



# SCOTT KRUG

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TO: Assembly Committee on Local Government

FROM: Rep. Scott Krug

RE: 2023 Assembly Bill 645, County Assistance to Certain Nonprofit Organizations

DATE: December 24, 2023

Chairman Novak and members of the Assembly Committee on Local Government: Thank you for holding this hearing on 2023 Assembly Bill 645, which would explicitly permit counties to provide financial support to food banks or food pantries.

It might seem logical that counties would be able to provide financial support to nonprofit entities (like food pantries) that are entity separate from any county agency. However, as we explored ways to assist the work of nonprofit food pantries, we were reminded of a 2017 opinion from the Attorney General (OAG-01-17) which seems to indicate that this is not permissible.

The 2017 AG opinion concludes “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.”

The Wisconsin Counties Association (WCA) has reviewed this question. Their analysis casts doubt upon the Attorney General’s conclusions on this point. Instead WCA suggests that questions surrounding county appropriations to support local organizations that ease the burdens associated with a county’s provision of services to its residents should be analyzed considering a totality of a county’s broad powers under the relevant Wisconsin Statutes.

WCA tells us that staff at the Wisconsin Legislative Council (WLCS) have arrived at a conclusion similar to what WCA has concluded. We ask today that WLCS comment, at some point, on this before a committee vote would occur on 2023 AB 645.

In an effort to clarify matters, we drafted 2023 AB 645 which would amend Wisconsin statutes to specifically grant county boards this authority. The statute simply *permits* county boards to make appropriations to food banks or food pantries but *does not* require any action.

***MORE***

This legislation is needed to allow county governments to support food insecurity organizations if they choose. WCA tells us that currently, food insecurity is an issue for 7.2% of Wisconsinites, including 12.6% of Wisconsin children. At the same time, regional food banks and pantries are experiencing a 30 to 45% increase in need. County governments have expressed interest in helping support local food banks and food pantries but there is a barrier under current law that prevents them from providing that support.

This legislation is supported by Feeding Wisconsin (the statewide association of the six Feeding America food banks), the Wisconsin Farm Bureau Federation, Cooperative Network and the Wisconsin Cheese Makers Association. The Wisconsin Counties Association indicates their willingness to work with us on AB 645 and indicates its support for our concept.

Since we circulated what is now AB 645 for co-sponsorship, WCA has come to us with a requested change. WCA believes that limiting the legislation to “food bank(s) or food pantry(s)” as is done in the bill, may unintentionally limit the effect of the bill. They ask: What if an entity provides assistance in addition to food, such as diapers?

With this in mind, WCA has asked if we would consider amending s. s. 59.53(21) to have AB 645 include all nonprofits. WCA has provided the language below, which we agree with.

*(21) OPERATION OF RELIEF PROGRAMS. The board may establish and operate a program of relief for a specific class or classes of persons residing in that county, except that in a county with a population of 750,000 or more, the county executive shall be in charge of the operation of the program of relief. The county may set such eligibility criteria to obtain relief, and may provide such services, commodities or money as relief, as the county determines to be reasonable and necessary under the circumstances. The county may provide such relief directly or through an appropriation to a nonprofit organization, as defined in s. 23.197 (4) (a) 1. The program may include work components. The county may enact any ordinances necessary or useful to the operation of a relief program under this subsection. Counties may use vehicle registration information from the department of transportation in determining eligibility for relief programs under this subsection.*

We have requested this amendment from LRB. We recently received a draft; however, we are not yet in agreement with LRB about other provisions that LRB recommends be included in the amendment. We will work with LRB and with the supporters of the bill to come to a suitable and effective conclusion on this question.

As soon as we have a suitable amendment we will introduce it and we will share it with you.

I thank you for your consideration of AB 645 and ask for your eventual support of this bill.



STATE OF WISCONSIN  
DEPARTMENT OF JUSTICE

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September 1, 2017

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

¶ 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

Mr. Tony A. Kordus  
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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

BDS:BPK:mlk



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# CORY TOMCZYK

STATE SENATOR • 29<sup>TH</sup> SENATE DISTRICT

Testimony – **AB 645**  
Assembly Committee on Local Government  
Thursday, December 14, 2023

Under current law, county boards may not appropriate funds to private nonprofits that operate a food bank or food pantry in the county. AB 645 amends Wisconsin statutes to specifically grant county boards this authority. The statute simply *permits* county boards to make appropriations to food banks or food pantries but *does not* require any action.

This legislation is needed to allow county governments to support food insecurity organizations if they choose. Currently, food insecurity is an issue for 7.2% of Wisconsinites, including 12.6% of Wisconsin children. At the same time, regional food banks and pantries are experiencing a 30 to 45% increase in need. County governments have expressed interest in helping support local food banks and food pantries but there is a barrier under current law that prevents them from providing that support.

In my district, Marathon County was interested in helping out a local food pantry and found that they were not able to under the law. If a county chooses to use their money in this way and the voters who elect their county board are comfortable with this use of funds, then the County should be able to do that.

Thank you for hearing AB 645 and for your consideration.





## MEMORANDUM

**TO:** Members of the Assembly Committee on Local Government  
**FROM:** Michelle Orge, Feeding Wisconsin  
**DATE:** December 14, 2023  
**RE:** **Support for AB 645, County Assistance to Certain Nonprofit Organizations**

My name is Michelle Orge. I am the Board President of Feeding Wisconsin, the Interim Executive Director of Feeding Wisconsin and the President and CEO of Second Harvest Food Bank of Southern Wisconsin. Thank you for allowing me to testify today in support of AB 645 on behalf of Feeding Wisconsin.

Under current Wisconsin law and Wisconsin Attorney General Opinion OAG-01-17, county governments are prohibited from providing essential support to organizations who work to combat food insecurity. We are asking you to support AB 645, which would amend Wisconsin statutes to grant county boards the authority to appropriate funds to private nonprofit corporations operating food banks or food pantries in the county, *if they choose to*. The legislation simply permits counties to support food banks and pantries but does not require it. We sincerely appreciate the efforts of Representative Scott Krug and Senator Cory Tomczyk who authored this legislation.

Currently, food insecurity is an issue for 7.2% of Wisconsinites, including 12.6% of Wisconsin children. At the same time, regional food banks and pantries are experiencing a 30% to 45% increase in need. At Second Harvest Food Bank, we are already 20% ahead of our planned distribution after just four months into our fiscal year as compared to the same time last year. In addition, we are 65% ahead of where we were two years ago, which was at the height of the pandemic. I routinely am fielding calls from local agencies who are calling me in a panic because they cannot keep up with demand locally and we cannot keep up with their requests.

Feeding Wisconsin has actively worked to strengthen connections between counties, our network of food banks and food pantries, and Wisconsin farmers and food processors as a mechanism to address food insecurity within our local communities.

Counties care deeply about their residents. When they want to provide support for those facing food and security, it makes sense for them to partner with their local food banks and food pantries, rather than recreate a parallel or duplicate system themselves. In the two other food banks in states that I've worked in, Michigan and Colorado, it was common for us to work closely with county governments to achieve successful outcomes for children, families, seniors, veterans, and others





experiencing food insecurity. In those examples, county governments could choose to provide funding based on their identified community priorities and available resources.

In Wisconsin, counties and our network also want to partner, but the difference is the counties' ability to choose to provide funding. When we partnered with counties prior to the federal CARES and ARPA funds becoming available, the counties had no options other than to ask us to use our own funding sources for their needs, which primarily come from our nonprofit teams raising money from individuals giving smaller donations.

When federal funds became available, counties across Wisconsin had new options and could work with us through DATCP's initiative. Dane county, for example, partnered with us to create a farm to food bank program where we purchase local and regional agricultural products. This has provided consistent nutrition to families for the past 3 years while providing consistent support to local farmers and food producers - saving several from permanently closing their operations during the pandemic. In addition to the impact on families and farmers, a conservative calculation shows the economic impact of \$1.59 in economic activity spurred for every \$1 we spend on this local food.

Until these federal dollars became available through DATCP and through counties, government funding to food banks was generally limited to reimbursements for part of our SNAP Foodshare outreach work. Outside of that, our food bank does not receive federal, state, or local government funds to do our work. ARPA funds are sunseting, but the need is not. It is growing. All food banks and pantries have been working hard over the past few years to replace this funding with additional private dollars at a time when more funding for food support is needed. The statutory change in AB 645 is needed in order for those programs to continue and for us to continue to utilize our strong state supply chain networks between Wisconsin farmers, counties and food banks.

Feeding Wisconsin's advocacy efforts aim to address the crucial need for support for initiatives combating food insecurity in Wisconsin. AB 645 effectively helps address this need by allowing, *without mandating*, county boards to allocate funds to private nonprofit corporations dedicated to operating food banks or food pantries.

We hope this bill will have a positive and lasting impact on the lives of many Wisconsinites facing food insecurity and the farmers and food processors in Wisconsin who grow the food for our local communities.

Thank you for your time and consideration of this matter.







## MEMORANDUM

**TO:** Honorable Members of the Assembly Committee on Local Government

**FROM:** Marcie Rainbolt, Government Affairs Associate

**DATE:** December 14, 2023

**SUBJECT:** Assembly Bill 645

Thank you for the opportunity to submit written comments on Assembly Bill 645, which authorizes a county to appropriate money to a nonprofit organization that operates a food bank or food pantry in the county. WCA is concerned with the bill language as it is currently drafted due to not addressing the underlying issue necessitating the legislation.

However, WCA could support the bill if it is amended to reflect a county's statutory authority to work with nonprofit agencies when the county authorizes a relief program, including, but not limited to programs to address hunger in the community.

In 2017, the Attorney General issued a formal opinion (OAG-01-17) that stated counties lacked the statutory authority to make an appropriation to a nonprofit organization "to serve residents of the county who need assistance in securing adequate food." OAG-01-17 at ¶4. WCA's General Counsel and the Legislative Council have since reviewed the Attorney General's analysis and conclusion contained in OAG-01-17 and both analyses cast doubt upon the Attorney General's broad conclusions. Instead, questions surrounding county appropriations to support local organizations that ease the burdens associated with a county's provision of services to its residents should be analyzed considering a totality of a county's broad powers under the relevant Wisconsin statutes.

Notwithstanding WCA's historical belief that a county is authorized to support food pantries under the appropriate circumstances, WCA welcomes statutory clarification in this important area. WCA believes an amendment modifying Wis. Stat. § 59.53(21) more appropriately addresses the issue. Specifically, a county is provided the choice of either directly operating a relief program or working with a nonprofit organization to operate such a program. This choice is important for counties in determining the best and most efficient manner by which to deliver the needed relief.

Moreover, this modification would clarify a county's ability to exercise powers that already exist in Wis. Stat § 59.53(21) (operating a program of relief for a specific class or classes of persons residing in the county) through a registered charitable organization. In essence, WCA's proposed language tracks existing county authority and specifically addresses the Attorney General's opinion and concern.

## MEMORANDUM

**TO:** Members of the Assembly Committee on Local Government

**FROM:** Wisconsin Farm Bureau Federation, Wisconsin Cheese Makers Association, Wisconsin Potato & Vegetable Growers Association, Midwest Food Products Association, Wisconsin Dairy Products Association, Wisconsin State Cranberry Growers Association, Cooperative Network, GrassWorks, Wisconsin Soybean Association, Wisconsin Corn Growers Association, Dairy Business Association, Wisconsin Horse Council, Wisconsin Pork Association and the Wisconsin Agri-Business Association

**DATE:** December 14, 2023

**RE:** **Support for AB 645 – County Assistance to Nonprofit Food Banks and Food Pantries**

Wisconsin's agricultural landscape is integral to our state's identity and well-being. Over the years, Wisconsin commodity and food processing organizations have collaborated with statewide foodbanks and local food pantries to provide Wisconsin grown food to those struggling with food insecurity, which is a testament to our commitment to addressing hunger in our local communities. However, despite our efforts and our ongoing partnership with the State of Wisconsin and the federal government, statutory barriers have hindered Wisconsin counties from extending aid to these crucial support systems.

Assembly Bill 645 stands as a solution to remove this barrier by enabling County Boards to allocate funds to nonprofit organizations, specifically foodbanks and food pantries, operating within their respective counties. These organizations have established robust collaborations with Wisconsin farmers, facilitating the sourcing and distribution of locally grown and processed food products. Our concerted efforts have fortified relationships that uphold the resilience of our state's agricultural supply chain.

This proposed legislation presents an opportunity for local governments to actively participate in sustaining our farmers' and food processors' vital role in nourishing Wisconsin. By supporting AB 645, we anticipate a strengthened connection between local governments, Wisconsin's expansive network of food banks and pantries, and the dedicated agricultural producers and processors who provide support to Wisconsin families grappling with food insecurity.

We urge you to support Assembly Bill 645 and strengthen the connections between local governments, food banks and pantries and Wisconsin farmers.

CONTACT: Jordan Lamb – (608) 576-5447 – [jordan@thewelchgroup.org](mailto:jordan@thewelchgroup.org)