Clark County Board of Freeholders, 2013-14

Briefing: The Legislative Branch

Summary

A county commission is both the legislative and executive branch of county government combined into one body. A county council represents the legislative authority of the county separately. It has no additional executive authority as is the case with a county commission. Instead, the county executive becomes the separate executive authority. A commission is three members by general law, but a council borne of a charter can be any size. It normally is created as an odd number so it won't have tie votes. In Washington, county councils have ranged in size from 5 to 13 councilors. Councilors are elected to staggered four-year terms, and can be elected by district, at-large (countywide), or any combination of the two methods.

Overview

- The primary role of the legislative branch is to enacts laws; they are the lawmakers. This is also the branch of government that sets tax rates and establishes fees/charges. It is juxtaposed to the executive branch which administers and implements the laws as passed.
- The legislative branch also approves the budget, allocating funds necessary to operate the governmental entity on behalf of constituents.
- The county legislative branch usually takes one of two forms: a commission or a council. A commission, as provided by general law in Washington, combines executive with legislative branch responsibilities. A county council results from the separation of executive from legislative responsibilities.
- Under Washington general law, a county commission consists of three members who are nominated by district during a primary, then elected countywide during a general election.
- Also under general law in Washington, a county commission may be expanded from three to five members per simple majority vote of the countywide electorate. That vote may arise from a referendum (referred by the commission) or initiative (petition from the people). If a petition, it must be signed by at least 10% of the voters and at least 25% of the signatures must come from each of the three commissioner districts.
- A county council, balanced against a county executive, could result from a home rule charter. There is no limitation on how many councilors may comprise the council. Similarly, if a home rule charter chose to maintain a commission form of governance, there is no limitation to how many commissioners could comprise the commission.
- Unless the additional members were all elected at-large (i.e., countywide), an expansion of the legislative branch would need to be accompanied by redistricting. County redistricting is controlled by 36.32.0552 and 36.32.0554 RCW. In the context of five comprising the legislative body, districts would need to be formed such that they represent (as nearly as possible) one-fifth of the countywide population in each district.
- As a potential check on the county executive, a county council is often granted subpoena power. This is the power to command an individual to provide information either in person by testifying, or through producing documents or other tangible items. A witness must

respond to a lawful subpoena and may be represented by counsel. Subpoena power gives a county council the ability to make investigations into the affairs of the county and examine the conduct of any county department, office, employee, agency, supplier, or vendor.

Perspectives

- As part of the balance of powers between branches of government, the county council will usually have its legislation subject to veto by a county executive. However, the county council would also have the ability to override that veto, usually by a 2/3 affirmative vote of the council.
- The size of the legislative body matters, but it is not everything. The fundamental issue for voters tends to be who they elect, not the governmental form or size of the legislative branch. The structure of county government only provides the framework, but does not control who gets elected or the behavior/expertise of electeds.
- A limitation on the existing three-member county commission is the inability for any two members to discuss policy issues outside of an officially noticed public meeting because two members trigger a quorum. A larger legislative body gives the opportunity for more person-to-person discussion without triggering a quorum.
- One argument in favor of expanding the size of the legislative branch beyond three members is the ability for each member to better represent constituents. Individually, they would be responding to fewer constituents and, if elected by district, advocate for the interests of a smaller geographical area with area-specific concerns. This may also be an important consideration when redistricting impacts the rural-urban mix of legislative representatives in the county.
- Generally, having legislative members emanate from a larger number of districts increases opportunities for representing specific interests that vary geographically across the county. Conversely, councilors or commissioners elected by district may be subject to developing a parochial rather than a countywide perspective.
- As a way to balance countywide needs with specific interests that emanate from a segment of the county, a council or commission may be comprised from a combination of those elected at-large (countywide) and those elected from districts. For example, in Whatcom County there are six councilmembers elected by district, but one elected at-large.
- A smaller council/commission may gain greater familiarity with county operations. Larger legislative bodies tend to provide opportunities for committees to specialize in specific county programs and thus become experts in those areas.