



**United Counties Council of Illinois**  
217 East Monroe ~ Suite 101  
Springfield, Illinois 62701

**217-544-5585**

W. Michael McCreery, Executive Director

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August 8, 2018

To: UCCI Membership

*Re: Authority of the Chairman of a County Board of Commissioners*

**Issue:**

Whether the chairman of a county board of commissioners possess authority to bind a county contractually without advice and consent of the rest of the board.

**Analysis:**

Generally, home rule units may exercise powers and perform functions pertaining to its government and affairs without regard to specific statutory authority.<sup>1</sup> Non-home-rule units, however, possess only those powers which are specifically conveyed by the Illinois Constitution or by statute.<sup>2</sup>

There exist three possible organizational structures for county government in Illinois. The Counties Code allows for counties to organize their local government as a township,<sup>3</sup> a commission,<sup>4</sup> or a county executive form of government.<sup>5</sup> At issues here is a chairman's role in the commission form of county government. A county board chairman is selected by the commissioners from their ranks on a yearly basis.<sup>6</sup>

<sup>1</sup> Ill. Const. 1970, art. VII, § 6; *T & S Signs, Inc. v. Village of Wadsworth*, 261 Ill. App. 3d 1080, 1090 (2nd Dist. 1994).

<sup>2</sup> *Commonwealth Edison Co. v. City of Warrenville*, 288 Ill. App. 3d 373, 380 (2nd Dist. 1997).

<sup>3</sup> 55 ILCS 5/Div. 2-1.

<sup>4</sup> 55 ILCS 5/Div. 2-4.

<sup>5</sup> 55 ILCS 5/Div. 2-5.

<sup>6</sup> See 55 ILCS 5/2-4003 (in December of each year, the county commissioners shall elect one of their number chairman for the ensuing year, who shall preside at their sessions and perform such duties as are or may be prescribed by law or by the order of said board).

The Counties Code is sparse in defining in any great detail the power, duties, and obligations of a county board chairman. To a great extent, a county board chairman's powers and duties are based on the traditions and practices of a particular county. That said, there exist various sources for determining the duties and responsibilities of a chairman. For example, common law duties are recognized by courts as inherent or otherwise implicit to the position of chairman. The Counties Code and related statutory provisions (occasionally) identify duties or functions to be performed by the chairman on behalf of the county board (*i.e.*, appointment authority<sup>7</sup>, veto authority<sup>8</sup>, etc.).

In addition, counties have traditionally adopted rules of practice and procedure for the conduct of county board and/or committee meetings. Prior county board ordinances and resolutions governing the chairman's duties are largely considered binding on successor county boards unless such ordinances and resolutions limit the applicability to the then current board. Accordingly, a new board should ascertain the existence of prior ordinances, resolutions, or motions that may have been adopted establishing rules of practice and procedure, as they may be considered binding on successor boards.

Generally speaking, it is the duty and responsibility of the county board chairman to control, manage and preserve the decorum of the meeting which includes calling law enforcement, if necessary, to protect the members of the board, the public and otherwise maintain order. The chairman must also protect the rights of the general public to address the meeting as provided by law, including the right to publicly address the board and their right to record the meeting. In addition, the chairman,

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<sup>7</sup> The various statutory provisions governing appointment to boards and commissions generally require appointment by the county board as distinguished from the chairman. This language, subject to board rules, typically suggests appointment by the chairman "with the advice and consent" or the approval of the board members. Occasionally statutory provisions specifically identify the appointment authority vested in the chairman. In this respect, the chairman should follow traditional board practice. However, the best practice is always to secure consent or approval of the board.

<sup>8</sup> Note that a chairman does not possess veto authority unless such authority is expressly authorized by law. The Counties Code grants limited veto authority to a chairman of a county with a population between 700,000 and 3,000,000 with respect to ordinances or resolutions appropriating funds to the county health departments and metropolitan airport authorities. 55 ILCS 5/5-1014.5; 55 ILCS 5/5-25010; 70 ILCS 5/13. A chairman elected at large may receive veto authority if an ordinance is adopted by the board granting such veto authority. 55 ILCS 5/2-1005.

in conjunction with the state's attorney, has the burden of ensuring compliance with all applicable laws, ordinances and resolutions governing the county board. Finally, it is the responsibility of the chairman to ensure that board meetings are conducted in compliance with the Open Meetings Act.<sup>9</sup> More specifically, the county board chairman is charged with opening and calling the county board meeting to order;<sup>10</sup> receiving committee reports,<sup>11</sup> conducting a roll call or voice vote;<sup>12</sup> recognizing members of the public wishing to address the board;<sup>13</sup> and ensuring compliance with both county board rules and the Open Meetings Act.<sup>14</sup>

With regard to the question of whether the chairman of a county board of commissioners possess independent authority to unilaterally bind a county contractually without advice and consent of the rest of the board., the Illinois Supreme Court has repeatedly instructed that a county board chairman in Illinois has no power to act individually absent statutory or board authorization.<sup>15</sup> In fact, no individual members of a county board in Illinois, including the chairman, possess the independent authority to bind a county to contracts.<sup>16</sup> A review of the Counties Code does not reveal any specific blanket statutory authority afforded to a county chairman to contractually bind a county without

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<sup>9</sup> 5 ILCS 120/1 *et. seq.*

<sup>10</sup> The initial act of calling a meeting to order is a roll call vote to determine the presence of a quorum. 55 ILCS 5/2-1005; 5 ILCS 120/1.02. The absence of a quorum prevents conducting public business until a quorum is established. A quorum must be established by those present at the meeting. If a quorum is present, the Open Meetings Act permits members to be present through electronic means. 5 ILCS 120/2.01.

<sup>11</sup> Note that while a motion is generally made, one is not necessary to receive committee reports.

<sup>12</sup> The Counties Code mandates a roll call vote with respect to all appropriation propositions. The Open Meetings Act also requires a roll call vote in connection with a motion to enter closed session. It is the best practice with respect to all substantive ordinances or resolutions for the chairman to seek a roll call vote.

<sup>13</sup> 55 ILCS 5/2-1001; 5 ILCS 120/2.06.

<sup>14</sup> It is generally considered the chairman's duty and obligation, with the assistance of the state's attorney, to ensure that all agenda requirements are in compliance with the Open Meetings Act.

<sup>15</sup> *County of Stephenson v. Bradley and Bradley, Inc.*, 2 Ill. App. 3d 421, 425 (1971) ("A county board alone has power by law to bind a county contract, and there is no such power in an individual or a committee unless that power has been bestowed by the county board.").

<sup>16</sup> See *County of Stephenson*, 2 Ill. App. 3d at 425; *County of Will v. George*, 103 Ill. App. 3d 1016 (1982); *Sexton v. Cook County*, 114 Ill. 174 (1885); *Cawley v. The People*, 95 Ill. 249 (1880).

advice and consent of the rest of the board. Whether an individual county allows a chairman the independent authority to contract without advice and consent of the board would require an examination of that county's prior ordinances, resolutions, and motions, which would establish and govern any such practice and procedure.

**Conclusion:**

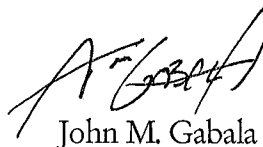
In sum, it is the opinion of this office that, absent some specific statutory or board authorization, the chairman of a county board of commissioners does not possess independent authority to contractually bind a county without first seeking advice and obtaining consent of the rest of the board.

At the request and direction of UCCI this opinion was prepared by

GIFFIN, WINNING, COHEN & BODEWES, P.C.



Herman G. Bodewes



John M. Gabala