

**FILED**  
**03-21-2025**  
**Clerk of Circuit Court**  
**Ashland County, WI**  
**2024CV000073**

**BY THE COURT:**

**DATE SIGNED: March 20, 2025**

Electronically signed by Hon. John P. Anderson  
Circuit Court Judge

STATE OF WISCONSIN                      CIRCUIT COURT                      ASHLAND COUNTY

TOWN OF LA POINTE,  
Petitioner,

v.

Case No. 24 CV 73

WISCONSIN DEPARTMENT  
OF REVENUE,  
Respondent,

COUNTY OF ASHLAND,  
Intervenor.

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WISCONSIN DEPARTMENT  
OF REVENUE,  
Petitioner,

v.

Case No. 24 CV 74

TOWN OF LA POINTE, Respondent-Intervenor,

COUNTY OF ASHLAND,  
Respondent.

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**DECISION**

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These cases before the Court are unique both from a legal as well as factual perspective. For one, while the Town of La Pointe, consisting of several islands off the Bayfield Peninsula in Bayfield County, it is actually a part of Ashland County. The Town of La Pointe (La Pointe) consists of 16 Islands, 15 of which are federally owned and are part of the Apostle Islands National Lakeshore. Madeline Island is the only inhabited island not within the boundaries of the National Lakeshore. La Pointe has a year-round population of

a little over 400 residents. That population increases to anywhere between 2,000 and 3,000 during the summer months, together with additional daily visitors.

The parties in this case acknowledge that a significant issue representing the genesis of this dispute is the significant difficulty facing the Ashland County Sheriff's Department to provide law enforcement coverage to Madeline Island. The record is replete with these acknowledgements and the Court can take judicial notice that, besides transportation by air, boat or in unusually rare circumstance, across ice, vehicular access to the island requires driving about 25 miles through Bayfield County just to get to the ferry dock in the City of Bayfield and then wait for the next ferry boat to go to the island.

It appears to be undisputed that the Ashland County Sheriff discontinued a regular law enforcement presence on Madeline Island in 1977, after the one deputy sheriff assigned to and living in La Pointe was terminated. The sheriff apparently had difficulty finding a replacement for that deputy and the sheriff could not afford to have a deputy riding the ferry back and forth from the Bayfield County mainland to La Pointe on a regular basis. At the same time, La Pointe did not have a sufficient police force to provide adequate law enforcement to the island without assistance from the sheriff's department. It appears from the record that the then sheriff of Ashland County, in order to remedy the lack of a law enforcement presence on the Island, proposed that Ashland County (the County) pay La Pointe money to defer the cost of an additional police officer. Apparently, officials from La Pointe and the County met and agreed to this arrangement, which began in 1979. The initial agreement was not in writing, but entailed the County paying La Pointe for a full-time police officer and a portion of the expenses for a squad car. Consequently, La Pointe's police force grew to two full-time officers and a part-time officer. Former La Pointe police chief Michael Anderson testified that each year he would meet with the County, provide them with the employee and squad car expenses, and they would agree upon a figure that the County would pay La Pointe to cover law enforcement services. The County also had a worksheet that Mr. Anderson would complete and provide to the County. This was done every year until 1995, when the agreement between the parties was reduced to writing.

After operating without a formal written agreement for 16 years, the Town and the County entered into a formal written agreement memorializing and updating the previous arrangement. The 1995 agreement (Doc. 47, pg. 327) reads as follows:

#### LAW ENFORCEMENT AGREEMENT

WHEREAS, the County of Ashland ("the County"), and the Town of La Pointe ("the Town"), have cooperated with each other for years addressing law enforcement needs on Madeline Island; and

WHEREAS, due to the geographic location of Madeline Island the parties have found it mutually beneficial for the County to contribute money to the Town for the Town to use to help defray law enforcement costs; and

WHEREAS, the parties believe such arrangement continues to be mutually beneficial but should be reduced to writing,

NOW, THEREFORE, in exchange for valid consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned, hereby agree:

1. Prior to August 31 of each successive calendar year beginning with calendar year 1995, the Town of La Pointe will submit to the sheriff of Ashland County a written request for law enforcement funds signed by the Chairperson or Clerk of the Town. Such written request for funds will itemize with particularity the Town's good faith estimate of the projected costs for the ensuing calendar year of:

a. One-half the gasoline, oil, tires, repairs and maintenance of one Town of La Pointe squad car; and

b. The full amount of the salary and fringe benefit expenses to the Town of one full time Town police officer.

2. The Sheriff of Ashland County, upon receipt of such written request for law enforcement funds from the Town, will enter the amount requested by the Town as a line item in the Ashland County annual budget for the ensuing year.

3. During such ensuing year, Ashland County will pay to the Town of La Pointe the amount of the aforesaid line item in the Ashland County annual budget which the Ashland County Board of Supervisors has approved and adopted.

4. In addition to the aforesaid, when the Town determines in good faith that it reasonably needs a new squad car, the Town will send a written notice signed by the Chairperson or Clerk of the Town to the Sheriff of Ashland County indicating the same. The Sheriff of Ashland County will, after consultation with appropriate Town officials and the County Administrator, order a squad car; which squad car will be titled in the name of the Town. One-half of the cost of such new squad car will be paid by the County and the other one-half of the cost of such new squad car will be paid by the Town. The Town may do as the Town sees fit with the squad car being replaced when a new squad car is so purchased.

5. The Town agrees to use all law enforcement funds paid to it by the County under the terms of this agreement for the purposes for which such funds were intended.

6. No Liability. This agreement provides only for the County to contribute financial assistance to the Town to help defray law enforcement expenses in the Town of La Pointe, Ashland County, Wisconsin. The Town of La Pointe Police Department and all of its officers, employees, agents and representatives shall remain under the direction and control of the Town.

This agreement does not constitute and shall not be construed as constituting a joint venture or any other arrangement by which:

a. The County assumes any liability, responsibility, or obligation of any nature or kind to any person or entity for any injury, death, loss, damage, or expense associated with, relating to, or arising from, any act, omission, occurrence, happening, or circumstance involving any officer, employee, agent, or representative of the Town of La Pointe.

b. The Town assumes any liability, responsibility, or obligation of any nature or kind to any person or entity for any injury, death, loss, damage or expense associated with, relating to, or arising from, any act, omission, occurrence, happening or circumstance involving an officer, employee, agent, or representative of the County.

7. Entire Agreement; Modification. This agreement supersedes and replaces any prior discussion, negotiation, or agreement between the undersigned relating to the subject of this agreement. This agreement shall not be amended or modified except by a writing signed by an authorized representative of both of the undersigned.

8. Termination. This agreement shall remain in full force and effect until it is terminated by affirmative action of one or both of the undersigned. Either of the undersigned is free to terminate this agreement at any time for any reason upon 30 days' written notice sent to the other party by certified mail or personal service.

In 2008, a revised agreement which was substantively the same as the 1995 agreement was created (Doc. 47, pg. 331), which reads as follows:

Law Enforcement Agreement Between Town of LaPointe And Ashland County

WHEREAS, the County of Ashland ("the County"), and the Town of LaPointe ("the Town"), have cooperated with each other for years addressing law enforcement needs on Madeline Island; and

WHEREAS, due to the geographic location of Madeline Island the parties have found it mutually beneficial for the County to contribute money to the Town for the Town to use to help defray law enforcement costs; and

WHEREAS, the parties believe such arrangement continues to be mutually beneficial but should be reduced to writing,

NOW, THEREFORE, in exchange for valid consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned hereby agree:

1. Prior to August 31 of each successive calendar year, the Town of LaPointe will submit to the Sheriff of Ashland County and to the Ashland County Administrator, a written request for law enforcement funds signed by the Chairperson or Clerk of the Town. Such written request for funds will itemize with particularity the Town's good faith estimate of the projected costs for the ensuing calendar year of:
  - a. One-half the gasoline, oil, tires, repairs and maintenance of one Town of LaPointe squad car; and
  - b. The full amount of the wages and fringe benefit expenses to the Town of one full time Town police officer.

- c. One half of the wages for three (3) part time Police Officers for the Town.
2. The Administrator of Ashland County, upon receipt of such written request for law enforcement funds from the Town, will enter the amount requested by the Town as a line item in the Ashland County annual budget for the ensuing year.
3. During such ensuing year, Ashland County will pay to the Town of LaPointe the amount of the aforesaid line item in the Ashland County annual budget which the Ashland County Board of Supervisors has approved and adopted.
4. In addition to the aforesaid, when the Town determines in good faith that it reasonably needs a new squad car, the Town will send a written notice signed by the Chairperson or Clerk of the Town to Sheriff of Ashland County and the Ashland County Administrator indicating the same. The Sheriff of Ashland County will, after consultation with appropriate Town officials and the County Administrator, order a squad car; which squad car will be titled in the name of the Town. One-half of the cost of such new squad car will be paid by the County and the other one-half of the cost of such new squad car will be paid by the Town. The Town may do as the Town sees fit with the squad car being replaced when a new squad car is so purchased.
5. The Town agrees to use all law enforcement funds paid to it by the County under the terms of this agreement for the purposes for which such funds were intended.
6. No Liability. This agreement provides only for the County to contribute financial assistance to the Town to help defray law enforcement expenses in the Town of LaPointe, Ashland County, Wisconsin. The Town of La Pointe Police Department and all of its officers, employees, agents and representatives shall remain under the direction and control of the Town.

This agreement does not constitute and shall not be construed as constituting a joint venture or any other arrangement by which:

- a. The County assumes any liability, responsibility, or obligation of any nature or kind to any person or entity for any Injury, death, loss, damage, or expense associated with, relating to, or arising from, any act, omission, occurrence, happening, or circumstance involving any officer, employee, agent, or representative of the Town of LaPolnte.
- b. The Town assumes any liability, responsibility, or obligation of any Nature or kind to any person or entity for any injury, death, loss, damage or expense associated with, relating to, or arising from, any act, omission, occurrence, happening or circumstances involving an officer, employee, agent, or representative of the County.
7. Entire Agreement: Modification. This agreement supersedes and replaces any prior discussion, negotiation, or agreement between the undersigned relating to the subject of this agreement. This agreement shall not be, amended or modified except by a writing signed by an authorized representative of both of the undersigned.

- 8 Termination. This agreement shall remain In full force and effect until it is terminated by affirmative action of one or both of the undersigned. Either of the undersigned Is free to terminate this agreement at any lime for any reason upon 30 days written notice sent to the other party by certified mall or ' personal service.

On March 22, 2022, the Ashland County Board of Supervisors voted to terminate the agreement. The county administrator informed La Pointe of the cancellation by letter, stating that the cancellation would be effective December 31, 2022. On January 24, 2023, the La Pointe Board of Supervisors voted to expend surplus funds to replace Ashland County's payment so that La Pointe could continue to provide continuous law enforcement patrol.

### **Procedural posture and issues of the case**

This matter concerns a dispute between the Town of La Pointe and the County of Ashland regarding their respective levy limits under Wis. Stat. § 66.0602(3)(a) and (b). La Pointe and Ashland County had an agreement under which Ashland County contributed money to La Pointe to defray La Pointe's law enforcement costs. Ashland County terminated the agreement and stopped contributing to La Pointe, which then sought a declaratory ruling from the Department of Revenue (DOR) asking whether it was entitled to increase its levy limit by the amount of that lost contribution, an increase that would require Ashland County to decrease its levy limit by the same amount.

The DOR determined La Pointe was not entitled to raise its limit. DOR interpreted the statutory provision authorizing adjustments to municipal levy limits upon the transfer of responsibility for providing any service. Wis. Stat. § 66.0602(3)(a). It concluded that Ashland County had not transferred responsibility to La Pointe for providing a "service" when it terminated the funding agreement because, under that agreement, Ashland County provided funds, not services, to La Pointe. La Pointe appealed to the Tax Appeals Commission (Commission), which declined to hear the appeal, holding that it lacked jurisdiction.

The primary issues before this Court at this time is to determine whether the Commission erred in its conclusion that it lacked jurisdiction and remand the matter back to the Commission to hear the Town of La Pointe's appeal or to determine the Commission did not have jurisdiction and review the DOR's ruling on the merits briefed. The plaintiff suggests a third alternative which avoids a remand even if it concluded that the Commission did have jurisdiction to hear the appeal and, for judicial economy and overall expediency, rule on the DOR's decision.

The Court will initially point out what should be obvious in this dispute. The 1995 and the 2008 written agreements are between the Town of La Pointe and the County of Ashland. They were authorized and signed by town board and county board representatives. The Ashland County Sheriff is not a signatory to this agreement. The fact that the sheriff is not a party to this agreement is illustrative of a long held understanding that law enforcement

is both a function of legal authority of the sheriff and financial support through the county board of supervisors. County boards have the legal responsibility to fund a sheriff's law enforcement duties. The shared functions of both branches of government work in tandem to provide law enforcement support and service. The sheriff is primarily responsible for maintaining law and order within the county. This includes taking charge of the county jail, attending court sessions, serving legal processes, and enforcing city or village ordinances under certain contracts. Wis. Stat. § 59.27. The sheriff's duties are constitutionally protected to some extent, particularly those that are essential to maintaining law and order and preserving the peace. *Kocken v. Wisconsin Council 40, AFSCME, AFL-CIO*, 2007 WI 72, 301 Wis. 2d 266, 732 N.W.2d 828; *Washington County v. Washington County Deputy Sheriff's Ass'n*, 2009 WI App 116, 320 Wis. 2d 570, 772 N.W.2d 697. The county board has the authority to regulate the number and compensation of deputy sheriffs, which includes setting the budget for the sheriff's office. This regulation does not usurp the constitutional powers of the sheriff, but allows the county board to exercise some control over administration. This includes setting the sheriff's salary, determining the number of deputies, and regulating employment conditions. Wis. Stat. § 59.22 and Wis. Stat. § 59.26. The board also has the authority to contract with the sheriff for law enforcement services in cities or villages. Wis. Stat. § 62.13. This Court believes it is well within the authority of a county board to determine the level of financial and administrative resources needed to provide law enforcement to various locations in a county. The agreement at issue in this case is clearly about how to provide and pay for police and associated law enforcement on Madeline Island. It should be obvious that a sheriff's duty to provide law enforcement throughout a county is wholly dependent upon the branch of government responsible to fund that obligation. There cannot be one without the other.

The reasons for the original verbal and later the 1995 and 2008 written agreements are not in dispute, as it appears all parties acknowledge the unique character of providing such services to the Town of La Pointe. The Court is aware that there is no ferry service from anywhere in Ashland County to the Town of La Pointe. The tiny hamlet of La Pointe faces incredibly unique conditions, exacerbated by a political decision made long ago when Ashland County was created and removed from La Pointe County, now Bayfield County. Those political boundaries and physical barriers form the core of this complex legal issue and budding political dispute.

### **Legal Standard and Discussion**

On January 25, 2023, La Pointe petitioned DOR, pursuant to Wis. Stat. § 227.41(5), for a declaratory ruling that Ashland County's termination of the funding agreement constituted a transfer of responsibility under Wis. Stat. § 66.0602(3)(a) and (b) for providing a service from Ashland County to La Pointe. La Pointe requested that it be allowed to increase its levy limit and require Ashland County to decrease its limit correspondingly. Wis. Stat. § 66.0602(3)(a) and (b). DOR issued a declaratory ruling on July 19, 2023. DOR held that the termination of the agreement was not a transfer of services under section 66.0602(3). The holding by DOR was based on a legal determination the statute applies only to transfers of services themselves, not to the withdrawal of financial contributions toward

payment for such services. La Pointe appealed and the Commission determined that it lacked jurisdiction, because it interpreted Wis. Stat. § 227.41(5)(a)'s provision that DOR declaratory rulings "shall be subject to review by the tax appeals commission as provided in ch. 73," interpreting the phrase "as provided in ch. 73" to limit the Commission's jurisdiction to subjects specifically enumerated in Wis. Stat. § 73.01(4). La Pointe filed a petition for judicial review, contending that DOR erred in its declaratory ruling, thereby seeking a declaration that La Pointe was entitled to increase its levy and that Ashland County was required to decrease its levy by a corresponding amount. DOR filed its own petition, contending that the Commission had erred in concluding that it lacked jurisdiction over La Pointe's appeal and seeking remand to the Commission to hear La Pointe's appeal. The parties filed a stipulated motion to consolidate the two matters into a single case.

The DOR's declaratory ruling and the Commission's ruling are essentially legal questions, subject to de novo review in the circuit court. *Tetra Tech EC, Inc. v. DOR*, 2018 WI 75, ¶ 84, 382 Wis. 2d 496, 914 N.W.2d 21. In reviewing both questions, this Court is limited to the record before the agency and must affirm the rulings unless it "finds a ground for setting aside, modifying, remanding or ordering agency action or ancillary relief" provided by statute. Wis. Stat. § 227.57(1) and (2). The issue of primary importance is whether the Commission had jurisdiction over La Pointe's appeal and, if so, is its failure to exercise said jurisdiction grounds for remand. The starting point is the language in Wis Stat. § 227.41, which contains two relevant subsections: sub. (1), which governs declaratory rulings by all agencies except DOR, and sub. (5), which governs only DOR declaratory rulings. Sub. (5)(a) expressly provides that all DOR declaratory rulings "shall be subject to review by the tax appeals commission as provided in ch. 73." The Commission construed the phrase "as provided in ch. 73" as a substantive limitation on its jurisdiction. This Court disagrees. There is no reason to believe the legislature intended to carve out this type of declaratory ruling from the appellate process to the Commission. Wis. Stat. § 227.41(5) does not say it is limited only to review of declaratory rulings under matters listed in Wis. Stat. § 73.01(4). The Commission's interpretation would essentially make section 227.41(5) utterly meaningless. The plain reading of sections 227.41(1) and 227.41(5) together is the unequivocal pronouncement that **all** DOR declaratory rulings "shall be subject to review" by the Commission. The fact that ch. 73 does not refer to this type of DOR declaratory ruling is not persuasive. The review provision of Wis. Stat. § 227.41(5) contains a specific grant of jurisdiction to the Commission over all DOR declaratory rulings that supersedes the general jurisdictional provisions contained in ch. 73. "[I]f conflicting statutes on the same subject matter cannot be reconciled, the more specific statute controls." *Westra v. State Farm Mut. Auto. Ins. Co.*, 2013 WI App 93, ¶ 10, 349 Wis. 2d 409, 835 N.W.2d 280. The principle that a more specific statute controls over a more general statute is well established in statutory construction. This rule is consistently applied across various jurisdictions and contexts. Specifically, when two statutes relate to the same subject matter, the more specific statute takes precedence over the general statute. *Oneida County v. Sunflower Prop II, LLC*, 2020 WI App 22, 392 Wis. 2d 293, 944 N.W.2d 52. This principle is particularly emphasized when the specific statute is enacted after the general statute, reinforcing its controlling nature. *Clean Wisconsin, Inc. v. Public Service Com'n of Wisconsin*, 2005 WI 93, 282 Wis. 2d 250, 700 N.W.2d 768.



The Commission misinterpreted its clear duty to hear this appeal. The Court can see no particular reason to refuse to remand the matter to the Commission under these circumstances. Therefore, the matters in both these cases will be remanded to the Tax Appeals Commission to hear the Town of La Pointe's appeal.