

Elected Officials - Salary Setting Considerations & Best Practices

County Boards are called upon to set salaries for elected officials on an annual basis. Various rules and guidelines should be taken into account when developing a sound salary setting process. Human resources professionals can work with their Board of Commissioners in establishing and following a process that supports informed and appropriate decision-making when it comes to establishing each county elected official's salary for the upcoming year.

Primary Sources of Guidance:

Rules and requirements in the public sector arise from a variety of sources, which may not necessarily be coordinated with each other. The challenge presented to human resources professionals is to analyze and account for all relevant requirements and guidance, to establish an informed and compliant course of action.

As for all issues, the main sources of information establishing requirements and guidance that must be incorporated into the elected official salary setting process include the following:

1. Laws (Minnesota Statutes, in this case),
2. Regulations (Rules, in this case), and
3. Case law, which is continuously evolving.

Laws:

There are separate laws addressing salaries for each type of elected official. Positions deemed as elected can vary from one county to another, but three roles are consistently filled by elected officials across Minnesota counties. The elected positions common to all counties include County Commissioners, County Attorney, and County Sheriff.

- County Commissioners have a statute dictating January first as the salary's effective start date for the year, [Minnesota Statutes, Section 375.055](#), Subd. 1.
- County Attorneys' statute guiding compensation is found in [Minnesota Statutes, Section 388.18](#) in which Subd. 2 states that "annually" the County Board sets the salary by resolution, to be paid at intervals as set by the Board.
- County Sheriffs have a similar statute, [Minnesota Statutes, Section 387.20](#) where Subd. 2 also says that "annually" the County Board sets the salary by resolution, to be paid at intervals as set by the Board.

Other elected officials, including Auditor, Treasurer, Recorder, and some appointed officials/department heads also have specific statutes applicable to their positions. These are generally found in [Minnesota Statutes, Chapters 370 - 403](#).

Over time, the Minnesota legislature has seen fit to establish requirements for certain positions and functions. This may be done to protect the authority and responsibility of those areas, to prevent the roles from being abolished, to establish consistency throughout the state, to separate them from other areas, or to prevent county boards from acting unreasonably with regard to these positions, or an array of other reasons. In short, the Minnesota legislature has found the reasoning behind establishment of the requirements significant enough to prompt them to act in a unified, prospective manner, and to apply the standards that they developed to all counties. (Some larger counties have had their own unique laws passed.) Typically, the legislature will act with the intent to correct something that has gone awry, or to prevent something unreasonable from happening. A collection of laws now exists providing an important framework for establishing county elected officials' salaries.

Regulations:

Government agencies exist to carry out and enforce the laws of the legislature. Often, the agencies create their own regulations to methodically and consistently apply and enforce their governing laws. In Minnesota, the [Minnesota Rules](#) deal with some of the substance that county elected officials work with and uphold, as well as what is expected of society. For example, the [7400 series of Minnesota Rules](#) deals with certain technical aspects of the state's Public Safety Department and touches on a number of areas a County Sheriff would be expected to uphold.

Case Law:

Statutes and Rules don't cover the details of every situation that could be encountered. At times, a court is needed to interpret or apply the laws. The court's explanation of why it decided a certain way provides counties with valuable guidance on how to apply the laws in the future.

While a county can look to a court to decide how disagreements over a law's meaning or application should be settled, counties usually prefer not to relinquish what control they have and hand it over to a third party. Most organizations would prefer not to end up in court, especially involving discussion of the treatment of elected officials in their own jurisdiction. The accompanying media coverage should be considered, in addition to the fact that even if the county prevails, the county will typically bear the costs of litigation for both the county and the elected official, in addition to the elected official's salary, as well as the elected official's budget. Looking to the courts to resolve an issue can become a costly endeavor, on many counts.

Learning the lessons that other counties have had decided in previous court cases can help your county avoid being the next case study.

Setting the Standards: Busse v. Board of County Commissioners, Sibley County, 241 N.W.2d 794 (Minn. 1976)

A bedrock case is the [Sibley County case](#), which was ultimately decided by the Minnesota Supreme Court. The case dealt with the Clerk of Courts' three deputy positions for which the County Board had authority and responsibility for setting salaries. The County Board set the salaries much lower than what the Clerk recommended and had included in his proposed budget request. Ultimately, the lower court set the salaries well above what the County Board had approved. Why? The most significant problem was that the County Commissioners "were not intimately familiar with the specific duties of the deputy clerks."

There was testimony from the County that the proposed salaries were a drastic departure from what they had been considering, and also that the need for interdepartmental salary equity was more important. Those arguments didn't sit well with the court.

The Clerk of Courts presented a very thorough set of arguments for the higher salaries.

- The Clerk had requested the higher salaries as part of his budget request.
- The Clerk had objective criteria for calculating the proposed salaries, including the salary of a previous employee who had retired, knowledge of other counties' pay, determined appropriate number of years to the top of the pay scale, and utilized a factor of the Consumer Price Index.
- He provided his mathematical computation of what the proposed salaries should be.
- The Clerk listed out the "wide variety of duties, responsibilities, and training requirements for court deputies."

- The Clerk testified how his deputies needed to have a broader range of duties than deputies in comparator counties, because he had few staff and so therefore, they could not specialize.
- He showed evidence that his deputies were paid less than those in other counties.
- He distinguished the work of his deputies from those in the other, internal departments, with his deputies' work being "more difficult and more technical" - and that evidence was not contradicted.
- He provided "extensive descriptions of the background, specific duties, and statutory responsibilities of the deputies."
- "All parties" rated the deputy clerks' performance as "excellent."
- He offered evidence that the starting salaries of the deputies was very low.

The Minnesota Supreme Court hearkened back to the statute governing the County Board's setting of the Clerk's salary and the Clerk's budget. They acknowledged that although the salaries the County Board proposed would have provided "substantial increases" to the deputies, and they would have received the same across-the-board increases as all other employees, and they made up three out of a total of four employees who received an additional "merit" increase, nonetheless there was "ample evidence" to show that the County Board's determination was "arbitrary, capricious, oppressive or without sufficiently taking into account the extent of responsibilities and duties" of the Clerk's office.

Not uncoincidentally, these same criteria appear in the County Sheriff's and County Attorney's statutes, as well as in statutes governing the setting of other elected officers' salaries. Additionally, the elected official's "experience, qualifications, and performance" need to be considered.

How to Become "Intimately Familiar":

There are several approaches for a County Board to demonstrate that it is "intimately familiar" with the specific duties of the elected official's job. At a minimum, a County Board should use at least one approach, and can use a combination of several methods. The County Board should keep in mind that it will serve them well if, by their actions a third party, such as a court, would immediately be able to determine that the County Board was indeed "intimately familiar" with the elected official's duties.

Approaches that will assist the County Board in establishing that they are intimately familiar with the duties of the elected official's role and office include the following:

- Ask. Ask the elected official to stand up and state, or write out, what they consider to be the office's official duties. (There has been at least one court case determined against the County because the County Board never asked the incumbent what the official duties were.) Incorporating this simple step into the annual salary setting process immediately takes away the argument that the County Board has no idea, or not enough of an idea, of what the office does. Consider building in sufficient time to take in all of the elected official's information at one meeting, then take time to consider and research it, and later vote on the salary and budget at a subsequent meeting.
- Have the elected official fill out a form, listing out the official duties. Give the information to each Commissioner.
- Request information or conduct research to identify and define the statutory duties of the elected official's office.
- If there is a statewide association or professional organization associated with the elected office, review any compilations of what that group considers to be the statutory duties of the office. Compare the county's duties for the office with that statewide description of

duties. Consider whether they are identical, or if the county's expected duties involve higher level or broader requirements.

- Put forward a specific board meeting agenda item: "Budget and Salary for [County Elected Official Title]." Allow the elected official to express their thoughts, data, and viewpoint for the Board's consideration as part of this board agenda item. Include the listing of the elected's official duties in the County Board's meeting minutes to establish an official record of the information that was presented to the Board.
- Provide each Commissioner with the job descriptions for every position in the elected official's department. That is a comprehensive picture of what is entailed in the department's operation.
- Meet with the elected official. Accept and review all documentation they provide.

Once an effective approach is defined for the County Board to establish intimate familiarity with the duties of the elected offices, continue to follow these processes *every year*. Duties could have changed, or a new commissioner could join the County Board. Relying on memory from studying the issue after a year or more has passed is likely to reduce the efficacy of any established approach as well as its perceived value by a court.

Understand Performance Information and Its Significance:

The County Board similarly needs to understand the elected official's performance, and should consider this in the context of what is expected in the elected official's capacity.

Similar to becoming "intimately familiar" with the office's official duties, the County Board needs to take objective steps to clearly understand how the elected official (and the official's employees for whom the official is requesting salary determinations or approvals) performed, as well as be prepared to show a third party, such as a court, that the County Board has appropriately reviewed and assessed this information in their decision making process.

Remember that the Open Meeting Law, [Minnesota Statutes, Section 13D.05](#), Subd. 2, allows the County Board to discuss data that is not public data at an open meeting, when it is "reasonably necessary to conduct the business or agenda item before the public body." In addition, [Minnesota Statutes, Section 13.03](#), Subd. 11, again states that not public data can be discussed at open meetings to the extent provided in 13D.05. It is permissible to discuss (but not hand out to the public) performance data about the elected official's employees when reasonably necessary to conduct the business or agenda item before the Board. The elected official is not an "employee" for purposes of the Minnesota Government Data Practices Act.

- Ask. Ask the elected official to describe their performance and that of their employees.
- Additionally, are there others who have relevant information on how the elected official or the department or office performed? This may include but not be limited to information from other departments or individuals in positions that interact with the elected official, current and former employees of the official, colleagues, and key contacts in collaborative agencies. Seek, or at least allow, their input and consider it in an informed context, as one element of the overall performance picture.
- Accept materials supplied by the elected official to describe their performance. In addition, seek out comparison data. Comparison data will add significance and perspective to the elected official's data. This could include data from a salary survey, or from contacting comparable counties.

- Include factors such as: population size, tax capacity, caseloads, years of experience, full time equivalents (FTEs) and numbers of personnel supervised and for which responsible, extent and type of workload, number of cases filed in state court system, other measures of workload size and complexity, etc., depending on the elected official's position.

Collect and consider this information *every year*. Circumstances, pressures, and priorities can change. Some years there will be a new Commissioner on the Board. Individual performance can vary over time. There are many reasons that support establishing a fresh assessment of the relevant data *each year*.

What Not To Do:

- Don't delegate the authority and vetting of the information to a personnel committee or staff person without also ensuring the Board takes the time and makes the effort to review and understand the information. Abdicating the County Board's responsibility to a subgroup or other person, even if they are highly trusted, will appear to a third person (such as a court) that the County Board itself is not "intimately familiar" with the duties and performance of the elected official. Don't give someone else the impression that each Commissioner is not fully informed and understanding of the duties and performance. Show that there was a sound process and method applied, and relevant factors considered, that the County Board incorporated into their reasoning when setting the salary and budget.
- Don't give an across-the-board percentage increase to all elected officials. Doing so simply points out that the County Board did not consider individual qualifications, performance, and experience of each elected official. While sometimes an across-the-board percentage increase is what is approved and applied, it should come after at least a documented discussion with each of the elected officials and/or other appropriate objective decision making analysis.
- Don't automatically follow what the county's Pay Equity Report indicates is an underpayment / overpayment. The Pay Equity Report is looking at the position and its points, and not the individual's performance. It is not taking comparable jurisdiction's salaries into account.
- Don't set a salary or budget that is so low that it will immediately draw suspicion and appear off base. Don't give a third party, such as a court, any reason to suspect that there was something improper occurring when the County Board set the elected official's salary or budget. Instead, make it very clear as to the County Board's multiple and sound reasons why the salary and budget amounts are appropriate and supported by a logical assessment.
- Don't pay a full-time elected official less than the elected official's assistant. It looks disingenuous, and it is likely to place the assistant in an uncomfortable position.
- Whenever reasonably possible, avoid freezing salaries. Doing so can appear punitive. If it can be demonstrated that funding was available to pay for increases, this approach will be difficult to support.

Consult Outside Legal Counsel:

Setting elected official salaries and budgets can at times present various challenges. It is always wise to consult the county's legal counsel when more specific and detailed advice is needed to navigate the circumstances at hand.