



AG & OTHER OPINIONS: Miscellaneous

Topic: Salary Changes & the applicability of Article IV, Section 26 of the Wisconsin Constitution

In March of 2009, a question was posed to the Legislative Reference Bureau regarding whether Article IV Section 26 of the Wisconsin Constitution applies to county officers. Mark E. Shovers, Managing Attorney of the Legislative Reference Bureau, replied:

Based on the research I have conducted, I do not believe that article IV, section 26 of the Wisconsin Constitution applies to county officers. This opinion is based on several state Supreme Court decisions, and an opinion of the Attorney General.

The clearest statement on this issue is found in *State ex rel. Sachtjen v. Festge*, 25 Wis. 2d 128 (1964). In this case, the court held that ". . . the term "public officer" as used in sec. 26, art. IV, Wis. Const., has not been deemed to [*134] include every officer who fulfils the broad definition of the term, and that by consistent exclusion of officers of primarily local responsibility, "public officer" in sec. 26 has been interpreted virtually as if it read "state public officer." Indeed this court has, in three decisions on the subject, used the term "state officer." (citations omitted.) See *Sachtjen* at 133-134.

In *Columbia County v. Board of Trustees of Wisconsin Retirement Fund*, 17 Wis. 2d 310 (1962), the court flatly stated that "The Wisconsin constitution, art. IV, sec. 26,⁷ does not apply to counties." See *Columbia County* at 326. Although the general holding of this case has been superseded by statutory changes (See *Wis. Prof. Police Assoc. v. Lightbourn*, 243 Wis. 2d 512, 570 (2001)), the statement regarding the constitutional provision's nonapplicability to county officers does not seem to have been affected.

For a general discussion of the history of this provision and why the state Supreme Court has consistently applied it only to state officers and not local officers, see *Sachtjen*, generally, *State ex rel. Sullivan v. Boos*, 23 Wis. 2d 98 (1964), and a 1983 opinion of the Attorney General, 72 OAG 45, 46 (1983).

Topic: Statutory Powers Can't be Altered by Board

Op. Att'y Gen. 40, 41 (1990) It is well settled that "statutory powers and duties conferred upon a county officer cannot be narrowed, enlarged, or taken away by a county board unless the legislature has authorized such action." *Harbick v. Marinette County*, 138 Wis. 2d 172, 179, 405 N.W.2d 724 (Ct. App. 1987). See also *Reichert v. Milwaukee County*, 159 Wis. 25, 35, 150 N.W. 401 (1914); 24 Op. Att'y Gen. 78, 80 (1935); 14 Op. Att'y Gen. 590 (1925). Moreover, in 77 Op. Att'y Gen. 113, 115 (1988), I concluded that "neither the various elective county officers nor their constitutional or statutory duties, functions and authority can be abolished, consolidated or altered" under section 59.025, Stats., the county administrative home rule statute.



AG & OTHER OPINIONS: Miscellaneous

Topic: Annual Reports to the County Board

Is there a statute that states need to submit an annual report to the County Board?

Per Wis. Stats. 59.22(1)(b) you are required to report all fees collected in the form prescribed by the board on an annual basis.

In addition, the Attorney General issued opinion was located:

OAG-6-13 – A county board may require county department heads to submit reports to the county board, but cannot require county department heads appointed and supervised by the county executive to report to the board in a supervisory sense.

It was the opinion of the WRDA Helpdesk members to take every opportunity given to promote our offices and what we do for the community.

Topic: Authority of Register of Deeds to Appoint Deputies, Assignment of Duties and Conditions of Employment

Memo from Attolles Law, s.c. (attached)