



GREEN LAKE COUNTY

571 County Road A, Green Lake, WI 54941

Original Post Date: 2/24/22

Amended* Post Date: 03/02/2022

The following documents are included in the packet for the Administrative Committee on March 2, 2022:

1. Agenda
2. Resolution Relating Sick Leave Pay Out for Sheriff Mark Podoll
3. Resolution Relating to Salary for the County Coroner for the term 2023-2026
4. *Letter from Corporation Counsel to the Administrative Committee



**GREEN LAKE COUNTY
OFFICE OF THE COUNTY CLERK**

*Elizabeth Otto
County Clerk*

*Office: 920-294-4005
FAX: 920-294-4009*

Special Administrative Committee Meeting Notice

***Date: Wednesday, March 2, 2022 Time: 3:00 PM
Green Lake County Government Center,
County Board Room, 571 County Rd A, Green Lake WI***

Amended AGENDA*

**Committee
Members**

*Harley Reabe,
Chairman
Keith Hess
Dennis Mulder
Katie Mehn
Brian Floeter*

*Elizabeth Otto,
Secretary*

1. Call to Order
2. Certification of Open Meeting Law
3. Pledge of Allegiance
4. Public Comment
5. Resolutions
 - Relating to Sick Leave Payout for Sheriff Mark Podoll
 - Salary for County Coroner 2023-2026
6. Discussion and Possible Action regarding Medical Examiner
7. Committee Discussion
 - Future Meeting Dates:
 - Future Agenda items for action & discussion
8. Adjourn

Due to the COVID-19 pandemic, this meeting will be conducted and available through in person attendance (6 ft. social distancing and face masks required) or audio/visual communication. Remote access can be obtained through the following link:

Topic: Special Administrative Meeting
Time: Mar 2, 2022 03:00 PM Central Time (US and Canada)

Join Zoom Meeting

<https://us06web.zoom.us/j/81011357626?pwd=ZEQvVFNlQjZLNWgwMGNxc0NTWm96dz09>

Meeting ID: 810 1135 7626
Passcode: 104573

Dial by your location

+1 301 715 8592 US (Washington DC)
+1 312 626 6799 US (Chicago)

* A quorum of the Highway Committee and Finance Committee may be present. Neither the Highway or Finance Committee will take any formal action at this meeting.

Virtual attendance at meetings is optional. If technical difficulties arise, there may be instances when remote access may be compromised. If there is a quorum attending in person, the meeting will proceed as scheduled.

Kindly arrange to be present, if unable to do so, please notify our office. Sincerely, Elizabeth Otto

Please note: Meeting area is accessible to the physically disabled. Anyone planning to attend who needs visual or audio assistance, should contact the County Clerk's Office, 294-4005, not later than 3 days before date of the meeting.

RESOLUTION NUMBER -2022

RELATING TO SICK LEAVE PAYOUT FOR SHERIFF MARK PODOLL

The County Board of Supervisors of Green Lake County, Green Lake, Wisconsin, duly assembled at its regular meeting begun on the 15th day of February, 2022, does resolve as follows:

1 **WHEREAS**, the wage for elected officials, including the Sheriff was presented to the
2 Administrative Committee at the February 20, 2018 meeting, and
3

4 **WHEREAS**, the Sheriff's term is for four years, and that salary is set almost a year
5 before the term begins, and
6

7 **WHEREAS**, in 2018 the Sheriff presented to the Administrative Committee his proposal
8 for wages for the years 2019 through 2022, and
9

10 **WHEREAS**, the Administrative Committee felt that the 11.25% raise that was needed to
11 bring the Sheriff up to the mid-point wage for the comparable Sheriff's for the term 2019
12 thru 2022 was not affordable, and
13

14 **WHEREAS**, the Sheriff received a 3.9% increase in salary which did not meet the
15 midpoint salary for the Sheriff's in the comparable Counties. and
16

Roll Call on Resolution No. -2022

Submitted by Administrative
Committee:

Ayes , Nays , Absent , Abstain

Passed and Adopted/Rejected this 15th
day of February 2022.

Harley Reabe, Chair

Brian Floeter

County Board Chairman

Dennis Mulder

ATTEST: County Clerk
Approve as to Form:

Keith Hess

Corporation Counsel

Katie Mehn

17 **WHEREAS**, in 2019 the actual salary for the position of Green Lake County Highway
18 Commissioner which was budgeted for in 2018 was increased by 14.75%, and

19
20 **WHEREAS**, in 2019 the actual salary for the position of Director of Green Lake County
21 Human Services, which was budgeted for in 2018 was increased by 15.75%, and

22
23 **WHEREAS**, that during the term of 2019 through 2022 the Sheriff's salary was
24 \$11,103.17 less than the mid-point salary for the comparable Sheriff's.

25
26 **NOW THEREFORE BE IT RESOLVED** that \$11,103.17 be converted to hours at the
27 rate of \$47.18 per hour, which is equal to 235 hours, and

28
29 **Let it be further resolved** that 235 hour be added to the Old Sick Leave Bank for
30 Sheriff Podoll and

31
32 **Let it be further resolved** that Sheriff Mark Podoll will be granted all of the hours in
33 the Old Sick Leave Bank at his hourly salary rate at the time of his retirement,
34 resignation or death.

35 Majority vote is needed to pass.

36

RESOLUTION NUMBER -2022

Resolution Relating to Salary for the County Coroner for the term 2023-2026

The County Board of Supervisors of Green Lake County, Green Lake, Wisconsin, duly assembled at its regular meeting on this 15th day of March 2022, does resolve as follows:

- 1 **WHEREAS**, Wisconsin Statute §59.22(1)(a)1. requires that the County Board “before
- 2 the earliest time for filing nomination papers for any elective office to be voted on in the
- 3 county which officer is paid in whole or in part from the county treasury, establish the
- 4 total annual compensation for services to be paid to the officer exclusive of
- 5 reimbursements for expenses out-of-pocket.”;

- 6 **WHEREAS**, the salary for the Coroner must be determined prior to April 15, 2022.

- 7 **WHEREAS**, resolutions for the Sheriff and Clerk of Circuit Court for the next four year
- 8 term have set a 3.55% increase in salary during the next four year term of office.

- 9 Fiscal note is below.

- 10 Majority vote is needed to pass.

Roll Call on Resolution No. -2022

Submitted by Administrative
Committee

Ayes , Nays , Absent , Abstain

Passed and Adopted/Rejected this 15th
day of March 2022.

Harley Reabe, Chair

Dennis Mulder

County Board Chairman

Keith Hess

ATTEST: County Clerk
Approve as to Form:

Katie Mehn

Corporation Counsel

Brian Floeter

11 **NOW THEREFORE BE IT RESOLVED**, that the salary for the Green Lake County
12 Coroner for the periods below shall be:

13 January 1, 2023 to December 31, 2023 - \$18,094.00 3.55% increase

14 January 1, 2024 to December 31, 2024 - \$18,736.00 3.55% increase

15 January 1, 2025 to December 31, 2025 – \$19,028.00 3.55% increase

16 January 1, 2026 to December 31, 2026 - \$19,703.00 3.55% increase

17 **FISCAL NOTE:**

18 2023 increase \$620

19 2024 increase \$642

20 2025 increase \$652

21 2026 increase \$675



GREEN LAKE COUNTY
OFFICE OF CORPORATION COUNSEL

Dawn N. Klockow
Corporation Counsel

Office: 920-294-4067
FAX: 920-294-4069

LEGAL OPINION

ATTORNEY/CLIENT PRIVILEGED

NOT A PUBLIC RECORD

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TO: Hon. Members Administrative Committee

CC: Catherine Schmit, County Administrator

FROM: Dawn N. Klockow

DATE: February 17, 2022

RE: Resolution to grant Sheriff time in sick leave bank
Our file no.: CR22-0042

Honorable Members of the Administrative Committee,

At the meeting on February 8, 2022, Sheriff Podoll presented a Resolution which proposed that \$11,103.17 be converted to hours at \$47.18 per hour or 235 hours to be placed in his “Old Sick Leave Bank” which would be paid out at the time of his retirement, resignation, or death. The rationale for the resolution is that the Sheriff’s salary for the 2019-2022 term was not comparable to the midpoint of comparable counties for the current term. During discussion on the resolution, I was asked my legal opinion. Due to not receiving the proposed resolution until the day it came out in the packet, I was unable to provide a legal opinion. I have now researched the matter and have formed a legal opinion regarding the proposed resolution.

I. Short Answer

The County Board has no legal authority to pass the resolution because the Board does not have the power to set leave for an elected constitutional official. Further, adding additional sick time to a sick bank (which is not permissible) would be an impermissible circumvention of the statute prohibiting increasing an elected official’s salary during their term of office.

II. Legal Analysis

First, I must begin with the legal maxim that “counties exist for, and derive their powers from, the state, through legislation.”¹ Further, the authority of county boards is limited to that which the legislature grants them or are necessarily implied from statute.² The Sheriff, Clerk of Court, Coroner, Register of Deeds, County Clerk and Treasurer are all constitutional officers.³ All are subject to the Wisconsin Constitution and the statutes that apply to the office.

A. Applicable Statutes

Wisconsin Statute §59.22 governs how the County Board may compensate its elected officials, other than supervisors and circuit court judges. The Statute requires that the board set the compensation for the sheriff, clerk of court, county clerk, register of deeds, coroner, and treasurer, prior to the earliest time for filing nomination papers. (Not all these offices are up for election in any given election year.) The statute further requires that the board establish the “total annual compensation for services to be paid” exclusive of out-of-pocket expenses. Finally, the statute does not allow for the compensation to be increased or decreased during the officer’s term. The salary must remain the same for the next term unless changed by the county board⁴, i.e., if the board does not want to increase the salary for ensuing terms it is not under any obligation to do so. What is particularly interesting is that Wis. Stat. §59.22(1)(a)2. Stats that “the board shall establish the annual compensation of the sheriff as straight salary.” Salary is distinguishable from annual compensation since compensation may be considered salary and fringe benefits.⁵

B. Applicable Case Law, Attorney General Opinions and Treatises

There is one Wisconsin case, several attorney general opinions⁶, and one legal treatise that are instructive on whether the County Board can convert salary to sick time for a constitutional elected official.

¹ *Jackson County v. State Dept. of Natural Resources*, 2006 WI 96, ¶16 (2006).

² *Id.*, 2006 WI 96 at ¶16-17.

³ Wisconsin Constitution, Art. VI, §4.

⁴ Wis. Stat. §59.22(1)(a)1.

⁵ *Cramer v. Eau Claire County*, 2012 WI APP 67, ¶8, 14.

⁶ Although a court is “not bound by an attorney general’s opinion, a well-reasoned opinion is of persuasive value.” However, if the legislature changes a statute in response to an attorney general opinion, the opinion has less persuasive value. *Schill v. Wisconsin Rapids School District*, 327 Wis.2d 572,619, 627 (2010). See also, *State V. Beaver Dam Area Development Corp.*, 2008 WI 90, ¶37. (“Attorney general opinions may be persuasive as to the meaning of statutes.”)

1. Case Law

In the case of *Cramer v. Eau Claire County*⁷, the county sheriff and treasurer brought an action against the county because they believed the county improperly reduced their compensation/salary when taking deductions for what they called fringe benefits, specifically health insurance premiums and pension contributions. The sheriff argued that fringe benefits were protected under the statute that prohibits compensation from being reduced during the term of office, meaning the county could not deduct from his salary the health insurance premium or pension.⁸ The appellate court disagreed, stating that the only way fringe benefits could be protected, and not subtracted from the sheriff's salary is if they qualified as "fees" under the statute. The court of appeals found that insurance premiums and pension contributions were not fees as contemplated under the statute.⁹

The appellate court found the sheriff's interpretation of compensation unreasonable¹⁰, reasoning that "benefits are not viewed as direct compensation" for services "but as an incident of employment common to all employees within an organization."¹¹ Finally the court stated that Wisconsin Courts have recognized, as early as the 1920s that "fringe benefits such as employer-paid insurance contributions were excluded from the definition of 'compensation.'"¹² Therefore, the court of appeals ruled that fringe benefits are not compensation when dealing with Wis. Stat. §59.22(1)(a). The county was able to deduct the cost of health insurance from the sheriff's salary because a county may provide fringe benefits to an elected official, but only in the nature of hospital, surgical and life insurance to elected officials.¹³ Fringe benefits may also include payment toward the state pension system.¹⁴ Even though the *Cramer* decision clearly states that fringe benefits, such as health insurance premiums, are not considered compensation, the case is limited to the ability to reduce salary for statutorily allowable fringe benefits. To read otherwise, would negate Wis. Stat. §59.22(1)(a) and the restriction on increasing or decreasing compensation during a term.

⁷ *Cramer v. Eau Claire County*, 2013 WI App 67 (Ct. App. 2013)

⁸ *Id.*, 2013 WI App 67 at ¶6.

⁹ *Id.*, 2014 WI App 67 at ¶13.

¹⁰ *Id.*, 2013 WI 67 at ¶13.

¹¹*Id.*, ¶16

¹² *Id.*, at ¶20

¹³ 66 Wis. Op. Atty. Gen 329 (1977). Wisconsin Statute §59.07(2)(c)(now Wis. Stat. §59.52(11)(c)) allows the county to provided group hospital, surgical and life insurance for county officers provided they pay the premiums for those benefits.

¹⁴ 66 Wis. Op. Atty. Gen. 329 (1977)(elected officials of all counties under 500,000 population are allowed to participate in the Wisconsin Retirement Fund.)

2. Attorney General Opinions

With the *Cramer* decision, one would think that the county could pay out sick time as a fringe benefit which would then be outside the statutory prohibition on increasing salary during an elected official's term. This is not true. The law is clear that elected officials, such as the Sheriff, Treasurer, County Clerk, Register of Deeds, Coroner and Clerk of Circuit Court are not eligible for "fringe benefits" such as vacation and sick time. There are several attorney general opinions which are completely on point and answer the question whether the County Board may pay out accumulated sick leave to an elected official such as the sheriff.

In 65 Op Atty Gen 1976, the attorney general gave the opinion that Wisconsin Statutes do not "authorize a county board to regulate leave time for elected officials."¹⁵ The attorney general looked at the statutes in force at the time and found that the county does not have the ability to regulate anything other than compensation for an elected office under the statute. Current statutes do not allow for the county board to set vacation or sick time for elected officials.¹⁶ The statute only allows the county board to set those "fringe benefits" for unelected employees paid by the county treasury, such as retirement, health insurance, and retirement contributions. Elected officials are specifically excluded from County Board control for vacation and sick time.

Elected officials are expected to keep and discharge the duties of their office pursuant to statute and common law. But, nothing in Wisconsin Statutes requires that an elected officer must be physically present in an office during all office hours.¹⁷ Nor can the county board reduce compensation if the elected official is absent from their office "through illness, or upon purely personal business . . ."¹⁸ Therefore, the County has no legal authority to grant or impose sick or vacation time for elected officials. It is also important to note that a county cannot deny compensation for an elected official

¹⁵ 65 Op. Atty Gen. (1976).

¹⁶ Wis. Stat. §59.22(2)**Appointive officials; deputy officers; and employees.** (a) **Except for elective offices included under sub. (1), supervisors and circuit judges,** . . . the board has the powers set forth in this subsection, sub. (3) and s. 59.03(1) as to any office, department, board, commission, committee, position or employee in county service created under any statute, the salary or compensation for which is paid in whole or in part by the county, and the jurisdiction and duties of which lie within the county or any portion thereof and the powers conferred by this section shall be in addition to all other grants of power and shall be limited only by express language.

(c)1. Except as provided in subd. 2. and par. (d), the board may do any of the following:

a. Provide, fix or change the salary or compensation of any office, board, commission, committee, position, employee or deputies to elective officers that is subject to sub. (1) without regard to the tenure of the incumbent.

b. Establish the number of employees in any department or office including deputies to elective officers.

c. Establish regulations of employment for any person paid from the county treasury.

¹⁷ 65 Op Atty Gen 65 (1976).

¹⁸ 65 Op Atty Gen 55 91976)(internal citation omitted.)

when they are physically absent from their offices.¹⁹ However, there may be provision for stopping payment of compensation if there is evidence that an elected public official has shown a clear intent to relinquish or abandon the office.²⁰

In another attorney general opinion, the Dodge County Corporation Counsel asked the following questions that illustrate the legal principle that a County Board cannot set and pay out sick or vacation leave time for elected officers, and is on point with the resolution presented to this Committee:

1. Does the board have power to establish the number of sick-leave days which elective officials may take with pay, and pay for accumulated, unused sick leave?
2. Does the board have power to establish the days an elected official may take as vacation with pay, and pay for accumulated, unused vacation?
3. If such benefits had been established in the past and certain officials had been accumulating these benefits, may the county board increase the salaries of the elected officials during their term of office in an amount equal to the accumulated benefits?²¹

The Attorney General answered “No” to all three questions.²² The answer to the first two questions was based on the opinion in 65 Opp. Atty. Gen 1976, referenced above. The answer to the third question is “no” because “the county board was not empowered to grant or regulate sick leave and vacation leave of elected officials, no officer would have legally accumulated sick leave or vacation leave.”²³ Without the authority to establish vacation pay or sick leave, the county was unable to pay those benefits out because they shouldn’t exist per statute.

3. Legal Treatises

The attorney general opinions above are based in part on legal treatises which discuss the compensation of public officers. “A public official is entitled only to compensation provided by law.”²⁴ Generally, the ability to alter the compensation of public officers is limited by constitutional restrictions or statutes.²⁵ The Wisconsin Constitution, in addition to Wis. Stat. §59.22(1)(a)1., states, “except as provided in this

¹⁹ 65 Op Atty Gen 63 (1976).

²⁰ 63C Am. Jur. 2d *Public Officers and Employees* §284.

²¹ 66 Wis. Op. Atty. Gen 329 (1977).

²² 66 Wis. Op. Atty. Gen 329 (1977).

²³ 66 Wis. Op. Atty. Gen 329 (1977).

²⁴ 63C Am. Jur. 2d, *Public Officers and Employees*, §258.

²⁵ 63C Am. Jur. 2d, *Public Officers and Employees*, §264.

subsection, the compensation of a public officer may not be increased or diminished during the term of office. . . .” This is because “all candidates, both incumbents and challengers, are on notice of what the salary is of the office for which they are running, and it is not appropriate under a state constitution that the salary be increased after the election is concluded.”²⁶ One of the rationales is to establish definiteness regarding the salary and to avoid the appropriating body having influence over a public officer by a threat or promise of a salary change.²⁷

III. Legal Opinion

Based upon legal treatises, case law, the Wisconsin Constitution and statutes, and attorney general opinions the County Board is without legal authority to grant or regulate sick leave and vacation leave for its constitutional elected officers. Further no elected county officer may have legally accumulated sick leave or vacation leave.²⁸ Nor can any sick leave or vacation leave be paid out to an elected official upon leaving office, whether by death, removal, retirement, or losing an election.²⁹

The annual compensation of the sheriff must be set as a straight salary, without sick or vacation leave per statute. The Sheriff is not entitled to a sick leave bank because the County Board is without power to regulate sick or vacation time for an elected constitutional officer. Moreover, creating a sick bank would create additional compensation during the term of the Sheriff which is in violation of the Wisconsin Constitution and Wis. Stat. §59.22(1)(a)1. and 2. The proposed \$11,103.17 is additional compensation which would be paid out upon the Sheriff no longer holding office and is meant to compensate for what listed in the resolution as a lower salary than market value during the current term of office. This resolution is an indirect attempt to circumvent the salary set for the Sheriff during the current term. This resolution would be a direct violation of the legal maxim that “a constitutional prohibition against changes in compensation of public officers may not be evaded, either directly or indirectly, by the legislature or other body.”³⁰

My legal opinion is that the resolution should not be brought to the floor for discussion because the resolution would be an illegal act under State law. This would be accomplished by no member making a motion to adopt the resolution, which is one way to deny the motion. If the matter is brought before the body by a motion and second, my advice is that a motion to postpone indefinitely be made. The motion to postpone indefinitely is used when a proposition cannot be adopted by the body, which applies to this resolution.

²⁶ 63C Am. Jur. 2d, Public Officers and Employees, §279.

²⁷ *Id.*

²⁸ 66 Wis. Op. Atty. Gen 329 (1977).

²⁹ *Id.*

³⁰ 63C Am. Jur.2d *Public Officers and Employees* §280, citing *Schultz v Milwaukee County*, 250 Wis. 18 (1947)

Finally, I am concerned that the Sheriff has a sick leave bank under the “old sick leave bank” that will be paid out in one form, or another based on County pre-Act 10 policies. Based on the research I have done; no constitutional elected official should have a sick leave or vacation leave bank that is subject to payout upon leaving office. If an official was a county employee prior to being elected to office and had vacation or sick time that could have been paid out at the time of leaving the position as employee, it should have been paid out upon them terminating their employment with the county and prior to them being sworn into office. This opinion is based on the American Jurisprudence Treatise – Public Officers and Employees, which states the following regarding payout of vacation and sick time. It states,

In general, a public employee whose employment has terminated may not recover the monetary value of unused vacation and sick time, in the absence of statutory or contractual authority. The terms of employment concerning the payment of unused fringe benefits to public employees must be express and specific, so that employees understand the amount of unused fringe benefit pay, if any, owed to them on separation from employment. A court will construe any ambiguity in the terms of employment concerning the payment of unused fringe benefits to public employees in favor of the employees³¹

If Sheriff Podoll was entitled to sick leave payout prior to becoming Sheriff, he would remain entitled to that if there was a policy when he terminated his employment as a county employee. Any sick leave or vacation time “accumulated” during his term as Sheriff should be deleted from any leave banks, as those benefits are not tied to an elected official’s compensation and cannot be part of statutory compensation for the office. Furthermore, no County constitutional officer is entitled to any sick leave or vacation leave bank upon entering office per statute and common law. Any current existing sick leave or vacation leave banks must be wiped out beginning the date any constitutional elected official took office as these are benefits that are not payable to constitutional elected officials. It might be seen as a drastic change if elected officials currently rely on sick time or vacation leave banks and expect to have those banks paid out upon leaving office; however, “statutes providing compensation for a public officer are to be strictly construed in favor of the government and are strictly construed against the officer.”³²

If you have any questions, please contact me directly. This Legal Opinion was emailed to the Committee and will not be appearing in the meeting packet. This opinion is protected by attorney/client privilege, and I cannot submit it to the County Clerk for inclusion in the packet. If the Committee wishes it to be placed in the packet for future reference, it will have to place the matter on the agenda for a vote.

³¹ 63C Am. Jur. 2d *Public Officers and Employees* §284.

³² 63C Am. Jur. 2d *Public Officers and Employees* §258.

Respectfully submitted,

A handwritten signature in blue ink that reads "Dawn N. Klockow". The signature is written in a cursive, flowing style.

Dawn N. Klockow
Corporation Counsel