

“You’re not the boss of me”

Autonomy of Independently Elected County Officials

Unbridled stallions or yoked draft horses?

(thanks, Microsoft Copilot)

2025 WACO Fall Conference, Kennewick, WA
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Jot down your questions.
There will be some Q&A time
at the end.

Separation of Powers

The “stay in your lane” theory of government



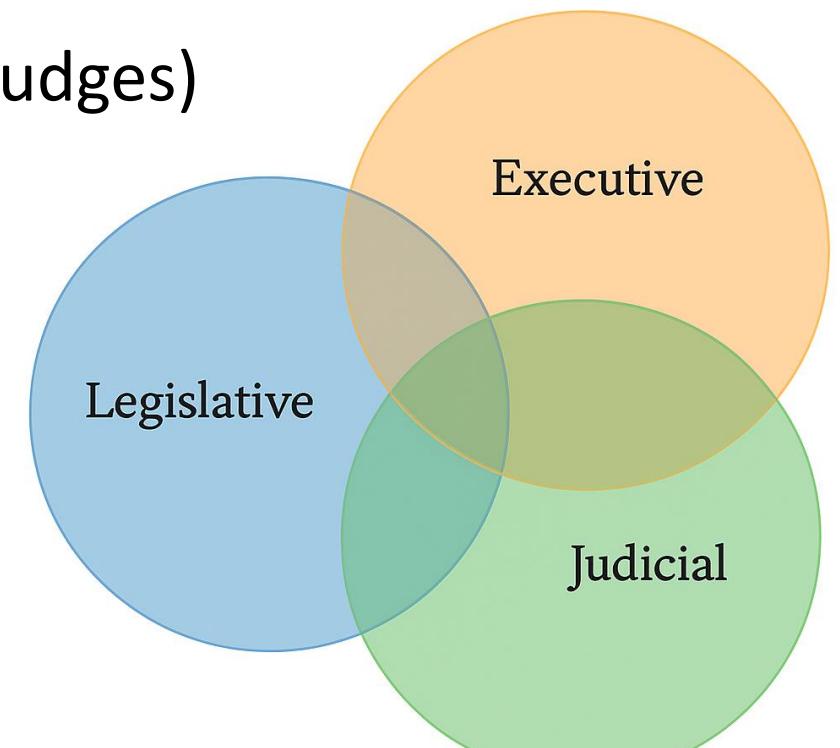
Separation of Powers – a brief history

- Our Common Law tradition going back to the 1700s
- Washington Constitution - Wa. Const. art. XI, § 4
- Statutes, particularly in Title 36 RCW
- Case law – e.g *Matter of Salary of Juvenile Dir.*, 87 Wn.2d 232, (1976)

Three Co-Equal Branches of Government

County Version

- Legislative (County Commissioners / County Council)
- Executive (WACO Members, County Executives, Department Heads and County Commissioners)
- Judicial (Superior Court and District Court judges)



Autonomy

as a function of where you live

- In constitutional counties:
 - All WACO officials are independently elected executives
 - Maximum autonomy
- In home rule charter counties:
 - It depends on how office is defined
 - May be on par with constitutional counties
 - May be nada...nil...bupkis...zilch
 - Or someplace in the middle

The Charter County Two-Step

Wa. Const. art. XI, § 4

1. By default, after a charter adoption, all powers of county officers (except Prosecutor and Superior Court judges) are vested in the Legislative Authority (BOCC or County Council).
2. Legislative Authority may, by resolution “delegate any of its executive or administrative powers, authority or duties not expressly vested in specific officers by the charter, to any county officer or officers or county employee or employees.”

Checks and Balances

- “While the Constitution diffuses power the better to secure liberty, it also contemplates that practice will integrate the dispersed powers into a workable government. It enjoins upon its branches separateness but interdependence, autonomy but reciprocity.”

Matter of Salary of Juvenile Dir., 87 Wn.2d 232 (1976)

- Not always obvious where one branch’s authority ends, and another’s begins

Checks and Balances

- BOCC sets your budget
- BOCC must authorize positions
- Independent electeds may not enter into contracts if insufficient funds in their budget, without signoff of BOCC (Think multi-year contracts)
- BOCC cannot direct how you perform your duties or exercise discretion
- Sheriff can investigate criminal activity by BOCC
- Auditor can review BOCC's vouchers for legality and refuse to issue warrant (rarely)
- BOCC cannot execute an interlocal agreement that obligates independent elected to perform some function

A Particular Problem of Counties

- Duties of one elected official cannot be assigned to another by Legislature or BOCC
 - e.g. Sheriff to Prosecutor as was struck down in State ex rel. Johnston v. Melton, 192 Wash. 379 (1937)
- BOCC cannot assign your duties to a private party
 - e.g. State ex rel Banks v. Drummond (prosecutor)
 - e.g. Northwestern Improvement v. McNeil (assessor)

Detour: Separation of powers problems between two independently elected executive officials

Comity:

n. Avoidance of unnecessary conflict by recognizing the legitimacy of each others' functions

Comedy:

Copilot's AI drawing



Another Detour: Inherent Authority

You are the masters of your domain.



Specific Topics: Budget

“County commissioners exercise their greatest degree of control over other elected county officials through their authority to adopt a county budget.”

“That is undoubtedly one of the reasons why the legislature has surrounded that authority with due process requirements—specificity of timing and notice of hearings, formality of the adoption procedure, and relative finality after adoption.”

Miller v. Pacific County, 9 Wn. App. 177 (1973)

Specific Topics: Budget (Miller v. Pac. Cty.)

- BOCC Cannot Informally Amend Budget (impound funds)
 - Pros. Atty. maintained a separate office outside of county seat.
 - It was approved in budget.
 - BOCC notified PA that they were not gonna fund the office anymore.
 - BOCC refused to approve claims to pay expenses of the office.
- Held: BOCC could not refuse to pay. They had to formally amend budget to do so.

Budget Checks and Balances

- We must provide detailed estimates of all anticipated revenue and expenditures. RCW 36.40.010
 - No more. No less. Notwithstanding requests to the contrary
- Once formally adopted after a public hearing, budget is FIXED
- RCW 36.40.100 and .130:
 - Do not overspend....
 - Or you will pay



Budget Checks and Balances – a fun anecdote

- Budgets must be “by department and office.” RCW 36.40.040
- Commissioners cannot reserve the power to make particular expenditure decisions for other elected officials
- A favorite quote:

“The respondent officers are independent elective officers and are not in any way subordinate to the county commissioners, but responsible only to the people of their county.”

Budget Checks and Balances

- Try to work within their system
- Budgeting is a public exercise
- See it as an opportunity to communicate to public how we spend their taxes on our essential functions

Personnel Checks and Balances

- Only BOCC can authorize an employee/deputy position
- You can hire (BOCC cannot)*
- You can fire (BOCC cannot)*

*Subject to Collective Bargaining Agreements (signed by BOCC and independent elected official)

Osborn v. Grant County, 130 Wn.2d 615, (1996)

- “Defendants argue the Board should have some say in the irresponsible hiring decisions of elected officials.”
- “Defendants' concerns are misguided.”
- “If an official makes a poor hiring decision, the official is accountable not to the board of commissioners, but to the public.”
- “If the public dislikes Dedra Osborn's hiring of Keenan, the ballot is its recourse”

Personnel Checks and Balances

- Can BOCC eliminate position?
 - In budget cycle: Yes
 - Mid-cycle: Yes, if with reason and not arbitrary AND done in accordance with a lawful budget amendment

Job Descriptions and Classification

Attorney General says (Wash. AGO 2017 NO. 3 (2017)):

- The county commissioners do not have authority to write job descriptions for specific positions
- The county commissioners may not vest themselves with that authority by writing job descriptions into budget items
- Sheriffs may designate unclassified positions without the consent of BOCC

Personnel Manuals

AGO 2017 No. 3; AGO 1982 No. 8:

- County Personnel Manual is not binding on other elected officials, unless those officials also adopt it

Crossler v. Hille, 136 Wn.2d 287 (1998)

- An elected cannot bind his/her successor to a personnel manual

Personnel – Salary

- BOCC has authority to set salaries. RCW 36.16.070
- But, CBA may delegate, conditionally, to elected executive (i.e. subject to budgetary authority) for promotions, etc.

Personnel – Checks and balances

- Consult with PA
- Consult with HR
- Consult CBA
- Work with BOCC to reclassify / adjust pay grids

Special Topics: Contracts

- County probably has a contract review and approval procedure
- BUT, if within your budget authority, you have ability to enter into contracts, for your term of office (or at least budget year)
- But, why create issues?
- Consult with your prosecutor

Interlocal Agreements

- Signing an Interlocal Agreement is within your sole authority:
 - If all functions are within your statutory authority
 - If doesn't obligate county money or county property
- Good idea/good relations to have BOCC sign anyway
- Consider liability issues
- BOCC has no authority to execute ILA that obligates another elected

Resources

- [Knowing the Territory - Basic Legal Guidelines for Washington City, County and Special District Officials \(pages 1-2\)](#)

Final Thoughts

- Don't forget comity.
- Or comedy.

Questions?

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