

Model Charter County Engineer Guidelines

Under the Washington State Constitution, Charter Counties may organize functions of the County Engineer differently than generally provided for in state law. The County Road Administration Board (CRAB) recommends that any such changes be very carefully considered. These laws have been developed over many years to assure that the Office of the County Engineer properly carry out a variety of intricately interlinked professional responsibilities. Given the ability of Charter Counties to make changes, and recognizing that there are some that may well be appropriate to a particular county, CRAB offers the following guidance to assist them. Our purpose is to help assure that legal responsibilities appropriate to the Office of the County Engineer are properly considered, and to try to assure a clear understanding by all affected of those responsibilities.

CRAB staff also developed a model ordinance. It provides an option for those counties who determine that the priorities of government dictate a necessity to organize the responsibilities normally given to the County Engineer differently than as stated in law and as permitted under the Constitution.

The issues that should be considered are outlined herein.

Washington State Constitution

The Constitution, Article XI, Section 4, "County Government and Township Organization", permits counties that are organized by charter considerable flexibility in how they choose to organize and operate. After the initial requirements for adopting a charter, it continues into organization with the following statement.

"Any home rule charter proposed as herein provided, may provide for such county officers as may be deemed necessary to carry out and perform all county functions as provided by charter or by general law, and for their compensation, but shall not affect the election of the prosecuting attorney, the county superintendent of schools, the judges of the superior court, and the justices of the peace, or the jurisdiction of the courts."

In this portion, with very few exceptions the constitution clearly gives the county the option to determine which officers are "deemed necessary". Obviously the general law provision for a County Engineer is included within that latitude. The section continues:

After the adoption of such charter, such county shall continue to have all the rights, powers, privileges and benefits then possessed or thereafter conferred by general law.

This language would lead to the conclusion that, barring specific charter provisions to the contrary, general law would dictate how the county would otherwise operate. In this context, absent provisions within the charter, the requirements in general law

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placed upon the County Engineer would still be required to be carried out by a person designated as the County Engineer.

Then, again with limited exceptions that do not include the County Engineer, this section provides:

"All the powers, authority and duties granted to and imposed on county officers by general law, except the prosecuting attorney, the county superintendent of schools, the judges of the superior court and the justices of the peace, shall be vested in the legislative authority of the county unless expressly vested in specific officers by the charter. The 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."

Clearly, the charter county legislative authority must carry out the general requirements of law outside those dealing with organization. Those general laws include those protecting the County Road Fund, and the responsibilities of the County Engineer. When taken together, this creates questions of whom and how those responsibilities will be carried out.

CRAB responsibility is to assure that general laws regarding county roads are properly carried out. CRAB staff is therefore quite interested in clarity. The desire is that both the county officials and the County Road fund are protected to the extent anticipated by the legislature in adopting those various laws.

Revised Code of Washington

The Revised Code of Washington (RCW) carries a wide variety of requirements for a County Engineer. We have not tried to capture all of those here, but only to provide a flavor of the impacts. We have also provided a few key examples for a charter county to consider as it determines the most appropriate way to carry out general law requirements within the county organizational flexibilities provided in the constitution.

Road Fund

36.82.010 RCW creates a County Road Fund for road purposes only. The County Treasurer must deposit all fuel taxes received by the County in this fund. In addition, the County Road Tax must be deposited into this fund, unless the Board diverts those taxes. These protections were set in place in recognition that Road Fund tax revenues provide for what is undoubtedly the most important physical public infrastructure system in existence.

CRAB's concerns in this context are who will assure that the County Road fund is properly administered, and who then will be responsible for the proper day to day expenditures from the fund for road purposes.

Duties of the County Engineer

A variety of sections, primarily but not exclusively in Chapter 36 RCW, cover a myriad of responsibilities assigned specifically in general law to the County Engineer. Those range for setting ER&R rates in 36.33A, to budgets in 36.40 and 36.80, to engineering functions in 36.75, and to the CRAB Standards of Good Practice in 36.78.

A general summary of the principle laws regarding the responsibilities of the County Engineer are listed in Appendix 'A'. The reader should bear in mind that there are any number of other direct and indirect responsibilities, and requirements related to the position of County Engineer, that are not listed in the appendix. For example, professional licensing laws, 18.43 RCW, make it very clear that a person "practicing engineering" must be qualified and licensed to legally do so. So while the duties of the County Engineer may be assigned to some other position, any that fall into the legally defined areas of engineering must be assigned to a qualified person.

CRAB's responsibilities and concerns revolve primarily around 36.78, the Standards of Good Practice, which charter counties are still required to meet under general law. All are based in the legal requirements for County Roads, the County Road Fund, and the County Engineer. It becomes important to understand clearly how these will be met, and who will be responsible for the day to day work to do so. It would seem key to the county to assure appropriate accountability within that context as well.

Washington Administrative Code

CRAB, like all state agencies, uses the Washington Administrative Code (WAC) to provide the specifics that clarify the more general RCW. In the context of the duties of the County Engineer, 136.50 WAC reiterates the formal relationship between the legislative authority and its County Engineer. In so doing, it requires that certain written policies be adopted for the information and guidance of the county engineer, to ensure the efficient and productive operation of the road department.

136.50.035 specifically recognizes charter counties. It states:

"In counties that have adopted a home rule charter, as provided for in Article 11 subsection 4 of the state Constitution, the duties and responsibilities of the county engineer set forth in chapter 36.80 RCW may be modified by the county legislative authority as allowed by existing constitutional law, statutory law, and the county's charter."

It is intended to clarify that while the duties may be assigned different than in general law, the written policies and other requirements in the WAC apply, albeit through a potentially different organizational structure. It is further intended to help assure that there is clarity in the unique relationship between the legislative authority and the County Engineer, so that both may appropriately and efficiently carry out their respective responsibilities.

Organizational Options

County Road & Public Works in the 21st Century

We recognize that a 21st century county often has many responsibilities in the public works arena in addition to the historic responsibilities for County Roads. Those include many infrastructure types, typically requiring technical and engineering expertise for good public stewardship. It is for this reason that as these new functions have evolved, the County Road Engineer position has also evolved into the more generic County Engineer, and in the past twenty years, into a Public Works Department with either the dual or separate responsibilities of Public Works Director and County Engineer.

We cannot begin to outline all of the possible options that a charter county might consider. There are at least as many ways to organize as there are counties. For that reason, we do not provide specific organizational structures within this document or in our recommendations. Rather, we provide only general guidance for how the general law responsibilities of the County Engineer may be most efficiently met, assure that professional and technical expertise is provided, and retain expected accountability. In every case, clarity and transparency is the test of good government.

Policy vs. Operations

The 1948 Legislature changed the landscape of policy direction and county road operations for counties who choose to adopt charters when it approved the 23rd amendment to the state constitution. Nevertheless, the need for clear policy direction, coupled with efficient delivery remains. And charter county organizations have the potential to complicate that relationship.

Probably the most effective way to assure that doesn't occur is for the County Council to reserve to itself policy development and direction. Certainly the Executive and staff should be a part of the discussions that lead to the policies under which the county will operate under, but the final authority should rest with the Council.

At the same time, the Executive should clearly be given the authority and responsibility to carry out the policies on a day to day basis. This commonly includes the appointing authority for the various department heads, including the PWD. That separation helps greatly to provide clear direction and efficient service delivery.

With that separation, there should be an organizational structure that clearly delineates where those lines occur. More about the structure as the relationship between the Council, Executive, and Professional staff is discussed.

Operational Direction vs. Professional Expertise

The technical expertise required for Public Works and Road Department operations is significant. (We focus on Road and Engineering issues here although there are similar issues in other areas of Public Works.) Again, with the requirements for Professional

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Engineers, state law recognizes that fact. Conflicts most often occur when there is a lack of recognition of this fact at the county level.

It is common today that Public Works Directors (PWDs) are not engineers, and may not have a technical background. They are typically employed on the basis of their organizational and people skills. While these are extremely valuable to an organization, they do not substitute for the requisite technical skills. It is understandable why an Executive might choose a PWD with those people skills as opposed to or in contrast to one with predominately technical skills.

Most often, County Roads are a subset of Public Works. And in charter counties, it is common that the PWD reports to the County Executive rather than the Council. With this type of organization, the County Engineer functions may become quite isolated from the Council members. Where the Executive and PWD recognize their technical limitations, and rely on their staff, this may not be a concern. However, to assure that it does not become one, CRAB recommends that there be clear written direction on this issue.

Given the myriad and varied responsibilities assigned to the County Engineer under RCW, CRAB recommends that clear lines of similar, if not precisely the same, authority be given to an equivalent position. This recommendation is centered on the fact that all of the authorities in RCW are based on the strong links between what may otherwise seem disparate responsibilities. Several examples come to mind.

First, accounting may seem to be a function that could be housed elsewhere. And indeed, if county roads accounting was strictly personnel and office costs, that would make little difference. However, there are complicated relationships between the materials and equipment that go with the personnel and office costs. Those relationships become even more complicated when the broad implications of construction, construction contracting, and budgetary interactions are considered. For that reason, accounting should be an integral part of the road responsibilities. At the same time, it may be a subset of a larger accounting function within the county.

Second, the setting of rates in the Equipment Rental and Revolving fund, as well as management of the fund, may seem to be a logical removal from County Roads. The critical links however, include the fact that the vast majority of the equipment and materials are almost without exception, county road related. Moreover, rates must reflect an appropriate division of costs between the road fund and other general fund users, such that there is clearly no illegal subsidy, and therefore diversion, of road funds.

Finally, there are undoubtedly necessary engineering and technical functions external to County Roads, usually within Public Works. It may seem logical then to create a separate Engineering Division within Public Works, but outside County Roads. The difficulty this typically creates is lack of communications and understanding of the

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extensive, varied and unique engineering, administrative and technical requirements of County Roads that often do not occur in other areas.

Appointing Authority

Given the brief outline above, CRAB recommends that charter counties consider what they may believe is a unique set of relationships.

CRAB recommends first that a position of County Engineer remain a key appointive managerial position. The Engineer may report to the PWD, but that appointing authority should be kept as close to the legislative body as possible due to the significant legal, policy and administrative requirements for County Roads.

The Executive should be the appointing authority. There should be clear statements and organizational chart relationships shown so there is no question on that authority. Within that, we recommend that the Council adopt a relationship that assure that the County Engineer is consulted on a regular basis, in cooperation with the Executive and PWD as appropriate, regarding County Road policies, budgets, and management.

Day to day operational direction will likely come through the PWD. A strong relationship should be clearly shown in the organizational charts and directives. That relationship should be encouraged with the Executive, the PWD and the County Engineer as a team. While it may well be more of a challenge to operate with such a structure, that relationship will enhance all of the skills and authorities of each of these positions.

Model Ordinance

We offer a model ordinance in Appendix 'B' for setting up clear directives in county law. The ordinance is a model. It is not required by state law. However, we recommend it in that accountability and clarity are both excellent means of getting our work done efficiently, on purpose, and with the understanding and support of both the participants and the public.

As a model, you are free to modify it according to your needs. Counties with large complex organizations may require more elements than those with smaller offices.

CRAB recommends that the Council adopt a resolution setting up the mechanics and directives that enable the relationships and authorities discussed above. Then, as a part of that resolution, it should consider inclusion of specific language for adoption into the County Code, thereby memorializing the reasons and the structure for future Councils, Executives and staff.

Appendix 'B' contains a model resolution and ordinance.

CRAB Assistance

As a complement to its oversight responsibilities, CRAB Staff represents many years of County Road experience in dealing with a wide variety of issues. Cooperation and coordination with other County offices is a significant part of that experience, as well as a solid understanding of legal issues and considerations. We much prefer to help you resolve questions and concerns before they become problems. In that effort, we offer our advance assistance should you choose to use this tool, and/or have questions or suggestions on its use.

In all cases CRAB does not provide legal advice. Legal issues and statutory interpretations should always be discussed with, and preferably approved by, your county legal counsel. This is typically the Prosecutor or a Civil Deputy Prosecutor. It is ideal if there is a Civil Deputy specializing in Public Works law.

Additional questions may be referred to CRAB.

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