



Roles and Authority of Governing Body Members

Maria Davis, Assistant Legal Counsel and Claire Silverman, Legal Counsel, League of Wisconsin Municipalities

League attorneys frequently receive requests for information explaining the duties and authority of governing body members (common council and village board members). Most often, these requests are prompted by situations where a governing body member’s authority has been, or is being, questioned. Although the Wisconsin Statutes detail statutory authority and responsibilities for certain governing body members, such as mayors and village presidents, the statutes do not particularly detail or define the responsibilities of alderpersons and trustees.

Mayor

The statutes provide that the mayor and alderpersons shall be the common council.¹ A mayor is the city’s chief executive officer.² As that title denotes, mayors possess executive authority, though they exercise administrative authority as well. As the chief executive, the mayor is responsible for ensuring that city ordinances and state laws are observed and enforced, overseeing day-to-day operations, and making sure that all city officers and employees discharge their duties.³ Although mayors do not possess legislative authority (that is reserved for the council, as discussed below), the statutes do provide mayors with certain executive authority relating to the legislative branch. For example, a mayor shall, from time to time, give the council information and make recommendations that the mayor

deems advantageous to the city.⁴ As executive, the mayor also presides at council meetings.⁵ Mayors do not have voting authority on matters before the council, unless there is a tie, in which case the mayor may vote to break the tie. However, the mayor does have the ability to veto acts/decisions of council – though, this is subject to council override.⁶ As chief executive, the mayor is also head of the city’s police and fire departments – unless the city’s police and fire commission has optional powers.⁷ The statutes also authorize the mayor to make various appointments, which are subject to confirmation by the council unless otherwise provided by law.⁸

Village President

In villages, the village president is a trustee, with a vote on all matters, and shares executive authority with the entire board of trustees. In contrast to mayors, village presidents are not statutorily designated as the village’s chief executive officer. However, it’s worth noting that there are some statutory references in statutes pertaining to cities, villages, and towns, that refer to “chief executive” and include a corresponding provision defining “chief executive” to include village president.⁹ Some references do not contain a definition and simply refer to the chief executive office of a village.¹⁰ In those instances, it is reasonable to

infer the legislature is referring to the village president.

Although the president is not generally considered a chief executive officer, the president does have certain unique, statutory duties and also serves as a figure-head of sorts for the village. A village president’s statutory duties include presiding at all board meetings and signing ordinances, bylaws, regulations, licenses, etc. authorized by the board.¹¹ The president also maintains peace and good order; sees that ordinances are faithfully obeyed; and in case of disturbance, riot or other apparent necessity may appoint as many special marshals as the president deems necessary.¹² Additionally, the president has charge of the village jail, which includes certain recordkeeping duties, but may delegate this responsibility to the village constable or a village police officer.¹³ Unlike mayors, village presidents do not have veto power – because they always have voting authority. The statutory default affords village boards the power to appoint “other officers.”¹⁴ However, some statutes specifically give the village president appointing authority for certain offices – e.g., election officials,¹⁵ plan commission,¹⁶ and zoning board of appeals.¹⁷

► p.19

1. Wis. Stat. sec. 62.11(1).
 2. Wis. Stat. § 62.09(8)(a).
 3. Wis. Stat. § 62.09(8)(a).

4. Wis. Stat. § 62.09(8)(b).
 5. Wis. Stat. § 62.09(8)(b).
 6. Wis. Stat. § 62.09(8)(c).
 7. Wis. Stat. § 62.09(8)(d).
 8. Wis. Stat. § 62.09(3)(e).
 9. E.g., Wis. Stat. §§ 66.1007(1)(c), 66.1109(1)(c).
 10. E.g., Wis. Stat. § 30.37(3).

11. Wis. Stat. § 61.24
 12. Wis. Stat. § 61.24.
 13. Wis. Stat. § 61.24.
 14. Wis. Stat. § 61.19.
 15. Wis. Stat. § 7.30.
 16. Wis. Stat. §§ 61.35, 62.23(1).
 17. Wis. Stat. §§ 61.35, 62.23(7)(e)2.

Alder & Trustee

Common councils and village boards are legislative bodies. Alders and trustees are leaders, responsible for setting policy and charting the future of the municipality. Although the statutes provide some detail as to the duties and powers of city mayors and village presidents, the statutes provide *no* detail regarding the duties and authority of alders and trustees. This lack of detail reflects the fact that alders and trustees do not have authority in their individual capacity. Instead, the statutes address the responsibilities and powers of village boards and common councils as a whole. This is because the governing body's authority is collective; it holds power as a unit rather than through its individual members. This does not mean individual governing body members are prohibited from doing anything related to their roles outside of the common

council or village board meeting setting. They may still carry out certain functions of their role as an alder or trustee. For example, governing body members can and should function as a liaison between the municipality and the members' constituents. Alders and trustees may engage with their constituents – e.g., hold listening sessions, write newsletters, survey constituents. However, certain actions remain outside the scope of the role as alder or trustee. For example, individual governing body members do not have supervisory authority over municipal employees and, as such, should refrain from directing municipal staff. While it's not necessarily inappropriate to request information from staff, governing body members should not demand that certain information be provided or actions taken unless local law authorizes governing body members to

do so – such actions stray into executive authority territory.

Because there are no statutory provisions offering direction for individual governing body members, municipalities may want to consider establishing guidelines and/or developing materials to help governing body members more fully understand their roles and responsibilities. This could include a code of conduct and a training/resource manual for new (and returning) governing body members.

Legislative, Executive, and Administrative Power

In order for governing body members to stay within their respective roles and avoid overstepping their authority, it's helpful to understand the difference between legislative, executive, and administrative powers. Here are some

► p.20

“I am so proud to know that you all work diligently to make your program the best. Please keep up the good work and thank you all so much.”

- Pamela

Marked Tree, Arkansas



CenterPoint®
Fund Accounting
and Payroll Software

To get your FREE guide visit:
www.redwingsoftware.com/home/fundguide

relatively clear examples of the different types of authority:

Legislative

Enactment of legislation (e.g., adopting budget, ordinance regulating keeping of animals, determining what services the municipality will provide, enacting land use regulations).

Executive

Directing staff, developing details relating to delivery of services the governing body has determined to provide, decisions relating to matters where legislation is silent as to details.

Administrative

Signing checks, carrying out specific directions.

Although the above examples are fairly clear, the line between legislative and executive authority is not always clear. In distinguishing between legislative and executive actions, a prominent municipal treatise provides as follows:

Municipal corporations ordinarily are vested with legislative and executive powers, the latter being sometimes referred to as administrative or ministerial powers or duties. Legislative power, as distinguished from executive power, is the authority to make laws, but not to enforce them, or appoint the agents charged with the duty of such enforcement. If it can be shown that the particular act could not have been done without a law or ordinance, such act is considered as legislative. The crucial test for determining what is legislative and what is administrative has been said to be whether the ordinance is one making a new law, or one executing a law already in existence.

2A McQuillin Mun. Corp. sec. 10:6 (3d ed.) (footnotes omitted).

In *Governing Bodies* 392, the League was asked to weigh in on the difference

between legislative and executive authority in a situation where the council and mayor gave staff conflicting instructions. The fire department had already used the amount appropriated as a line item in the city budget for fire department overtime. The mayor instructed the fire chief to eliminate overtime unless urgent or necessary. In response, the council instructed the fire chief to *not* take action to reduce overtime and to maintain current staffing levels. We opined that the common council is a legislative, policy-making body and may not, by simple directive or order, countermand lawful orders of the mayor as chief executive that relate to the day-to-day operations of the city. The mayor was executing the budget as enacted by the council. However, the council could exercise its legislative authority and establish a new general policy (e.g., amend the budget to appropriate additional funds for overtime). The mayor would then be required to exercise his or her executive authority within the bounds of the newly established policy.

Executive authority can also include filling in details when existing legislation is silent on how the policy is accomplished.

[T]he complexities of modern life often impel legislatures to confer on executive and administrative departments the authority to make rules and regulations in order to enforce and achieve the policy intended. Thus, the making of such rules and regulations by executive and administrative departments sometimes become not a matter of mere law enforcement but of secondary law creation. However, so long as the determination of the legislative principle remains within the control of the legislative body, the determination of the secondary structure that ensures and assists the establishment of the principle is not legislation. The idea

is that the creative element delegated is exclusively limited to arrangements and procedures consistent with the substantive principle. Further, when administrative agencies are delegated regulatory power, legislative action by the agency to establish general rules and guidelines may be necessary as a condition precedent to exercise the powers in individual cases.

2A McQuillin Mun. Corp. sec. 10:6 (3d ed.) (footnotes omitted).

The following scenario may be helpful in demonstrating the differences between the various types of power and how these powers are exercised by elected governing body members in cities and villages:

1. Following a snow storm, Alderperson Smith receives several calls from angry constituents on Elm Street who are upset to see public works employees removing snow from the nearby city park when their residential street has not yet been plowed. These constituents are upset because they are waiting to leave for work and frustrated that clearing snow from the park has apparent priority over plowing Elm Street. **Question:** What are appropriate ways for Alderperson Smith to respond?
 - a. Alderperson Smith calls the city's Director of Public Works (DPW) and tells the Director that plowing residential streets is more important than removing snow from city park areas, and Elm Street needs to be plowed immediately.
 - b. Alderperson Smith calls the Mayor, explains the situation, and asks the Mayor to have the DPW get Elm Street plowed right away.
 - c. Alderperson Smith pursues legislative policy setting priority for snow removal in the City.

Answer: B and C are appropriate ways for the alderperson to respond. As a legislator, it is appropriate for Smith to communicate constituent concerns to the mayor and ask the mayor, as chief executive officer, to direct city staff. It is also appropriate for the alderperson to pursue legislation that sets priority for snow removal. It is not appropriate for the alderperson to direct city staff.

2. What if the above scenario occurs in a village and, instead of Alderperson Smith, we have Trustee Smith and, instead of Mayor, we have the Village President?

Trustee Smith can communicate constituent concerns to public works staff but, like Alderperson Smith, lacks authority to direct staff individually. The trustee can appropriately pursue

legislative policy setting priority for snow removal. The main difference in a village is that unlike the mayor, a village president is not a chief executive officer and shares executive authority with the village board. So technically speaking, the village president also lacks authority to unilaterally direct employees. As a practical matter, however, in many villages the village president has more regular contact with the staff than other trustees and does serve as a bridge between staff and the village board. In that case, it may be appropriate for the trustee to have the village president communicate the constituents' concerns to public works staff.

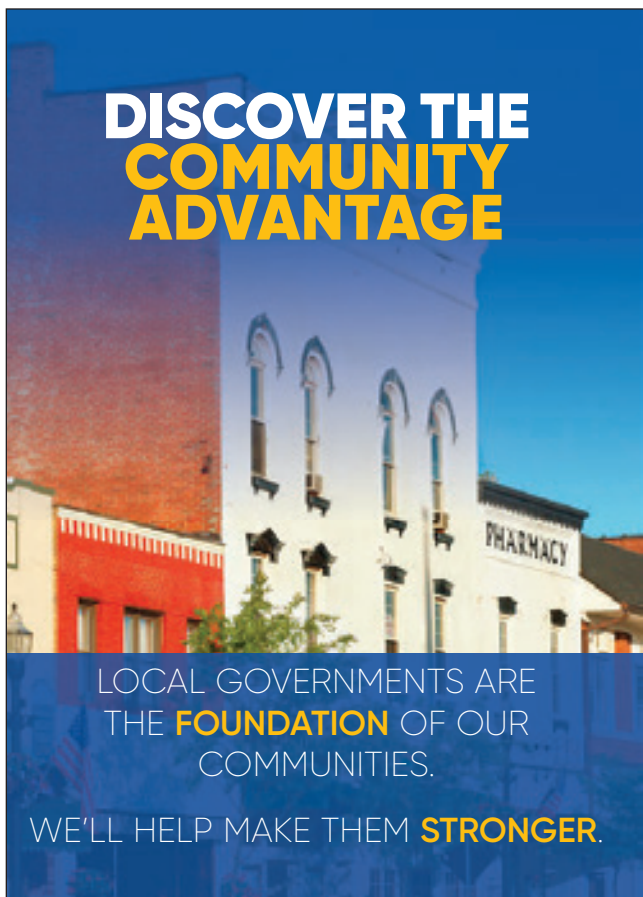
Hopefully a better understanding of respective roles and authority will help all governing body members be more effective leaders.

Governing Bodies 409

About the Authors:

Maria Davis is Assistant Legal Counsel for the League of Wisconsin Municipalities. Maria joined the League staff in 2018 after working in the City of Madison's Office of Real Estate Services upon graduating law school in 2015. Contact Maria at mdavis@lwm-info.org

Claire Silverman is Legal Counsel for the League of Wisconsin Municipalities. Claire joined the League staff in 1992. Contact Claire at cms@lwm-info.org



Community Insurance Corporation provides liability, workers' compensation and property insurance coverage for cities, towns villages and school districts. We offer broad coverage, designed specifically to meet the needs of Wisconsin public entities under ONE single liability policy form.

COVERAGES	VALUE-ADDED SERVICES
<ul style="list-style-type: none"> » General Liability » Automobile Liability » Public Officials Errors & Omissions » Property » Workers' Compensation » Cyber Liability 	<ul style="list-style-type: none"> » Broad-range risk management and loss control services, including on-site training » Online safety training » Community Insurance Care Line - 24/7 nurse triage service for work-related injuries

To learn more, please contact
 Josh Dirkse, Aegis Corporation,
 1.800.236.6885 or josh@aegis-wi.com

