

**STATE OF WISCONSIN
DEPARTMENT OF REVENUE**

**In Re the Matter of the Applicability of Wis. Stat. §§ 59.605(3)(c) and 66.0602(3)(a) & (b)
to the Town of La Pointe and Ashland County**

VERIFIED PETITION FOR DECLARATORY RULING

INTRODUCTION

The Town of La Pointe (hereinafter the “Town”) requests a declaratory ruling from the Wisconsin Department of Revenue (the “Department”) pursuant to Wis. Stat. § 227.41(5) regarding the application of Wis. Stat. §§ 59.605(3)(c) and 66.0602(3)(a) & (b). The Town seeks a declaration from the Department that these statutes call for an adjustment in the levy increase limits applicable to the Town and to Ashland County (hereinafter the “County”), as the County has transferred to the Town responsibility for law enforcement patrol and dispatch response services (and related costs) that had been provided by the County indirectly via payment for these services and costs (hereinafter “patrol and response services”) for at least the past 27 years, ending December 31, 2022.

The Town seeks to make the declaratory ruling binding on itself and the County. The County’s address is: Ashland County, c/o County Clerk Heather W. Schutte, 201 Main Street West, Room 202, Ashland, WI 54806.

The Town requests that pursuant to Wis. Stat. § 227.41(5)(a), the Department issue a declaratory ruling on the facts contained in this Petition or, if additional facts are needed, that the Department hold a hearing pursuant to Wis. Stat. § 227.44 and provide all interested parties a full opportunity to participate. Should the Department determine that the statutes do

apply to the facts and parties described herein, the Town requests that the Department determine the amount of the levy adjustment(s).

Statutes in Question

Wisconsin Statute § 59.605(3)(c)1 states:

If a county transfers to another governmental unit responsibility for providing any service that the county provided in the preceding year, the levy rate limit otherwise applicable under this section to the county in the current year is decreased to reflect the cost that the county would have incurred to provide that service, as determined by the department of revenue.

Wisconsin Statute § 66.0602(3)(a) states:

If a political subdivision transfers to another governmental unit responsibility for providing any service that the political subdivision provided in the preceding year, the levy increase limit otherwise applicable under this section to the political subdivision in the current year is decreased to reflect the cost that the political subdivision would have incurred to provide that service, as determined by the department of revenue.

Wisconsin Statute § 66.0602(3)(b) states:

If a political subdivision increases the services that it provides by adding responsibility for providing a service transferred to it from another governmental unit that provided the service in the preceding year, the levy increase limit otherwise applicable under this section to the political subdivision in the current year is increased to reflect the cost of that service, as determined by the department of revenue.

Statement of Facts

1. The Town of La Pointe is a town located within Ashland County, Wisconsin. The township encompasses 16 islands in Lake Superior, geographically separated from the balance of Ashland County. Fifteen of the islands are part of the Apostle Islands National Lakeshore and under federal jurisdiction; the largest, Madeline Island, is not. Madeline has the only year-round population.
2. As a result of this geographical fact, it has been difficult for the County Sheriff to directly

provide adequate patrol and response services to the Town at the same level as provided to other parts of the County.

3. The County's Sheriff has a statutory and constitutional duty to provide adequate law enforcement services throughout the County. Wis. Stat. Sec. 59.28 (2021-2022); 81 Op. Att'y Gen. 24, 24 (1993); *Manitowoc County v. Local 986B*, 168 Wis. 2d 819, 830, 484 N.W.2d 534 (1992); *Andreski v. Industrial Comm'n*, 261 Wis. 234, 240, 52 N.W.2d 135 (1952); 58 Op. Att'y Gen. 72 (1969).
4. To address the difficulty of directly providing adequate law enforcement services to the Town, the Town and the County have, for at least the past 27 years ending December 31, 2022, entered into agreements under which the County paid the Town to provide patrol and response services to the Town via the Town Police Department, resulting in the County providing such services indirectly. The Town has supplemented those County-supplied services to offer enhanced law enforcement services to its residents and visitors and to enforce Town Ordinances, like many towns do, but has never replaced or intended to replace the patrol and response services that are the responsibility of the County.
5. Effective December 31, 2022, the County terminated the agreement through which it had been indirectly providing patrol and response services to the Town by purchasing those services from the Town. At the same time, since January 1, 2023, the County is not directly providing, and has indicated that it will not directly provide, patrol and response services to the Town commensurate with those services provided to the rest of the County.
6. A history of the agreements over the past 27 years between the Town and County

whereby the County indirectly provided patrol and response services to the Town by purchasing them from the Town is described below.

- a. The Town and County entered into a written agreement in 1995 which provided for payments from the County to the Town for law enforcement services. A copy of that document is attached hereto, incorporated herein as though fully set forth, and marked as Exhibit A.
- b. The 1995 agreement called for the County to pay for approximately half of the Town's expenses related to law enforcement. The payments were intended to compensate the Town for patrol and response services that it was not receiving directly from the County, thus allowing the Town Police Department alone to provide those services.
- c. On October 24, 2000, the County agreed to increase the amount of payment provided under the agreement with the Town by \$7,500.
- d. On August 28, 2001, the Town requested an additional \$83,000 from the County in 2002 for two additional, part-time seasonal officers. On November 8, 2001, the County informed the Town that it would approve \$69,000 in additional law enforcement funding in 2002.
- e. The Town and the County entered into a renewed law enforcement agreement in 2008. That document is attached hereto, incorporated herein as though fully set forth, and marked as Exhibit B. Again, the agreement called for the County to pay the Town for the provision of law enforcement services, through the costs of one full-time officer, three part-time officers, half the maintenance costs of a squad car, and half of the costs for a new squad car when appropriate, in lieu

of the County providing patrol and response services directly. The agreement could be terminated by either party.

- f. The parties updated that agreement informally in 2013, which increased funding from the County by \$13,000 over 2012 levels, with an additional \$2,000 for Ice Rescue.
 - g. Through the next several years, County and Town staff had multiple discussions about a new written agreement. Despite several comprehensive drafts, a successor to the 2008 agreement was never signed, and thus that agreement remained in effect until the County terminated it effective December 31, 2022, as described further below.
 - h. The county administrator and Town's police chief settled on a flat sum of \$134,000 to purchase patrol and response services for the years 2017 and 2018, and a flat sum of \$135,000 for 2019. That amount remained unchanged in 2020, 2021, and 2022, despite rising costs and the formula provided in the parties' agreement for the purchase of law enforcement services.
7. On January 21, 2022, the County Board Executive Committee voted to recommend to the full board that it terminate the agreement with the Town to purchase law enforcement services from the Town.
 8. On February 1, 2022, the Finance Committee also voted to serve the Town with a notice to terminate the agreement.
 9. On March 20, 2022, the full County Board voted to give notice that it would terminate the agreement with the Town at the end of 2022.
 10. By letter dated April 5, 2022, the county administrator informed the Town that the

County was terminating the 2008 agreement. That letter is attached hereto, incorporated herein as though fully set forth, and marked as Exhibit C.

11. Despite the good faith efforts by the Town to reach a replacement agreement with the County whereby the County would provide adequate law enforcement services to the Town, either indirectly by purchasing those services from the Town or otherwise, no such agreement has been reached.
12. On October 20, 2022, the County Board Finance Committee met in closed session and voted not to provide any law enforcement funding to the Town in 2023.
13. On November 15, 2022, the County Board rejected on a 13-6 vote a proposed budget amendment to provide \$70,000 to the Town and approved the budget with no funding to purchase law enforcement services from or for the Town whatsoever. The County's 2023 budget is attached hereto, incorporated herein as though fully set forth, and marked as Exhibit D.
14. The funds that the Town received from the County over the past 27 years were critical in providing an adequate level of law enforcement services to the Town's residents, including those services that the County is obligated to provide equally within the County. That is, without the funds from the County purchasing law enforcement services from the Town (thereby providing such services indirectly), and in the absence of the County providing adequate law enforcement services directly to the Town, the residents, enterprises, visitors, and businesses of the Town may be without adequate law enforcement services.
15. The Town provides just over twenty percent (20.1%) of the funds that make up the County's property tax revenue. The County has budgeted \$1,809,227 for Sheriff- Law

Enforcement for 2023, as set forth on Page 2 in Exhibit D. Accordingly, the Town is paying approximately \$364,000 for County law enforcement services in 2023, including the patrol and response services that it will not receive directly or indirectly.

16. The Town has calculated the shared costs of providing full-time law enforcement services at the same level as it has historically provided: both the patrol and response services historically purchased from the Town by the County, and the services the Town has elected to provide as a supplement to those the County is obligated to provide. Those costs are \$381,337.12 for 2023, with an additional \$28,907.88 in law enforcement costs borne by the Town alone. The itemization thereof is attached hereto, incorporated herein as though fully set forth, and marked as Exhibit E. Based on the historical practice of the County covering roughly half of the Town's law enforcement expenditures, the Town calculates that to maintain the same level of law enforcement services provided in the past, the cost to the County for 2023 patrol and response services – and, consequently, the amount of the levy adjustments – is \$190,668.56.

Argument

The County, including its Sheriff's Department, has a legal obligation to provide law enforcement services throughout the County. Wis. Stat. Sec. 59.28 (2021-2022); 81 Op. Att'y Gen. 24, 24 (1993); *Manitowoc County v. Local 986B*, 168 Wis. 2d 819, 830, 484 N.W.2d 534 (1992); *Andreski v. Industrial Comm'n*, 261 Wis. 234, 240, 52 N.W.2d 135 (1952); 58 Op. Att'y Gen. 72 (1969). Further, regardless of any legal obligation, for at least the past 27 years the County has in fact provided County law enforcement services to the Town, in part by

purchasing patrol and response services from the Town. That ended as of December 31, 2022. As described in the facts above, by abdicating its responsibility to provide patrol and response services in the Town, directly or indirectly, the County, including its Sheriff's Department, has transferred County law enforcement responsibility within the Town of La Pointe to the Town itself as of January 1, 2023.

The intent of the statutes in question is clear from the plain language. The legislature intended to provide a financial remedy to address the situation in which a county transfers responsibility to another governmental unit for the provision of services. "If a county transfers to another governmental unit responsibility for providing any service that the county provided in the preceding year, the levy rate limit otherwise applicable under this section to the county in the current year is decreased to reflect the cost that the county would have incurred to provide that service, as determined by the department of revenue." Wis. Stat. § 59.605(3)(c)1 (2021-2022) (emphasis added).

The language in Wis. Stat. §§ 66.0602(3)(a) & (b) is nearly identical, while also providing a commensurate increase in levy rate limit for the municipality assuming the new responsibility. Wis. Stat. §§ 66.0602(3)(a) & (b) (2021-22). Thus, if a political subdivision transfers to another governmental unit the responsibility for providing any service that the political subdivision had provided in a preceding year, their levy rate limit in the current year is decreased to reflect the cost that they would have incurred for the service. *Id.* Likewise, the levy rate limit of the governmental unit taking on the new responsibility is increased by the same amount to fund the additional services that must be provided. *Id.*

When engaging in statutory interpretation, the first step is always to examine the plain language of the statute. *Dow Family, LLC v. PHH Mortg. Corp.*, 2014 WI 56, ¶ 20, 354 Wis.

2d 796, 848 N.W.2d 728; see also *State ex rel. Kalal v. Cir. Ct. for Dane Cty.*, 2004 WI 58, ¶ 45, 271 Wis. 2d 633, 681 N.W.2d 110; *Waity v. LeMahieu*, 2022 WI 6, ¶ 18, 400 Wis. 2d 356, 370-71, 969 N.W.2d 263 (if the meaning of the statute is plain from its language, that is ordinarily where the inquiry ends). “We consider extrinsic sources to determine statutory meaning only when the plain language of the statute could reasonably be interpreted in more than one way.” *Dow Family, LLC*, 2014 WI 56, ¶ 20.

Here, the plain language of Wis. Stat. § 59.605(3)(c)1, Wis. Stat. § 66.0602(3)(a), and Wis. Stat. § 66.0602(3)(b) indicates that municipal levy limits must be adjusted when the responsibility for services is transferred from one governmental unit to another. That is, when one governmental unit has been bearing the responsibility for providing a service and stops, that unit’s levy limit must decrease and the levy limit for the governmental unit that now bears the responsibility for providing that service increases. The statutes make no distinction between those services provided directly, i.e., by County employees using County property and other resources; and those services provided indirectly, i.e., as here, purchased from another municipality or a third party. It has long been held that “We should not read into the statute language that the legislature did not put in.” *Brauneis v. LIRC*, 2000 WI 69, ¶ 27, 236 Wis. 2d 27, 612 N.W.2d 635 (citing *In the Interest of G. & L.P.*, 119 Wis. 2d 349, 354, 349 N.W.2d 743 (1984)).

Here, the County has provided for County patrol and response services by purchasing those services from the Town for at least the past 27 years. It further has failed since January 1, 2023, and has no intention of or commitment to providing patrol and response services going forward via any other means, either directly or indirectly. It has consequently transferred responsibility for County law enforcement to the Town.

The County has now discontinued the agreement between the parties and shifted the entire responsibility for providing all patrol and response services to the Town, including those services that must by law be provided by the County commensurate to that provided to the rest of the County.

Conclusion

Based on the foregoing, the Town requests that the Department issue a declaratory ruling that Wis. Stat. § 66.0602(3)(a) & (b) and Wis. Stat. § 59.605(3)(c) apply to the foregoing facts and parties, with such result binding upon the Town and the County, and determine that the County's levy limit is decreased by \$190,668.56, while the Town's levy limit is increased by \$190,668.56.

Dated this _____ day of January, 2023.

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VERIFICATION


STATE OF WISCONSIN)
(SS.
ASHLAND COUNTY)

The undersigned, Glenn Carlson, hereby attests that he is the Board Chair of the Town of La Pointe, that he has the authority to verify this Verified Petition under Wis. Stat. § 227.41(5), that he has read the Verified Petition and that the statements contained in said Petition are true and correct based on his own knowledge and the records of the Town of La Pointe, except those matters stated on information on belief, which he believes to be true.



Glenn Carlson
Town of La Pointe Board Chair

Subscribed and sworn to me
this 24th day of January, 2023.



Barbara L. Nelson

Notary Public, State of Wisconsin

My commission expires: August 23, 2023

