

## Chapter 2:

# THE BOARD OF COUNTY COMMISSIONERS

The board of county commissioners is the governing body and the major policy approval center for county government. It is the legislative body with authority over most aspects of the county. Its responsibilities, however, are not all encompassing. We find several instances where the power of the county board is limited. Counties also have other agencies and boards that, while part of the county, are rather independent from the board of commissioners. It is for this reason that we sometimes think about county government not as *a* government but as a "collection of governments."

Still, the boards of commissioners are the central policy-making bodies that give coherence to these collections of governments. In this chapter we discuss the board of commissioners. We will look at its membership, the process for selecting commissioners, meeting rules, and the provisions of the open meetings act. The next chapter will also cover the board of commissioners, examining the county board's legislative role.

## THE COMMISSIONER SYSTEM

Voters elect county commissioners from single-member districts in each county.<sup>1</sup> A county apportionment commission establishes the commissioner districts every 10 years following the U.S. government's official census of the population.

### MEMBERSHIP

How many members may county boards have? A county may have not fewer than 5 or more than 35. Within this range, there are further limits, depending on the population of a county. A committee called the apportionment commission decides how many commissioners a county will have for the next 10-year period according to the schedule in the box.<sup>2</sup> The

LIMITS ON THE NUMBER OF COMMISSIONERS	
POPULATION	COMMISSIONERS*
Under 5,001	Not more than 7
5,001-10,000	Not more than 10
10,001-50,000	Not more than 15
50,001-600,000	Not more than 21
600,000 to 1,000,000	17 to 35
Over 1,000,000	25 to 35

\*The minimum for any county is 5.

only exceptions to this are counties organized under a county charter. In that instance, the charter specifies the number of single-member districts which must

be realigned each decade to provide equal population in each district.

### QUALIFICATIONS FOR OFFICE

Persons are elected to the office of county commissioner from their districts in each even-numbered year on a partisan basis. To qualify, candidates must be registered voters. Candidates, thus, must be U.S. citizens, at least 18 years of age, and residents of the district they propose to represent.<sup>3</sup>

To gain a place on the primary election ballot, a person must file a nominating application with the county clerk by 4:00 p.m. on the twelfth Tuesday prior to the date of the primary election.<sup>4</sup> In addition to the application, the person must file petitions containing a specified number of

District Population	Min.	Max.
0-9,999	3	10
10,000-24,999	20	50
25,000-49,999	50	100
50,000-74,999	100	200
75,000-99,999	200	400
100,000-199,999	300	500 <sup>1</sup>

signatures based on the number of registered electors in the district. (See table) Alternatively, a person may pay a filing fee of \$100 instead of the signatures. Those who place first and second in their party's primary balloting get their money back. The remaining applicants forfeit the fee.<sup>5</sup>

### COUNTY APPORTIONMENT

Effective in 1967, the state legislature made a major change in the way counties select their commissioners. It made the office an elected office, one that voters fill directly. Previously, township supervisors, along with elected or appointed supervisors from cities, constituted the county board. The change came about as a result of the 1964 U.S. Supreme Court case of *Reynolds v. Sims*,<sup>6</sup> which required legislative districts to be reapportioned on a one-person, one-vote basis and *Avery v. Midland County (Texas)*<sup>7</sup> which applied the principle to counties. These and other federal cases and the state legislature's 1966 response led to the present method of electing county commissioners. Each county must now reapportion the districts in time for the second election of each new decade.

### The Apportionment Commission

The group charged with the task of reapportioning county commissioner districts and determining the number of districts is the county apportionment commission. It consists of the county clerk, treasurer, prosecuting attorney, and the chairpersons of the two major political parties. (If a political party is not organized in a county and has no official chairperson, the chair of that party's state central committee may appoint a person to represent the party.<sup>8</sup>) On occasion, one of the three elected officers is also the chairperson of the county political party committee. Does the person sit on the apportionment commission in both capacities? The attorney general said no and ruled that elected county officers must serve on the apportionment commission in their capacity of county officer. In such instances,

the political party committee must appoint another person as apportionment commission member.<sup>9</sup>

The county clerk convenes the apportionment body and serves as chairperson until the group elects one of its members in accordance with its adopted rules of procedure. The commission must adopt rules of procedure and conduct its meetings under the provisions of the Open Meetings law. All of its documents and other material, too, are open to the public under the state's Freedom of Information Act. Three members constitute a quorum. Decisions are made by majority vote of the commission.

A county apportionment commission ordinarily has 60 days to complete its task of redrawing the county commissioner districts. The period begins when the body officially receives the census data from the secretary of state. If the task is not finished on time, the apportionment commission may apply to the state appeals court for additional time. If the issues are not settled by the original or extended deadline, any voter in the county may submit a reapportionment plan to the commission. It is then obligated to select, within 30 days, one of those plans that meet the legal requirements.<sup>10</sup>

### **Standards for Apportionment**

When the U.S. Supreme Court first ordered state legislatures, and later all other - units of local government, to operate on the principle of one-person, one-vote, it emphasized that each district should have equal numbers of residents. In later cases, the court relaxed these standards somewhat to accommodate other factors it considered important. But this relaxation of standards came after the Michigan legislature passed its 1966 law setting the standards for county reapportionment. The legislature, following the original 1964 court standards, said that county commissioner districts should be "as nearly of equal population as is practicable." The Michigan Court of Appeals, in a series of cases, held that this meant "mathematical exactness" and that such exactness took precedence over the other statutory standards. These other standards are:

- Each district must consist of contiguous land area.
- Districts must be as compact and as nearly square in shape as is practicable, depending on the geography of the county area involved.
- No township or part of a township may be combined with any city or part of a city for a single district, unless such combination is needed to meet the population standard.
- Townships, villages, and cities are to be divided only to meet the population standard.
- Precincts are to be divided only to meet the population standard.
- Residents of state institutions who cannot by law register in the county as electors are to be excluded from any consideration of representation.
- Districts are not to be drawn to effect partisan political advantage.<sup>11</sup>

During the reapportionment cycles for the 1972 and 1982 elections, the courts dealt with numerous questions regarding what the law would permit or prohibit. Efforts were made to justify districting plans of some counties on the basis of urban versus rural divisions, use of registered voters as a surrogate for population, to balance the political parties, and on a variety of other bases. Many plans tested the limits of the law and its requirements. At the outset, equality of population between districts was the most important criterion. But with each succeeding court case other standards took on new meaning within the context of population equality.

In 1982 the Michigan Supreme Court dramatically reversed an appeals court decision and held that commissioner district lines must be drawn to follow township, city, village, and precinct boundaries to the extent that this can be done without violating federal standards that then allowed a maximum population difference of 11.9 percent between districts and "at the least cost to the federal principle of equal population between election districts consistent with the maximum preservation of such lines." Where two or more alternate plans meet that standard, the court held that "compactness and squareness in shape to the extent practicable shall govern."<sup>12</sup>

### **Politics of Reapportionment**

The last of the reapportionment standards—districts are not to be drawn to effect partisan political advantage—must bring at least a little snicker to even a casual observer of reapportionment politics. For any one of the apportionment commissioners to join the group with the idea that he or she will put aside partisan considerations is not very credible even in a county where one party dominates. The very makeup of the apportionment commission is political—all are members of political parties.

The guidelines help a little to curb the partisan appetites involved in reapportionment but do not eliminate them. How the apportionment commission sets the county board districts affects not only the number of commissioners but also the partisan make-up of the county board for the succeeding 10 years. Placing a boundary one way instead of another could separate an incumbent from his or her area of political strength or pit two incumbents against each other. And the way the lines are drawn may concentrate a commissioner's strength so that he or she is virtually unbeatable.

Perhaps the most fortunate counties are those in which the political leaders and followers realize that the great majority of questions that come before their county boards are decided without significant dissent and that relatively few of the controversies arising there pertain to partisan differences.

### **Board Size**

The apportionment commission also determines, within the legal limits, the number of seats a county board will have. This is a decision with political implications as well. Any reduction in the number of seats, of course, means that reapportionment can contribute to the loss of some current members of the commission. Apportionment commission members have a variety of reasons for reducing or enlarging the size of the board—some to dilute the influence of a

county commissioner or two, others to make the board more "efficient." As county boards shifted from boards of supervisors to boards of commissioners they also became much smaller.

The 1982 reapportionment actions, collectively, reduced the total number of county commissioners in the state by more than 25 percent. Many boards were reduced to five or seven members even though the law permitted more. The county boards that increased in size were the exceptions. In the 1990s, apportionment commissions were less predictable. Some reduced the county commissions even more; others increased the board sizes. (See table below for the changes from 1968 to 2002.)

<b>SIZE OF COUNTY BOARDS BY REGION</b>											
<b>1968, 1972, 1982, 1992, 2002</b>											
<b>Southwest</b>	1968	1972	1982	1992	2002	<b>North</b>	1968	1972	1982	1992	2002
Berrien	48	21	13	13	13	Crawford	7	7	7	6	7
Branch	21	8	9	8	8	Emmet	22	11	5	7	7
Calhoun	41	19	7	7	7	Grand Traverse	18	15	9	9	9
Cass	18	21	11	7	15	Iosco	19	9	7	5	5
Eaton	31	21	15	15	15	Kalkaska	12	7	7	7	7
Hillsdale	22	9	9	5	7	Leelanau	11	7	7	7	7
Ingham	42	21	20	17	16	Missaukee	17	9	9	9	7
Jackson	27	21	15	15	12	Montmorency	18	7	5	5	5
Kalamazoo	37	17	13	9	17	Ogemaw	18	10	7	7	7
St. Joseph	24	12	7	7	7	Oscoda	16	6	5	5	5
Van Buren	26	15	5	7	7	Presque Isle	22	13	8	8	5
						Roscommon	12	7	5	5	5
						Wexford	23	9	7	8	9
<b>East Central</b>						<b>West Central</b>					
Arenac	17	9	7	5	5	Allegan	40	21	13	9	11
Bay	45	21	9	9	9	Barry	20	10	7	8	8
Clare	23	5	7	7	7	Ionian	24	9	9	9	7
Clinton	22	11	7	7	7	Kent	77	21	21	19	19
Gladwin	22	11	7	7	7	Lake	15	9	7	7	9
Gratiot	26	9	11	7	7	Manistee	14	11	9	7	7
Huron	30	7	6	7	7	Mason	22	15	15	9	10
Isabella	21	15	7	7	7	Mecosta	21	5	6	7	7
Midland	21	19	7	7	7	Montcalm	28	9	5	13	9
Saginaw	55	21	15	15	15	Muskegon	45	15	11	9	11
Sanilac	29	5	5	7	7	Newaygo	32	7	5	7	7
Shiawassee	31	17	9	7	7	Oceana	18	5	7	7	7
Tuscola	25	7	7	7	5	Osceola	21	15	9	9	7
						Ottawa	35	21	11	13	11
<b>Southeast</b>						<b>Upper Peninsula</b>					
Genesee	62	17	9	9	9	Alger	12	9	5	5	5
Lapeer	22	7	7	5	7	Baraga	6	5	6	5	5
Lenawee	11	21	9	9	9	Chippewa	25	13	7	7	7
Livingston	21	15	5	9	9	Delta	27	5	5	5	5
Macomb	71	21	25	25	26	Dickinson	19	15	5	5	5
Monroe	22	9	9	9	9	Gogebic	21	15	9	9	9
Oakland	87	27	27	27	25	Houghton	18	15	5	5	5
St. Clair	59	15	8	8	7	Iron	21	15	6	5	5
Washtenaw	39	13	9	15	11	Keweenaw	5	5	5	5	5
Wayne	135	26	15	15	15	Luce	5	5	5	5	5
<b>North</b>						Mackinac	15	10	5	5	5
Alcona	14	5	5	5	5	Marquette	44	21	5	10	9
Alpena	16	10	8	8	8	Menominee	7	15	7	7	5
Antrim	15	9	11	9	9	Ontonagon	11	5	5	5	5
Benzie	14	10	7	5	7	Schoolcraft	13	7	5	5	5
Charlevoix	25	15	6	6	6						
Cheboygan	25	15	11	9	7						

### **Citizen Challenges**

Can county commissioners or other citizens take any actions to limit the partisan or political influences of apportionment decisions? The possibilities are limited, but the law permits a few. One such opportunity exists because meetings of the apportionment commission must be open to the public in accordance with the open meetings law. This opens the process to public scrutiny. It makes it possible for us to know at least something about what information members had available, and how each voted. That information could be of some help in filing a court challenge against the decision. Those wishing to challenge an apportionment plan can do so by petitioning the state court of appeals directly. Any registered voter in the respective county may challenge, but only during the 30-day period following final adoption of a plan. After each reapportionment period, some approved plans are challenged. But a review of judicial decisions shows that the courts seldom gave much weight to arguments that said a particular apportionment commission did not follow the secondary guidelines properly. If one could establish that the commission did not select the plan with the smallest population variance ratio (PVR), however, the courts were strongly inclined to order an apportionment commission to revise the approved plan. And the courts were rather consistent in upholding those plans with the lowest PVR even when other criteria were ignored. As noted earlier, an apportionment plan that has equally populated districts is preferred over one that does not but a commission may not and need not run roughshod over the other criteria to achieve a plan that is "population perfect." Since the 1982 decision, as noted above, the secondary guidelines have risen in importance.

### **EVALUATION OF COMMISSIONER PLAN**

How has the commissioner plan worked out? Is it better than the former supervisor system? It depends on one's perspective.

### **Representative Base**

From the standpoint of providing fair and equal representation, the commissioner system is an improvement. We no longer have some "county representatives" in a county representing thousands of residents while others on the same board vote the interests of only a few hundred. That, we believe, adds considerable credibility to the county board of commissioners.

County board membership is also more diverse than it has been traditionally. In 2006, 136 women were elected as county commissioners; the average age of board members was 56.2 years.

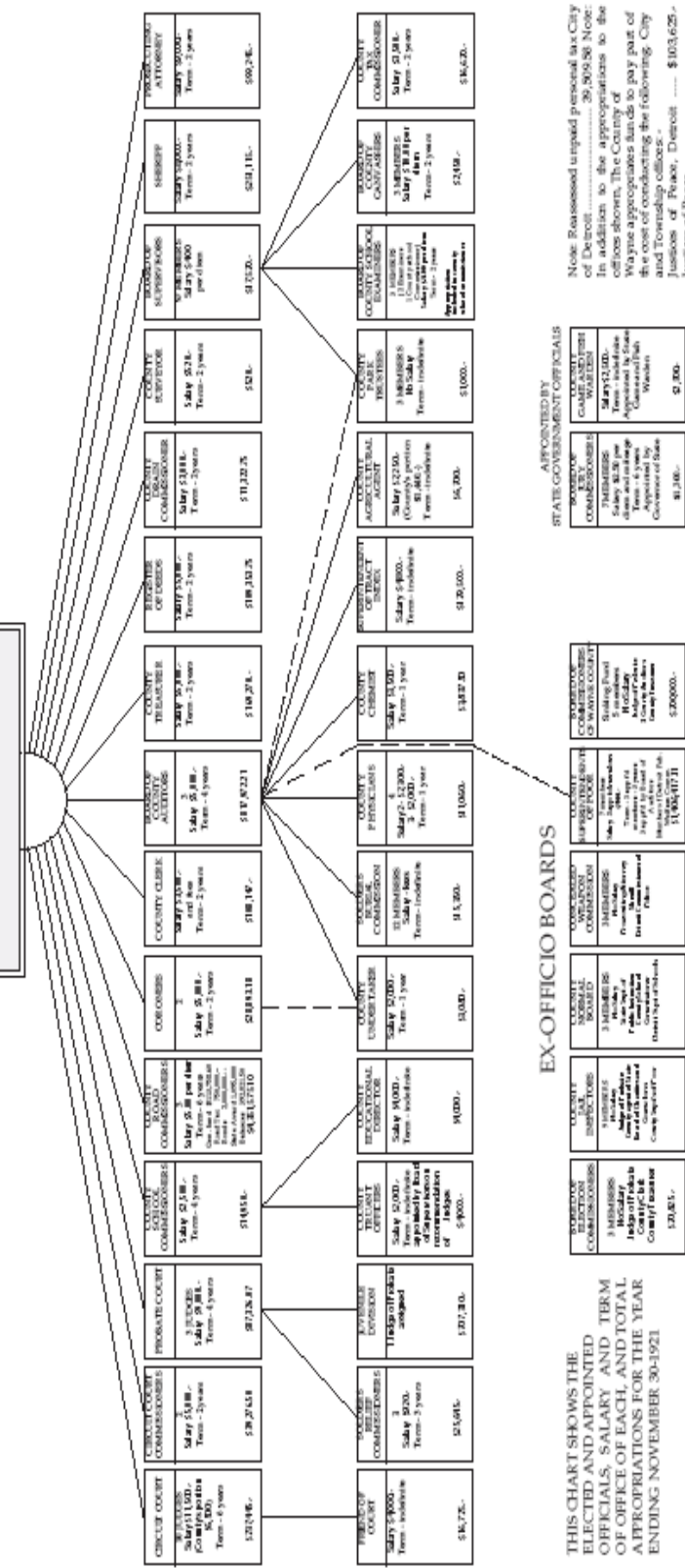
### **Smaller Boards**

County boards are now smaller than they were in the early 1960s. All but four county boards now have between five and 15 members. Under the supervisor system, Wayne County had 135 members; five had more than 50 members. Some may argue that current county boards are now too small, but few would defend the very large boards of three decades ago.

BUDGET 1920-1921 --- \$ 9,341,094.-

ORGANIZATION OF THE GOVERNMENT OF WAYNE COUNTY - MICHIGAN

ELECTORATE



THIS CHART SHOWS THE ELECTED AND APPOINTED OFFICIALS, SALARY AND TERM OF OFFICE OF EACH, AND TOTAL APPROPRIATIONS FOR THE YEAR ENDING NOVEMBER 30-1921

Prepared by Detroit Bureau of Governmental Research, Inc.

Note: Reassessed unpaid personnel for City of Detroit 20,909.88. Note: In addition to the appropriations to the offices shown, the County of Wayne appropriates funds to pay part of the cost of conducting the following: City and Township offices, Justices of Peace, Detroit --- \$103,625; Justices of Peace, General Township --- 8,600; Recorder's Court --- 195,175; Probate Court --- 67,883.25

This rendition of the organizational chart of Wayne County Government as it was structured in 1920-21. This chart was prepared by the Detroit Bureau of Governmental Research, Inc. We would like to give our thanks to the Citizens Research Council of Michigan for forwarding it to us.

### **Service to Local Governments**

The change to the commissioner system also brought about a change in the job or role of county board members. Commissioners represent people while the supervisors primarily represented units of government. The fact that voters vote directly for commissioners, we believe, causes commissioners to keep an ear attuned to the wants and needs of individuals and groups. This is not to say that commissioners now freely ignore the township and city officials in their districts—many commissioners meet regularly with these groups as well. Still, we occasionally hear that the commissioner system does not serve as well the needs of local government officials. Perhaps that is the case in some counties.

### **Partisanship**

Political partisanship got a renewed emphasis with the change to the commissioner system. Under the supervisor system, township supervisors were elected on a partisan basis, but most of the city representatives chosen by their city councils were nonpartisan. In counties where one party dominates, partisan designations may not make a great deal of difference. But in "swing" counties, the majority party usually controls the board chair and often the committees. In addition, partisan loyalties probably also play a part in determining which citizens the board appoints to the various boards and committees that are part of county government. Perhaps more important is the likelihood that party alignments tend to bridge the rural-urban divisions that were so evident under the supervisor system.

## **MEETINGS OF THE COUNTY COMMISSION**

Most, if not all, county commissions now meet regularly on a twice-a-month schedule. One of these meetings may be a formal "action" meeting; the other as discussion or committee-of-the-whole kind of meeting where actions are discussed and prepared for final passage. In addition, county commissions have occasional "special" meetings. Standing committees also typically meet once each month.

The boards maintain this schedule by their own choice, although the statutes mention several meetings that constitute at least a minimum schedule. In this section we review the statutory meeting schedule and the rules regarding the conduct of public meetings.

### **STATUTORY MEETINGS**

In times past, the legislature felt compelled to require county commissions to meet at specific times during the year. The commissioners could conduct business of interest to the county at these meetings, but the state wanted to make sure that the county boards concluded action on business of particular interest to the state by a given time of the year. As a result, the state established four statutory meetings.

#### **January Meeting**

One law mentions the "first meeting in each calendar year." We have referred to