choose not to exercise their powers, second and third class cities are specifically empowered to implement their own systems within city limits. Local telephone companies are required to collect the fees and turn them over to the county, but are not responsible for delinquent accounts or their collection. Phone companies are also required to provide telephone numbers, names and addresses to aid in implementation of the 911 systems.

Emergency Management.

This section on Emergency Management was originally prepared by Ted Wise, former Emergency Management Coordinator for Cumberland County.

The emergency management program within the Commonwealth and its counties and local subdivisions is mandated in the Emergency Management Services Code.³ This statute requires each political subdivision of the Commonwealth to establish a local emergency management organization in accordance with the plan and program of the Pennsylvania Emergency Management Agency (PEMA). Each local organization has the responsibility for emergency management, response and recovery within the territorial limits of that political subdivision.

Each local organization in emergency management must have a coordinator who is responsible for the planning, administration and operation of the local organization, subject to the direction and control of the county commissioners in the case of counties.

A coordinator is appointed in all counties, with approval of the director of the state agency. The governing body of the county recommends a coordinator whose recommendation must be endorsed by the director of PEMA prior to appointment by the Governor. The coordinator's duties are as follows:

1. Prepare, maintain and keep current a disaster emergency management plan for the prevention and minimization of injury and damage caused by disaster, prompt and effective response to disasters and disaster emergency relief and recovery under the Pennsylvania Emergency Management Plan.
2. Establish, equip and staff an emergency operations center, consolidated with warning and communications systems to support government operations in emergencies and provide other essential facilities and equipment for agencies and activities assigned emergency functions.
3. Provide individual and organizational training programs to insure prompt, efficient and effective disaster emergency services.
4. Organize, prepare and coordinate all locally available manpower, materials, supplies, equipment, facilities and services necessary for disaster emergency readiness, response and recovery.
5. Adopt and implement precautionary measures to mitigate the anticipated effects of disaster.

6. Execute and enforce such rules and orders as the agency adopts under the authority of the law.
7. Cooperate and coordinate with any public and private agency or entity in achieving any purpose of the law.
8. Have available, for inspection, at its emergency operations center all emergency management plans, rules and orders of the Governor and the agency.
9. Provide prompt and accurate information regarding local disaster emergencies to appropriate Commonwealth or local officials, agencies and the general public.
10. Participate in all tests, drills and exercises, including remedial drills and exercises, scheduled by the state agency or by the federal government.
11. Participate in the program of integrated flood warning systems.⁴

In addition to maintaining the emergency management program previously described, many counties utilize their emergency management office to manage 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 Act⁵ and the Hazardous Material Emergency Planning and Response Act⁶ have significant impact on the roles and duties of the emergency management coordinator of each county. Both acts are directly linked to PEMA, which serves as the Commonwealth's coordinating agency in various capacities.

Counties have also required additional responsibilities in the aftermath of September 11. Counties are the primary agencies in each of the state's antiterrorism task forces, including regional planning, mitigation and recovery responsibilities.

Corrections and Prison Management

Counties are responsible for all offenders sentenced to two years or less, including those in intermediate punishment (community corrections) and for 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 sheriff or, where established, the county prison board. The county prison board is comprised of the following members: the county commissioners, the president judge or a judge designee, the district attorney, the sheriff and the controller. The prison board, sometimes called the board of inspectors, is the general rule for counties of the third to eighth class. Counties of the sixth, seventh, and eighth classes may elect to either have a prison board or maintain the 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. There are currently three counties that maintain the sheriff/warden system. Counties of the first, second and second class A have different requirements under the law.

During the 1990's Pennsylvania county jails experienced explosive growth in inmate populations. In 1990, there were over 18,500 offenders per day housed in county jails throughout the state. By 2002, over 30,000 inmates per day could be found in county jails. This explosive increase in population has pushed the county jail to one of the fastest growing county budget items.

Land Use

Planning. The Municipalities Planning Code (MPC) requires counties to adopt comprehensive land use plans and update them every 10 years. In the absence of local municipal or multi-municipal zoning, county zoning can be applied. All counties in the Commonwealth have created planning agencies, but planning in some counties plays a much greater role than in others.

Counties are required to have comprehensive plans, comment on and review all municipal plans, zoning and subdivision, and land development ordinances as well as proposals for land development, which includes subdivision plats and plans. Comprehensive plans are guidance documents and serve to advise the governing body. County comprehensive 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.

Local governments are required to submit proposed actions to the county planning agency for review.⁷ Municipalities with planning, zoning and subdivision ordinances usually have a procedure for referring such proposals and other development applications to the county planning agency for review and comment.

The legislature has given counties the primary responsibility for storm water planning.⁸ County plans are required and state permitting and funding is tied to them. The Storm Water Management Act requires counties to develop plans on a watershed basis in consultation with the municipalities in the watershed.

Counties can adopt zoning for the entire county if there is no local zoning, or for as much of the land within the county that is un-zoned.⁹ Eleven counties have enacted some type of zoning regulations. County zoning is preempted by enactment of a local or multi-municipal zoning ordinance. In the more rural counties of Pennsylvania, it makes sense for planning and zoning to be done at the county level.

Recent amendments to the MPC requires the county to update the plan every ten years and 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. In many rural areas funds and expertise may be inadequate to engage in both planning and zoning at the local level. County zoning is fiscally efficient and permits the identification and protection of large elements and patterns in the natural environment such as forests, aquifers, agricultural land, and river and stream corridors.

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, 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.¹⁰

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. Most municipalities have implemented their recycling programs. Beyond that, the plan may also provide for county involvement in developing new facilities, or contracting for disposal at existing facilities. The Act gives the county flexibility to rely on private or municipal facilities or to develop its own.

Grants are available from 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.

Weights and Measures

In 1913, the state legislature enacted a law referred to as the Short Weights Act. The law established a system of city and county sealers of weights and measures who were appointed, funded, and responsible to the local authority. In 1965, with the legislative enactment of Act 368, the legislature renewed the license of the local sealer by granting concurrent authority with that of the state weights and measures agency in the Department of Agriculture.

While over the last 8 decades the number of city sealers has dramatically decreased to as few as six viable city sealers, the local weights and measures system has remained in force, and in most cases the counties assumed the responsibility. The county authorities, since 1913, continued to perform the vast majority of device inspections in the Commonwealth.

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 could not be economically certified periodically by the local sealers.

With the realization that the vast amount of inspections are performed by the county sealers of weights and measures, Memorandums of Understanding (MOU's) was established by the state bureau and later incorporated in legislation. Once the MOU is developed between the county and the bureau, the state bureau then allocates its resources based on legislatively designated responsibility, geographical dispersion of its field staff, and the availability as well as capability of county weights and measures authorities.

Many MOU's stipulate that the county weights and measures officials carry out the inspection responsibilities for small and medium capacity scales and motor vehicle (gas pumps) dispensers, 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 three basic ones mentioned. The law also allows the counties to abandon the weights and measures function, and as a result about half of the counties have, thereby, passed the weights and measures responsibilities totally to the state.

Tax Collection

In the majority of counties, municipal tax collectors collect county real estate, per capita and occupation taxes. Special local laws make the county treasurer the collector of county taxes in Beaver, Bedford, Chester, Fulton, Greene, Lawrence and Washington counties.¹¹ Counties adopting home rule charters may opt to collect their own taxes; currently Allegheny, Delaware, Lackawanna and Northampton counties collect their own taxes under their home rule authority.

Intangible Personal Property Tax. Taxing authorities have used this tax in the past which is generally levied on investments, primarily stocks, bonds, and privately held mortgages. In May of 1996, the U.S. Supreme Court found the comparable Personal Property Tax levied in the state of North Carolina to be unconstitutional. In June 2001, the Pennsylvania Supreme Court ruled that the provision in the personal property statute that exempts stock held in Pennsylvania corporations from taxation violates the uniformity mandate of the Pennsylvania Constitution. The Court held that the constitutional violation could be remedied by carrying out either a retroactive collection of the tax on Pennsylvania corporation stock, granting a refund of the tax, giving a tax credit, or any combination of these three options.¹² While the tax remains legal, no county currently levies it.

Third Class Cities; Home Rule Municipalities. In third through eighth class counties, the county commissioners may provide for the collection of county taxes levied in third class cities by the county treasurer. In municipalities adopting home rule charters or optional plans where the office of tax collector is no longer elective, the county commissioners may provide for the billing and collection of county taxes by the county treasurer.¹³

References

1. 16 P.S. 1001; County Code, Section 1001.
2. 35 P.S. 7011; Public Safety Emergency Telephone Act.
3. 35 Pa. C.S.A. 7101.
4. 35 Pa. C.S.A. 7313; Emergency Management Service Code.
5. 35 P.S. 7011.
6. 35 P.S. 6022.
7. 53 P.S. 10301.3; Pennsylvania Municipalities Planning Code, Section 301.3.
8. 32 P.S. 680.4 et seq.; Storm Water Management Act.
9. 53 P.S. 1062; Pennsylvania Municipalities Planning Code, Section 602.
10. 53 P.S. 4000.303.
11. 1851 P.L. 317.
12. *Annenberg v. Commonwealth*, 757 A.2d 338, Pa., 2000; *Stranahan v. County of Mercer*, 697 A.2d 1049, Pa.Cmwlt., 1997; *Israelit v. Montgomery County*, 703 A.2d 722, Pa.Cmwlt., 1997.
13. 16 P.S. 1701.1; County Code, Section 1701.1.

XIII. Relationships with State Agencies

The county, and the chief clerk as its agent, often acts as an agent of the state. State laws and regulations impose certain ministerial duties upon the chief clerk specifically or on a county which generally are then delegated to the chief clerk. When the chief clerk comes into such relationships with state agencies, the need is to assure that a required duty has been properly discharged.

The relationship between chief clerk and the state can, and frequently does, reach far beyond the mechanical/clerical relationships required as part of their mandatory duties. State/county relations comprise a two-way street. Not only does the county and its chief clerk act as agents of the state, but the state and its agencies provide a host of services intended to help county officials accomplish local objectives. A well-informed chief clerk may be the decisive contact between the state and the county in implementing such services locally. The area beyond clerical duties includes the whole gamut of state services and opens for the chief clerk challenging and rewarding relationships with state officials and agencies.

This chapter identifies some of the more common points of contact with state. Depending on the scope of county functions, other areas of contact are likely. This list is far from exhaustive. Visit the state agencies' web sites for web forms and guidance at PAPowerport.com.

Department of Community and Economic Development

DCED has a primary responsibility for state/local relations in Pennsylvania. It is not only the main repository of county and municipal reports and certifications, but also offers many services, programs and activities pertaining to local government. All counties are required to perform specific duties through DCED. In some instances, the duties are specifically imposed upon the chief clerk, while others duties may be imposed on the county generally or on another county official. Frequently, some of the latter type are passed along to the chief clerk for implementation by local practice, or because the experienced chief clerk is most qualified to get the job done. Some of the most significant mandated duties usually delegated to the clerk are listed below.

Annual Audits and Financial Reports. Counties may have one elected controller or three elected auditors. In most counties having controllers, the annual audit report must be filed with the Department before the first day of April.¹ However, in counties of the second class and second class A, controllers must file the annual audit report by the first Monday in May.² In counties having auditors, the annual audit report must be filed with the Department on or before the first day of May.³ It is quite common for chief clerks to perform this duty after the controller or auditors have completed and signed the audit report.

Survey of Financial Condition. On or before March 15 of each year, the county must submit a complete survey of financial condition on a form provided by DCED. The report applies to the county's prior fiscal year. The survey form must be signed by the presiding officer of the county governing body.⁴ Submission of the completed form is often assigned to the chief clerk.

Tax Levying Ordinances. Chief clerks are required to file with the Department copies of all tax-levying ordinances or resolutions within fifteen days after they become effective.⁵

Municipal Borrowing. Before issuing any bonds or notes in excess of \$100,000 or 30 percent of the borrowing base, whichever is less, all local government units must file for approval of the proceedings with DCED.⁶ The Department examines the proceedings for compliance with the debt limit and required procedures. The governing body of any local government may cancel wholly or in part the authorization to incur electoral debt. A certified copy of the resolution and proof of publication must be filed with DCED.⁷

Certification of Local Referendum. Within ten days of any county or municipal referendum occurring in the county, the county board of elections must certify and send the referendum results to the Department.⁸

Department of Transportation

The state, pursuant to the Liquid Fuels Tax Act of 1931, as amended, pays one-half cent of the tax collected on each gallon of liquid fuels into a special fund known as the Liquid Fuels Tax Fund for distribution to counties that meet certain requirements.

PENNDOT distributes the money in this fund to the counties for the county's use on local transportation infrastructure. For counties without county bridges or roads, the funds may be redistributed by the county to municipalities in the county. The amount which a county receives depends on a formula set up in the Act as passed in 1931 and is calculated twice each year by PENNDOT. The money paid to the respective counties is the ratio that the average return made during the three preceding years of each county bears to the average amount returned to all counties for the three preceding years.

Each county must deposit the Liquid Fuels Tax Funds it receives from the Commonwealth into a special fund called the County Liquid Fuels Tax Fund. With one exception, it may not deposit any other money into this fund. The one exception occurs when the county does not have enough money in the special fund to meet the payments called for by its current annual budget for the various highway and bridge purposes permitted by the Act.

Once each year, the county must submit a report showing the receipts and expenditures of all Liquid Fuels Tax Funds received from the Commonwealth. This must be done on forms supplied by the Department of Transportation and shall be submitted by January 31 for the period ending December 31 immediately preceding. The original and one copy of this report shall be forwarded to the Department of Transportation, Bureau of Municipal Services, P.O. Box 8211, Commonwealth Keystone Building, Harrisburg, PA 17120-8211. Should a county fail to prepare and submit a report as required, or contains expenditures not in compliance with the Act, it will receive no further payments until these matters are resolved.

Allocation of County Liquid Fuels Tax Funds to the municipalities in a county is “mandatory” only if on December 31 the unencumbered balance in the County Liquid Fuels Fund is more than the county’s receipts during the preceding twelve months. In the case of a forced distribution, the county commissioners notify each political subdivision in the county to file an application within 90 days for participation in redistribution of a portion of the unencumbered balance. This forced distribution applies only to the unencumbered balance in excess of 50 percent of the receipts for the previous twelve months. The county shall within 120 days of the date of the report make such redistribution to the municipalities, based on 50 percent mileage and 50 percent population.

To illustrate: Assume that your county’s receipts were \$50,000 in the twelve-month period immediately preceding the January report. Also, assume that your unencumbered balance in the January report was \$55,000. Therefore, 50 percent of the receipts for the previous twelve months is \$25,000, which would mean that the county would have a forced distribution of \$55,000 minus \$25,000 equals \$30,000 which must be distributed.

If the total municipal mileage in the county was 500 miles, to obtain a mileage factor it would be necessary to take 50 percent of the amount to be distributed, or \$15,000 and divide it by 500 miles. This would give a mileage factor of \$30 per mile. Similarly, we assume that the population of the county is 10,000. The remaining 50 percent of the balance to be distributed, or \$15,000, is divided by 10,000 to obtain a population factor of \$1.50 per capita.

The mileage factor and population factor is then applied to the mileage and population of each municipality, added together and this is the amount each municipality must receive. If your county is faced with a forced

distribution, the Department of Transportation will make these calculations and notify you how much you must distribute to each municipality.

The rule is that a county's handling of its special fund must be on a year to year basis. However, in an emergency, and if the Department of Transportation approves, a county may obligate itself for the expenditure of its estimated receipts from the County Liquid Fuels Tax Fund for a period of two years. The county will then receive a credit for such expenditures against subsequent receipts. Except for this, no county may carry over a credit balance against future receipts from the state from one year to the next.

A county shall not allocate any money from its special fund to any political subdivision, or for its own use on construction or reconstruction of roads and bridges, until the application and the contracts or plans for the proposed expenditures of funds have been approved by the Department of Transportation (on forms supplied by the Department of Transportation).

County commissioners may also spend money from the County Liquid Fuels Tax Fund for the purpose of installing traffic signals at railroad crossings or other intersections involving roads, highways and bridges and also in compliance with an order of the Public Utility Commission.

All County Liquid Fuels Tax Funds are audited by the Department of the Auditor General in accordance with the requirements of Section 403 of the Fiscal Code. Any questions relating to Liquid Fuels Accounts should be directed to the Bureau of Municipal Services, Pennsylvania Department of Transportation, P.O. Box 8211, Commonwealth Keystone Building, Harrisburg, PA 17120-8211

Report Forms To Be Prepared By The Counties

(Department of Transportation furnishes these forms.)

		WHEN SUBMITTED
Form MS 991	Report of County Liquid Fuels Tax Fund	Annually, January 31
Form MS 992	County Liquid Fuels Tax Fund - Account Expenditures	Annually, January 31
Form MS 993	County Liquid Fuels Tax Fund Account Schedule of Encumbrances	Annually, January 31
Form MS 339	Application for County Aid (Subdivision)	When allocation is agreed by county commissioners
Form MS 340	Application for Expenditure of Liquid Fuels Tax Allocations (County)	For use on county projects only
Form MS 999	Completion Report	When project is completed

Department of Conservation and Natural Resources

The counties of Pennsylvania have many contacts with the Department of Conservation and Natural Resources (DCNR), most of which are initiated by the Department as a result of regulatory matters for which the Department is responsible. An exception to the contacts being initiated by DCNR may be those related to county programs for which DCNR grants are available. Each chief clerk should have an ongoing relationship with both the DCNR regional office and various bureaus in Harrisburg. Some of the DCNR bureaus of possible interest to the chief clerk are included below. Current names and contact information are available on the DCNR web site at www.dcnr.state.pa.us.

Bureau of Forestry

Urban Forestry Program: Offers grants for urban tree planting and maintenance; provides support to community tree associations; produces Sylvan Communities.

Forest Pest Suppression Program: Works cooperatively with local/municipal governments on forest pest insect suppression, particularly the gypsy moth.

Forest Fire Protection: Rural Community Fire Protection Program; Wildland/Urban Interface Guidance Document (used by homeowners, developers, community and development associations, and local governments to develop a plan of action in the event of a wildland fire).

Bureau of Topographic and Geologic Survey

The Bureau of Topographic and Geologic Survey provides geologic and topographic information and guidance to local governments related to landform (slope), specific geographic locations of natural and human-produced features, mineral, fossil energy, and groundwater resources that are found in their underlying rocks and surficial materials.

Bedrock and Surficial Geologic Materials

Geologic Hazards - Landslides: Identifies locations of known landslides and areas susceptible to landsliding where development should be designed to mitigate potential damage.

Geologic Hazards - Sinkholes: Identifies locations of known sinkholes and areas susceptible to sinkhole-related surface collapse where development should be designed to mitigate potential damage.

Geologic Resources - Energy, Minerals

Groundwater Resources: Guidance in the selection of sites for ground-water wells for community water supplies.

Bureau of Recreation and Conservation

The Bureau of Recreation and Conservation administers various grant programs and provides technical assistance. Most of the grant programs are part of the “Keystone Recreation, Park and Conservation Fund” and all are key components of DCNR’s Community Conservation Partnership Initiative.

General Technical Assistance:

Community, Rail-to-Trails, Rivers Conservation, Land Trust, Symms Recreation Trail, Coldwater Heritage Partnership Grant Programs.

Region 1 - Southeast Regional Office in Philadelphia (Counties of Bucks, Chester, Delaware, Montgomery and Philadelphia).

Region 2 - Northeast Regional Office in Scranton (Counties of Berks, Bradford, Carbon, Lackawanna, Lehigh, Luzerne, Monroe, Northampton, Pike, Schuylkill, Sullivan, Susquehanna, Tioga, Wayne and Wyoming).

Region 3 & 4 - Northcentral/Southcentral Office in Harrisburg (Counties of Adams, Bedford, Blair, Cambria, Centre, Clinton, Columbia, Cumberland, Dauphin, Franklin, Fulton, Huntingdon, Juniata, Lancaster, Lebanon, Lycoming, Mifflin, Montour, Northumberland, Perry, Snyder, Somerset, Union and York).

Region 5 - Southwest Regional Office at Pittsburgh (Counties of Allegheny, Armstrong, Beaver, Butler, Fayette, Greene, Indiana, Washington and Westmoreland).

Region 6 - Northwest Regional Office at Erie (Counties of Cameron, Clarion, Clearfield, Crawford, Elk, Erie, Forest, Jefferson, Lawrence, McKean, Mercer, Potter, Venango and Warren).

Heritage Parks Grant Program - Provides technical assistance and grants to designated State Heritage Parks.

Heritage Parks Grants - Western District, Harrisburg Regional Office (Counties of Regions 4,5 and 6 and a portion of Region 3).

Heritage Parks Grants - Eastern District, Scranton Regional Office (Counties of Regions 1,2 and portions of Region 3).

Department of State; Bureau of Commissions, Elections and Legislation

The Secretary of the Commonwealth is the state's chief election officer. Through the State Bureau of Elections, the Secretary determines the forms of nomination petitions and other papers required for the election process, and approves types of voting machines and electronic voting systems for use. Names of all candidates for statewide and non-local offices and all statewide referenda questions are certified to the county boards. Results of elections for offices and referenda above the county level are certified to the Secretary by the county boards. The telephone number of the Bureau in Harrisburg is (717) 787-5280.

The Department also now has under development a central unified registry of electors (SURE), a statewide database that is intended as the backbone of county voter registration systems. SURE is state-developed and state-maintained and, once complete, will be the official statewide registration system.

Below is a list of important days in the election process. The dates of course will vary each year, and are available at www.dos.state.pa.us.

- First day to circulate and file nomination petitions.
- Last day to circulate and file nomination petitions.
- First day to circulate and file nomination papers.
- Last day for withdrawal by candidates who filed nomination petitions.
- Last day to register before the primary.
- Last day to apply for a civilian absentee ballot.
- Last day for County Boards of Elections to receive absentee ballots.
- GENERAL PRIMARY.
- First day to register after primary in Philadelphia.
- First day to register after primary in all municipalities other than Philadelphia.
- Last day to circulate and file nomination papers.
- Last day for withdrawal by candidates nominated by nomination papers.
- Last day for withdrawal by candidates nominated at the primary.
- Last day to register before the November election.
- Last day to apply for a civilian absentee ballot.
- Last day for County Boards of Elections to receive absentee ballots.
- GENERAL ELECTION.
- First day to register after November election in Philadelphia.
- First day to register after November election in all municipalities other than Philadelphia.

Pennsylvania Department of Public Welfare

The Department of Public Welfare administers a wide range of human services programs for low-income and disabled Pennsylvanians. It is the Commonwealth's largest public agency, with more than 23,000 employees and a budget exceeding \$13 billion annually.

In addition to directly administering programs like cash assistance, food stamps and medical assistance, the department distributes state and federal grants to counties to provide assistance to people with a variety of special needs. These grants include funds to provide community programs for people with mental illness and mental retardation, housing for homeless individuals and families and services to abused and neglected children and their families. The department also provides direct institutional care for retarded persons who are referred through county-based programs and court systems.

Community mental health and mental retardation funds are channeled through single and multi-county MH/MR agencies, which typically contract with private providers for professional services. The county agencies directly operate base service units, which assess client needs and refer them to contract agencies for services, including inpatient care, partial hospitalization, sheltered workshops, residential care and in-home family-based programs.

Services for homeless individuals and families are funded through grants to county housing authorities, which provide housing and case management to people using their services. Some county agencies also subcontract with private providers for similar services.

Each county is responsible for providing protective and rehabilitative services to abused and neglected children and their families. These programs, funded primarily through state grants with county matches, are designed to protect children from harm and reunite families whenever possible. Children and youth agencies also provide foster care and adoption services for children whose families cannot care for them.

County commissioners are responsible for reporting services and expenditure data for each service category. These reports are typically due on a quarterly and annual basis and are prepared by the administrators of the respective service agencies. Specific requirements for reports and audits are contained in legislation and regulations governing each program.

Pennsylvania Department of Aging

Counties work with the Department of Aging on a variety of senior programs, largely through the county-based or private Area Agencies on Aging.

Pennsylvania Department of Agriculture

The Department of Agriculture is counties' partner in 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, and on weights and measures.

Pennsylvania Department of Environmental Protection

Counties interact with the Department of Environmental Protection in a number of areas. Counties have responsibility for solid waste planning, which includes Departmental funding and plan approval. 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.

Pennsylvania Department of Health

Counties' primary relationship with the Department of Health is in provision of drug and alcohol services, either directly or through third parties. Only a handful of counties operate public health systems.

References

1. 16 P.S. 1720; County Code, Section 1720.
2. 16 P.S. 4920; Second Class County Code, Section 1920.
3. 16 P.S. 1721 (c); County Code, Section 1721 (c).
4. 53 P.S. 11701.123(a); Financially Distressed Municipalities Act, Section 123.
5. 71 P.S. 965; 1966 P.L. 1902.
6. 53 Pa. C.S.A 8001 Local Government Unit Debt Act, Section 8001.
7. 53 Pa. C.S.A 8047 Local Government Unit Debt Act, Section 8047.
8. 53 P.S. 966.3; 1967 P.L. 351.

VX. Innovative Approaches to County Government

Home Rule

Adoption of a new local government article to the Pennsylvania Constitution in 1968 guaranteeing the right of all Pennsylvania counties and municipalities to adopt home rule charters and exercise home rule powers was hailed as a watershed in the history of local government in Pennsylvania. Proponents of home rule saw local control as opening a new era of effective and responsive local government. Opponents warned of risky 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 state law, as set forth by the General Assembly, the County Code as the main example, to a local charter, adopted and amended by the voters. This basic point has been explained by government study commissioners 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 and in state laws 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 only act 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 Law¹ establishes the procedure for adoption of a home rule charter. The voters of a local jurisdiction elect a government study commission, 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 which is 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 certain subject areas, home rule municipalities are restricted to powers set forth in state law. In addition, home rule municipalities are subject to uniform state laws applicable in every part of the Commonwealth.

As of June, 2003, the voters of six counties had approved home rule charters for their county. Those approving charters: Allegheny, 2000, Delaware, 1975, Erie, 1976, Lackawanna, 1976, Lehigh, 1975 and Northampton, 1976. The Philadelphia charter adopted in 1951 governs its consolidated city-county government.

Since the early 1970’s, many other counties have considered home rule but, for various reasons, the efforts failed.

The changes in governmental structures brought about through the charter adoption in the six counties range from minimal in Lackawanna County to executive-council governments in Allegheny, Erie, Lehigh and Northampton counties. The hallmark of the executive council form of government is a “strong” elected executive with broad administrative appointment and veto powers. In other words, there is a defined separation of executive and legislative authority and function.

In Lehigh and Northampton counties, there are nine part-time councilmembers; five elected at large and four by district in Northampton, and four at large and five by district in Lehigh. Erie County elects seven by district and Delaware, five at large. Allegheny County elects two at large and thirteen by district. There were also changes in row offices in the charter provisions. In Northampton County all elected row offices except district attorney and controller were eliminated, and in Delaware County, all were made appointive except controller and register of wills. Examples of other charter provisions in the five counties include mandates for a personnel merit system and modern financial system requirements such as capital budgeting and CPA post audit.

County Exercise of Municipal Powers. A concern raised by the possibility of county home rule was the prospect of a home rule county government taking over traditional municipal functions. The Home Rule Law includes a provision protecting local units from counties taking over existing municipal functions.² This provision has not been used. County home rule charters do contain provisions preserving the powers of municipal units, usually as part of their general powers clause.

DCED publishes and distributes a publication on home rule, available on-line by accessing www.newPA.com or by contacting.

Department of Community and Economic Development
Governor's Center for Local Government Services / Publications
400 North Street, 4th Floor
Commonwealth Keystone Building
Harrisburg, PA 17120-0225
(888) 223-6837

Fax: (717) 783-1402

E-mail: ra-dcedclgs@state.pa.us

Intergovernmental Cooperation

Intergovernmental cooperation is a key to success in the complex world of modern local government. Counties, cities, boroughs and townships must look to their neighbors as well as themselves in order to maintain viable effective and efficient governments able to meet the rising expectations of our citizens.

The Constitution of the Commonwealth recognizes this need. Article IX, Section 5 provides: "A Municipality . . . may . . . cooperate or agree in the exercise of any function, power or responsibility with . . . one or more other . . . municipalities." Counties are included in the term "municipality" in the constitution. This constitutional authorization, as implemented by the Intergovernmental Cooperation Law³ provides the broadest possible authorization for local governments to work together. With more than 2600 local governments, Pennsylvania has more municipalities, and more opportunity for intergovernmental cooperation, than almost any other state.

Why is intergovernmental cooperation a key to success in local government?

The answer is found in three areas of governmental concern. The first is the shared interest or interdependence of the citizens who make up our communities. The second is economy, the economies of scale that can be accomplished by increasing the size or extent of governmental activities. The third is the effectiveness which can be achieved when governmental activities and programs are sufficiently well developed. When interdependence, economy and effectiveness are considered as a whole, intergovernmental cooperation clearly is the future for success in local government.

Pennsylvania counties are involved in a wide range of cooperative efforts with each other and with municipalities within the county. Examples include Lebanon and Union counties providing code enforcement

for county boroughs and townships; Lancaster County organizing and participating in joint purchasing with its municipalities; Butler and Armstrong counties sharing a finance director under DCED's Circuit Rider Program; Erie County's extensive review and planning for a wide range of municipal services within the county; several instances of countywide sewage enforcement services; Indiana County's municipal services authority providing water and sewer services for nineteen communities; and a number of solid waste cooperative efforts on a countywide basis.

Lawrence and Beaver were the first Counties to create a Watershed Planning Specialist shared position. DCNR and DCED began to fund the position in 2008, and may fund it until 2012. The position successfully splits time between the 2 counties every week. Also, Lawrence and Mercer Counties share staff to operate their recycling and solid waste offices. Lawrence County staff will serve as the staff for Mercer County's R/SW program.

There is also a strong role that county officials can play in encouraging, promoting and helping city, borough and township officials organize cooperative activities. Several counties have done this, for example, the Bradford County Planning Commission has been instrumental in the formation of two COGs (Councils of Government) covering the entire county; the Lancaster County Planning Commission is helping a number of townships in southern Lancaster County to set up a full-time information office for citizens by including a county planner to staff the office several days a week; and particularly Allegheny County, where county funds have been appropriated to help provide full-time staff for COGs in the county.

Two current examples of intergovernmental cooperation receiving substantial support from a number of counties are in multimunicipal planning and joint codes enforcement. Counties are providing technical and in some cases financial support to groups of municipalities to develop regional comprehensive plans in accordance with Article XI of the Municipalities Planning Code. Counties, particularly in rural parts of the Commonwealth, are also providing support to county-wide or sub-county efforts to form regional code enforcement entities as a result of Act 45 of 1999, the state Uniform Construction Code. For more information on either of these examples, contact the Governor's Center for Local Government Services. DCED has also prepared a comprehensive publication on the subject of local cooperation, *Intergovernmental Cooperation Handbook*. The publication is available on-line by accessing www.inventpa.com. For copies contact:

Department of Community and Economic Development
Governor's Center for Local Government Services
400 North Street, 4th Floor
Commonwealth Keystone Building
Harrisburg, PA 17120-0225
(888) -223-6837
Fax: (717) 783-1402
E-mail: ra-dcedclgs@state.pa.us

Cameron County Municipal Government Feasibility Project

Cameron County is an eighth class county located in the north-central portion of the Commonwealth of Pennsylvania. The county has seven municipal governments consisting of five townships of the second class and two boroughs.

In 1999, the Cameron County Commissioners embarked on a project designed to assess the feasibility of a countywide consolidation of the municipal governments and to establish a single county/municipal government. This effort has required a significant amount of planning, education and communication among the residents and elected officials.

The Cameron County Commissioners see a continual need to improve county and municipal government. The objective of this study effort is to facilitate improved and more cost-effective public services for the taxpayers and to support future economic and community development activities with the county. The process has involved an assessment of the benefits, costs, legal steps and political feasibility. If determined to be feasible, discussions will continue towards voter referendum and, potentially, the actual development of a new municipal and county government.

The authority to undertake such an innovative approach as this is derived from the Pennsylvania Constitution, the Municipal Consolidation or Merger Act, PA Act 90 of 1994 and the Home Rule Charter and Optional Plans Law, PA Act of 1972. Material on the subject can be found in the *Home Rule in Pennsylvania* manual produced by the Governor's Center for Local Government Services.

Lebanon County Planning Department

After years of operation as a County Planning Commission, the Lebanon County Planning Department was created in 1970. In addition to the routine planning activities done by typical county planning agencies, Lebanon County decided to branch out and develop a land use enforcement program on behalf of its local municipalities.

This initiative of the Lebanon County Planning Department has resulted in specific enforcement activities that include:

1. Zoning Enforcement
2. On-Lot Sewage Enforcement
3. Building Code Enforcement, and
4. Subdivision and Land Development reviews

At the present time, the Planning Department is enforcing individual municipal zoning ordinances for 19 of the 26 municipalities in the county and providing on-lot sewage permit enforcement in 22 municipalities. The county's building code program enforces regulations in 10 municipalities, with more expected in the near future. In 1999, 1500 zoning permits, 165 sewage permits and 502 building permits were issued. All but six municipalities have delegated their subdivision and land development review to the county, resulting in approximately 200 reviews per year.

Through the efforts of a knowledgeable staff and an efficient, centralized service, the Lebanon County Planning Department is available to issue permits, answer questions and provide resources to the community. Furthermore, while reasonable in nature, the permit fees collected have allowed the department to become self-sufficient and require no fiscal support from the local municipalities it services.

The Lebanon County Planning Department has a proven record of expanded, cost-effective and sound enforcement responsibilities for the past 30 years. According to William Kurtz, Executive Director, "this innovative initiative has withstood the test of time."

Union County's Archival Repository

Utilizing a secure room in the basement of the courthouse, Union County officials have established an archival repository for the county's historically valuable records. The county has renovated an 860 square foot room to serve as an archives and has purchased steel shelving designed to efficiently store approximately 2,500 cubic feet of records or the equivalent of 7,500,000 pages. Half of the shelving will be used to store inactive short-term records at an off-site location about two miles from the courthouse. A staff member of the commissioners' office will serve as records manager and will oversee the operation of the storage areas.

Under the supervision of a Pennsylvania State University archivist, the records processor will conduct record orientation, transfer records from the office of origin to the preparation site, inventory records, reinstate the original order and unfold documents and place them in acid free storage materials.

This project provides the public, historians and government officials with efficient retrieval of Union County's naturalization, election return, and road and bridge papers. It will also provide control and safety of the records through archival arrangement and preservation and serve as a model project for extending the county's archival program.

There are many county documents that provide important information on the early social, political, administrative and commercial development of Union County. These documents are in danger of early destruction due to improper packing and storage. This project properly organizes, and flat-folds these precious documents in acid-free folders and acid-free boxes to ensure preservation.

Centre County Records Facility

The purpose of the Centre County Records Facility is to ensure proper storage and accessibility of inactive county records. Inactive records are those which are no longer needed for day to day operation of an office but which must be retained permanently or for an extended period of time. For example, records which are referred to only once per month per file drawer have become inactive.

County officials who transfer records to the records facility maintain legal authority over the records, while the facility staff maintains responsibility for managing and protecting them. All records in the facility will be made available to authorized county personnel upon request. The originating office is responsible for labor, materials and equipment associated with the transfer of records. A records coordinator should be appointed in each department to ensure the proper preparation and transfer of office records. The preparation of records includes inventorying, boxing and labeling records. This responsibility cannot be taken lightly. If not conducted properly and continuously, a department's records may be misfiled and will not be available or properly preserved for business or archival purposes.

Requests for records may be made by phone, memo or personal visit. A reference request form must be submitted to receive records. The records will be retrieved and brought to the requestor, who signs and dates the request form to acknowledge receipt of the records. The records facility retains the last requestor's name on file. Monthly, offices will be notified of retrieved files or boxes that have not been returned.

The transfer and storage of records to the records facility is not a substitute for disposal. When the retention period for a record series has ended, the records facility begins the disposal procedures that are mandated by state regulations.

The records facility staff prepares a records disposition certification request in accordance with the County Record Retention and Disposition Schedule. The request is forwarded to the office of origin for signature by the department head or elected official and then sent to the Pennsylvania Historical and Museum Commission's Division of Archives and Manuscripts for approval. Upon return of the approved Disposition Certificate, the records are destroyed and a copy of the certificate is permanently retained by the records facility and the office of origin.

Cumberland County Stresses Internal/External Public Relations

The Cumberland county administrator, and members of a volunteer "government career group" go into schools and tell students about county government, encourage them to get interested in local affairs and maybe even steer a few toward government jobs. "This, basically, would be planting the seeds of interest in local

government,” the administrator says, “The best place to start is in the schools, before these youth become voters and taxpayers.”

A big problem is the negative perception that people have about government in general. People go into a meeting or a local government office or the courthouse and they expect a conflict. They have an idea of incompetent bureaucrats and politicians who only are interested in special interest groups.

The plan is to have the volunteer team go to each high school, maybe for half a day, once a year. The group would explain how government works, what jobs are available in the field and what types of business county and municipal officials are trying to attract. The last bit of information would let the students know what skills they will need if they want to work in their county.

Another effort is directed toward the children of the county, several hundred of whom troop through the Cumberland County Courthouse each year on school field trips. The county administrator enjoys seeing all those young folks coming in, but he was afraid they were leaving the building on Carlisle square with little more than pleasant, but fleeting, memories. The result is a four-page Cumberland County Study Activity Book that the commissioners’ office has been handing out to children who tour the courthouse.

“It’s encouraging that the teachers are bringing the kids to the courthouse. We want to take that interest the schools are starting and embellish it,” the administrator said. “This is something they can take away, something they can leave the courthouse with, something they’ll remember.”

Internal public relations in Cumberland County is enhanced through the *Cumberland County News*, distributed to all employees several times a year. It is billed as “News for, about and by the employees of Cumberland County.” One eight-page edition included a list of new employees and important personal milestones, a review of the Agriculture Extension Office, an employee-submitted recipe, an article entitled “A Morning in the Day of a County Commissioner”, an article on the employee vision plan, a county-related crossword puzzle and a county recycling plan notice.

Berks County Intergovernmental Program

The Berks County Commissioners have undertaken a bold approach to foster intergovernmental cooperation within their county. Building on previously established joint comprehensive planning policies, the county has initiated a *Regional Zoning Incentive Policy* which will provide 100 percent reimbursement of the costs associated with the preparation of joint zoning ordinances for two or more contiguous municipalities. Ordinances must conform with Act 247, including the formation of a joint zoning board and be consistent with the county’s comprehensive plan.

The county has also provided funds for two or more municipalities who desire to designate urban growth boundaries for their region. This *Urban Growth Boundary Demonstration Program* requires participating municipalities to work in close cooperation with the County Planning Commission. Using a regional approach, boundaries will be designated and an implementation plan describing how the municipalities will enforce their growth boundaries will be a requirement of the program.

Additional incentives being developed include the *Intergovernmental Cooperation Incentive Program*. Through this measure, every aspect of county government will be explored, including such things as the distribution of liquid fuel funds, increased CDBG incentives, highway capital program priorities, and the purchase of agriculture easements. The county will also convene a panel of state legislators and local elected and appointed officials. This *Future of Local Government in Berks County Task Force* will identify the issues considered to be of strategic importance for local government in the 21st century. Other agencies such as the Governor’s Center for Local Government Services, Albright College, Penn State University, the Pennsylvania Economy League and the Chamber of Commerce will be participating in this long-term visioning process.

Through the creation of the *Berks County Intergovernmental Network*, the county's longer-term plans are to establish a computer network that will link all local municipalities, authorities and school districts. This will be in concert with the county's internal efforts to link all of their agencies and departments.

To assist with the success of these initiatives and to foster continued cooperative activities and pilot projects between local governments, the county has created the *Joint Public Ventures Fund*. In this fund, the county will match, dollar for dollar, contributions from the private sector. With the creation of a new *Intergovernmental Affairs Planner* position within the county planning office, continued support and assistance will be available for these initiatives and to any municipality willing to explore an intergovernmental approach to planning, zoning, infrastructure and municipal service delivery projects.

References

1. 53 P.S. 1-101 et seq.; Home Rule Charter and Optional Plans Law.
2. 53 P.S. P.S. 1-303; Home Rule Charter and Optional Plans Law.
3. 53 P.S. 481.

Appendix A

Other Sources of Assistance

County Commissioners Association of Pennsylvania
17 North Front Street
Harrisburg, Pennsylvania 17101
717-232-7554 Fax: 717-232-2162
<http://www.pacounties.org/>

American Society for Public Administration
1120 G. Street, N.W.
Washington, D.C. 20005
202-393-7878
<http://www.aspa.org/>

National Institute of Governmental Purchasing
151 Spring Street
Herndon, Virginia 20170
703-736-8900 or 800-367-6447
<http://www.nigp.org>

National Association of Counties
440 First Street, N.W., 8th Floor
Washington, DC 20001
202-393-6226
<http://www.naco.org>

International City Management Association
777 North Capitol Street, N.E., Suite 500
Washington, D.C. 20002-4201
202-289-ICMA (4262)
<http://www1.icma.org>

Government Finance Officers Association
180 North Michigan Avenue, Suite 800
Chicago, Illinois 60601
312-977-9700
<http://www.gfoa.org>

International Institute of Municipal Clerks
1212 North San Dimas Canyon Road
San Dimas, California 91773-1223
909-592-4462 or 800-251-1639
<http://www.iimc.com>

International Personnel Management Association
1617 Duke Street
Alexandria, Virginia 22314
703-549-7100
<http://www.ipma-hr.org>

Appendix B

County Contracts Statutory Requirements of the County Code

1. Contracts for services and personal property
 - a. \$10,000 or less – by note or memorandum, in writing, signed by commissioners or their designee. 16 P.S. 1801(a).
 - b. For contracts exceeding \$4,000 but less than \$10,000 written or telephonic price quotations from at least three qualified and responsible bidders and a written record maintained. 16 P.S. 1801(b)
 - c. More than \$10,000, 16 P.S. 1802
 - (1) Written contracts. *16 P.S. 1802(a)*
 - (2) Advertisement for bids – due notice in one newspaper of general circulation, published or circulating in the county, at least two times at intervals of not less than three days where there are daily newspapers of general circulation, or once a week for two successive weeks in the case of a weekly newspaper. First ad shall be published not less than ten days prior to date fixed for opening of bids. In cases of emergency, bidding requirements can be waived, but emergency must be declared and stated by resolution of the commissioners. *16 P.S. 1802(b)*
 - (3) Award to lowest responsible and responsive bidder. *16 P.S. 1802(b)*
 - (4) Receipt and opening of bids – bids must be received by controller, or if there is no controller, then by the chief clerk, in sealed envelopes, opened publicly at the time and place specified in the advertisement, by commissioners or their designee, in the presence of controller or the chief clerk. Controller or chief clerk must keep a record of all bids and awards and only pay on contracts made accordingly. *16 P.S. 1802(c)*
 - (5) Amount of contract shall be entire amount county pays to bidder. *16 P.S. 1802(d)*
 - (6) Acceptance of bids may only be made by public announcement at meeting when bids are opened, or at subsequent meeting, which time and place are announced at bid opening; or at a subsequent meeting which time and place are announced at meeting originally held for award. At third meeting, commissioners must either award the contract or reject all bids. All contracts must be filed with the controller. *16 P.S. 1802(e)*
 - (7) Cash, certified check or bid bond of a reasonable amount may be required, forfeited if successful bidder fails to supply performance bond or execute contract. *16 P.S. 1802(f)*
 - (8) Performance bond in amount sufficient to the commissioners must be supplied within 30 days (or shorter period as prescribed by commissioners) for any contract which involves the construction, erection, installation, completion, alteration, repair of or addition to any public work or improvement of any kind. Bond for services and contracts for labor and materials delivered on a periodic basis may be computed on the expected average value for one or more months at the discretion of the commissioners. *16 P.S. 1802(g)*
 - (9) No advertising, bidding or price quotations for contracts in excess of \$10,000 for:
 - (a) Maintenance, repairs or replacements for water, electric, light or other public works that are not new additions, extensions or enlargements of existing facilities and equipment. A bond may be required.
 - (b) Improvements, repairs and maintenance of any kind, made or provided through county employees. This does not apply to construction materials used in a street improvement.
 - (c) Patented and manufactured or copyrighted products.

- (d) Insurance policies, surety company bonds, public utility service under P.U.C. tariff,
- (e) Professional services - medical, legal, registered architects, engineers, CPAs, or other personal service involving professional expertise.
- (f) Those involving contracts entered into by nonprofit cooperative hospital service associations for hospitals and nursing homes which are part of the institutional district or which are owned by the county, operated by the county or affiliated with the county by the purchasing of, or participating in contracts for, materials, supplies and equipment. *16 P.S. 1802(h)*
- (g) Contracts with any public body defined as the federal government, the Commonwealth of Pennsylvania, any other state, a political subdivision or their agencies.
- (h) Contracts exclusively involving construction management services
- (i) Those involving computer software

(10)

County commissioners may enter into contracts for equipment and services related to technology and information systems on the basis of best value procurement. *16 P.S. 1802(i)*

(11)

Compliance with Steel Products Procurement Act for all contracts for construction, reconstruction, alteration, repair, improvement or maintenance of public works. *16 P.S. 1802(j)*

(12)

No evasion of advertising and bidding requirements by splitting into a series of contracts, each under \$10,000, commissioners are personally subject to surcharge for any loss sustained. *16 P.S. 1803*

2. Contracts for construction and alteration of county buildings

a. Contracts for more than \$10,000. *16 P.S. 2317*

- (1) Separate bids if entire cost of work is more than \$10,000, for erection, construction and alteration of any public building. The county may have only the following separate specifications: plumbing, heating, ventilating, electrical work, elevators and moving stairs and one complete set of specifications for all other work to be done. Heating and ventilating may be combined if there is air conditioning.
- (2) Must award contracts to lowest responsible bidder for each of the above branches, including balance of the work in addition to plumbing, heating, ventilating and electrical work and elevators and moving stairs.

- b. For construction contracts for amounts between \$25,000 and \$100,000, a payment bond for all labor and material for not less than ten percent nor more than 100 percent of contract price (amount prescribed by county). (This section applies unless Public Works Contractors' Bond Law applies). *16 P.S. 2318(a)*.
- c. In all construction contracts or contracts involving the employment of labor, the commissioners shall require proof of worker's compensation insurance and the contract must contain clauses that the contractor accepts the provisions of the Workers' Compensation Act and that the contractor will insure liability thereunder or file a certificate of exemption from the Department of Labor and Industry. *16 P.S. 2319*
- d. Whenever the county commissioners propose to build or repair a bridge upon the line between two adjoining counties costing more than \$10,000, the advertising shall be done in each of the counties and a copy of the plans and specifications shall be kept in the commissioners' office of each county. *16 P.S. 2670*

Other Statutory Requirements

1. Public Works Contractor's Bond Law, *8 P.S. 191 et seq.*
 - a. Applies to all public bodies and contracts in excess of \$5,000 for construction work, including repair contracts and highway work. *8 P.S. 193(a)*
 - b. Before awarding contract, contractor must furnish payment and performance bonds, each at 100 percent of contract amount.
 - c. Bonds must be executed by one or more surety companies legally authorized to do business in Pennsylvania.
 - d. Public body must furnish certified copies of payment bonds upon request and affidavit. *8 P.S. 196(a)*.
 - e. Public body may not require that bonds be furnished by a particular surety company or through a particular agent or broker. Violation is a misdemeanor. *8 P.S. 198(a)*

2. Prevailing Wage Act, *43 P.S. 165-1 et seq.*
 - a. Requires the payment of not less than the prevailing minimum wages, as determined by the Secretary of Labor and Industry, to all workers employed on public work construction jobs where total project estimated cost is in excess of \$25,000. Maintenance work is excluded.
 - b. Contract specifications must contain determination issued by Secretary. *43 P.S. 165-3*
Notice must reference prevailing wages requirement. *43 P.S. 165-4*
 - c. Public body must request determination of prevailing minimum wage rates from Secretary.
 - d. If predetermination is challenged, public body must extend bid date until 5 days after final determination, and must give notice thereof in a special bulletin to all interested parties, as well as notice of final determination.
 - e. Public body must require written certifications from contractors and subcontractors before final payments.

3. Withdrawal of Bids Law. *73 P.S. 1601 et seq.*
 - a. Applies to all public contracts for construction, services, lease of real or personal property except highway work. *73 P.S. 1601 et seq.*
 - b. Bidder may withdraw bid after bid opening with out forfeiting bid security if bidder made a clerical mistake such as arithmetical error or unintentional omission of substantial quantity of work made directly in compilation of bid, not judgment mistake. *73 P.S. 1602*
 - c. Bidder must give written notice of claim of right to withdraw within two business days after bid opening.
 - d. Withdrawal of bid must not result in awarding of contract on another bid of same or related bidder.
 - e. Withdrawal bidder may not perform any work, either directly or indirectly, without written approval of contracting body.
 - f. If bid is withdrawn, contracting body may either award contract to next lowest bidder or may reject all bids and rebid. *73 P.S. 1603*
 - g. If re-bid, withdrawing bidder must pay costs of rebidding, e.g., printing, advertising, postage.
 - h. Public body can contest right to withdraw, but must hold a hearing within ten business days and issue an order within five days of hearing. Must have court stenographer. Order can be arbitrated. If public body wins, the bid bond is forfeited. *73 P.S. 1604*
 - i. No liability or surcharge on public body or public official for allowing withdrawal of bid, absent fraud or collusion. *73 P.S. 1605*
 - j. Anyone who allows withdrawn bidder to supply labor or material or perform any subcontract for anyone performing work on the project without approval of contracting body is guilty of misdemeanor, up to \$25,000 fine, one to two years imprisonment. *73 P.S. 1606*

4. Anti-Bid Rigging Act, *73 P.S. 1611 et seq.*
 - a. Prohibits bid rigging in all contracts and subcontracts for equipment, goods, services, materials, construction or repair. 73 P.S. 1613(a)
 - b. Public body may pursue action for treble damages and attorneys' fees. 73 P.S. 1614(c)
 - c. Statute of limitation is four years from date of discovery of conduct, with a maximum of ten years from date contract was signed. 73 P.S. 1614(d)
 - d. Public body may issue rules and regulations and regulations to debar violations. 73 P.S. 1615
 - e. Public body may require non-collusion affidavits, which must be set forth in invitation to bid. See specific language of 73 P.S. 1617 for required language of the affidavit. If affidavit not provided when required, this may be grounds for disqualification of bid.

5. Award and Execution of Public Contracts Law, *73 P.S. 1621 et seq.*
 - a. Applies to public contracts for construction, reconstruction, alteration or repair of public works, in excess of \$50,000, where performance and payment bonds are required by Public Works Contractors' Bond Law. 73 P.S. 1621
 - b. Time for award of contracts — must be awarded within 60 days of bid opening (120 days if delayed by sale of bonds or approval of government agency). 30-day extensions allowed with mutual written consent. 73 P.S. 1622
 - c. Must execute contracts within 30 days of award, and public body must issue a notice to proceed unless extended by mutual written consent. 73 P.S. 1623
 - d. Failure to comply releases bidder, and entitles bidder to return of bid security. 73 P.S. 1624
 - e. Retainage, 73 P.S. 1625
 - (1) Maximum ten percent until contract is 50 percent complete. 73 P.S. 1625(a)
 - (2) When 50 percent complete, one-half of retainage to contractor is returned (unless valid reason for greater withholding). Architect/engineer must approve application for payment.
 - (3) After 50 percent completion, maximum retainage is five percent. (If dispute with another prime contractor, one and one half times amount of possible liability may be withheld, unless bond is posted). 73 P.S. 1625
 - f. Contractor must pay subcontractors within 20 days of receipt of payment. 73 P.S. 1626
 - g. If retainage, then contract must provide for architect/engineer to make final inspection within 30 days of receipt of contractor's request for final inspection and application for final payment. If substantially complete, final payment within 45 days after inspection, less one and one half times amount for minor uncompleted items. See statute for specific requirements of architect/engineer. 73 P.S. 1627
 - h. Interest on final payment from date due and payable to the contractor. 73 P.S. 1628
 - (1) Six percent if no retainage
 - (2) Ten percent if retainage
 - (3) If financed by bonds, then ten percent or rate on bond, whichever is less.

6. Bid Advertisements and Non-Receipt of Bids, *73 P.S. 1641*
 - a. Applies to political subdivisions, municipal authorities and transportation authorities.
 - b. If public body advertises for bids on an item as required by law and receives no bids, they must rebid.
 - c. If no bids are received the second time, then public body may purchase or enter into contracts for the purchase of an item within 45 days of date of second advertisement.

7. Steel Products Procurement Act, *73 P.S. 1881 et seq.*
 - a. Applies to all public contracts for construction, reconstruction, alteration, repair, improvement or maintenance of public works.
 - b. Requires contractual provision that any steel products or supplies must be made from steel made in U.S. If product contains U.S. and foreign steel, it must be least 75 percent domestic.
8. Motor Vehicle Procurement Act, *73 P.S. 1891 et seq.*
 - a. Applies to cars and self-propelled farm and construction equipment. 73 P.S. 1892
 - b. Public bodies must procure only motor vehicles which are manufactured in North America, i.e., substantial majority of principal components are assembled into final products in assembly plant in North America.
 - c. Contract documents must contain appropriate provision.

Case Law

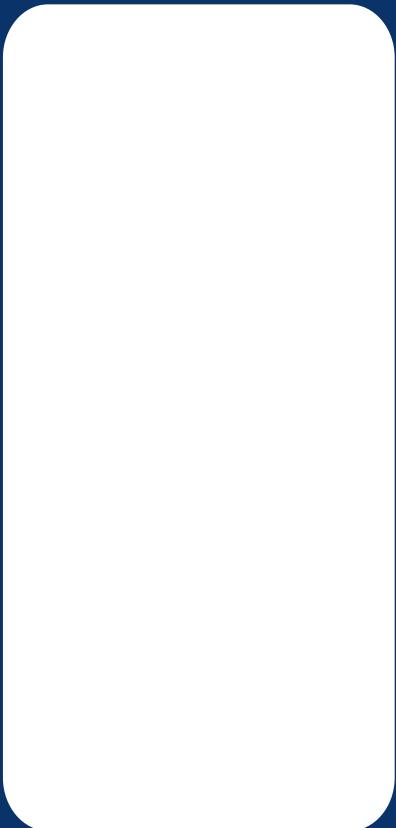
1. Specifications
 - a. Common standard – bidders must submit proposals on an equal basis; must have previously prepared specifications, freely accessible for all competitors, as sole basis for bids. Common standard can be destroyed by ambiguous specifications, proprietary specifications or negotiations.
 - (1) Ambiguous specifications - material changes must be published.
 - (2) Proprietary specifications, which have the effect of placing unnecessary obstacles in the way of those who may want to bid, are illegal. Can use “or equal” specifications.
 - (3) Negotiation with bidders is not allowed.
 - b. General Conditions – change AIA or other general conditions to more favorable terms.
 - c. Required provisions – there are many contract provisions which are required by law. See outline above.
2. Bids
 - a. Responsiveness of bid
 - (1) Bid must be responsive in all material aspects to terms and specifications of invitation to bid. If not, then it is not considered to be a bid at all, but merely an offer on changed terms, which cannot be accepted.
 - (2) Minor irregularities can be waived.
 - (3) If the differing factor affects price, quality or quantity, it is generally material.
 - (4) Non-responsive bids may not be confirmed after bid opening.
 - (5) No extrinsic evidence is allowed to determine responsiveness; it must be determined from the face of the bid.
 - b. Late bids may not be accepted.
3. Lowest “responsible” bidder
 - a. Lowest bidder who submits a responsive bid.
 - b. Responsibility is determined by the following factors; judgment, skills, promptness, honesty, financial standing, reputation, experience, resources, facilities, past history of adherence to plans and specifications, availability, efficiency.
 - c. Public body must complete a full investigation before rejecting a low bidder on the basis of lack of responsibility.
 - d. If lowest bidder is not responsible, public body may award to next lowest bidder.

- e. Invitation to bid may require submission of information with bids to establish responsibility, or such information can be supplied after bid opening.
- 4. Rejection of all bids allowed if in public's best interest, absent fraud or collusion.
 - 5. Bid Protest cases
 - a. Taxpayer has standing.
 - b. No award to disappointed bidder, only injunction against award to improper bidder, and then rebid.
 - c. Even if there is no statutory requirement for bids, if the public body invites bids, it must award to lowest responsible bidder.

Pennsylvania Department of Community & Economic Development
Governor's Center for Local Government Services

Commonwealth Keystone Building
400 North Street, 4th Floor
Harrisburg, PA 17120-0225

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APPROVED POLY



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DEPARTMENT OF COMMUNITY
& ECONOMIC DEVELOPMENT