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NOV 12 2025

Wisconsin Tax Appeals Commission

Drew Fox - Clerk

STATE OF WISCONSIN

TAX APPEALS COMMISSION

TOWN OF LA POINTE, **DOCKET NO. 23-J-183**

Petitioner,

v.

WISCONSIN DEPARTMENT OF REVENUE,

Respondent,

COUNTY OF ASHLAND,

Intervenor.

RULING & ORDER

ELIZABETH KESSLER, COMMISSIONER:

This case comes before the Commission on remand from the Circuit Court of Ashland County, which instructed us to hear the Town of La Pointe's appeal of a Declaratory Ruling issued by the Department of Revenue.[1] As ordered, we hereby issue a substantive Ruling and Order on Cross-Motions for Summary Judgment.

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[1] The Commission continues to believe that our jurisdiction is limited by the plain language of Wis. Stat. § 73.01(4)(a), which specifically lists those areas of Wisconsin law over which "the commission shall be the final authority for the hearing and determination of all questions of law and fact," specifically: [those] arising under sub. (5) and § 72.86 (4), 1985 stats., and §§ 70.38 (4) (a), 70.397, 70.64, and 70.995 (8), § 76.38 (12) (a), 1993 stats., §§ 76.39 (4) (c), 76.48 (6), 77.26 (3), 77.59 (5m) and (6) (b), 78.01, 78.22, 78.40, 78.555, 139.02, 139.03, 139.06, 139.31, 139.315, 139.33, 139.76, 139.78, 341.405, and 341.45, subch. XIV of ch. 71, and subch. VII of ch. 77. As Wis. Stat. §§ 59.605(3)(c) and 66.0602(3) are not found on that list, we continue to believe they are outside of our jurisdiction. However, we acknowledge the authority of the Circuit Court to remand this matter to us and to order us to issue this Ruling & Order.

Petitioner, the Town of La Pointe ("the Town"), is represented by Attorneys Tamara B. Packard of Pines Bach LLC and Bryce Schoenborn of Slaby, Deda, Marshall, Reinhard & Writz LLP; Respondent, the Department of Revenue ("the Department"), is represented by Attorney Dominic Weisse[2]; and the Intervenor, Ashland County ("the County"), is represented by Attorneys Matthew J. Thome and Jacob J. Curtis of Attolles Law, s.c.

The question before us is whether or not Ashland County transferred responsibility for law enforcement services to the Town of La Pointe, under Wis. Stat. § 66.0602(3)(a), which could potentially require the tax levy limitations to be adjusted, reducing the taxes levied by Ashland County and increasing those permitted to be levied by the Town of La Pointe. All parties have stipulated to the facts and documents admitted into evidence in the Department hearing, along with use of the hearing transcript. There being no genuine issue of material fact, this appeal is ripe for Summary Judgment.

FACTS

Because all parties have stipulated to the facts and documents admitted into evidence in the Department hearing, along with use of the hearing transcript, and because such stipulated facts and documents include hundreds of pages of material and more than sixty exhibits, they are collectively incorporated herein by reference.

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[2] Attorney Kelly Altschul represented the Department of Revenue during the original briefings but left prior to the Commission's original decision.

Jurisdictional Facts

1. The Town of La Pointe ("the Town") is one of the 16 municipalities located within Ashland County, Wisconsin. (Department of Revenue Declaratory Ruling, July 19, 2023 ("DOR Ruling"), ¶ 1.)

2. Ashland County ("the County") is one of the 72 Counties located within the State of Wisconsin. (DOR Ruling, ¶ 1.)

3. On January 25, 2023, the Town filed a Petition for a Declaratory Ruling before the Department of Revenue ("the Department"), seeking a determination that Wis. Stat. §§ 59.605(3)(c) and/or 66.0602(3) require that the County's levy limit be decreased, and the Town's levy limit be increased by $190,668.56 because the County transferred responsibility for providing law enforcement patrol and dispatch response services in the Town beginning January 1, 2023. (DOR Ruling, ¶ 10.)

4. On April 14, 2023, the Department held an evidentiary hearing on these matters. (DOR Ruling, ¶ 11.)

5. On July 19, 2023, the Department issued a Declaratory Ruling determining that there had been no transfer of responsibility for providing law enforcement patrol and dispatch response services between the County and the Town, and therefore adjusting the levy limits was unwarranted. (December 12, 2023, Stipulation of Facts ("SOF") ¶ 4, Ex. 59.)

6. On September 12, 2023, the Town timely filed a petition before the Commission. (Commission file.)

7. On October 12, 2023, the County timely filed a Motion to Intervene, which was unopposed by the Town or the Department, and which was formally granted by the Commission at the first telephone status conference held in this matter, on November 7, 2023. (Commission file.)

8. Both the Town and the Department filed Cross-Motions for Summary Judgment, arguing that the Commission has jurisdiction over this dispute based on Wis. Stat. § 227.41(5)(a). The Town sought to have the Declaratory Ruling reversed, while the Department sought to have it affirmed. (Commission file.)

9. The County filed a Motion to Dismiss the Town's Appeal, arguing the Commission does not have jurisdiction under Wis. Stat. § 227.41(5)(a), as neither Wis. Stat. §§ 59.605(3)(c) and/or 66.0602(3) are included in the grant of jurisdiction to the Commission under Wis. Stat. § 73.01(4)(a), or in the alternative, to grant Summary Judgment affirming the Department's Declaratory Ruling. (Commission file.)

10. The Commission issued a ruling ("La Pointe 1") on August 14, 2024, finding that we lacked jurisdiction over this dispute as neither Wis. Stat. §§ 59.605(3)(c) and/or 66.0602(3) are included in the legislative grant of jurisdiction to the Commission. (Commission file.)

11. On September 11, 2024, the Town filed a Petition for Judicial Review of the Commission's decision. (Commission file.)

12. On March 21, 2025, the Ashland County Circuit Court issued a Decision remanding this matter to the Commission. (Decision 2024CV000073, Circuit Court of Ashland County, p. 9. ("Circ. Ct. Dec."))

13. Counsel for the Intervenor, Ashland County, requested the opportunity to add to the Commission's record a supplemental brief based on commentary within the Ashland County Circuit Court's March 21, 2025, Decision, specifically on the topic of a county board's legal responsibility to fund a sheriff's law enforcement duties. The Commission granted this request and allowed the Town and the Department the opportunity to file response briefs on the same limited topic. The Town chose to do so, while the Department did not. (Commission file).

Material Facts Found by the Department of Revenue

The following material facts were found in the DOR Ruling.

14. In 2008, the County and the Town entered into a Law Enforcement Agreement ("2008 Agreement"), which stipulated that the County provide the Town an annual contribution of money for the Town to use to help defray law enforcement costs. (DOR Ruling ¶ 2).

15. In 2022, the County's budget allocated $135,000.00 to the Town of La Pointe, pursuant to the 2008 Agreement, to supplement the Town's law enforcement services budget. (DOR Ruling ¶ 3).

16. On March 22, 2022, the County Board voted to authorize the County Administrator to terminate the 2008 Agreement with the Town. (DOR Ruling ¶ 4).

17. In early April 2022, the County Administrator sent a letter informing the Town of the termination of the 2008 Agreement, effective December 31, 2022 (DOR Ruling ¶ 5).

18. The 2023 Ashland County budget did not allocate any County funds to the Town for the purposes of supplementation of the Town's law enforcement services budget (DOR Ruling ¶ 6).

19. On January 24, 2023, the Town Board voted to use surplus Town funds to make up for the loss of funding from the County so that it could continue to provide 24/7 law enforcement patrol of the Town. (DOR Ruling ¶ 7).

20. A county sheriff has a legal obligation to provide law enforcement services countywide. (DOR Ruling ¶ 8).

21. The Ashland County Sheriff currently has the same responsibilities and conducts the same law enforcement activities with respect to the Town that the Ashland County Sheriff conducted in 2022. (DOR Ruling ¶ 9).

Material Facts in the Circuit Court Decision

The following material facts were articulated by the Circuit Court of Ashland County in the Decision issued on March 21, 2025.

22. The Town of La Pointe consists of 16 islands off of the Bayfield Peninsula in Bayfield County. Fifteen of the islands are federally owned and are part of the Apostle Islands National Seashore. Madeline Island is the only inhabited island not within the boundaries of the National Seashore. La Pointe has a year-round population

of a little over 400 residents; the population increases to 2,000-3,000 during the summer months, when it also experiences daily visitors. (Circ. Ct. Dec. ¶ 1.)

23. Transportation between mainland Ashland County and the Town is complicated. Vehicular access requires driving about 25 miles through Bayfield County just to get to the ferry dock in the City of Bayfield, and then a visitor must wait for the next ferry boat to the island. Alternative transportation may be available by air, by boat, or over ice. (Circ. Ct. Dec. ¶ 2.)

24. 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 the Town was terminated. (Circ. Ct. Dec. ¶ 3.)

25. At some point between 1977 and 1979 the Ashland County Sheriff proposed that, in order to remedy the lack of a law enforcement presence on the island, the County pay the Town money to defray the cost of an additional police officer. This arrangement began in 1979 and also included a portion of the expenses for a squad car, but it does not appear to have been made in writing. (Circ. Ct. Dec. ¶ 3.)

26. Every year between 1979 and 1994, the Town submitted a written request for law enforcement funds to the Sheriff of Ashland County and/or the Ashland County Administrator, provided them with estimated employee and squad car expenses, and the parties would agree upon a figure that the County would pay the Town to cover law enforcement services. (Circ. Ct. Dec. ¶ 3.)

27. In 1995 the Town and County entered into a formal written agreement, which noted that the parties had cooperated with each other for years addressing law enforcement needs on Madeline Island; that due to the geographical location of the island the parties found it mutually beneficial for the County to provide the Town with money to defray law enforcement costs; and that moving forward, on an annual basis the Town would submit to the sheriff of Ashland County a written request for law enforcement funds in the estimated amount of the cost of salary and benefits for one full-time Town police officer and half of the costs to operate and maintain one Town squad car. The agreement also included language covering sharing expenses to replace squad cars. The Sheriff of Ashland County also agreed to submit the total amount of those law enforcement funds requested by the Town as a line item in the County budget. Each party was empowered to terminate the agreement with a 30-day written notice. (Circ. Ct. Dec. pp. 3-4 (citing "Doc. 47, p. 327," which appears to be the same as Town Ex. 6 from the DOR Hearing).)

28. In 2008 the parties revised the agreement, which was substantively the same, except that the Town was then required to submit its funding request to both the Sheriff of Ashland County and the Ashland County Administrator, and this agreement added funds covering half of the wages and benefits for three additional part-time police officers for the Town. Responsibility for placing the line item into the County budget shifted to the Administrator, and the County noted that the amount of funding in the line item would come from the budget which the Ashland County Board of

Supervisors approved and adopted. The right to terminate the agreement remained. (Circ. Ct. Dec. pp. 4-5 (citing "Doc. 47, p. 331," which appears to be the same as Town Ex. 7 from the DOR Hearing).)

29. On March 22, 2022, the Ashland County Board of Supervisors voted to terminate the agreement, effective December 21, 2022, and appropriately informed the Town. (Circ. Ct. Dec. p. 6.)

30. On January 24, 2024, the Town of La Pointe Board of Supervisors voted to expend surplus funds to replace Ashland County's payment so that the Town could continue to provide continuous law enforcement patrol. (Circ. Ct. Dec. p. 6.)

APPLICABLE LAW

> **Wis. Stat. § 66.0602**
> **Local levy limits.**
> **(2) Levy Limit.**
> **(a)** Except as provided in subs. (3), (4) and (5), no political subdivision may increase its levy in any year by a percentage that exceeds the political subdivision's valuation factor. ...
> **(3) Exceptions.**
> **(a)** 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. The levy increase limit adjustment under this paragraph applies only if the transferor and transferee file a notice of service transfer with the department of revenue.
> **(b)** 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. The levy increase limit adjustment under this paragraph applies only if the transferor and transferee file a notice of service transfer with the department of revenue.

ANALYSIS

Summary judgment must be granted if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. *Maynard v. Port Publications, Inc.*, 98 Wis. 2d 555, 558, 297 N.W.2d 500 (1980), citing Wis. Stat. § 802.08(2). A party moving for summary judgment has the burden to establish the absence of a genuine, that is, disputed, issue as to any material fact. *Kraemer Bros. v. United States Fire Ins. Co.*, 89 Wis. 2d 555, 565, 278 N.W.2d 857 (1979). Any evidentiary facts in an affidavit are to be taken as true unless contradicted by other opposing affidavits or proof. *Artmar, Inc. v. United Fire & Casualty Co.*, 34 Wis. 2d 181, 188, 148 N.W.2d 641, 644 (1967).

In this appeal, there are no disputed facts. The threshold question in this case is whether or not Ashland County transferred responsibility for the service of law enforcement to the Town of La Pointe, under the meaning of "a political subdivision transfers to another governmental unit responsibility for providing any service that the political subdivision provided" under Wis. Stat. § 66.0602 (3)(a). Only if we find that responsibility for "any service" was transferred do we move on to the question of whether the tax levies can or must be adjusted.[3]

In a practical sense, it seems so, but the fact of one political subdivision of government paying for work previously paid for by another political subdivision of government is not the same as transferring the legal responsibility for the work.

Since 1977, the Ashland County Sheriff has not had a regular presence as such on Madeline Island or in the Town of La Pointe. Beginning in 1979, Ashland County and the Town negotiated for the County to provide funds to the Town in order to ensure adequate law enforcement in the Town. This support was formalized and renegotiated several times between 1979 and 2022, when the County Board voted to terminate the agreement between the Town and the County.

From the perspective of the permanent residents of the Town, and from the perspective of the Town government, it certainly must appear that the County stopped providing a service it had been providing for more than 40 years. To the extent that the Town perceived that level of law enforcement service as necessary, the only way to continue having such service was to provide it as a Town. In other words, from the perspective of the Town, responsibility for the service of law enforcement was transferred from the County to the Town.

[3] There is also a statutory requirement that the political subdivisions commit this transfer to writing and file it with the Department: "The levy increase limit adjustment under this paragraph applies only if the transferor and transferee file a notice of service transfer with the department of revenue." Wis. Stat. § 66.0602(3)(a) and (b). As Ashland County did not agree that a service transfer took place, it is logical that no such notice was filed, however, the Commission notes the unfulfilled statutory requirement.

The challenge facing the Town in fully funding its own law enforcement, which was formerly funded in part by the County, is undoubtedly real. In order for the Commission to be able to provide any relief for the real and substantial challenges facing the Town, the challenges must fall within our statutory authority. Our jurisdiction is not one with equitable powers, only statutory ones, and in this case, the statute in question is narrowly written: Wis. Stat. § 66.0602 (3)(a) requires us to find, as a threshold question, that a political subdivision "transfers…responsibility…for providing any service" to another political subdivision.

Did Ashland County "transfer responsibility" for providing law enforcement services to the Town of La Pointe? The County says that it did not. The Department of Revenue found that a county sheriff has a legal obligation to provide law enforcement services countywide, and that the Ashland County Sheriff currently has the same responsibilities and conducts the same law enforcement activities with respect to the Town that the County Sheriff conducted in 2022. While it is difficult to imagine that a Deputy Sheriff who must travel at least 30 minutes, including by ferry, could provide the same level of law enforcement service a local officer located on the island already could provide, the Town has not provided evidence that the County Sheriff is not providing law enforcement services, is not conducting law enforcement activities, or is not fulfilling its law enforcement responsibilities with respect to the Town.

The Commission, therefore, has no basis in the record to find that responsibility for law enforcement was transferred from Ashland County to the Town of La Pointe.

CONCLUSIONS OF LAW

1. The termination of the 2008 Agreement between Ashland County and the Town of La Pointe did not transfer responsibility to the Town of La Pointe for providing any service provided by Ashland County in 2022.

2. Ashland County is not required to decrease its levy in 2023 pursuant to Wis. Stat. § 66.0602(3)(a).

3. The Town of La Pointe is not entitled to increase its levy in 2023 pursuant to Wis. Stat. § 66.0602(3)(b).

ORDER

The Petitioner's Petition for Review is hereby dismissed.

Dated at Madison, Wisconsin, this 12th day of November, 2025.

WISCONSIN TAX APPEALS COMMISSION

Elizabeth Kessler

Elizabeth Kessler, Chair

Jessica Roulette

Jessica Roulette, Commissioner

KP Adler

Kenneth P. Adler, Commissioner

ATTACHMENT: **NOTICE OF APPEAL INFORMATION**

WISCONSIN TAX APPEALS COMMISSION
101 E Wilson St, 5th Floor
Madison, Wisconsin 53703

NOTICE OF APPEAL INFORMATION

NOTICE OF RIGHTS FOR REHEARING, OR JUDICIAL REVIEW, THE TIMES ALLOWED FOR EACH, AND THE IDENTIFICATION OF THE PARTY TO BE NAMED AS RESPONDENT

A taxpayer has two options after receiving a Commission final decision:

***Option 1*: PETITION FOR REHEARING BEFORE THE COMMISSION**

The taxpayer has a right to petition for a rehearing of a final decision within 20 days of the service of this decision, as provided in Wis. Stat. § 227.49. The 20-day period commences the day after personal service on the taxpayer or on the date the Commission issued its original decision to the taxpayer. The petition for rehearing should be filed with the Tax Appeals Commission and served upon the other party (which usually is the Department of Revenue). The Petition for Rehearing can be served either in-person, by USPS, or by courier; however, the filing must arrive at the Commission within the 20-day timeframe of the order to be accepted. Alternately, the taxpayer can appeal this decision directly to circuit court through the filing of a petition for judicial review. It is not necessary to petition for a rehearing first.

AND/OR

***Option 2*: PETITION FOR JUDICIAL REVIEW**

Wis. Stat. § 227.53 provides for judicial review of a final decision. Several points about starting a case:

1. **The petition must be filed in the appropriate county circuit court and served upon the Tax Appeal Commission and the other party (which usually is the Department of Revenue) either in-person, by certified mail, or by courier,** within 30 days of this decision if there has been no petition for rehearing or, within 30 days of service of the order that decides a timely petition for rehearing.
2. If a party files a late petition for rehearing, the 30-day period for judicial review starts on the date the Commission issued its original decision to the taxpayer.
3. The 30-day period starts the day after personal service, or the day we mail the decision.
4. **The petition for judicial review should name the other party (which is usually the Department of Revenue) as the Respondent, but not the Commission, which is not a party.**

For more information about the other requirements for commencing an appeal to the circuit court, you may wish to contact the clerk of the appropriate circuit court or, the Wisconsin Statutes. The website for the courts is *https://wicourts.gov.*

This notice is part of the decision and incorporated therein.