Tax Commissioners: Overview of Constitutional Officers & Panel Discussion

May 8, 2019

Presenter:

Ken E. Jarrard

County Attorney to Forsyth County, Barrow County, Cherokee County, Jackson County, Greene County, Newton County & Dawson County, & City Attorney to the City of Milton
Welcome and Getting Started
Ground Rules For Today

Please...

• Have fun!
• Keep an open mind
• Observe the “Vegas” rule
• Make no extra noise
• Focus on making government better
• Defy expectations
• We are in this together
Our Esteemed Panel!
Panel!

• Kay Love, Georgia Municipal Association
• Bill Twomey, Association County Commissioners of Georgia
• Byron Lombard, Greene County Manager
• Chris Gaines, Dawson County Vice-Chair
• Joel Black, Mauldin and Jenkins, LLP (government accounting)
• Ken Jarrard, Jarrard & Davis, LLP
Constitutional Officers and the County: Who Controls What?
Who Are Constitutional Officers?

- County Constitutional Officers are enumerated in Ga. Const. art. IX, § 1, ¶ III (a):

"The clerk of the superior court, judge of the probate court, sheriff, tax receiver, tax collector, and tax commissioner, where such office has replaced the tax receiver and tax collector, shall be elected by the qualified voters of their respective counties for terms of four years and shall have such qualifications, powers, and duties as provided by general law."
Q: What makes constitutional offices different from other county offices and why are they afforded this increased protection?

A:

• Constitutional offices, for the most part, have been in existence since before the founding of the State and their duties are prescribed by the constitution and State law.

• Creating political independence between the constitutional officers and the board of commissioners allows voters to have more direct influence over the persons providing critical services and ensures political independence.
Performance of duties:

- Constitutional officers' duties are prescribed by law and may not be delegated to other persons or entities.

- “It is a sufficient answer to this contention to say that, the office of county treasurer being a constitutional office, it cannot be abolished by the legislature by direct enactment, nor could the office be indirectly abolished by transferring the duties of that office to some other person, not chosen in the manner prescribed by the constitution.” Massenburg v. Bibb County, 96 Ga 614 (1895)
Is a Constitutional Officer an “Employee” of the County?

• The independence of the constitutional officers is well settled.

• "A sheriff is an elected, independent constitutional officer who is not an employee of the board and is not, therefore, subject to the control of the board." Bd. of Comm'rs of Spalding County v. Stewart, 284 Ga. 573, 574, 668 S.E.2d 644, 645 (2008);

• "A sheriff is an elected, constitutional officer, is subject to the charge of the General Assembly, and is not an employee of the county commission. Hill v. Clayton County Bd. of Com'rs, 2006, 283 Ga.App. 15, 640 S.E.2d 638
Is a Constitutional Officer an “Employee” of the County?

But – be mindful of -

• **Issue** - Arthur Ferdinand, the Fulton County Tax Commissioner, sent a memo to Fulton County's Personnel Director indicating his intent to raise the salaries of his chief deputy, six subsidiary deputies, and two administrative assistants. The Director refused to implement the raises, citing Fulton County Personnel Regulations that restricted Ferdinand from adjusting the salaries of civil service employees.

• **Held** - Because the Fulton County employees and deputies of the Tax Commissioner's office are included in the Fulton County civil service system, the trial court properly rejected Ferdinand's contentions and correctly granted summary judgment to Fulton County
Can A County Get Rid of A Constitutional Officer?

- While constitutional officers may be removed for several reasons, their offices themselves are permanent.

"[T]he office of county treasurer being a constitutional office, it cannot be abolished by the legislature by direct enactment, nor could the office be indirectly abolished by transferring the duties of that office to some other person. Massenburg v. Bibb County Comm'rs, 96 Ga. 614, 23 S.E. 998, 1000 (1895); Ga. Op. Atty. Gen. No. 01-8 (Oct. 23, 2001)."
Can A County Get Rid of A Constitutional Officer?

• Nor can a constitutional office be destroyed indirectly by reducing the budget to unsustainable levels.

“[T]he commissioners were under a duty to adopt a budget making reasonable and adequate provision for the personnel and equipment necessary to enable the sheriff to perform his duties of enforcing the law and preserving the peace.” Wolfe v. Huff, 233 Ga. 162, 164, 210 S.E.2d 699 (1974)
What About the Budget?
What about the Budget?

• The budget is under the control of the county commission, which, subject to some limitations, has authority to amend or change estimates of required expenditures presented by another officer acting under his statutory duty.

• The action of the county commissioners in making such appropriations may be reviewed only for abuse of discretion. Bd. of Commissioners v. Wilson, 396 S.E.2d 903 (Ga. 1990).
County Budget Requirements

Law making clear that constitutional officers are separate entities from the County:

- *Gilbert v. Richardson* - Since deputy sheriffs are employed by the sheriff rather than the county, sheriffs may be liable in their official capacity for a deputy's negligence in performing an official function.

- *Mander v. Lee* - Georgia's Constitution has created the sheriff's office as an elected constitutional office in Georgia's governmental hierarchy. Ga. Const. art. IX, § 1, ¶ 1. The sheriff's office is not a division or subunit of Clinch County or its county governing body, and, thus, it is not a structural part of Clinch County government. See id.; Ga. Const. art. IX, § 2, ¶ 1(c)(1). Rather, the sheriff's office is a separate constitutional office independent from Clinch County and its governing body. See Ga. Const. art. IX, § 2, ¶ 1(c)(1).
County Budget Requirements

O.C.G.A. § 36-81-3. Fiscal year; annual budget required for local governments; expenditures pursuant to budget ordinance or resolution

• (a) The governing authority shall establish by ordinance, local law, or appropriate resolution a fiscal year for the operations of the local government.

• (b)(1) Each unit of local government shall adopt and operate under an annual balanced budget for the general fund, each special revenue fund, and each debt service fund in use by the local government. The annual balanced budget shall be adopted by ordinance or resolution and administered in accordance with this article.
County Budget Requirements

O.C.G.A.36-81-3 –

(d) Nothing contained in this Code section shall preclude a local government from amending its budget so as to adapt to changing governmental needs during the budget period. Amendments shall be made as follows, unless otherwise provided by charter or local law:
County Budget Requirements

O.C.G.A.36-81-3 – (d)

- (1) Any increase in appropriation at the legal level of control of the local government, whether accomplished through a change in anticipated revenues in any fund or through a transfer of appropriations among departments, shall require the approval of the governing authority. Such amendment shall be adopted by ordinance or resolution;

- (2) Transfers of appropriations within any fund **below the local government's legal level of control** (remember, the default is ‘department to department’) shall require only the approval of the budget officer;

- When you move money around within line items...is any county requiring you to secure the approval of your finance director?
We can agree that the ‘default’ legal level of control is that transfer of appropriations between Admin, Engin., P&D, and Facilities requires Board approval?
Legal Level of Control, O.C.G.A. § 36-81-1

- “Legal level of control” means the lowest level of budgetary detail at which a local government's management or budget officer may not reassign resources without approval of the governing authority. The legal level of control shall be, at a minimum, expenditures for each department for each fund for which a budget is required. This does not preclude the governing authority of a local government from establishing a legal level of control at a more detailed level of budgetary control than the minimum required legal level of control.

- **Budget officer** means that local government official charged with budget preparation and administration for the local government. The official title of the local government budget officer shall be as provided by local law, charter, ordinance, or appropriate resolution of the governing authority.
Legal Level of Control

• (3) The governing authority of a local government may amend the legal level of control to establish a more detailed level of budgetary control at any time during the budget period. Said amendment shall be adopted by ordinance or resolution.

• So, rather than the ‘default’ of department to department – DOES the County have the authority to refine the “legal level of control” such that Board approval is required prior to any transfers of funds between lines items at the constitutional officer level?
What about the Budget?

"And although the county commission has the power and the duty to issue a budget, the county commission may not dictate to the sheriff how that budget will be spent in the exercise of his duties." Chaffin v. Calhoun, 262 Ga. 202, 203, 415 S.E.2d 906, 907 (1992).

In contrast, under Georgia's Constitution, the State has exclusive authority and control over the duties and affairs of the sheriff's office. Although the State requires the county to fund the sheriff's budget, Georgia's Constitution precludes the county from exercising any authority over the sheriff, including how the sheriff spends that budget. Ga. Const. art. IX, § 2, ¶ 1(c)(1); Chaffin v. Calhoun, 262 Ga. 202, 203–04, 415 S.E.2d 906 (1992); see Boswell v. Bramlett, 274 Ga. 50, 52, 549 S.E.2d 100 (2001). –Manders v. Lee.
Building and maintaining relationships with your Board of Commissioners
## How County Commissioners and Constitutional Officers are Different

<table>
<thead>
<tr>
<th>Officers</th>
<th>Commission</th>
<th>Constitutional</th>
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<tbody>
<tr>
<td>Taxation</td>
<td>Power to adopt millage, impact fees, call for bonds, call for Special Purpose Local Option Sales Tax, GO bonds.</td>
<td>No such power.</td>
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<tr>
<td>Budgeting</td>
<td>Must adopt a county-wide budget to include funding for constitutional officers.</td>
<td>Submits a proposed budget only.</td>
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<tr>
<td>Control</td>
<td>Budget control and discretion, adopt ordinances, contracts, hire County Manager, establish County vision and goals.</td>
<td>Operate constitutional offices independent of Commissioners.</td>
</tr>
<tr>
<td>Indemnity</td>
<td>Typically acquire and pay premiums for insurance that covers all county employees, county assets, and constitutional officers.</td>
<td>Provided liability coverage via this insurance.</td>
</tr>
<tr>
<td>Buildings</td>
<td>Owned and maintained by the County.</td>
<td>Occupy and use County-provided space.</td>
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Typical Sources of Conflict

- Personnel
- Compensation
- Procurement
- Facilities and Equipment
- Budget
Is Conflict Inevitable?
Is Conflict Inevitable?

Tension inherently exists between constitutional officers and commissioners for the following reasons:

• Commissioners are considering multiple funding obligations – constitutional officers are typically considering their offices.

• Oftentimes there is a lack of appreciation for the independence of the constitutional office.

• Sometimes budget staff, personnel staff and senior management have no appreciation for the difference.

• Typically not much communication until crisis.

• Due to limited resources – there is always tension.
Is Conflict Inevitable?

• Political entities will occasionally resist funding entities over which they have no meaningful control.
Is Conflict Inevitable?

• Occasionally, constitutional officers are viewed with envy (and perhaps resentment) because they are not required to set a budget or raise taxes – thereby making them a lesser target for public criticism.
Is Conflict Inevitable?

• From the county’s perspective, the actions of a constitutional officer can reflect poorly on a local government and even result in monetary liability exposure for which a local government’s insurance carrier will be responsible.
Real Steps That Can Be Taken to Avoid Disputes and Foster Strong Working Relationships

Communication!
Communication!
Communication!
Real Steps That Can Be Taken to Avoid Disputes and Foster Strong Working Relationships

• Purposeful interaction between senior county officials and constitutional officers.

• Ensure constitutional officers are meaningfully included as part of the budgeting process.

• The county should discuss with constitutional officers the potential need for significant budget-saving measures (i.e., furloughs, unpaid holidays, no COLAs, reductions in force). The county should not simply announce that these are going to occur.
Real Steps That Can Be Taken to Avoid Disputes and Foster Strong Working Relationships

- The county should resist making county-wide policy changes that impact constitutional officers without advanced warning (computer usage policies, purchasing policies).

- For commissioners – endeavor to demonstrate respect and appreciation that the constitutional officer is an independent center of power and should be purposefully treated differently than a department head.
Real Steps That Can Be Taken to Avoid Disputes and Foster Strong Working Relationships

• Get the numbers right! (The county should ensure that when it is discussing budget concerns with constitutional officers, they are using honest, accurate numbers – as this builds legitimacy and credibility.)
What Happens if a Dispute Between the County Board of Commissioners and a Constitutional Officer Cannot be Resolved?
What Happens if a Dispute Between the County Board of Commissioners and a Constitutional Officer Cannot be Resolved?

• This is an unfortunate situation, as it lessens public confidence that a local government can resolve its difference amicably.

• If one side capitulates in the face of an intractable dispute, hard feelings and ill will may arise.

• Litigation may ensue.

• If the County Attorney has a conflict (which he/she will), then both sides will need to retain separate counsel.
What Happens if a Dispute Between the County Board of Commissioners and a Constitutional Officer Cannot be Resolved?....Continued

• The litigation will be expensive to the public fisc.

• Citizens may become resentful as they watch attorney’s fees being expended on public officials that cannot get along.

• Relationship between board of commissioners and constitutional officer will be impaired for years after litigation ends.

• Will likely result in “electoral discharge” for one or both sides of the dispute.
Litigation Should Truly Be A Tool of Last Resort
Legal Action

• “By this holding, however, we note that a county commission is not without recourse when it believes that a county officer is seeking to spend taxpayers’ money illegally. In such an event, the commission could institute its own mandamus or declaratory judgment action against the county officer to have a court determine the legality of the expenditure.” Griffies v. Coweta Co., 272 Ga. 506 (2000).
Providing the Constitutional Officer an Attorney at Taxpayer Cost

• “We hold that where, as here, an official, acting in his official capacity, is required to hire outside counsel to assert a legal position the local government attorney cannot (because of a conflict in representing the local government) or will not assert, and the official is successful in asserting his or her position, the local government must pay the official’s attorney fees. *Gwinnett Co. v. Yates*, 458 S.E.2d 791 (1995).
Panel Discussion:

Chris Gaines
Dawson County Board of Commissioners

Byron Lombard
Greene County Manager

Kay Love
Georgia Municipal Association

Joel Black
Mauldin & Jenkins, LLP

Bill Twomey
Association County Commissioners of Georgia

Ken Jarrard
Jarrard & Davis, LLP
Panel Discussion Topics

• What would you like to learn about constitutional officers, from their perspective?

• What would you like constitutional officers to learn about the Board of Commissioners, from your perspective?

• Why do you believe that in some jurisdictions there is conflict between Commissioners and constitutional officers?
Panel Discussion Topics

• What are issues related to accounting?

• What are issues related to administration?

• What are issues related to personnel and/or handbooks?
Panel Discussion Topics

• What are issues related to facilities?

• What are issues related to budgeting?

• What are issues related to communication?
Panel Discussion Topics

• What are suggestions for enhancing communication?

• What is a practice that we should avoid?

• What does a typical citizen in your jurisdiction think about constitutional officers, as compared to the Board?
Course Wrap up and Adjournment