



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

BRAD D. SCHIMEL
ATTORNEY GENERAL

Paul W. Connell
Deputy Attorney General

Delanie M. Breuer
Chief of Staff

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

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OAG-01-17

Mr. Tony A. Kordus
Shawano County Corporation Counsel
311 North Main Street
Shawano, WI 54166

Dear Mr. Kordus:

¶ 1. You have requested an opinion on whether a county board is legally authorized to appropriate money to a private nonprofit corporation whose sole mission is to operate a food pantry in the county for the benefit of the county's citizens.

¶ 2. I conclude that a county board is not authorized to appropriate money to a nonprofit food pantry. Under Wisconsin law, "a county board has only such powers as are expressly conferred upon it or necessarily implied from the powers expressly given or from the nature of the grant of power." *Town of Vernon v. Waukesha Cty.*, 102 Wis. 2d 686, 689, 307 N.W.2d 227 (1981). Because the statutes granting powers to county boards do not authorize appropriations to nonprofit corporations for the purpose of operating food pantries and no such authority can be implied, I conclude that county boards do not have the authority to make such an appropriation.

¶ 3. As the Wisconsin Supreme Court requires, I begin with the plain language of the relevant statutes. *State ex rel. Kalal v. Circuit Court for Dane Cty.*, 2004 WI 58, ¶ 45, 271 Wis. 2d 633, 681 N.W.2d 110. When interpreting statutory language, we may infer that the Legislature's "express mention of one matter excludes other similar matters [that are] not mentioned." *FAS, LLC v. Town of Bass Lake*, 2007 WI 73, ¶ 27, 301 Wis. 2d 321, 733 N.W.2d 287 (alteration in original) (citations omitted). County boards have general authority to "represent the county, have the management of the business and concerns of the county in all cases where no other provision is made, apportion and levy taxes and appropriate money to carry into effect any of the board's powers and duties." Wis. Stat. § 59.51(2). Under this

general authority, the board can “appropriate money” only “to carry into effect any of the board’s powers and duties.” *Id.*

¶ 4. Wisconsin Stat. § 59.53 grants county boards the authority to perform many specific functions with respect to health and human services, but none of the twenty-five subsections in Wis. Stat. § 59.53 authorizes the appropriation of funds to nonprofits that operate food pantries. The county board has the authority to “establish and operate a program of relief for a specific class or classes of persons residing in that county.” Wis. Stat. § 59.53(21). The program “may provide such services, commodities or money as relief, as the county determines to be reasonable and necessary under the circumstances.” *Id.* While county boards may establish and operate programs to serve residents of the county who need assistance in securing adequate food, the statute does not grant authority to make appropriations to nonprofits to perform this task. Because the statute specifically addresses a county board’s authority in this area without granting the authority to make appropriations to nonprofits, county boards do not have the authority, either express or implied, to make such appropriations.

¶ 5. Nor can the statutes be read to imply a power to appropriate funds to a nonprofit food pantry when Wis. Stat. § 59.53 specifically authorizes appropriations to nonprofits for other purposes. When we interpret a statute, the absence of an item from an enumerated list suggests the Legislature did not intend to include it. *See Milwaukee Journal Sentinel v. City of Milwaukee*, 2012 WI 65, ¶¶ 35–37, 341 Wis. 2d 607, 815 N.W.2d 367 (holding that public records law did not allow fees for redaction because redaction was not one of the four specific tasks for which fees were allowed). County boards are authorized to “appropriate funds . . . making payments to a nonprofit organization . . . that has as a primary purpose providing assistance to individuals who are the victims of domestic violence and related crimes.” Wis. Stat. § 59.53(3). In addition, county boards are authorized to “[a]ppropriate money to defray the expenses incurred by private organizations that provide homemaking services to elderly and handicapped persons within the county if the services will enable the persons to remain self-sufficient and to live independently or with relatives.” Wis. Stat. § 59.53(11)(c). There is no similar authorization for appropriating money to a nonprofit food pantry. Given that the Legislature authorized appropriating money to nonprofits in certain circumstances, if the Legislature intended that county boards could appropriate money to nonprofit food pantries, it would have said so in the statute.

¶ 6. This interpretation is consistent with Wisconsin case law and prior opinions of the Attorney General. The Wisconsin Supreme Court held that a town could not appropriate money to various charitable organizations because “[n]owhere in those provisions [setting forth the power of town boards] is authority granted to expend money from the town treasury for charitable purposes.” *Pugnier v. Ramharter*, 275 Wis. 70, 74, 81 N.W.2d 38 (1957). In two previous opinions, the Attorney General has concluded that a county board had no authority to fund certain community-wide nonprofit corporations by appropriating money to specific nonprofits, 67 Op. Att’y Gen. 297 (1978), or to appropriate funds to a nonprofit that would provide information to the public about services offered by various public and private agencies in the county, 64 Op. Att’y Gen. 208 (1975). The Attorney General reached these conclusions because the statutes outlining the powers of county boards did not authorize such appropriations. 67 Op. Att’y Gen. at 300; 64 Op. Att’y Gen. at 209.

¶ 7. You suggest that the county board’s power to “enact and enforce ordinances to preserve the public peace and good order within the county . . . and provide a forfeiture for a violation of the ordinances,” Wis. Stat. § 59.54(6), authorizes the appropriation of money to nonprofits. That language does not encompass that authority. An appropriation to a nonprofit for providing services is not an “ordinance[] to preserve the public peace and good order.” Wis. Stat. § 59.54(6). Instead, the power to enact ordinances “to preserve the public peace and good order” grants county boards the authority to enact ordinances such as prohibiting false fire alarms, 72 Op. Att’y Gen. 153 (1983), prohibiting trespass on land, 69 Op. Att’y Gen. 92 (1980), or imposing a curfew, 56 Op. Att’y Gen. 126 (1967). Further, interpreting Wis. Stat. § 59.54(6) as broadly as you suggest would be inconsistent with the detailed scheme of county boards’ powers with respect to health and human services in Wis. Stat. § 59.53, including subsections specifically dealing with relief programs and appropriations to other types of nonprofits. Statutes are to be interpreted “as part of a whole; in relation to the language of surrounding or closely-related statutes” and “to avoid surplusage.” *Kalal*, 271 Wis. 2d 633, ¶ 46. The detailed scheme of board powers in Wis. Stat. § 59.53 would be surplusage if Wis. Stat. § 59.54(6) already conveyed that authority.

¶ 8. In support of your interpretation, you cite an unpublished Attorney General opinion, OAG 23-80 (Apr. 4, 1980), 1980 WL 119464, which concluded a town board had authority to appropriate money to a nonprofit corporation that promoted a retirement community under the broad grant of power to villages in Wis. Stat. § 61.34(1). The reasoning in that opinion does not apply to the power of county boards because villages and towns are granted broader powers than those granted to counties. This distinction is reflected in Wis. Stat. § 59.53(11), which specifically

grants county boards the authority to make appropriations for senior citizen programs. This specific authorization is necessary because county boards do not have authority to appropriate such money to nonprofits under their general powers in Wis. Stat. § 59.51(2).

¶ 9. The powers granted to county boards must be distinguished from the much broader power granted to cities and villages (and towns in certain circumstances) over their local affairs. The Wisconsin Constitution grants home rule power to cities and villages to “determine their local affairs and government.” Wis. Const. art. XI, § 3(1). In contrast, the Wisconsin Constitution provides that “[t]he legislature may confer upon the boards of supervisors of the several counties of the state such powers of a local, legislative and administrative character as they shall from time to time prescribe.” Wis. Const. art. IV, § 22.

¶ 10. The Legislature has given the common councils of cities the “power to act for the government and good order of the city, for its commercial benefit, and for the health, safety, and welfare of the public,” a power which is “in addition to all other grants, and shall be limited only by express language.” Wis. Stat. § 62.11(5). Similarly, village boards also “have power to act for the government and good order of the village, for its commercial benefit and for the health, safety, welfare and convenience of the public,” which is “in addition to all other grants and shall be limited only by express language.” Wis. Stat. § 61.34(1). Town boards are able to exercise the powers of village boards if they adopt a resolution to that effect. Wis. Stat. § 60.22(3).

¶ 11. This “power to legislate for the purposes of the health, safety, and welfare of the public” is called the police power. *Metro. Milwaukee Ass’n of Commerce, Inc. v. City of Milwaukee*, 2011 WI App 45, ¶ 50, 332 Wis. 2d 459, 798 N.W.2d 287. The Wisconsin courts recognize that “under the provisions of sec. 61.34, Stats., villages have been vested with very broad, if not full, police powers in local affairs.” *City of Fond du Lac v. Town of Empire*, 273 Wis. 333, 337, 77 N.W.2d 699 (1956).

¶ 12. County boards, however, do not have a similarly broad grant of police power. *Compare* Wis. Stat. §§ 61.34(1), and 62.11(5), *with* Wis. Stat. § 59.51(2). Instead, as noted above, county boards have the power to “appropriate money to carry into effect any of the board’s powers and duties,” Wis. Stat. § 59.51(2), which are specifically enumerated in chapter 59. A county board’s powers with respect to health and human services are enumerated in Wis. Stat. § 59.53, which does not authorize appropriations to private nonprofit food pantries.

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¶ 13. Because county boards have only the powers expressly conferred or necessarily implied by statute, and the statutes outlining the powers of county boards cannot be read to grant the authority to appropriate money to nonprofit food pantries, I conclude that county boards cannot make such an appropriation.

Very truly yours,

BRAD D. SCHIMEL
Wisconsin Attorney General

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