

MANDATED SERVICES AND OFFICES IN MICHIGAN COUNTY GOVERNMENT

STATE AND LOCAL GOVERNMENT PROGRAM, MICHIGAN STATE UNIVERSITY, APRIL 2009

DR. ERIC A. SCORSONE

This is an updated version by of the mandated services argument as developed over the years by the State and Local Government Program, including Professor Lynn Harvey, Professor Ken Verburg and Specialist Gary Taylor.

Introduction

During tight budgetary times, elected and appointed county officials often resort to a discussion of mandated versus non-mandated services as a formula for making difficult funding choices. The concept has evolved through the application of court cases and other state and federal laws to the wide range of activities carried out by Michigan's counties. County commissioners must understand the mandated versus non-mandated concept to appreciate the important role that mandates play in county government policy-making. This paper is provided to help commissioners unravel the complex issues surrounding mandated services that arise during budget deliberations.

Sources of Mandates

In the context of intergovernmental relations, a mandate is a command by one level of government for a subordinate government to carry out certain functions. In Michigan, many of county government's functions are carried out in its role as an administrative arm of state government. As a result, the state is the source of various mandates for county government. The state constitution, for example, mandates that the citizens of each county shall elect a clerk, treasurer, sheriff and prosecutor "whose duties and powers shall be provided by law." State statutes require that county government provide a wide variety of facilities and resources including a courthouse, jailor lockup facilities, a health department, medical examiner, circuit court, and the family division within circuit court. State statutes also require the provision of various services such as the training of local elections officials, maintaining vital records, recording real estate transactions, and many others. Attorney general opinions and regulations of state agencies are also sources of mandates to county government.

For example, the attorney general has concluded that statutory language that a county "shall levy a tax not to exceed..." is a mandate to levy a tax (i.e., a levy of zero violates the mandate). The Office of State Registrar has promulgated rules concerning the storage and retention of vital records.

Over the years, federal mandates have also had an impact on local governments. Sometimes the source of a mandate is a federal court decision, such as the "one person, one vote" decisions that resulted in the abolition of the county board of supervisors in favor of a board of county commissioners elected by districts. Congressional action such as the Americans with Disabilities Act (ADA), civil rights legislation and labor laws all affect policy-making, and therefore budget choices, at the local level.

Mandates can also arise through the actions of the local government itself. An extra-voted millage for senior services mandates that the taxes levied may only be expended in the manner prescribed by the ballot proposal. County ordinances, resolutions and memoranda of agreement all create responsibilities of the county government to perform certain actions or carry out certain functions.

Services and actions that are not mandated by federal or state government or through the action of local governments are often referred to as non-mandated or discretionary programs. Many examples of non-mandated programs exist. State statutes permit, but do not require, county governments to provide water and sewer infrastructure and sanitation services, parks and recreation, fire and ambulance services, and mental health services are all examples of discretionary functions.

Frequently county controllers and administrators classify county functions into more or less the following categories:

1. Functions mandated by law – County functions performed because federal, state or local constitutions, charters, statutes, regulations or court orders mandate them. These functions must be carried out by county government unless and until the law is changed or repealed.
2. Functions mandated by agreement – County functions performed because the county is a party to a contractual agreement. These functions are mandated for the duration of the agreement.
3. Functions necessary, but not mandated –These are “support” services necessary to carry out the mandated services referred to in (1) and (2). Examples include accounting, payroll, central services, buildings and building maintenance.
4. Discretionary functions – County functions that do not meet any of the above criteria.

Sorting out Mandates

Although the basic concept of mandates is simple, it should be obvious that the everyday practice of carrying out mandates is complex. While the classification outlined above is useful, it can sometimes mask the intricacies associated with providing “mandated” services. The following circumstances underscore the need to dig deeper into the mandated services discussions that inevitably take place during budget deliberations.

- State and federal mandates vs. local mandates.* While the board of county commissioners has no legal control over mandates handed down by the federal or state governments, it does have some degree of control over the mandates it imposes on itself. Ordinances and resolutions that require county government to carry out some function may be amended or repealed or, in some cases, simply go unfunded. Likewise, it may be possible to renegotiate some contractual agreements, or simply choose not to renew them upon their expiration. This means that locally self-imposed mandates are, in a practical sense, policy choices that remain within the discretion of the board.

- Mandated office, non-mandated functions.* The Michigan constitution provides for the election of county clerks, register of deeds (although the board of commissioners may combine the offices of clerk and register of deeds into a single office), sheriffs and prosecutors; however, the mandate for elected county officials does not mean that every service provided or desired by the official is therefore a mandated function of the office. The requirement to provide a mandated service still must reside somewhere in law or contract. For

example, Michigan court cases set forth the common law duties of the sheriff's department, including service of process, execution of court orders and arrest and detention of suspected criminals¹. Michigan statutes define still other duties, including management of the county jail and the recovery of drowned bodies. Many of the other specialized functions commonly performed by sheriffs' departments (e.g. drug enforcement units, domestic violence units, DARE programs) are not mandated. Some functions are mandated as a condition of accepting grant funds (DARE, supplemental road patrol functions as described in MCL 51.76(2)) or reaching agreements with townships (dedicated deputy), but absent those grant funds or agreements the county is under no obligation to perform the functions.

- *Non-mandated office or department, mandated functions.* County Extension offices frequently enter into memoranda of agreement with county boards to partially or completely fund local positions. As a result, the county is mandated to carry out the terms of the agreement despite the fact that "Extension" in a general sense, is not a mandated function of county government.

- *Provision of service not mandated.* Counties are not mandated to act as the provider of mental health services. The Mental Health Code simply requires that the county pay 10 percent of the cost of mental health services provided to residents of the county (MCL 330.1302). Nevertheless, every county in the state has elected to organize to deliver community mental health services programs, either through its own county level agency, a multi-county community mental health organization, or through a single or multi-county legal entity known as a community mental health authority. These organization arrangements provide the local community a mechanism for controlling how monies are spent on services. With these arrangements, however, come a mandate to provide "a complete array of mental health services" which must include certain specific activities. An annual plan is submitted to the Michigan Department of Community Health. Once approved, the plan becomes the mandate.

How Much is Mandated? The Level of Service Question

In making budget decisions it is important for county commissioners to distinguish between a mandate to provide a specific service and the level of service that must be provided. The interrelationship of these two issues is also complex; however, there are essentially two considerations that will influence commissioners' thinking in making budget choices in response to mandates: whether the mandate relates to a specific function or to the level of service required to be delivered.

- *Mandated functions.* Most constitutional and statutory mandates take the form of a general mandate to provide a specific function or service. The county board must appropriate sums sufficient to allow these mandates to be carried out, whether it is a mandate directed at an elected county officer or at county government generally. But how efficiently must the county provide a service? Michigan court cases have set a "minimally serviceable level" standard.

"A serviceable level is not met when the failure to fund eliminates the function or creates an emergency immediately threatening the existence of the function. A serviceable level is not the optimal level. A function funded at a serviceable level will be carried out in a barely adequate manner, but it will be carried out. A function funded below a serviceable level, however, will not be fulfilled as required by statute." Cahalan, et al. v. Wayne County Board of Commissioners, 93 Mich App 114(1979).

1 Refer to the Appendix for selected cases involving the common law duties of the sheriff.

A review of relevant Michigan court cases is provided in the Appendix. The “minimally serviceable level” standard still leaves county commissioners with considerable discretion to make decisions on the amount of funds to expend on any given mandated function. Commissioners need to be aware that any decisions on the level of service to be provided on a mandated function, beyond a minimum serviceable level, are policy choices on equal footing with decisions on spending on discretionary functions. Community expectations, efficiency and effectiveness of delivery and historical precedent all influence the degree to which various programs are funded. Commissioners should be ready to question levels of funding that they do not feel reflect the levels of service being provided. All of the following are policy choices, yet none are mandated:

- Community-based corrections programs provide rehabilitative alternatives to incarceration.
- Adding more computers in the clerk’s office can reduce man-hours.
- Paved shoulders on county roads increase safety and provide bike lanes.
- Recreation and nutrition programs for senior citizens improve their quality of life.
- New software packages and accompanying training in the treasurer’s office may speed the tax administration process.
- County planning and zoning programs protect property values and prevent incompatible neighboring land uses.
- Extension programs help communities, families, organizations, businesses, and individuals gain the knowledge and skills to increase their quality of life.
- Adding 1 FTE will improve circuit court case management.
- Economic development programs create jobs and improve the lives of families.

• *Mandated levels of service.* Some mandates actually define the required level of service with considerable specificity. A memorandum of agreement to fund an Extension Youth Development Agent is self-explanatory in terms of the money the county will expend to support the individual’s salary. Frequently federal or state agency regulations provide specific guidelines on how a function must be carried out. The function may or may not be mandated, but once the county has made the policy choice to support the function it must be provided according to the law. The Public Health Code and the Michigan Department of Community Health detail numerous specific functions that must be carried out by county health departments, including vision and hearing screening, on-site septic system management and food service sanitation. There are specific regulations, medical protocol, etc. that accompany the provision of these services that, in effect, act as the determinant of the level of service to be provided. Counties are not mandated to build, maintain or operate a jail within their borders²; however, once the policy choice is made to do so the design and management of the facility are subject to strict regulation by the Department of Corrections. Commissioners must pay careful attention to the long-term implications of policy choices that will result in mandates to provide specific levels of service. The county often will be left with little discretion as to the level of funding required

2 Counties are required to maintain temporary lock-ups.

of these programs, yet their existence could necessitate budget cuts in other departments to balance the county budget.

County commissioners must review county departments' programs and budgets and stay informed about the mandates each department must meet. Commissioners must keep in mind that decision to fund mandated functions "beyond a barely adequate level" are policy choices within the discretion of the board. Commissioners must also think through the long-term budgetary consequences of policy decisions made today.

Levels of Service and "Quality of Life" Services

Closely related to the "level of service" issue is the "quality of life" issue. Occasionally, some local officials view the quality of life issue as one of providing unneeded luxuries to citizens. In lean revenue years these officials look at programs provided by parks and recreation departments, for example, as prime targets for budget cuts. Elected officials need to be aware of the role government plays in maintaining or improving the quality of life of citizens. By setting a higher level of service than required by mandate, and by providing non-mandated services, counties enhance the quality of life for their constituents. A significant share of the county budget, reflected across many department budgets, is devoted to enhancing the quality of life of its citizens, above and beyond levels required by mandates.

Serving the Many vs. Serving the Few

Another philosophy occasionally advanced during tight budgetary times is that functions that serve the broadest audience should be given priority; the belief being that "mandated" functions generally fit that description. The two functional areas that generally receive the bulk of county financial resources, human services (health and community mental health in particular) and law and courts (including enforcement, adjudication and corrections), however, run counter to this philosophy. Due to the nature of these services, many county citizens' lives are not directly affected by spending in these areas. For example, \$224.5 million of the total \$361.1 million operating budget for Kent County for 2002 is earmarked for these two functional areas. Community Mental Health, which has an \$85 million operating budget, serves roughly 13,118 of Kent County's 575,000 residents.³ In fact, the average taxpayer is sometimes hard pressed to say how he or she benefits from taxes paid to county government. To again use the earlier example, parks and recreation generally provides broad-based services that serve a much wider audience, and give citizens positive exposure to county government.

Another dimension the quality of life issue is that of providing services directed at prevention rather than remediation. It can be argued that a high quality of life is also maintained through preventing problems, such as juvenile crime, malnutrition, watershed degradation or community economic decline, from occurring in the first place. If this can be done successfully through cost-effective means, the need for expensive programs for reversing problems can be reduced.

³ Daryl Delabbio and Al Vanderberg, "City Management. County Management. "Not so Similar After All." Michigan Municipal Review, Vol. 75, No. 8, p. 11 (September/October 2002).

Summary – Key Questions

When engaged in analysis and discussion of the county budget, county commissioners should consider the following questions about mandates, mandated functions and levels of service:

- What are the real mandates for each department?
 - What are the specific functions mandated?
 - Are levels of service mandated?
 - Is the decision to provide the service itself a policy choice? In other words, can the county avoid the mandate by its own action/inaction?
- Are departments protecting programs from potential budget cuts by claiming either that functions are mandated when they are not, or that they are mandated at current levels of service when they are not?
 - Can departments provide documentation for both functional and required level of service mandates?
 - Federal, state, local?
 - Statutes, regulations, ordinances, resolutions, agreements?
- What services does each department provide?
 - What constituencies are served?
 - How many citizens are directly affected by the services?
- Do budget requests reflect additional spending on manpower, technology, etc. when current service levels will be adequate over the short term?
- Is the board subjecting all non-mandated programs, and levels of service beyond “minimally serviceable” levels of service, to the same scrutiny?
- Are there long-term negative consequences of current policy decisions?
 - What obligations arise from accepting a grant, getting into a new service, entering into long-term agreements?
- Do partnering/cost-sharing opportunities between departments exist?
- Do leveraging opportunities exist?
 - Can county appropriations be used to bring outside (primarily state and federal) monies into the county?

Appendix

The appendix contains two sections. Section One contains a synopsis of the most important cases regarding mandated services provide by counties from the Supreme Court of Michigan or the appellate court of Michigan and also contains some provisions from Attorney General opinions.

Section Two contains information from state agencies, one from the Michigan Department of Community Health and one from the Michigan Supreme court, regarding various administrative orders or rules that have been passed by state agencies to guide county governments in the provision and administration of state mandates.

Section One: Review of Selected Court Cases Relating to Mandated County Services

A number of Michigan appellate court cases address the board of commissioner's responsibilities to fund mandated services and the offices of elected county officials. The following three cases provide the essential points of law for commissioners to consider in making budgetary decisions. For highlights of other cases, particularly the evolution of the relationship between the courts, court funding and county appropriations for courts see Harvey and VerBurg, "Mandated vs. Non-Mandated County Services: Evolution of the Argument," paper presented at the Management Training Workshop for County Extension Directors, June 16, 1992 and at New County Commissioner workshops, November-December 2000.

Each and every county service is backed by enabling statutory authority permitting the service to be funded by county monies. Thus, their evolves several types of mandates: constitutional; statutory; AG Opinions (which carry the weight of law); court orders; and community policy (services preferred by the community). Thus the water becomes murky when one tries to use a convenient designation of mandated versus non-mandated as the criteria for resource allocation.

In summary, the various court cases and AG opinions established the following principles:

1. The concept of mandated services does exist and constitutional officers must be provided funding to maintain a serviceable level, a level which is not optimum but barely adequate.
2. Courts may not issue administrative orders for budgets but must first utilize the arbitration system set forth in the Hillsdale/Cheboygan case.
3. In cases where judges and county officers have sued the county board, the officers may recover reasonable attorney fees if the court hearing the case finds that the county board acted in an arbitrary and capricious manner.
4. Burden of proof that appropriations are not adequate rests with the officer or judge seeking additional funding; there must be clear and convincing evidence that the denial of additional funding will inhibit the offices or courts ability to carry out required statutory duties.
5. Courts may set employee salaries but the court's operation must remain within the

appropriated amounts.

6. County board of commissioners may hire personnel to assist the county board and designate such individuals to assume the county purchasing function.

Brownstown Township v. Wayne County Board of Commissioners, 68 Mich. App. 244, 242 N.W.2d538 (1976)

Brownstown Township brought an action to compel the county board to provide the necessary funds to enable the county sheriff to continue road patrol service. The trial court entered summary judgment for the county board. The Court of Appeals affirmed.

The Court of Appeals stated that, as a constitutional office, the office of sheriff has a “known legal character.” As such, the state legislature, in adopting statutes that define the duties of the office, “may vary the duties, but may not change the duties so as to destroy the power to perform the duties of the office.” The court concluded that the sheriff must perform the duties of the office as recognized at common law, as well as those statutory duties that do not destroy the sheriff’s power to perform his/her common law duties. Citing an 1880 case, the court found the common law duties of the office to be:

“...[t]he execution of the orders, judgments, and process of the courts; the preservation of the peace; the arrest and detention of persons charged with the commission of a public offense; the service of papers inactions, and the like....”

Observing that the state legislature has codified the common law duties of the sheriff with little variance, the court concluded that neither common law nor Michigan statutes [at the time in 1976] imposed a mandate on the sheriff to supply road patrol.

“A stricter duty is imposed upon the sheriff to maintain law and order in those areas of the county not adequately policed by local authorities. This does not mean that the sheriff must regularly patrol those areas. All that is minimally required is the sheriff exercise reasonable diligence to (1) keep abreast of those areas inadequately policed, which may require limited vigilance, (2) monitor criminal activity or unusual conditions in the county, and (3) respond professionally to calls for assistance from the citizenry.”

Wayne County Sheriff v. Wayne County Board of Commissioners, 148 Mich. App. 702, 385 N.W.2d267 (1983)

The county board cut the sheriff’s budget by eliminating the Patrol and Investigative Division. The sheriff appealed the trial court’s ruling in support of the county board. The Court of Appeals quoted from a federal district court case from Ohio to paint a frank picture of the typical budgetary process in action at the local level:

“Under the American system of constitutional government, it is the duty of the legislature, in this case the Board of County Commissioners, to raise the funds for governmental operation, and to distribute them among the various executive departments including, in this case, the Sheriff and his department. Since the public funds are not unlimited, and every executive always needs more money than he can get, the matter of appropriations is a highly politic alone.... No public official can provide all the services that he would like to provide, and it is for him to use his judgment as to how

he will make his money spread. If he is politically astute, he can perhaps make sufficient political capital of his inability to render services to create pressure upon the legislative branch to increase his appropriation. But no court can very well take a hand in that game.”

In finding the sheriff could still perform mandated functions at a “minimally serviceable level” after the elimination of the Patrol and Investigative Division, the court considered it highly relevant that the services performed (1) were duplicated by other divisions or departments, including the State Police; (2) were back-up for non-mandated functions, or (3) were still being performed by personnel under the auspices of the Jail Division.

County of Oakland v. State, 432 Mich. 49, 438N.W.2d 61 (1989)

This case is included less for its implications for mandated services than for its explanation of the legislative and judicial actions concerning the function of road patrol by county sheriffs subsequent to the preceding three cases.

Partially in response to *Brownstown Township v. Wayne County Board of Commissioners*, supra, the Legislature adopted PA 416 of 1978, which provides grants to county sheriffs to enhance road patrol efforts beyond those that the sheriffs’ offices were performing “immediately prior to October 1, 1978.” The Legislature established a list of services to be provided by departments receiving grant monies. (MCL 51.76(2)) The grant monies were to be used only for those services, and those services were to be required only to the extent that state funds were provided. (MCL 51.77). If “county expenditures or road patrol” fell below that provided before October 1978 then the county would lose its eligibility for the grant (the “maintenance of effort” clause), the thought being that the grants were being provided to supplement existing road patrol efforts.

Oakland County was notified in 1983 that it no longer met the eligibility criteria for the grants because the state Office of Criminal Justice would not count toward the maintenance of effort standard road officer positions funded through contracts with townships. The county employed 89 full time officers in 1983 compared to 80 in 1978; however, only 25 of those were fully funded by the county’s general fund in 1983, compared to 48 in 1978. The other officers were funded by a combination of county, township and/city funds.

The Michigan Supreme Court determined that monies received for road patrol through contracts with townships should be counted as “county expenditures” for purposes of the maintenance of effort standard. Therefore, even if the amount of county general fund monies directed toward road patrol was reduced, the maintenance of effort standard was still met so long as total expenditures for, and number of officers directed to road patrol remained greater than or equal to the level immediately prior to October 1, 1978.

46th Circuit Court vs. Crawford, Otsego and Kalkaska County

This case involves the 46th circuit court versus its three funding units, Otsego, Crawford and Kalkaska counties. The court sued the county board of commissioners for refusing to provide funding per an increase in retiree, health and income benefits for court employees. In this case, the court argued, not specifically regarding mandates, but rather that without these increased benefits employee morale and productivity would falter and fall.

The court laid out several issues in decision this case. They were: (1) whether the appropriations sought for the enhanced benefits plan were “reasonable and necessary to achieve the court’s constitutional and statutory responsibilities”; (2) whether the defendant counties were contractually obligated to fund the enhanced benefits plan at the level requested by the Trial Court; and (3) whether there was evidence to support the conclusion that the level of funding offered by the counties was insufficient to allow the court to fulfill its essential functions.

In this case, the Supreme Court ruled in favor of the counties finding that the 46th circuit court was unable to provide evidence that any of these conditions above were violated. Thus, the judiciary’s “inherent power” to compel appropriations sufficient to enable it to carry out its constitutional responsibilities is a function of the separation of powers provided for in the Michigan Constitution. In essence, the court reaffirmed the legislative bodies right to set the budget and that the trial courts had to work with the local funding units to ensure that the judicial budget is set adequately but not unreasonably.

Charter Township of Ypsilanti, Township of Salem and Charter Township of Augusta

Ypsilanti, Salem and Augusta townships sued Washtenaw County over the claim that road patrol contracts with the Sherriff department were violated. Under existing agreements, the county subsidized the cost of deputies with .5 mills from the county general fund. After some analysis, the county decided that the townships would be responsible for some of the police service unit overtime as well as subject to a 6 percent increase in annual cost of the contract. In 2008, the county submitted a new four-year contract that would require each township to pay the full cost of the police service units with no subsidy from the county.

The Court of Appeals reiterated that there is no statutory or common law requirement that the Sherriff or Sherriff department provide road patrol.

All that is minimally required is that the sheriff exercise reasonable diligence to (1) keep abreast of those areas inadequately policed, which may require limited vigilance, (2) monitor criminal activity or unusual conditions in the county, and (3) respond professionally to calls for assistance from the citizenry.

Cahalan, et al. v. Wayne County Board of Commissioners, 93 Mich. App. 114, 286 N.W.2d 62 (1979).

The county board imposed an across-the-board 15% budget reduction for all county departments. The prosecuting attorney, treasurer, clerk, register of deeds and drain commissioner sought an injunction to prevent the board from implementing the budget cuts. The trial court concluded that an equal, across-the-board cut for all offices was arbitrary. The decision was appealed.

The Court of Appeals first stated, as a principle of separation of powers, that courts will not second-guess the legislative function of a county board in making appropriations decisions “unless the action taken is so capricious or arbitrary as to evidence a total failure to exercise discretion.” The court concluded, however, that:

“Where the Legislature has statutorily imposed on the county executive officers various duties and obligations, the county boards of commissioners must budget sums sufficient to allow the executive officers to carry out their duties and obligations.”

Necessarily, then, the court turned to a discussion of what *level of service* was sufficient. The court adopted

“serviceability” as the standard to be applied, and defined it as follows:

“Serviceability must be defined in the context of ...”urgent”, “extreme”, “critical”, and “vital” needs. A serviceable level of funding is the minimum budgetary appropriation at which statutorily mandated functions can be fulfilled. A serviceable level is not met when the failure to fund eliminates the function or creates an emergency immediately threatening the existence of the function. A serviceable level is not the optimal level. A function funded at a serviceable level will be carried out in a barely adequate manner, but it will be carried out. A function funded below a serviceable level, however, will not be fulfilled as required by statute.”

The court found that across-the-board cuts, in this case, were not arbitrary because the record demonstrated that the board had given serious thought to the issue, and that the board genuinely believed that all of the services were important enough that all should be treated alike. However, the court concluded that cuts to the offices of prosecutor and register of deeds would render those offices unable to perform their statutorily mandated functions.

Circuit Judge v. Wayne County Board of Commissioners 1971

A circuit court judge issued a court order to the county board in an attempt to increase the appropriation to the court. The ruling from the court case strengthened the claim by constitutional county officers of a claim on county resources. The courts stated "the judiciary must possess inherent powers to compel appropriations and expenditures to reasonable sums necessary to the exercise of its constitutionally assigned responsibilities".

Wayne County Prosecutor, Treasurer, Clerk, Register of Deeds, Drain Commissioners v. Wayne County Board of Commissioners, 93 Mich App 114, 1979

The Wayne County Board of Commissioners had imposed an across the board 15% budget reduction for all county departments. The aforementioned county officers sought an injunction to prohibit the county board from instituting the budget reductions. The case was appealed to the Michigan Court of Appeals.

The court found the following:

1. Judicial review of appropriation decisions of county boards is limited in scope and could only be undertaken where a county board fails to perform the duties imposed by the Legislature.
2. County Boards must appropriate sums sufficient to allow county executive officers to carryout the duties and obligations which have been statutorily imposed upon them by the Legislature.
3. Discretionary appropriations by county boards are subject to judicial review only when the action of the county board is so arbitrary and capricious as to evidence a total lack of discretion.
4. The uniformly applied fixed percentage was not arbitrary and capricious since the record demonstrates that the board believed that all funded services were

important enough to be treated equally.

5. County boards of commissioners must appropriate the funds necessary to permit county executive officers to carry out their statutorily mandated duties at a serviceable level. A serviceable level is not the optimal level, but is rather the level of funding which permits the duties to be carried out in a barely adequate manner.
6. The reductions in the budgets of the clerk, treasurer and drain commissioner did not result in funding below the serviceable level, since the reductions could be achieved by the elimination of unfilled previously budgeted positions.
7. Upheld the decision of the Trial Court.
8. The reduction in the budget of the register of deeds resulted in funding below the serviceable level, since such reduction would require elimination of six filled positions in a department that was chronically behind in its duties and would cause matters in that department to fall further behind.
9. The reduction in the budget of the prosecuting attorney resulted in funding below the serviceable level.

Wayne County Sheriff v Wayne County Board of Commissioners, 148 Mich App 702, 1983

The county board cut the sheriff's budget by eliminating road patrol and investigative division. The decision of the Court of Appeals held the findings of the Trial Court.

1. County board did not act arbitrary and capricious nor did their action involve malicious intent.
2. The elimination of road patrol and investigative divisions did not prevent the sheriff from carrying out mandated duties.
3. Circuit Court did not abuse its discretionary authority in excluding testimony of sheriff witnesses.
4. The circuit Court did not abuse its discretion in denying plaintiff's request for attorney fees.

County Board's Authority in Creating an Administrative Assistant Position To Serve As County Purchasing Agent, Attorney General Opinion No. 5816, November 1980.

The request for the AGO opinion also included whether or not county executive officers (elected) must submit purchase requests to the Purchasing Agent for approval.

1. County boards do have the statutory authority to create new positions and to assign the purchasing function.
2. County boards may not require prior approval of the chief administrative officer (purchasing agent, administrator) for expenditures by elected county officials

authorized line-item budget appropriations, except that the board may require pre-expenditure notification to such officer (1) to ensure that such expenditure is within authorized budgetary limits and (2) to effectuate centralized county purchasing functions.

Employees and Judge of the Second Judicial District Court v Hillsdale County and Board of Commissioners of Cheboygan County v Cheboygan Circuit Judge, 423 Mich 705, 1985.

District Court employees successfully litigated their right to withdraw from the county's retirement-pension system. An agreement was reached with court employees that the four percent county contribution would be paid directly to the employees. County board deleted the four percent direct payment. Court issued an administrative order to the county board directing the county to pay the increase. County refused employees and district judge brought action against the county.

The judge of the Cheboygan Circuit Court issued administrative orders directing the county clerk and treasurer to pay the wages of and provide benefits for a certain part-time employees in amounts greater than those provided for other county funded part-time employees and requiring the clerk and treasurer to refrain from efforts to reduce the court budget. The court argued that the order was enforceable through the court's contempt power. County board appealed to the Michigan Court of Appeals and was granted leave to appeal to the Supreme Court where the two court suits were handled together (Hillsdale and Cheboygan).

1. Court may not issue administrative orders to seek appropriations above those designated by the county board.
2. Court has the authority to set salaries within appropriations.
3. Court may order payment when necessary to perform statutorily designated duties and functions but the court did not prove that by not receiving their above appropriation request that the court's ability to carryout the statutory duties were impaired.
4. Procedures were established for the court to arbitrate budget conflicts. In cases where the court disagrees with the appropriation, the court must submit financial situation to the State Supreme Court Administrator. The SC administrator is required to investigate, hold a hearing between the court (judge) and a panel of three designated representatives (County, Michigan Association of Counties designee and one additional member. If it is determined that the budget request submitted by the court is reasonable, the court may begin legal action after a 30 day waiting period. Judge must pay own legal fees but may attempt to recover legal fees if sufficient proof is submitted that the request was reasonable.
5. The inherent power upheld but modified with respect to administrative orders related to budget requests.

Ottawa County Controller v Ottawa Probate Judge, 156 Mich App 594, 1986.

In 1983, the Ottawa Probate Court issued an administrative order directing the Ottawa County Controller to pay eight nonunion supervisory employees of the probate court salaries in the amount the probate court

determined to be appropriate. The controller and county board filed suit in Ottawa Circuit Court seeking a declaration that plaintiff board had exclusive authority to set the level of compensation. Probate court filed a counter claim seeking determination that the plaintiff board was required to annually award a lump sum total budget for probate court operation.

1. Probate court carries the responsibility for providing burden of proof that seeking funds beyond those appropriated by the county board were necessary in order for the court to fulfill its statutory duties. Court officers must provide clear and convincing evidence that the appropriation is necessary in performance of statutory duties. Burden of proof not established by Probate Court.
2. A probate judge has the authority to set individual salaries of probate court employees as long as the judge remains with the court's total budget appropriation by the county.
3. The Uniform Accounting and Budget Act does not apply to probate court appropriations. The county board may not make the probate court's appropriation subject to segregated budget or detailed line item appropriations but must make a lump sum appropriation.

Seventeenth District Probate Court v Gladwin County Board of Commissioners and Seventeenth District Probate Court v Clare County Board of Commissioners, 155 Mich App 429, 1986.

The 17th District Probate Court filed a complaint for declaratory judgment in Gladwin Circuit Court claiming that the level of funding provided was inadequate for the proper operation of the court. In particular, it was claimed that the sums appropriated for the salaries of the employees of the court were inadequate.

1. Probate court has inherent power to require funds necessary to carry out its statutorily mandated functions but court bears the burden of proof including what constitutes reasonable salaries. Must be based on reasonable and necessary standards. Court carried its burden of proof.
2. Trial court's findings were not erroneous. (The trial court had denied the probate courts claim.)
3. The probate court may not raise questions at the Appeals level if the question was not raised at the trial court level.
4. A court pursuing its right to adequate funding may employ outside counsel and may recover reasonable attorney fees. The plaintiff has the responsibility of proving that the requested attorney fees were reasonable.

Branch County Board of Commissioners v Local 586, 168 Mich App 340, 1988

District Court employees requested and denied additional appropriations to cover salary increases for court employees. The denial by the board was based on facts presented that the additional appropriation would place the county in a deficit condition. District Judge argued that although turnover in staff was not a problem, it could become one if salary increases were not granted. The county board's witness argued that

the terms of the collective bargaining agreement negotiated by the District Judge were "neither reasonable nor necessary".

1. District court had the responsibility of providing the burden of proof by presenting clear and convincing evidence that the wage increase was reasonable and necessary to the carrying out of the court's statutory duties. The Michigan Court of Appeals ruled that District Court had not done so, therefore upheld the trial courts findings.

Section Two: Administrative Rules, Orders and Statutes

Local Public Health Departments Administrative Rules, order and Statutes

The following citation is taken from Michigan law regarding the statutory mandates as passed in 1978 under the Michigan public health code. These statutory responsibilities have been further described and detailed in administrative rules promulgated by the Michigan Department of Community health.

333.2473 Specific objectives of required services; demonstrating provision of service; contracts.

Sec. 2473.

(1) Required services designated pursuant to part 23 shall be directed at the following specific objectives:

- (a) Prevention and control of environmental health hazards.
- (b) Prevention and control of diseases.
- (c) Prevention and control of health problems of particularly vulnerable population groups.
- (d) Development of health care facilities and agencies and health services delivery systems.
- (e) Regulation of health care facilities and agencies and health services delivery systems to the extent provided by state law.

(2) A local health department and its local governing entity shall provide or demonstrate the provision of each required service which the local health department is designated to provide.

(3) The department may enter into contracts necessary or appropriate to carry out this section.

This list has been expanded into far greater detail by the Michigan Department of Community Health. The following matrix is based on a memo from the Michigan Department of Community health to the Local Health departments in regards to local health departments' plan of organization.

MATRIX DEFINITIONS

Name	Citation	Description
1. Required Service	MCL 333.2321(2); MCL 333.2408; R325.13053	Means: (A) a basic service designated for delivery through Local Public Health Department (LPH), (B) local health service specifically required pursuant to Part 24 or specifically required elsewhere in state law, or (C) services designated under LPHO.
1.A. Basic Service	MCL 333.2311; MCL 333.2321	A service identified under Part 23 that is funded by appropriations to MDCH or that is made available through other arrangements approved by the legislature. Defined by the current Appropriations Act and could change annually. For FY 2005: immunizations, communicable disease control, STD control, TB control, prevention of gonorrhea eye infection in newborns, screening newborns for 8 conditions, community health annex of the MEMP, and prenatal care.
1.B. Mandated Service	MCL 333.2408	The portion of required services that are not basic services, but are “required pursuant to this part [24] or specifically required elsewhere in state law.”
1.C. LPHO	PA 349 of 2004 – Sec. 904	Funds appropriated in part 1 of the MDCH Appropriations Act that are to be prospectively allocated to LPH to support immunizations, infectious disease control, STD control and prevention, hearing screening, vision services, food protection, public water supply, private groundwater supply, and on-site sewage management.
2. Allowable Services	MCL 333.2403; R325.13053	“Means a health service delivered [by LPH] which is not a required service but which the department determines is eligible for cost reimbursement”.
PA 349 of 2004		Fiscal year 2005 Appropriations Act for the Department of Community Health.

Services	Rule or Statutory Citation	Required =	Basic +	Mandated +	LPHO	Allowable	Notes
		1	1.A.	1.B.	1.C.	2	
Immunizations	PA 349 of 2004 – Sec. 218 and 904; MCL 333.9203, R325.176	X	X	X	X		
Infectious/ Communicable Disease Control	MCL 333.2433; Parts 51 and 52; PA 349 of 2004 – Sec. 218 and 904; R325.171 et seq.	X	X	X	X		
STD Control	PA 349 of 2004 -- Sec. 218 and 904; R325.177	X	X	X	X		
TB Control	PA 349 of 2004 – Sec. 218	X	X	X			
Emergency Management – Community Health Annex	PA 349 of 2004 – Sec. 218 MCL 30.410	X	X	X			Basic Service under Appropriations Act and Mandated Service, if required, under Emergency Management Act.
Prenatal Care	PA 349 of 2004 – Sec. 218	X	X				
Family planning services for indigent women	MCL 333.9131; R325.151 et seq.	X		X			
Health Education	MCL 333.2433	X		X			
Nutrition Services	MCL 333.2433	X		X			
HIV/AIDS Services; reporting, counseling and partner notification	MCL 333.5114a; MCL 333.5923; MCL 333.5114	X		X			
Care of individuals with serious Communicable disease or infection	MCL 333.5117; Part 53; R325.177	X		X			(4) Financial liability for care rendered under this section shall be determined in accordance with part 53.

Services	Rule or Statutory Citation	Required	Basic	Mandated	LPHO	Allowable	Notes
		=	+	+			
		1	1.A.	1.B.	1.C.	2	
Hearing and Vision Screening	MCL 333.9301; PA 349 of 2004 – Sec. 904; R325.3271 et seq.; R325.13091 et seq.	X		X	X		
Public Swimming Pool Inspections	MCL 333.12524; R325.2111 et seq.	X		X			Required, if “designated”
Campground Inspection	MCL 333.12510; R325.1551 et seq.	X		X			Required, if “designated”
Public/Private On-Site Wastewater	MCL 333.12751 to MCL 333.12757 et. seq., R323.2210 and R323.2211	X		X	X		Alternative waste treatment systems regulated by local public health.
Food Protection	PA 92 of 2000 MCL 289.3105; PA 349 of 2004 – Sec. 904	X		X	X		
Public/Private Water Supply	MCL 333.1270 to MCL 333.12715; R325.1601 et. seq.; MCL 325.1001 to MCL 325.1023; R325.10101 et. seq.	X			X		
Allowable Services						X	This category would include all permissive responsibilities in statute or rule that happen to be eligible for cost reimbursement.
Other Responsibilities as delegated and agreed-to	MCL333.2235(1)					X	This category is NOT connected to express responsibilities within statute, but refers entirely to pure delegation by the department as allowed. In addition to general provision, the Code allows delegations for specified functions.

LAWS APPLICABLE TO LOCAL PUBLIC HEALTH (LPH)

Public Health Code (PA 368 of 1978)

MCL § 333.1105 – Definition of Local Public Health Department

MCL § 333.1111 – Protection of the health, safety, and welfare

Part 22 (MCL §§ 333.2201 *et seq.*) – State Department

Part 23 (MCL §§ 333.2301 *et seq.*) – Basic Health Services

Part 24 (MCL §§ 333.2401 *et seq.*) – Local Health Departments

Part 51 (MCL §§ 333.5101 *et seq.*) – Prevention and Control of Diseases and Disabilities

Part 52 (MCL §§ 333.5201 *et seq.*) – Hazardous Communicable Diseases

Part 53 (MCL §§ 333.5301 *et seq.*) – Expense of Care

MCL § 333.5923 – HIV Testing and Counseling Costs

MCL § 333.9131 – Family Planning

Part 92 (MCL §§ 333.9201 *et seq.*) – Immunization

Part 93 (MCL §§ 333.9301 *et seq.*) – Hearing and Vision

MCL § 333.11101 – Prohibited Donation or Sale of Blood Products

MCL § 333.12425 – Agricultural Labor Camps

Part 125 (MCL §§ 333.12501 *et seq.*) – Campgrounds, etc.

Part 127 (MCL §§ 333.12701 *et seq.*) – Water Supply and Sewer Systems

Part 138 (MCL §§ 333.13801 *et seq.*) – Medical Waste

(Required to investigate if complaint made and transmit report to MDCH – 13823 and 13825)

MCL § 333.17015 – Informed Consent

Appropriations (Current: PA 349 of 2004)

Sec. 218 – Basic Services

Sec. 904 - LPHO

Michigan Attorney General Opinions

OAG, 1987-1988, No 6415 – Legislative authority to determine appropriations for local health services

OAG, 1987-1988, No 6501 – Reimbursement of local department for required and allowable services

Food Law of 2000 (PA 92 of 2000)

MCL §§ 289.1101 *et seq.*

Specifically:

MCL § 289.1109 – Definition of local health department

MCL § 289.3105 – Enforcement, Delegation to local health department

Natural Resources and Environmental Protection Act (PA 451 of 1994)

Part 31- Water Resources Protection

Specifically: MCL §§ 324.3103 powers and duties and 324.3106 (establishment of pollution standards)

Part 22 - Groundwater Quality rules (on-site wastewater treatment)

Michigan Supreme Court and Trial Courts Administrative Rules and Orders

Another area of state-local relations where a clear cut approach to mandating and budgeting has been adopted is the court system. The trial courts, probate, circuit and district are funded by county and state government. The State government covers the cost of the judges' salaries, federal and state taxes, retirement and a small travel stipend. The county is responsible for fringe benefits, clerks, court reporters bailiffs, legal assistants, support staff, computers and equipment, courtroom and judge's chambers. Counties are mandated by law to provide support staff, services and facilities to judges. However, there is a process for negotiation and bargaining that occurs between the trial courts and county commissioners. The Supreme Court of Michigan has laid down important rules that each trial court must follow as specified in administrative order 1998-5.

The administrative order is reported below. In summary, the order has a few key components:

- 1) Chief Judge or court may not enter into multiyear commitment regarding personnel economic issues with funding unit approval
- 2) Court or Chief Judge may not transfer funds between line items to create new positions or supplement wages or benefits or reclassify employees with funding unit approval
- 3) To the extent possible, noneconomic personnel issues should be consistent with non-court personnel

Thus, the order ensures that courts may not unilaterally make changes to issues surrounding the budget or economic issues of court personnel. This respects the right of the legislative branch of government to make and pass laws regarding the spending of public funds.

Michigan Supreme Court Administrative Order No. 1998-5

Chief Judge Responsibilities; Local Intergovernmental Relations

On order of the Court, the following order is effective immediately. This order replaces Administrative Order No. 1997- 6, which is rescinded.

I. APPLICABILITY

This Administrative Order applies to all trial courts as defined in MCR 8.110(A).

II. COURT BUDGETING

A court must submit its proposed and appropriated annual budget and subsequent modifications to the State Court Administrator at the time of submission to or receipt from the local funding unit or units. The budget submitted must be in conformity with a uniform chart of accounts. If the local funding unit requests that a proposed budget be submitted in line-item detail, the chief judge must comply with the request.

If a budget has been appropriated in line-item detail, without prior approval of the funding unit, a court may not transfer between line-item accounts to: (a) create new personnel positions or to supplement existing

wage scales or benefits, except to implement across the board increases that were granted to employees of the funding unit after the adoption of the court's budget at the same rate, or (b) reclassify an employee to a higher level of an existing category.

A chief judge may not enter into a multiple-year commitment concerning any personnel economic issue unless: (1) the funding unit agrees, or (2) the agreement does not exceed the percentage increase or the duration of a multiple-year contract that the funding unit has negotiated for its employees. Courts must notify the funding unit or a local court management council of transfers between lines within 10 business days of the transfer. The requirements shall not be construed to restrict implementation of collective bargaining agreements.

III. FUNDING DISPUTES; MEDIATION AND LEGAL ACTION

If, after the local funding unit has made its appropriations, a court concludes that the funds provided for its operations by its local funding unit are insufficient to enable the court to properly perform its duties and that legal action is necessary, the procedures set forth in this order must be followed.

1. Legal action may be commenced 30 days after the court has notified the State Court Administrator that a dispute exists regarding court funding that the court and the local funding unit have been unable to resolve, unless mediation of the dispute is in progress, in which case legal action may not be commenced within 60 days of the commencement of the mediation. The notice must be accompanied by a written communication indicating that the chief judge of the court has approved the commencement of legal proceedings. With the notice, the court must supply the State Court Administrator with all facts relevant to the funding dispute. The State Court Administrator may extend this period for an additional 30 days.
2. During the waiting period provided in paragraph 1, the State Court Administrator must attempt to aid the court and the involved local funding unit to resolve the dispute.
3. If, after the procedure provided in paragraph 2 has been followed, the court concludes that a civil action to compel funding is necessary, the State Court Administrator must assign a disinterested judge to preside over the action.
4. Chief judges or representatives of funding units may request the assistance of the State Court Administrative Office to mediate situations involving potential disputes at any time, before differences escalate to the level of a formal funding dispute.

IV. LOCAL COURT MANAGEMENT COUNCIL OPTION

Where a local court management council has been created by a funding unit, the chief judge of a trial court for which the council operates as a local court management council, or the chief judge's designee, may serve as a member of the council. Unless the local court management council adopts the bylaws described below, without the agreement of the chief judge, the council serves solely in an advisory role with respect to decisions concerning trial court management otherwise reserved exclusively to the chief judge of the trial court pursuant to court order and administrative order of the Supreme Court.

A chief judge, or the chief judge's designee, must serve as a member of a council whose nonjudicial members agree to the adoption of the following bylaws:

- 1) Council membership includes the chief judge of each court for which the council operates as a local court management council.
- 2) Funding unit membership does not exceed judicial membership by more than one vote. Funding unit membership is determined by the local funding unit; judicial membership is determined by the chief judge or chief judges. Judicial membership may not be an even number.
- 3) Any action of the council requires an affirmative vote by a majority of the funding unit representatives on the council and a majority vote of the judicial representatives on the council.
- 4) Once a council has been formed, dissolution of the council requires the majority vote of the funding unit representatives and the judicial representatives of the council.
- 5) Meetings of the council must comply with the Open Meetings Act.MCL 15.261 et seq.; MSA 4.1800(11) et seq. Records of the council are subject to the Freedom of Information Act.MCL 15.231 et seq.; MSA 4.1801(1) et seq.

If such bylaws have been adopted, a chief judge shall implement any personnel policies agreed upon by the council concerning compensation, fringe benefits, and pensions of court employees, and shall not take any action inconsistent with policies of the local court management council concerning those matters. Management policies concerning the following are to be established by the chief judge, but must be consistent with the written employment policies of the local funding unit except to the extent that conformity with those policies would impair the operation of the court: holidays, leave, work schedules, discipline, grievance process, probation, classification, personnel records, and employee compensation for closure of court business due to weather conditions.

As a member of a local court management council that has adopted the bylaws described above, a chief judge or the chief judge's designee must not act in a manner that frustrates or impedes the collective bargaining process. If an impasse occurs in a local court management council concerning issues affecting the collective bargaining process, the chief judge or judges of the council must immediately notify the State Court Administrator, who will initiate action to aid the local court management council in resolving the impasse.

It is expected that before and during the collective bargaining process, the local court management council will agree on bargaining strategy and a proposed dollar value for personnel costs. Should a local court management council fail to agree on strategy or be unable to develop an offer for presentation to employees for response, the chief judge must notify the State Court Administrator. The State Court Administrator must work to break the impasse and cause to be developed for presentation to employees a series of proposals on which negotiations must be held.

V. PARTICIPATION BY FUNDING UNIT IN NEGOTIATING PROCESS

If a court does not have a local court management council, the chief judge, in establishing personnel policies

concerning compensation, fringe benefits, pensions, holidays, or leave, must consult regularly with the local funding unit and must permit a representative of the local funding unit to attend and participate in negotiating sessions with court employees, if desired by the local funding unit. The chief judge shall inform the funding unit at least 72 hours in advance of any negotiating session. The chief judge may permit the funding unit to act on the chief judge's behalf as negotiating agent.

VI. CONSISTENCY WITH FUNDING UNIT PERSONNEL POLICIES

To the extent possible, consistent with the effective operation of the court, the chief judge must adopt personnel policies consistent with the written employment policies of the local funding unit. Effective operation of the court to best serve the public in multicounty circuits and districts, and in third class district courts with multiple funding units may require a single, uniform personnel policy that does not wholly conform to specific personnel policies of any of the court's funding units.

1. Unscheduled Court Closing Due to Weather Emergency.

If a chief judge opts to close a court and dismiss court employees because of a weather emergency, the dismissed court employees must use accumulated leave time or take unpaid leave if the funding unit has employees in the same facility who are not dismissed by the funding unit. If a collective bargaining agreement with court staff does not allow the use of accumulated leave time or unpaid leave in the event of court closure due to weather conditions, the chief judge shall not close the court unless the funding unit also dismisses its employees working at the same facility as the court.

Within 90 days of the issuance of this order, a chief judge shall develop and submit to the State Court Administrative Office a local administrative order detailing the process for unscheduled court closing in the event of bad weather. In preparing the order, the chief judge shall consult with the court's funding unit. The policy must be consistent with any collective bargaining agreements in effect for employees working in the court.

2. Court Staff Hours.

The standard working hours of court staff, including when they begin and end work, shall be consistent with the standard working hours of the funding unit. Any deviation from the standard working hours of the funding unit must be reflected in a local administrative order, as required by the chief judge rule, and be submitted for review and comment to the funding unit before it is submitted to the SCAO for approval.

Administrative Orders Last Updated 5/2/2007

VII. TRAINING PROGRAMS

The Supreme Court will direct the development and implementation of ongoing training seminars of judges and funding unit representatives on judicial/legislative relations, court budgeting, expenditures, collective bargaining, and employee management issues.

VIII. COLLECTIVE BARGAINING

For purposes of collective bargaining pursuant to 1947 PA 336, a chief judge or a designee of the chief judge shall bargain and sign contracts with employees of the court. Notwithstanding the primary role of the chief judge concerning court personnel pursuant to MCR 8.110, to the extent that such action is consistent with the effective and efficient operation of the court, a chief judge of a trial court may designate a representative of a local funding unit or a local court management council to act on the court's behalf for purposes of collective bargaining pursuant to 1947 PA 336 only, and, as a member of a local court management council, may vote in the affirmative to designate a local court management council to act on the court's behalf for purposes of collective bargaining only.

IX. EFFECT ON EXISTING AGREEMENTS

This order shall not be construed to impair existing collective bargaining agreements. Nothing in this order shall be construed to amend or abrogate agreements between chief judges and local funding units in effect on the date of this order. Any existing collective bargaining agreements that expire within 90 days may be extended for up to 12 months.

If the implementation of 1996 PA 374 pursuant to this order requires a transfer of court employees or a change of employers, all employees of the former court employer shall be transferred to, and appointed as employees of, the appropriate employer, subject to all rights and benefits they held with the former court employer. The employer shall assume and be bound by any existing collective bargaining agreement held by the former court employer and, except where the existing collective bargaining agreement may otherwise permit, shall retain the employees covered by that collective bargaining agreement.

A transfer of court employees shall not adversely affect any existing rights and obligations contained in the existing collective bargaining agreement. An employee who is transferred shall not, by reason of the transfer, be placed in any worse position with respect to worker's compensation, pension, seniority, wages, sick leave, vacation, health and welfare insurance, or any other terms and conditions of employment that the employee enjoyed as an employee of the former court employer. The rights and benefits thus protected may be altered by a future collective bargaining agreement.

X. REQUESTS FOR ASSISTANCE

The chief judge or a representative of the funding unit may request the assistance of the State Court Administrative Office to facilitate effective communication between the court and the funding unit.