



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

Josh Kaul
Attorney General

Room 114 East, State Capitol
P.O. Box 7857
Madison, WI 53707-7857
(608) 266-1221
TTY 1-800-947-3529

June 22, 2023

OAG-01-23

Ms. Rhonda K. Gorden
Ozaukee County Corporation Counsel
1201 South Spring Street
Port Washington, WI 53074

Dear Corporation Counsel Gorden:

¶ 1. You have requested an opinion about the interplay between Wis. Stat. §§ 82.08 and 84.18, statutes providing for funding for the construction and repair of bridges. Specifically, you ask whether section 82.08 allows a town to apply for funds from a county for the remaining cost of a bridge project after section 84.18 funds have already been obtained for the project. Based upon the statutes' plain language and the statutory context, I conclude that the answer is no. A town cannot utilize funding under both provisions and still comply with the statutes' conflicting requirements for which entity supervises a project.

¶ 2. Your request relates to funding a bridge project in the Town of Cedarburg. The Town received approval from the Wisconsin Department of Transportation for a bridge project under Wis. Stat. § 84.18. Pursuant to Wis. Stat. § 84.18(3), DOT will provide funding for 80% of the cost of the project. The Town then petitioned Ozaukee County under Wis. Stat. § 82.08(1) to request that the County share in funding the remaining 20% of the project's cost.

¶ 3. The question is whether funding under Wis. Stat. § 82.08(1) is available for a project already funded under Wis. Stat. § 84.18. That question can be answered by analyzing the text of both statutes.

¶ 4. The first statute, Wis. Stat. § 84.18, is entitled "Local bridge program" and establishes a program "to accelerate the reconstruction or rehabilitation of seriously deteriorating local bridges." Wis. Stat. § 84.18(1). DOT administers the program, which provides "an entitlement of funds" to the "[c]oordinating agency," namely, the "county which coordinates the submission of applications from eligible

applicants within the county to [DOT].” Wis. Stat. § 84.18(2)(a), (3). Counties, cities, villages, towns, or combinations of these entities are eligible for funds as eligible applicants. Wis. Stat. § 84.18(2)(b), (4). DOT is required to “provide the same percentage of the cost of a local bridge project as the percent established under 23 USC 144(f),” which is currently 80%. Wis. Stat. § 84.18(3); 23 U.S.C. § 144(f)(2). DOT determines the coordinating agency’s entitlement to funds. Wis. Stat. § 84.18(5).

¶ 5. DOT supervises and controls bridge projects approved under the statute. Under Wis. Stat. § 84.18(6), “[s]ubject to s. 30.2022 and the control exercised by the United States, the construction under this section of any local bridge project shall be wholly under the supervision and control of [DOT].” Wis. Stat. § 84.18(6). DOT’s secretary “shall make and execute all contracts and have complete supervision over all matters pertaining to such construction and shall have the power to suspend or discontinue proceedings or construction . . . at any time” if a “county, city, village or town fails to pay the amount required of it . . . or if the secretary determines that sufficient funds to pay the state’s part of the cost of such bridge project are not available.” *Id.*

¶ 6. DOT must adopt rules to implement the local bridge program and has done so in Wis. Admin. Code Trans ch. 213. Wis. Stat. § 84.18(7). Under those rules, DOT establishes the eligibility criteria for the local bridge program. Wis. Admin. Code Trans § 213.03(1)(a)–(d), (4). The rules also explain that DOT provides some, but not all, of the funds required for a project. Wisconsin Admin. Code Trans § 213.03(5) provides that DOT “shall provide the percentage of the cost of a local bridge project, which is applicable under the federal bridge program administered under 23 USC 144 (f),” but “[t]he remainder of the cost shall be provided by the applicant.”

¶ 7. Your letter indicates that the Town was the applicant for the bridge project at issue. “Each project which is assigned funds under this chapter shall be the subject of a formal agreement between the state and the applicant.” Wis. Admin. Code Trans § 213.03(6). The “applicant” is distinct from the “[c]oordinating agency . . . the county which coordinates the submission of applications from eligible applicants within the county.” Wis. Admin. Code Trans § 213.02(2).

¶ 8. The second relevant statute, Wis. Stat. § 82.08, is entitled “Town bridges or culverts; construction and repair; county aid” and provides a process for towns to seek partial county funding for bridge construction or repair. Section 82.08(1) permits a town to “file a petition for county aid with the county highway commissioner” for the repair or construction of a bridge or culvert connected to an existing highway maintained by the town. Subsection (2) of section 82.08 governs funding for county bridge aid, providing that “The town and county shall each pay one-half of the cost of construction or repair.” Wis. Stat. § 82.08(3).

¶ 9. For projects so funded, the statute requires that the county highway committee and town board supervise the project, unless the town board cedes that role to the county: “The county highway committee and the town board shall have full charge of design, sizing, letting, inspecting, and accepting the construction or repair, but the town board may leave the matter entirely in the hands of the county highway committee.” Wis. Stat. § 82.08(5). The county highway committee and town board must also “agree on the cost of the project and must consult each other during construction.” *Id.*

¶ 10. Your question is whether the Town may receive funding for its bridge project both under sections 84.18 and 82.08. I conclude that it may not.

¶ 11. The answer requires applying the rules of statutory construction. “[S]tatutory language is interpreted in the context in which it is used; not in isolation but as part of a whole; in relation to the language of surrounding or closely-related statutes; and reasonably, to avoid absurd or unreasonable results.” *State ex rel. Kalal v. Cir. Ct. for Dane Cnty.*, 2004 WI 58, ¶ 46, 271 Wis. 2d 633, 681 N.W.2d 110. “If this process of analysis yields a plain, clear statutory meaning, then there is no ambiguity, and the statute is applied according to this ascertainment of its meaning.” *Id.* (quoting *Bruno v. Milwaukee County*, 2003 WI 28, ¶ 20, 260 Wis. 2d 633, 660 N.W.2d 656). “Where multiple statutes are at issue,” one must “harmonize them through a reasonable construction that gives effect to all provisions.” *State v. Reyes Fuerte*, 2017 WI 104, ¶ 29, 378 Wis. 2d 504, 904 N.W.2d 773. Statutes must be interpreted to avoid conflict between them. *Id.*

¶ 12. Wisconsin Stat. §§ 82.08 and 84.18 each create programs for funding local bridge projects. To answer your question, then, one must read these statutes in context. Read together, the statutes do not permit a town to participate in both programs because they have conflicting supervision requirements.

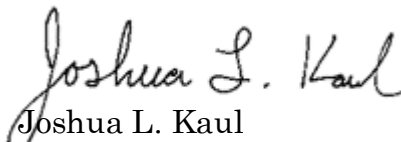
¶ 13. Specifically, Wis. Stat. § 84.18(6) provides that construction of a local bridge project under that section must be “wholly under the supervision and control of [DOT],” and DOT’s secretary must make “all contracts and have complete supervision over all matters pertaining to such construction,” including “the power to suspend or discontinue proceedings or construction . . . at any time” if certain conditions are met. In contrast, Wis. Stat. § 82.08(5) provides that for projects funded under that section, “[t]he county highway committee and the town board shall have full charge of design, sizing, letting, inspecting, and accepting the construction or repair, but the town board may leave the matter entirely in the hands of the county highway committee,” and “[t]he county highway committee and the town board must agree on the cost of the project and must consult each other during construction.”

¶ 14. It is not possible for a local bridge project to be both “wholly under the supervision and control of [DOT],” as Wis. Stat. § 84.18(6) requires for DOT’s local bridge program, and simultaneously under the “full charge” of the county highway committee and town board, as Wis. Stat. § 82.08(5) requires for county aid. Because Wis. Stat. § 84.18(6) requires that the project be “wholly” under DOT’s control, DOT must have “entire” control “to the exclusion” of others. *Wholly*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/wholly> (last visited Mar. 13, 2023) (defining “wholly” as “to the full or entire extent” or “to the exclusion of other things”). That leaves no room for sharing supervision with the town or county highway committee, much less putting the project under their control, as Wis. Stat. § 82.08(5) requires.

¶ 15. Your request points out that Wis. Stat. § 84.18(8) provides that “[n]othing in this section prevents construction or rehabilitation projects under other bridge programs if applicable,” which might suggest that the Town could partake in both programs. Perhaps there are different bridge programs that the Town might be able to utilize while participating in the town bridge program under Wis. Stat. § 84.18, but Wis. Stat. § 82.08 is not among them. Utilizing both sections 84.18 and 82.08 would create a conflict between the statutes’ mandatory provisions about which entity controls the project.

¶ 16. In summary, I conclude that a town may not seek aid from a county under section 82.08 for the outstanding cost of a bridge project receiving funds under section 84.18.

Sincerely,


Joshua L. Kaul
Attorney General