



County Structure & Powers

There is a fundamental distinction between a county and a city. Counties lack broad powers of self-government that California cities have (e.g., cities have broad revenue generating authority and counties do not). In addition, legislative control over counties is more complete than it is over cities. Unless restricted by a specific provision of the state Constitution, the Legislature may delegate to the counties any of the functions which belong to the state itself. Conversely, the state may take back to itself and resume the functions which it has delegated to counties (e.g., state funding of trial courts).

Types of Counties

The California Constitution recognizes two types of counties: general law counties and charter counties. General law counties adhere to state law as to the number and duties of county elected officials. Charter counties, on the other hand, have a limited degree of “home rule” authority that may provide for the election, compensation, terms, removal, and salary of the governing board; for the election or appointment (except the sheriff, district attorney, and assessor who must be elected), compensation, terms, and removal of all county officers; for the powers and duties of all officers; and for consolidation and segregation of county offices. A charter does not give county officials extra authority over local regulations, revenue-raising abilities, budgetary decisions, or intergovernmental relations.

A county may adopt, amend, or repeal a charter with majority vote approval. A new charter or the amendment or repeal of an existing charter may be proposed by the Board of Supervisors, a charter commission, or an initiative petition. The provisions of a charter are the law of the state and have the force and effect of legislative enactments. There are currently 44 general law counties and 14 charter counties. They are as follows:

General Law Counties: Alpine, Amador, Calaveras, Colusa, Contra Costa, Del Norte, Glenn, Humboldt, Imperial, Inyo, Kern, Kings, Lake, Lassen, Madera, Marin, Mariposa, Mendocino, Merced, Modoc, Mono, Monterey, Napa, Nevada, Plumas, Riverside, San Benito, San Joaquin, San Luis Obispo, Santa Barbara, Santa Cruz, Shasta, Sierra, Siskiyou, Solano, Sonoma, Stanislaus, Sutter, Trinity, Tulare, Tuolumne, Ventura, Yolo, Yuba

Charter Counties: Alameda, Butte, El Dorado, Fresno, Los Angeles, Orange, Placer, Sacramento, San Bernardino, San Diego, San Francisco, San Mateo, Santa Clara, Tehama

County Powers

The California Constitution authorizes a county to make and enforce local ordinances that do not conflict with general laws. A county also has the power to sue and be sued, purchase and hold land, manage or dispose of its properties, and levy and collect taxes authorized by law. Many additional powers have been granted to counties by the Legislature. The powers of a county can only be exercised by the Board of Supervisors or through officers acting under the authority of the Board or authority conferred by law. In addition, the Board must follow the procedural requirements in the statutes or its actions will not be valid. For example, if the Legislature has provided a method by which a county may abandon a road, that method must be followed. Also, where state law requires land use zoning by an ordinance, this statutorily prescribed method is binding on the county. On the other hand, where the law does not specifically prescribe a method for accomplishing a task, the county may adopt any reasonably suitable means.

The Board of Supervisors

Unlike the separation of powers that characterizes the **federal** and state governments, the Board of Supervisors is both the legislative and the executive authority of the county. It also has quasi-judicial authorities.

Board Structure

Government Code Section 25000 requires each county to have a Board of Supervisors consisting of five members. The section applies to general law counties and to charter counties, except where the charter provides otherwise (e.g., San Francisco City and County has eleven members and one mayor). A board member must be a registered voter of, and reside in, the district from which the member is elected. A county charter can provide a local method for filling vacancies on the Board of Supervisors. In the absence of such a provision, the Governor appoints a successor.

A majority of the members of the Board constitutes a quorum for conducting business. A majority of all the members must concur on any act of the Board. A Board may enact rules governing how abstentions are counted. Some extraordinary actions, like passing emergency ordinances, require four votes.

An official act of the Board of Supervisors can only be performed in a regularly or specially convened meeting. The individual members have no power to act for the county merely because they are members of the Board of Supervisors. Meetings of the Board of Supervisors are subject to the restrictions of the Ralph M. Brown Act (Government Code Section 54950 et. seq.). With limited exceptions, the Brown Act requires that all Board of Supervisors meetings be open and public. The county clerk, whose duty it is to record all proceedings of the Board of Supervisors, is the ex officio clerk of the Board, unless the Board appoints its own separate clerk. The Board must keep a record of its decisions and the proceedings of all regular and special meetings.

Board of Supervisor Powers

The Board of Supervisors exercises its power and authority by undertaking the following roles: executive, legislative, and quasi-judicial.

Executive Role

The Board performs its executive role when it sets priorities for the county. The Board oversees most county departments and programs and annually approves their budgets; supervises the official conduct of county officers and employees; controls all county property; and appropriates and spends money on programs that meet county residents' needs.

Supervision of County Officials

The Board of Supervisors may supervise the official conduct of county officers and require them faithfully to discharge their duties, but the Board cannot add to those duties or relieve the officers from these obligations. The Board may not direct or control the day-to-day operations of a county department, or otherwise limit the exercise of discretion vested by law in a particular officer.

The supervision of elected officers by the Board of Supervisors is somewhat more limited. The district attorney, as public prosecutor, is a state or quasi-state officer and is under the direct supervision of the attorney general. Consequently, the Board of Supervisors does not have supervisory authority over the district attorney's prosecutorial duties. On the other hand, the Board has general supervisory authority over the district attorney to the extent that the district attorney functions as a county officer.

The Board of Supervisors may supervise the sheriff to the extent that the sheriff acts as a county officer, and may investigate the officer's performance of county duties. However, in enforcing state law, the sheriff is acting as a peace officer of the state and is under the direct supervision of the attorney general. In addition to being an officer of the county, the sheriff is also an officer of the courts. While acting in that capacity, the sheriff is not under the supervision of the Board, and the Board may not investigate the sheriff in connection with such duties. The assessor is also under state control in many respects, but not to the same degree as are the district attorney and sheriff.

The Board of Supervisors has a unique relationship with the courts. The Board shares funding responsibility for the courts with the state and cannot fully control their budget or operations. As a court of record (i.e., maintain records of proceedings), the court has all powers (i.e., inherent powers as defined in the law) reasonably required to enable it to perform its judicial functions efficiently, to protect its dignity, independence, and integrity, and to make its lawful actions effective. But inherent powers have limits. The court may not exercise its powers in such a manner as to thwart, nullify, or frustrate legitimate legislative bodies. To this end, there are some conditions on the court's ability to order the Board of Supervisors to provide funding.

County Litigation

The Board of Supervisors also has the power to direct and control the conduct of litigation in which the county or any public entity which the Board governs is a party, and by a two-thirds vote, it may employ outside attorneys to assist the county counsel in conducting such litigation. The decision to hire special counsel is up to the supervisors.

Relationship of the Board of Supervisors to the Civil Grand Jury

The Civil Grand Jury, when working in concert with the Board of Supervisors and the county executive, can prove to be a valuable tool to audit county programs and provide constructive recommendations for the improved operation of local government.

Basically, the Civil Grand Jury in California serves two basic purposes: "(1) to weigh the allegations of misconduct against public officials and determine whether to present formal accusations requesting their removal from office and (2) to act as the public's watchdog by investigating and reporting upon the affairs of local government. Of these functions, the watchdog role is by far the one most often played by the modern grand jury in California." (McClatchy Newspapers v. Superior Court (1988) 44 Cal.3d 1162, 1170.)

Statutory authority of the grand jury:

- To investigate all branches of county, city and special district governments to ensure they are being run in an efficient and honest manner, in the best interest of citizens it serves. Reports may be issued anytime during the year.
- To investigate and report on the operational and financial aspects of all offices within its jurisdiction, including an audit. This authorization extends to any incorporated city or joint powers agency. The grand jury may also report on county officials' records and accounts as ex-officio officers of any district.
- To investigate, at its option, any case of an inmate in the county jail on a criminal charge and not indicted. To investigate the condition and management of detention facilities within its jurisdiction.
- To investigate the willful or corrupt misconduct of public officers within its jurisdiction.
- To investigate all sales and transfers of land and matters of land ownership.
- To address the need for salary increases or decreases for county elected officials.

Responsibility of the Board of Supervisors: No later than 90 days after the report is submitted, the Board of Supervisors must comment to the presiding judge of the Superior Court on the findings and recommendations. An elected official or agency head with responsibility pertaining to an area addressed in the report shall respond in writing to the presiding judge, with a copy sent to the Board of Supervisors within 60 days. The subject of the grand jury report must respond to the findings in the following ways:

- The respondent agrees with the finding.
- The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reason(s).
- The respondent is taking the following action(s) to address the findings and recommendations of the grand jury report.

Joint Powers Agreement/Joint Powers Agency-Authority

A Board of Supervisors may also establish a joint powers agreement and/or joint powers agency with another public agency. A joint powers agreement (JPA) is created where two or more local governments enter into a cooperative agreement to provide any service which either of them could provide on their own. A joint powers agreement involves mutually agreeing to specific conditions and terms which may limit each agency's ability to act independently, but it does not alter the basic structure of each agency's decision-making processes. These JPA's are fairly common; a sheriff's department may provide police services to a city, or a county and a city may form a JPA to jointly run an emergency dispatching center. A joint powers agency takes the concept of agreement and cooperation to a new level. Under California Government Code Section 6500, counties, cities, special districts, and other public agencies are allowed to enter into agreements which create new and distinct authorities. The new authorities have a separate operating board of directors which has the powers inherent in all of the participating agencies. The powers of the authority can be general or specific, the term of the authority must be

established, and other administrative decisions must be made (e.g., how the board meets and conducts its business). For example, two parties may agree to create a joint transit authority, where both parties contribute the necessary resources and the capital assets. Personnel may become employees of the new authority, and with a new operating board, policies may be independently set to create transportation services for both jurisdictions.

Legislative Role

As the legislative body of the county, the Board of Supervisors may act by resolution, by board order, or by ordinance. A resolution of a Board is ordinarily not equivalent to an ordinance; it is usually a declaration about future purposes or proceedings of the Board or a policy statement by the Board. Resolutions are often used when specific findings are made by the Board of Supervisors. A board order is usually a directive from the Board of Supervisors to its subordinate county officers.

An ordinance is a local law adopted with all the legal formality of a statute. The California Constitution allows a county or city to make and enforce within its limits all local, police, sanitary, and other ordinances and regulations that do not conflict with the state's own general laws. Most legislative acts, including using the police power, are adopted by ordinance. There are, however, numerous exceptions and specific state laws sometimes indicate whether the action requires an ordinance or resolution.

California Government Code Section 25120 et seq. specifies the form, content, and adoption process for county ordinances. For example, there are urgency ordinances (i.e., those required for the immediate preservation of the public peace, health, or safety) and ordinances which are statutorily required to have a noticed public hearing in order to be adopted (e.g., land use zoning or new fees).

County Revenue Authority

Boards of Supervisors can raise local revenue by imposing or increasing a tax, an assessment, or a fee. Each of these local revenue sources has its own constitutional and statutory authority and unique laws governing its use. A county can only impose those taxes, assessments, and fees which the Legislature or the Constitution allow the county to impose and which are approved by either a simple or two-thirds majority of local voters per Propositions 13 and 62.

There are important differences between taxes, assessments, and fees. A tax is an involuntary charge against an individual or landowner which pays for public services regardless of the taxpayer's benefit. An assessment is an involuntary charge on land which pays for public improvements or services which directly benefits the taxpayer. All revenue generated by an assessment must be used for the improvements or services specified. A fee is a voluntary charge on an individual which cannot exceed the reasonable cost of providing the service.

After the California Supreme Court ruled in *Guardino* (12/95), a Board of Supervisors may not impose new taxes without a vote of the people. Subject to a vote, a Board may impose a utility users tax, a business license tax, and a transient occupancy tax (hotel or bed tax). If the proceeds from these taxes are designated for general purposes, majority voter approval is required. If the tax proceeds are restricted to special purposes, two-thirds voter approval is required. The Board has authority to impose taxes only within the unincorporated area. Proposition 218, passed in November, 1996, applies additional constraints to county taxing authority, as well as fees and assessments.

If a Board of Supervisors decides to impose or increase a specific tax, assessment, or fee, it must follow proper notice and hearing requirements. There are different posting and disclosure requirements for each of these types of local revenue sources. The Board asks both the clerk of the Board and the county counsel at the beginning of the process to ensure that it follows all public hearing and disclosure requirements.

Quasi-Judicial Role

In its quasi-judicial role, the Board of Supervisors may settle claims made against the county and may examine and audit the accounts of all county officers as they relate to the management and disbursement of funds. The latter authority may be exercised with a subpoena to the county officer to bring all requested files to the Board. The Board may delegate the subpoena power to a committee of its own members, but pursuant to state law, the Board may not otherwise delegate that power.

The Board of Supervisors also sits as a quasi-judicial body in the case of appeals of land use decisions and tax issues (i.e., may sit as assessment appeals board to decide questions regarding the value of property).

Other Duties – Intergovernmental Relations

A county supervisor may serve in other capacities on various boards, commissions, or special districts. State statute authorizes, and in some cases mandates, that various services or functions be carried out by entities other than the Board of Supervisors. These entities, in addition to including locally elected officials, seek public participation and technical expertise:

- Councils of Government (COG)
- Local Agency Formation Commissions (LAFCO)
- Special Districts
- Air Quality Management Districts (AQMD)
- Airport Land Use Commissions (ALUC)
- Joint Powers Authorities (JPA)

The roles and functions of these entities primarily relate to planning for future development and the associated service needs (e.g., water, sewer) and impacts (e.g., air quality, airport safety). Board members serving on one of these entities may find themselves making decisions on a variety of issues from regional planning to establishing spheres of influence for new cities or special districts within the county.