



The County Tax Levy

All for One and One for All?

—Andrew T. Phillips and A. J. Peterman, von Briesen & Roper, s.c.

Since at least 1952, Portage County has provided its residents with an emergency medical system (EMS) that includes some form of ambulance service. Today, Portage County operates a county-wide EMS that includes ambulance service. A couple years ago, the Town of Grant (a town located within Portage County) became unhappy with certain aspects of the county-provided ambulance service and decided to contract with a private company for ambulance service for its residents and is now seeking to fully “withdraw” from the county-wide EMS system. In support of its “withdrawal,” the Town of Grant has sued Portage County claiming that its residents should not be forced to pay any property taxes that support county-wide EMS (*see Town of Grant v. Portage County*, Portage County Case No. 15CV176).

Although this dispute may seem specific to Portage County, the resolution of the matter could impact a variety of essential services provided by coun-

ties. Specifically, a court ruling in the town’s favor could impact a county’s ability to ensure the health and safety of the community through the provision of county-wide EMS/ambulance services through its general taxing authority and its public protection and safety powers. More broadly, the outcome of this case could fundamentally re-write the relationship between state, county, and local governments by stripping away counties’ ability to levy taxes to support mandated and authorized health and safety services. Because of the significance of a ruling in this case, the Wisconsin Counties Association (WCA) filed an amicus (friend of the court) brief with the court urging the dismissal of the town’s claims. Below is a brief summary of the arguments made to the court.

THE TOWN’S ARGUMENTS

According to the town’s arguments, when the town contracted for additional EMS services, its citizens

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were being taxed twice; once for the county-wide service and once for the town service. Unsurprisingly, some of the town's residents were unhappy with this arrangement, and in coordination with the town, those residents seek to withdraw from the county's ambulance service. Of course, the town does little to explain how a service-specific "withdrawal" would work given county levy support for a vast array of services to county residents and visitors.

The town made three arguments in support of its position: (1) the county possesses no general authority to tax for ambulance or EMS services; (2) while counties have the power to purchase, equip, operate, and maintain ambulances and contract for ambulance services, they can only "make reasonable charges for the use" of ambulances, meaning counties are not authorized to levy taxes for ambulance services; and (3) based upon the first two points, "Home Rule" requires the county to receive permission from its constituent local governments to provide EMS services. These arguments, if accepted as law, would have far-reaching negative consequences on Wisconsin's orderly system for provision of services at the local level.

WCA'S ARGUMENTS

WCA made two points to the court. The first point supports Portage County's argument that the town is engaging in interpretive semantics. When the Legislature authorized counties to engage in certain actions, like providing health and safety services in Wis. Stat. § 59.54, it did not explicitly state that the county could levy a tax for each and every item. This

is because the Legislature provided counties with a general taxing authority to support these powers. If counties had the power to engage in all sorts of governmental activities, but could not levy taxes to pay for these powers, the powers would be toothless.

WCA focused more of its brief on a second, but related point: that the town's interpretation would render a number of counties' EMS services invalid and would render virtually all of Wis. Stat. § 59.54 useless.

A number of counties, including Door, Waushara and Sawyer, utilize their general taxing power to provide some form of county-wide EMS. These counties all operate a county-wide ambulance service and levy a general tax to provide for part of these services. An interpretation in favor of the town could immediately render these EMS services invalid. Although extreme (and hopefully unlikely), this could result in certain residents being unable to receive timely EMS services. The town's interpretation would also wreak havoc on Wis. Stat. § 59.54.

Take one example highlighted in WCA's amicus brief. The county has the power to provide its sheriff with "arms, ammunition, gas bombs and gas sticks" (§ 59.54(13)). According to the town's interpretation, the county can theoretically purchase these items but could not use its general taxing power to pay for them. Under this provision, the sheriff would also not have the ability to "make reasonable charges for the use" of these items (however he or she would do that). How then does the sheriff pay for these items? According to the town, Home Rule would require the county to seek permission from each of its con-

LEGAL ISSUES

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stituent local governments to tax for these items. Assuming local governments refused to consent, the sheriff’s department would police without arms or ammunition. This cannot be what the Legislature possibly intended.

CONCLUSION

A county’s authority to levy a county-wide tax and pay for county-wide services is not without limitation. Indeed, the public purpose doctrine requires a county to demonstrate that the expenditure of public funds is for a “public purpose.” Allowing certain

county residents to “withdraw” from a portion of the tax simply because they claim not to “need” a particular service is nonsensical and contrary to established principles of government. For this reason, WCA supports Portage County in seeking to uphold a county’s ability to levy a tax to support a county-wide service even if some county residents decide that they do not wish to receive the service.

WCA will continue to monitor the progress of the *Town of Grant v. Portage County* case. If you have any questions concerning the case or its implications, please do not hesitate to contact the WCA.

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