



Public Policy Brief

State & Local Government Area of Expertise Team

Understanding the Mandated Service Argument: A Primer for County Commissioners

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During tight budgetary times elected and appointed county officials often resort to a discussion of *mandated* versus *non-mandated* services as a formula for making difficult funding choices. The concept has evolved through the application of court cases and other state and federal laws to the wide range of activities carried out by Michigan's counties. County commissioners must understand the mandated versus non-mandated concept to appreciate the important role that mandates play in county government policy-making. This paper is provided to help commissioners unravel the complex issues surrounding mandated services that arise during budget deliberations.

Sources of Mandates

In the context of intergovernmental relations, a *mandate* is a command by one level of government for a subordinate government to carry out certain functions. In Michigan, many of county government's functions are carried out in its role as an administrative arm of state government. As a result, the state is the source of various mandates for county government. The state constitution, for example, mandates that the citizens of each county shall elect a clerk, treasurer, sheriff and prosecutor "whose duties and powers shall be provided by law." State statutes require that county government provide a wide variety of facilities and resources including a courthouse, jail or lockup facilities, a health department, medical examiner, circuit court, and the family division within circuit court. State statutes also require the provision of various services such as the training of local elections officials, maintaining vital records, recording real estate transactions, and many others. Attorney general opinions and regulations of state agencies are also sources of mandates to county government.

For example, the attorney general has concluded that statutory language that a county "*shall* levy a tax not to exceed...." is a mandate to levy a tax (i.e., a levy of zero violates the mandate). The Office of State Registrar has promulgated rules concerning the storage and retention of vital records.

Over the years, federal mandates have also had an impact on local governments. Sometimes the source of a mandate is a federal court decision, such as the "one person, one vote" decisions that resulted in the abolition of the county board of supervisors in favor of a board of county commissioners elected by districts. Congressional action such as the Americans with Disabilities Act (ADA), civil rights legislation and labor laws all affect policy-making, and therefore budget choices, at the local level.

Mandates can also arise through the actions of the local government itself. An extra-voted millage for senior services mandates that the taxes levied may only be expended in the manner prescribed by the ballot proposal. County ordinances, resolutions and memoranda of agreement all create responsibilities of the county government to perform certain actions or carry out certain functions.

Services and actions that are not mandated by federal or state government or through the action of local governments are often referred to as *non-mandated* or *discretionary* programs. Many examples of non-mandated programs exist. State statutes permit, but do not require, county governments to provide water and sewer infrastructure and sanitation services,

parks and recreation, fire and ambulance services, and mental health services are all examples of discretionary functions.

Frequently county controllers and administrators classify county functions into more or less the following categories:

1. *Functions mandated by law* – County functions performed because federal, state or local constitutions, charters, statutes, regulations or court orders mandate them. These functions must be carried out by county government unless and until the law is changed or repealed.
2. *Functions mandated by agreement* – County functions performed because the county is a party to a contractual agreement. These functions are mandated for the duration of the agreement.
3. *Functions necessary, but not mandated* – These are “support” services necessary to carry out the mandated services referred to in (1) and (2). Examples include accounting, payroll, central services, buildings and building maintenance.
4. *Discretionary functions* – County functions that do not meet any of the above criteria.

Sorting out Mandates

Although the basic concept of mandates is simple, it should be obvious that the everyday practice of carrying out mandates is complex. While the classification outlined above is useful, it can sometimes mask the intricacies associated with providing “mandated” services. The following circumstances underscore the need to dig deeper into the mandated services discussions that inevitably take place during budget deliberations.

- *State and federal mandates vs. local mandates.* While the board of county commissioners has no legal control over mandates handed down by the federal or state governments, it does have some degree of control over the mandates it imposes on itself. Ordinances and resolutions that require county government to carry out some function may be amended or repealed or, in some cases, simply go unfunded. Likewise, it may be possible to renegotiate some contractual agreements, or simply choose not to renew them upon their

expiration. This means that locally self-imposed mandates are, in a practical sense, policy choices that remain within the discretion of the board.

- *Mandated office, non-mandated functions.* The Michigan constitution provides for the election of county clerks, register of deeds (although the board of commissioners may combine the offices of clerk and register of deeds into a single office), sheriffs and prosecutors; however, the mandate for elected county officials does not mean that every *service* provided or desired by the official is therefore a mandated function of the office. The requirement to provide a mandated service still must reside somewhere in law or contract. For example, Michigan court cases set forth the common law duties of the sheriff’s department, including service of process, execution of court orders and arrest and detention of suspected criminals.¹ Michigan statutes define still other duties, including management of the county jail and the recovery of drowned bodies. Many of the other specialized functions commonly performed by sheriffs’ departments (e.g. drug enforcement units, domestic violence units, DARE programs) are not mandated. Some functions are mandated as a condition of accepting grant funds (DARE, supplemental road patrol functions as described in MCL 51.76(2)) or reaching agreements with townships (dedicated deputy), but absent those grant funds or agreements the county is under no obligation to perform the functions.
- *Non-mandated office or department, mandated functions.* County Extension offices frequently enter into memoranda of agreement with county boards to partially or completely fund local positions. As a result, the county is mandated to carry out the terms of the agreement despite the fact that “Extension” in a general sense, is not a mandated function of county government.
- *Provision of service not mandated.* Counties are not mandated to act as the *provider* of mental health services. The Mental Health Code simply requires that the county pay 10 percent of the cost of mental health services provided to residents of the county (MCL 330.1302). Nevertheless, every county in the state has elected to organize to deliver community mental health services programs, either through its own

county level agency, a multi-county community mental health organization, or through a single or multi-county legal entity known as a community mental health authority. These organizational arrangements provide the local community a mechanism for controlling how monies are spent on services. With these arrangements, however, come a mandate to provide “a complete array of mental health services” which must include certain specific activities. An annual plan is submitted to the Michigan Department of Community Health. Once approved, the plan becomes the mandate.

How Much is Mandated?

The Level of Service Question

In making budget decisions it is important for county commissioners to distinguish between a mandate to provide a specific service and the level of service that must be provided. The interrelationship of these two issues is also complex; however, there are essentially two considerations that will influence commissioners’ thinking in making budget choices in response to mandates: whether the mandate relates to a specific function or to the level of service required to be delivered.

- *Mandated functions.* Most constitutional and statutory mandates take the form of a general mandate to provide a specific function or service. The county board must appropriate sums sufficient to allow these mandates to be carried out, whether it is a mandate directed at an elected county officer or at county government generally. But how efficiently must the county provide a service? Michigan court cases have set a “minimally serviceable level” standard.

“A serviceable level is not met when the failure to fund eliminates the function or creates an emergency immediately threatening the existence of the function. A serviceable level is not the optimal level. A function funded at a serviceable level will be carried out in a barely adequate manner, but it will be carried out. A function funded below a serviceable level, however, will not be fulfilled as required by statute.” *Cahalan, et al. v. Wayne County Board of Commissioners*, 93 Mich App 114 (1979).

A review of relevant Michigan court cases is provided in the Appendix. The “minimally serviceable level” standard still leaves county commissioners with considerable discretion to make decisions on the amount of funds to expend on any given mandated function. Commissioners need to be aware that any decisions on the level of service to be provided on a mandated function, beyond a minimum serviceable level, are *policy choices* on equal footing with decisions on spending on discretionary functions. Community expectations, efficiency and effectiveness of delivery and historical precedent all influence the degree to which various programs are funded. Commissioners should be ready to question levels of funding that they do not feel reflect the levels of service being provided. All of the following are policy choices, yet none are mandated:

- Community-based corrections programs provide rehabilitative alternatives to incarceration.
 - Adding more computers in the clerk’s office can reduce man-hours.
 - Paved shoulders on county roads increase safety and provide bike lanes.
 - Recreation and nutrition programs for senior citizens improve their quality of life.
 - New software packages and accompanying training in the treasurer’s office may speed the tax administration process.
 - County planning and zoning programs protect property values and prevent incompatible neighboring land uses.
 - Extension programs help communities, families, organizations, businesses, and individuals gain the knowledge and skills to increase their quality of life.
 - Adding 1 FTE will improve circuit court case management.
 - Economic development programs create jobs and improve the lives of families.
- *Mandated levels of service.* Some mandates actually define the required level of service with considerable specificity. A memorandum of agreement to fund an Extension Youth Development Agent is self-explanatory in terms of the money the county will expend to support

the individual's salary. Frequently federal or state agency regulations provide specific guidelines on how a function must be carried out. The function may or may not be mandated, but once the county has made the policy choice to support the function it must be provided according to the law. The Public Health Code and the Michigan Department of Community Health detail numerous specific functions that must be carried out by county health departments, including vision and hearing screening, on-site septic system management and food service sanitation. There are specific regulations, medical protocol, etc. that accompany the provision of these services that, in effect, act as the determinant of the level of service to be provided. Counties are not mandated to build, maintain or operate a jail within their borders;² however, once the policy choice is made to do so the design and management of the facility are subject to strict regulation by the Department of Corrections. Commissioners must pay careful attention to the long-term implications of policy choices that will result in mandates to provide specific levels of service. The county often will be left with little discretion as to the level of funding required of these programs, yet their existence could necessitate budget cuts in other departments to balance the county budget.

County commissioners must review county departments' programs and budgets and stay informed about the mandates each department must meet. Commissioners must keep in mind that decisions to fund mandated functions "beyond a barely adequate level" are policy choices *within the discretion of the board*. Commissioners must also think through the long-term budgetary consequences of policy decisions made today.

Levels of Service and "Quality of Life" Services

Closely related to the "level of service" issue is the "quality of life" issue. Occasionally, some local officials view the quality of life issue as one of providing unneeded luxuries to citizens. In lean revenue years these officials look at programs provided by parks and recreation departments, for example, as prime targets for budget cuts. Elected officials need to be aware of the role government plays in maintaining or improving the quality of life of citizens. By setting a higher level of service than

required by mandate, and by providing non-mandated services, counties enhance the quality of life for their constituents. A significant share of the county budget, reflected across many department budgets, is devoted to enhancing the quality of life of its citizens, above and beyond levels required by mandates.

Serving the Many vs. Serving the Few

Another philosophy occasionally advanced during tight budgetary times is that functions that serve the broadest audience should be given priority; the belief being that "mandated" functions generally fit that description. The two functional areas that generally receive the bulk of county financial resources, human services (health and community mental health in particular) and law and courts (including enforcement, adjudication and corrections), however, run counter to this philosophy. Due to the nature of these services, many county citizens' lives are not directly affected by spending in these areas. For example, \$224.5 million of the total \$361.1 million operating budget for Kent County for 2002 is earmarked for these two functional areas. Community Mental Health, which has an \$85 million operating budget, serves roughly 13,118 of Kent County's 575,000 residents.³ In fact, the average taxpayer is sometimes hard pressed to say how he or she benefits from taxes paid to county government. To again use the earlier example, parks and recreation generally provides broad-based services that serve a much wider audience, and give citizens positive exposure to county government.

Another dimension the quality of life issue is that of providing services directed at prevention rather than remediation. It can be argued that a high quality of life is also maintained through preventing problems, such as juvenile crime, malnutrition, watershed degradation or community economic decline, from occurring in the first place. If this can be done successfully through cost-effective means, the need for expensive programs for reversing problems can be reduced.

Summary – Key Questions

When engaged in analysis and discussion of the county budget, county commissioners should consider the following questions about mandates, mandated functions and levels of service:

- What are the real mandates for each department?

- What are the specific functions mandated?
- Are levels of service mandated?
- Is the decision to provide the service itself a policy choice? In other words, can the county avoid the mandate by its own action/inaction?
- Are departments protecting programs from potential budget cuts by claiming either that functions are mandated when they are not, or that they are mandated at current levels of service when they are not?
 - Can departments provide documentation for both functional and required level of service mandates?
 - Federal, state, local?
 - Statutes, regulations, ordinances, resolutions, agreements?
- What services does each department provide?
 - What constituencies are served?
 - How many citizens are directly affected by the services?
- Do budget requests reflect additional spending on manpower, technology, etc. when current

service levels will be adequate over the short term?

- Is the board subjecting all non-mandated programs, and levels of service beyond “minimally serviceable” levels of service, to the same scrutiny?
- Are there long-term negative consequences of current policy decisions?
 - What obligations arise from accepting a grant, getting into a new service, entering into long-term agreements?
- Do partnering/cost-sharing opportunities between departments exist?
- Do leveraging opportunities exist?
 - Can county appropriations be used to bring outside (primarily state and federal) monies into the county?

¹ Refer to the Appendix for selected cases involving the common law duties of the sheriff.

² Counties are required to maintain temporary lock-ups.

³ Daryl Delabbio and Al Vanderberg, “City Management. County Management. Not so Similar After All.” *Michigan Municipal Review*, Vol. 75, No. 8, p. 11 (September/October 2002).

Appendix

Review of Selected Court Cases Relating to Mandated County Services

A number of Michigan appellate court cases address the board of commissioner’s responsibilities to fund mandated services and the offices of elected county officials. The following three cases provide the essential points of law for commissioners to consider in making budgetary decisions. For highlights of other cases, particularly the evolution of the relationship between the courts, court funding and county appropriations for courts see Harvey and VerBurg, “Mandated vs. Non-Mandated County Services: Evolution of the Argument,” paper presented at the Management Training Workshop for County Extension Directors, June 16, 1992 and at New County Commissioner workshops, November-December 2000.

Brownstown Township v. Wayne County Board of Commissioners, 68 Mich. App. 244, 242 N.W.2d 538 (1976)

Brownstown Township brought an action to compel the county board to provide the necessary funds to

enable the county sheriff to continue road patrol service. The trial court entered summary judgment for the county board. The Court of Appeals affirmed.

The Court of Appeals stated that, as a constitutional office, the office of sheriff has a “known legal character.” As such, the state legislature, in adopting statutes that define the duties of the office, “may vary the duties, but may not change the duties so as to destroy the power to perform the duties of the office.” The court concluded that the sheriff must perform the duties of the office as recognized at common law, as well as those statutory duties that do not destroy the sheriff’s power to perform his/her common law duties. Citing an 1880 case, the court found the common law duties of the office to be:

“...[t]he execution of the orders, judgments, and process of the courts; the preservation of the peace; the arrest and detention of persons charged with the commission of a public offense; the service of papers in actions, and the like....”

Observing that the state legislature has codified the common law duties of the sheriff with little variance, the court concluded that neither common law nor Michigan statutes [at the time in 1976] imposed a mandate on the sheriff to supply road patrol.

“A stricter duty is imposed upon the sheriff to maintain law and order in those areas of the county not adequately policed by local authorities. This does not mean that the sheriff must regularly patrol those areas. All that is minimally required is the sheriff exercise reasonable diligence to (1) keep abreast of those areas inadequately policed, which may require limited vigilance, (2) monitor criminal activity or unusual conditions in the county, and (3) respond professionally to calls for assistance from the citizenry.”

***Cahalan, et al. v. Wayne County Board of Commissioners*, 93 Mich. App. 114, 286 N.W.2d 62 (1979)**

The county board imposed an across-the-board 15% budget reduction for all county departments. The prosecuting attorney, treasurer, clerk, register of deeds and drain commissioner sought an injunction to prevent the board from implementing the budget cuts. The trial court concluded that an equal, across-the-board cut for all offices was arbitrary. The decision was appealed.

The Court of Appeals first stated, as a principle of separation of powers, that courts will not second-guess the legislative function of a county board in making appropriations decisions “unless the action taken is so capricious or arbitrary as to evidence a total failure to exercise discretion.” The court concluded, however, that

“Where the Legislature has statutorily imposed on the county executive officers various duties and obligations, the county boards of commissioners must budget sums sufficient to allow the executive officers to carry out their duties and obligations.”

Necessarily, then, the court turned to a discussion of what *level of service* was sufficient. The court adopted “serviceability” as the standard to be applied, and defined it as follows:

“Serviceability must be defined in the context of ...”urgent”, “extreme”, “critical”, and “vital” needs. A serviceable level of funding is the minimum budgetary appropriation at which statutorily mandated functions can be fulfilled. A serviceable level is not met when the failure to fund eliminates the function or creates an emergency immediately threatening the existence of the function. A serviceable level is not the optimal level. A function funded at a serviceable level will be carried out in a barely adequate manner, but it will be carried out. A function funded below a serviceable level, however, will not be fulfilled as required by statute.”

The court found that across-the-board cuts, in this case, were not arbitrary because the record demonstrated that the board had given serious thought to the issue, and that the board genuinely believed that all of the services were important enough that all should be treated alike. However, the court concluded that cuts to the offices of prosecutor and register of deeds would render those offices unable to perform their statutorily mandated functions.

***Wayne County Sheriff v. Wayne County Board of Commissioners*, 148 Mich. App. 702, 385 N.W.2d 267 (1983)**

The county board cut the sheriff’s budget by eliminating the Patrol and Investigative Division. The sheriff appealed the trial court’s ruling in support of the county board. The Court of Appeals quoted from a federal district court case from Ohio to paint a frank picture of the typical budgetary process in action at the local level:

“Under the American system of constitutional government, it is the duty of the legislature, in this case the Board of County Commissioners, to raise the funds for governmental operation, and to distribute them among the various executive departments including, in this case, the Sheriff and his department. Since the public funds are not unlimited, and every executive always needs more money than he can get, the matter of appropriations is a highly political one.... No public official can provide all the

services that he would like to provide, and it is for him to use his judgment as to how he will make his money spread. If he is politically astute, he can perhaps make sufficient political capital of his inability to render services to create pressure upon the legislative branch to increase his appropriation. But no court can very well take a hand in that game.”

In finding the sheriff could still perform mandated functions at a “minimally serviceable level” after the elimination of the Patrol and Investigative Division, the court considered it highly relevant that the services performed (1) were duplicated by other divisions or departments, including the State Police; (2) were back-up for non-mandated functions, or (3) were still being performed by personnel under the auspices of the Jail Division.

County of Oakland v. State, 432 Mich. 49, 438 N.W.2d 61 (1989)

This case is included less for its implications for mandated services than for its explanation of the legislative and judicial actions concerning the function of road patrol by county sheriffs subsequent to the preceding three cases.

Partially in response to *Brownstown Township v. Wayne County Board of Commissioners, supra.* the Legislature adopted PA 416 of 1978, which provides grants to county sheriffs to enhance road patrol efforts beyond those that the sheriffs’ offices were performing “immediately prior to October 1, 1978.” The Legislature established a list of services to be

provided by departments receiving grant monies. (MCL 51.76(2)) The grant monies were to be used only for those services, and those services were to be required only to the extent that state funds were provided. (MCL 51.77). If “county expenditures or road patrol” fell below that provided before October 1978 then the county would lose its eligibility for the grant (the “maintenance of effort” clause), the thought being that the grants were being provided to supplement existing road patrol efforts.

Oakland County was notified in 1983 that it no longer met the eligibility criteria for the grants because the state Office of Criminal Justice would not count toward the maintenance of effort standard road officer positions funded through contracts with townships. The county employed 89 full time officers in 1983 compared to 80 in 1978; however, only 25 of those were fully funded by the county’s general fund in 1983, compared to 48 in 1978. The other officers were funded by a combination of county, township and/city funds.

The Michigan Supreme Court determined that monies received for road patrol through contracts with townships should be counted as “county expenditures” for purposes of the maintenance of effort standard. Therefore, even if the amount of county general fund monies directed toward road patrol was reduced, the maintenance of effort standard was still met so long as total expenditures for, and number of officers directed to road patrol remained greater than or equal to the level immediately prior to October 1, 1978.

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