



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

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OAG—01—12

Mr. Scott M. Corbett
Corporation Counsel
Marathon County
500 Forest Street, Rm. B134
Wausau, WI 54403-5568

Dear Mr. Corbett:

¶ 1. You indicate that your county has established a solid waste management department and that the solid waste management director is the head of that department. You ask whether the county administrator or the county solid waste management board possesses statutory authority to appoint the director of the county solid waste management department and whether the director or the board supervises the operation of the department.

¶ 2. In my opinion, the county administrator possesses statutory authority to appoint and supervise the solid waste management director. The director supervises the operation of the department. The board is purely an advisory and policy-making body.

ANALYSIS

¶ 3. The county board “may create a solid waste management board to operate the [solid waste management] system . . . composed of not less than 9 nor more than 15 persons of recognized ability and demonstrated interest in the problems of solid waste management, but not more than 5 of the board members may be appointed from the county board of supervisors.” Wis. Stat. § 59.70(2). The solid waste management board has broad statutory authority over all aspects of solid waste operations, including but not limited to the authority to acquire real property and equipment, to enact solid waste ordinances, and to impose or charge fees. *See* Wis. Stat. § 59.70(2)(a)-(p). The Legislature did not designate the solid waste management board to be a county department head.

¶ 4. Wisconsin Stat. § 59.70(2) provides that the solid waste management board “may employ a manager for the system.” The materials that you have submitted suggest that in your county the solid waste management director is the head of the solid waste management department and is also the “system manager” within the meaning of Wis. Stat. § 59.70(2).

¶ 5. Wisconsin Stat. § 59.18(2)(a) provides that the county administrator “[c]oordinate[s] and direct[s] all administrative and management functions of the county government **not otherwise vested by law in boards or commissions**, or in other elected officers.”¹ The next subsection of the county administrator statute, Wis. Stat. § 59.18(2)(b), provides that the administrator “shall . . . appoint and supervise all department heads where the law provides that the appointment shall be made by a board or commission[.]” The solid waste management board is a “board” within the meaning of Wis. Stat. § 59.18(2)(b). *See* 76 Op. Att’y Gen. 173, 175 (1987) (citing 61 Op. Att’y Gen. 116, 119-20 (1972), for the proposition “that the Legislature used the words ‘boards and commissions’ advisedly to the exclusion of ‘[county board] committees[.]’”). If I am correct that the system manager in your county is also the department head, then your county administrator appoints and supervises him.²

¶ 6. With respect to the functions that the board can perform in a county with a county administrator, Wis. Stat. § 59.18(2)(b) provides: “Notwithstanding any statutory provision that a board or commission supervise the administration of a department, the department head shall supervise the administration of the department and the board or commission shall perform any advisory or policy-making function authorized by statute.” Wisconsin Stat. § 59.18(2)(b) transfers the authority to supervise the administration of county departments from boards and commissions to department heads appointed by the county administrator. Wisconsin Stat. § 59.18(2) therefore entirely negates Wis. Stat. § 59.70(2) insofar as it provides that the board may “employ” a system manager. In a county with a county administrator, the solid waste management board is purely an advisory body to the county administrator and to the county board and a policy-making body for the solid waste management department as a whole.

¹You note that the language in Wis. Stat. § 59.18(2)(a) contrasts with the first sentence of Wis. Stat. § 59.17(2)(a), which provides that a county executive in a county with a population of under 500,000 “coordinate[s] and direct[s] all administrative and management functions of the county government not otherwise vested by law in other elected officers,” without any exception for boards or commissions. The language concerning boards and commissions was deleted from the county executive statute in 1985 Wisconsin Act 29. *See* 77 Op. Att’y Gen. 98 (1988) (concluding that in a county with a county executive, the solid waste management board is purely an advisory or policy-making body). In those rare instances in which the Legislature designates a board itself or a commission itself as a county department head, supervisory and management authority is not transferred from the board or commission to a county administrator under Wis. Stat. § 59.18(2)(a).

²Even if your county has both a solid waste management director who is a department head and a system manager who is not, it is doubtful that the appointment of a system manager constitutes an advisory or policy-making function that the board is authorized to perform. *See* Wis. Stat. § 59.18(2)(b); *cf.* OAG-01-10 (January 28, 2010), ¶ 7 (“Selecting or appointing an individual to perform a particular task or function in this context is an organizational or administrative power.”).

CONCLUSION

¶ 7. I therefore conclude that in a county that has a county administrator, the administrator possesses statutory authority to appoint the director or system manager of a county solid waste management department as department head and to supervise that department head. The person who is appointed department head supervises the operation of the department. The county solid waste management board is purely an advisory and policy-making body that cannot exercise administrative or managerial authority over the solid waste management department.

Sincerely,

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Attorney General

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