



COUNTY ADVISORY BULLETIN

CAB

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INTRODUCTION

Sub HB 501, effective on November 6, 1996 allows the board of commissioners to delegate the power to contract, pay claims and carry out personnel functions to the county administrator and to enter into an employment agreement with a county human services director. The bill also clarifies that fiduciary employees of the county administrator are in the unclassified civil service. Sub HB 501 further provides for adoption of an alternate formula for distribution of the Library and Local Government Support Fund within a county and allows a home rule township to contract with the county prosecutor for legal services, with the permission of the board of county commissioners. This CAB will deal with each of these issues separately.

DELEGATION OF CONTRACTING AUTHORITY TO COUNTY ADMINISTRATOR BY BOARD OF COMMISSIONERS (ORC 305.30(G))

Section 305.30 generally sets forth the authority and duties of the county administrator. Section 305.30 begins as follows:

The county administrator shall, **under the direction of the board of county commissioners:** (emphasis added)

The rest of the section is a list of authorities and duties, all subject to control of the county commissioners, which a county administrator may be charged with by the commissioners. Sub HB 501 adds section (G) to 305.30 as follows:

- (G) Contract on behalf of the board within limits provided by the board, provided that the resolution authorizing such actions shall also specify the types of contracts upon which the administrator may act without further resolution of the board.

In other words, the board of commissioners may pass a resolution authorizing the county administrator to enter into contracts on their behalf, as long as the board specifies what types of contracts. The board could allow the administrator to enter into contracts to purchase routine supplies up to a certain dollar figure for instance, without giving up the board's direct jurisdiction over purchasing buildings or vehicles or other major purchases. The key is specificity and oversight. While the board of county commissioners can delegate the authority to contract to the administrator, the board cannot delegate the ultimate legal and fiscal responsibility for whatever actions the administrator takes. The law does not alter the responsibility of the board of commissioners to follow bid procedures in ORC 307.86. While it is not advisable for a board of commissioners to delegate "any and all powers" of contracting to the administrator, it also would make no sense for the commissioners to review or re-do everything the administrator does. The key is full discussion of the administrator's authority, good ongoing communication between the board and the administrator, and periodic review of how the arrangement is working. Such a resolution may be modified or rescinded at any time by the board of commissioners.

DELEGATION OF AUTHORITY TO ALLOW AND PAY CLAIMS TO COUNTY ADMINISTRATOR BY BOARD OF COMMISSIONERS (ORC 305.30(H))

Sub HB 501 also adds to the list of county administrator's authority and duties section 305.30(H) as follows:

- (H) Allow and pay claims for goods received and services rendered within limits provided by a resolution of the board, provided that the county department receiving those goods and services certifies their receipt before the administrator allows the claim;

This language allows the boards of commissioners to delegate to the administrator the right to authorize payment of bills, only if the department receiving those goods or services has certified their receipt. Practically, this means that the administrator may process and sign vouchers for payment as long as a properly authorized purchase order has been issued (which the administrator also may sign) and signed by the appropriate department receiving the goods. This would free the commissioners from having to sign individual vouchers and personally certify routine bills for payment. The check and balance is undisturbed because the process for a purchase order remains otherwise the same and

the county auditor continues to certify and monitor the payments. Again, delegation of this routine activity does not relieve the board of its ultimate legal and fiscal responsibility for payment of bills. Nothing prohibits the board from specifying types of bills or a dollar limit for bills delegated to the administrator for payment. As with contracting, it makes no sense for the board to review or re-do everything the administrator does. If the board insists on reviewing a list of all bills paid by the administrator, the board may as well continue to approve bills directly. As stated above even though the administrator may sign both the purchase order and the voucher, the checks and balances are in place because of the sign off by the department head and the auditor. Once again, such a resolution may be modified or rescinded at any time by the board of commissioners.

DELEGATION OF PERSONNEL FUNCTIONS TO COUNTY ADMINISTRATOR BY BOARD OF COMMISSIONERS (ORC 305.30(I))

Sub HB 501 also adds to section 305.30 an new section 305.30(I) as follows:

- (I) Perform any or all personnel functions otherwise conferred or incumbent upon the board of county commissioners under chapter 124, or any other chapter or section of the revised code, provided that the board, by resolution, has delegated the specific functions to the county administrator.

This language is very broad. The board of commissioners may delegate to the county administrator the ability to hire, fire, discipline, sign personnel actions, assign duties, remove duties, and so on, ad infinitum.

Since this language is so broad, it is recommended that the board of commissioners discuss delegation of authority very carefully with the administrator and be as specific as possible in designing a resolution so that it is clear to all what the limits of that authority are. A resolution delegating all of the personnel powers of the board of commissioners to the administrator might be construed to include the decision to establish a county personnel office or the decision to change all job descriptions and classifications without consulting the commissioners. Specificity and oversight are again the key words. This resolution delegating personnel authority may also be modified or rescinded by the board of commissioners at any time.

COUNTY EMPLOYEES IN THE UNCLASSIFIED SERVICE (ORC 124.11(A)(9) AND 124.11(A)(28)

SB 99, effective October 25, 1995 revised language specifying which county employees are to serve in the unclassified service (at the pleasure of the appointing authority). Prior law had always been interpreted that employees having a fiduciary relationship to the county administrator were in the unclassified service. When the language was reworded in SB 99, the courts interpreted the change to mean that an employee must have a direct fiduciary relationship to an elected official to be in the unclassified service. In Sub HB 501,

the words “or a county administrator” were added to the language specifying that fiduciary employees of an elected official are unclassified. In ORC 124.11(A)(28) “counties” were added to the list including cities, civil service townships, city school districts and general health districts as entities in which the deputies and assistants of elective or principal executive officers authorized to act in their place (fiduciaries) are in the unclassified service. This would apply to deputy county administrators or other department heads who report to the administrator and has been interpreted to apply to employees directly reporting to a department head.

EMPLOYMENT AGREEMENT WITH COUNTY HUMAN SERVICES DIRECTOR (ORC 329.02)

Section 329.02 of Sub HB 501 allows the board of county commissioners to enter into a written agreement with a county director of human services specifying terms and conditions of employment. Such a contract may not exceed a three year period. The law specifies that such a contract shall, in no way, abridge the right of a board of commissioners to terminate the employment of an unclassified director, but it may specify terms and conditions of that termination. So that an outgoing board of commissioners may not enter a contract to which new commissioners would be bound, the law specifies that such a contract would be subject to review and renegotiation for a period of thirty days from the sixtieth to the ninetieth day after the beginning of the term of any newly elected commissioner.

Appropriate subjects for such an agreement might include, but not be limited to salary, fringe benefits, working conditions, job duties, performance requirements, or separation packages. What is not appropriate is a non-termination clause or anything which limits the right of the commissioners to terminate a director.

This employment agreement is permissive. County commissioners need not enter any such agreement with a human services director unless they see it as an advantage to have certain things specified in writing or to provide an incentive to retain an excellent director.

LEGAL SERVICES OF COUNTY PROSECUTOR FOR HOME RULE TOWNSHIPS (ORC 309.09/504.15)

Under prior law, townships which adopted limited home rule under ORC 504 were required to appoint a full time or part-time law director to act as legal advisor to the board of township trustees. Section 504.15 allows the board of township trustees to enter into a contract with the county prosecuting attorney to serve as the township law director with the consent of the board of county commissioners. Though it is not specified, it would make sense for the board of commissioners to, at a minimum, pass a resolution authorizing the contract and to require that they approve and/or sign off on the contract itself.

ALTERNATIVE METHOD OF DISTRIBUTING LIBRARY AND LOCAL GOVERNMENT FUNDS (ORC 5705.321)

Section 5705.321 of Sub HB 501 allows local governments entitled to share in the Library and Local Government Support Fund (LLGSF) to establish an alternative method of distributing those funds within the county. The LLGSF consists of 5.7% of the proceeds of the state personal income tax, which was legislated to replace libraries share of the intangibles tax which was repealed in 1984. The LLGSF is distributed to counties based on population. The new language in HB 501 does not change the guarantee that libraries first receive an amount from the LLGSF that is at least equal to the average percentages all libraries received from the intangibles tax in 1982, 1983, and 1984.

The change does allow the remaining local governments entitled to a portion of the surplus not reserved for library use to decide to distribute this surplus on some basis other than each subdivisions proportionate share of the intangibles tax collected in 1984. The procedure is the same as establishing an alternative formula at the county level for distribution of the Local Government Fund (LGF) which consists of 4.2% of the state income, sales and corporate franchise taxes. An alternative procedure for distribution of the LLGSF to jurisdictions other than libraries must be approved by the Board of County Commissioners, the most populous city, and a majority of other municipalities and townships in the county. Any alternative may be revised, amended or repealed by the same process. Some counties have used alternative distribution of the Local Government Fund to facilitate other agreements among local subdivisions for sharing revenues, projects or responsibility for various functions. Again, this alternative procedure for LLGSF mirrors the process for the LGF and applies only to any excess funds after distribution of the required shares to local libraries.

CONCLUSION

Clearly, Sub HB 501 dealt with a variety of issues. This CAB has attempted to deal with each issue separately. With the exception of the language clarifying the unclassified status of certain county employees, the other provisions of Sub HB 501 are permissive. It is always important for commissioners in delegating additional authority to county employees or entering into an employment agreement, or agreeing to changes with other subdivisions, to clearly think through the advantages and disadvantages to the county and to the board of commissioners of these actions. When delegating authority it is essential to specify the limits of that authority and to build in ongoing oversight, review and evaluation of the delegated functions, because the board of commissioners will be held ultimately responsible legally, financially, and most important, by the electorate for the actions taken or not taken on its behalf.