



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

JAMES E. DOYLE
ATTORNEY GENERAL

Burneatta L. Bridge
Deputy Attorney General

114 East, State Capitol
P.O. Box 7857
Madison, WI 53707-7857
608/266-1221

OAG 1-95

February 14, 1995

The Honorable Michael G. Ellis
Chairperson
Senate Organization Committee
210 South, State Capitol
Madison, Wisconsin 53702

Dear Senator Ellis:

You request my opinion on the applicability of section 20.927, Stats., to health insurance plans provided for state and local government employes by the Group Insurance Board (GIB). Specifically, you question "whether the use of funds by the Group Insurance Board to contract with health maintenance organizations, and to provide a standard plan, that cover abortions is consistent with s. 20.927, Stats." [sic] It is my opinion that monies used to fund state employe insurance plans are not "state or local funds" and that, therefore, the GIB is not subject to the limitation of section 20.927 when establishing and contracting for state and local employe health insurance plans.

Section 20.927 precludes the expenditure of state or local funds for performance of most abortions as follows:

(1) Except as provided under subs. (2) and (3), no funds of this state or of any county, city, village or town or of any subdivision or agency of this state or of any county, city, village or town and no federal funds passing through the state treasury shall be authorized for or paid to a physician or surgeon or a hospital, clinic or other medical facility for the performance of an abortion.

(2)(a) This section does not apply to the performance by a physician of an abortion which is directly and medically necessary to save the life of the woman or in a case of sexual assault or incest, provided that prior thereto the physician signs a certification which so states, and provided that, in the case of sexual assault or incest the crime has been reported to the law enforcement authorities. . . .

(b) This section does not apply to the performance by a physician of an abortion if, due to a medical

condition existing prior to the abortion, the physician determines that the abortion is directly and medically necessary to prevent grave, long-lasting physical health damage to the woman

The same restriction is specifically set forth for counties at section 59.07(136) and for cities, villages and towns at section 66.04(1)(m).

State statutes require the GIB to establish and offer to state employes at least one standard health insurance plan and one health maintenance organization or preferred provider plan. Sec. 40.51(6), Stats. GIB established insurance plans may also be used by local government units. Secs. 40.02(25)(b)9. [active non-state public employes] and 11. [retired non-state public employes].

Current GIB guidelines which form the basis for contracts with health maintenance organizations and preferred providers that in turn insure state and local employes, provide coverage for "therapeutic abortions." "Therapeutic abortions" may be generally defined as, "induced abortions which have been performed to safeguard the health of the mother, to prevent the birth of a child of a rape victim, or to prevent the birth of a deformed child." 4C Gray, Roscoe N. and Louise J. Gordy, Attorneys' Textbook of Medicine, ¶ 311.01 (3rd ed. 1991). Section 20.927 of the statutes is more restrictive on the type of abortions permitted because it does not permit the use of state funds for therapeutic abortions "to prevent the birth of a deformed child." Therefore, if section 20.927 applies to the GIB's establishing government employe health insurance plans, then current GIB provisions for therapeutic abortions would be impermissible.

Monies Paid into Employe Trust Funds are Not State Funds

The operative language of section 20.927 provides that "no funds of this state or of any county, city, village or town . . . shall be authorized for . . . the performance of an abortion." Proper statutory interpretation must turn on the meaning of "funds of this state [or local entity]." It has long been an accepted legal principle that "state funds" are not all monies passing through the state Legislature, but are of a more restricted and unique character. Importantly, for this discussion, monies appropriated by the Legislature to the Public Employe Trust Fund are not state funds because those monies have a specialized purpose:

The public employe trust fund is a public trust and shall be managed, administered, invested and otherwise dealt with solely for the purpose of ensuring the fulfillment at the lowest possible cost of the benefit commitments to

participants, as set forth in this chapter, and shall not be used for any other purpose All statutes relating to the fund shall be construed liberally in furtherance of the purposes set forth in this section.

Sec. 40.01(2), Stats. Sufficient monies to provide benefits under the public employe trust fund are appropriated by section 20.515(1)(r). It is these monies that are used to purchase government employe health insurance plans.

There is a longstanding view in Wisconsin law that trust funds are to be treated differently than general revenue, and that the state has less power to regulate the use of trust funds. In Attorney General ex rel. Blued v. Levitan, 195 Wis. 561, 563, 219 N.W. 97 (1928), the court held that state officials could not interfere with the Annuity Board's exercise of its own business judgment in managing retirement funds, and in State Teachers' Retirement Board v. Giessel, 12 Wis. 2d 5, 11, 106 N.W.2d 301 (1960), the court refused to let the state charge a portion of its expenses for a study to the retirement fund even though the study's purpose was to improve the retirement system, because the trust money could be used only for the benefit of the retirees. The Giessel court rejected the state's argument that retirees had no vested right in the fund until the money was credited to an individual's account.

Past Attorney General opinions have recognized a distinction between trust funds and general revenue. In 1969, the Attorney General opined that the Wisconsin retirement fund was of a different character than the public fisc, and therefore surpluses generated by prudent or lucky investments could be distributed to annuitants without running afoul of the legal principle that public funds may not be used for private purposes. 58 Op. Att'y Gen. 43, 45 (1969). Similarly, a 1985 Opinion found that the State Claims Board lacked the authority to order payments from the public employe trust fund relying on statutory mandate that the fund be managed for the participants, and that participants own those benefits as a "contractual right." 74 Op. Att'y Gen. 193, 198 (1985).

Additionally, the conclusion that there are legal distinctions between moneys passing through the state treasury is also found in B.F. Sturtevant Co. v. Industrial Comm., 186 Wis. 10, 202 N.W. 324 (1925), where the court upheld a worker's compensation statute directing that death benefits owed to employes who lack dependents are paid into the state treasury earmarked for the benefit of worker's compensation claimants. "We are therefore of the opinion that the words 'public or trust money' as used in sec. 8, art. VIII, of the state constitution refer to public funds in which the general public has a beneficial interest and not to special funds

held by the state treasurer as a mere depositor" Id., 186 Wis. at 21. Funds earmarked for a special purpose are thus not "state funds."

These precedents mandate the conclusion that trust funds are different from general state funds, and that the state is limited in its ability to regulate the use of trust funds. Recently Dane County Circuit Court Judge Angela Bartell specifically found that public employe trust funds are not "state funds" because those funds have been irrevocably placed in trust for the benefit of state employes, and the state itself has given up any right to direct their use. State Engineering Association v. Employe Trust Funds Board, Dane County Case Nos. 88-CV-1070 and 88-CV-4062 (On appeal to the Court of Appeals, District IV, Case No. 94-0712). "State funds," according to the Bartell decision, are non-restricted funds that the Legislature may use for any legitimate state purpose, while "trust funds" have a much more restricted purpose.

Thus, a statute that directs that "state or local funds" may not be used to procure abortions, does not prevent the GIB from establishing guidelines for insurance plans that will be purchased with "trust funds." Once appropriated to fulfil the state's obligations under the public employe trust fund, the state monies lose their character as state funds and the Legislature loses its ability to direct their use solely by means of the regulation of general purpose funds.

Trust Funds Pay for Insurance Coverage, and Cannot be Considered the Direct Funding of Abortions.

Section 20.927, prohibits the actual payment of state funds to a physician for an abortion not covered by one of the exceptions. By adopting guidelines requiring the provision of therapeutic abortions for qualifying health maintenance organizations or preferred providers, the GIB is not authorizing the direct use of state funds to pay for abortions, it is establishing guidelines for insurance coverage. Even if the monies appropriated to the trust fund for insurance purposes were considered to be state funds, they would lose that character once they have been used to purchase health insurance plans.

Had the Legislature specifically intended for the GIB to be prohibited from providing for therapeutic abortions in insurance policies for state and local government employes, it could have done so by restricting the GIB's authority under chapter 40 of the statutes. However, the Legislature has not chosen to do so, and it has not chosen to do so even in light of the well-established rule of law that trust funds are not state funds. By adopting section 20.927, but ignoring the specific health insurance regulations, the

Legislature did not indicate an intent to prohibit women who own or are covered under government health insurance plans from securing abortions provided under those plans.

The purpose of the trust fund is to provide benefits to employees at the lowest possible cost, which is achieved through the managing of benefits as a group. If the monies paid into the trust fund were not specifically pooled in order to pay for group health insurance, under the statutory appropriation language, the funds would belong to the public employees. Indeed, the trust fund does not even pay for 100% of a given employee's health insurance costs because section 40.05(4)(a) requires that the employee "contribute" the balance of the required premium amounts after applying the employer's contribution. Employees holding health maintenance organization plans that cost more than the least expensive plan must pay additional sums for insurance coverage, and state employees in their first six months of employment must pay the full premiums if they elect coverage. It is clear that these insurance benefits belong to the government employees, and that, therefore, use of those benefits to procure abortions does not constitute the direct use of state funds for the expenditure.

In 1978, the Governor of Wisconsin vetoed a proposed amendment that would have exempted employee insurance plans from section 20.927. See Senate Amendment 12 to 1977 Assembly Bill 321; Governor's Veto Messages, Journal of the Assembly, p. 3496 (March 8, 1978). While this history could be used to argue that the Legislature, by failing to override the Governor's veto, actually intended for section 20.927 to prohibit insurance plan coverage for abortions, to do so would give undo effect to legislative history where the plain meaning of the statute is not unclear in the first instance. Resort to legislative history will not be made if the language of the statute is not unclear. In Interest of Jamie L., 172 Wis. 2d 218, 225, 493 N.W.2d 56 (1992). When the Legislature chose the term "state or local funds" for section 20.927, it did so with the knowledge that public employee trust funds were of a different character than state funds, that trust funds were irrevocably placed in trust for the benefit of government employees, and that its ability to regulate trust funds was limited. Moreover, the GIB has never been constrained in negotiating insurance packages, notwithstanding the veto of the proposed amendment, and an administrative agency's interpretation of a statute may be accorded deference. Richland School Dist. v. DILHR, 174 Wis. 2d 878, 890-91, 498 N.W.2d 826 (1993).

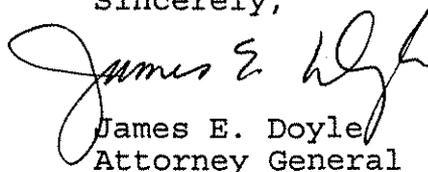
Summary

Funds appropriated in trust for public employees are not "state funds," and, therefore, the Legislature may not restrict the use of those funds merely by statute governing the use of "state or local

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funds." Additionally, the use of trust funds to pay for part of the purchase of health insurance does not amount to the direct funding of abortions with state or local funds. For these reasons, the abortion restrictions of section 20.927, do not apply to the GIB's establishment of health insurance plans for covered employes, and the GIB may implement guidelines that provide for therapeutic abortions.

Sincerely,



James E. Doyle
Attorney General

JED:JSL:dah

CAPTION:

Section 20.927, Stats., relating to expenditure of state and local funds for performance of an abortion, does not apply to health insurance plans provided for state and local government employes by the Group Insurance Board.



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114 East, State Capitol
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OAG 2-95

May 5, 1995

Mr. Robert J. Zeman
Corporation Counsel
Manitowoc County
1010 South Eighth Street
Manitowoc, Wisconsin 54220-5392

Dear Mr. Zeman:

You ask whether a judgment rendered in a civil action in circuit court for payment of a forfeiture can be docketed, accumulate postjudgment interest at the rate of twelve percent per annum and be enforced using those collection remedies which are available in connection with judgments entered in other civil proceedings.

In my opinion, the answer is yes.

You indicate that your concerns extend to judgments entered in all types of forfeiture proceedings which can be commenced by any unit of government in circuit court. Numerous statutes concerning the imposition of forfeitures are therefore relevant to your inquiry. Section 66.119, Stats., concerning municipal citations, provides in part:

Citations for certain ordinance violations. (1)
ADOPTION; CONTENT. (a) The governing body of any county, town, city, village or public inland lake protection and rehabilitation district may by ordinance adopt and authorize the use of a citation to be issued for violations of ordinances, including ordinances for which a statutory counterpart exists.

.

(2)

(b) The issuance of a citation by a person authorized to do so . . . shall be deemed adequate process to give the appropriate court jurisdiction over

the subject matter of the offense for the purpose of receiving cash deposits, if directed to do so, and for the purposes of sub. (3)(b) and (c). Issuance and filing of a citation does not constitute commencement of an action. . . .

(3)

(b) If a person appears in court in response to a citation, the citation may be used as the initial pleading, unless the court directs that a formal complaint be made, and the appearance confers personal jurisdiction over the person. The person may plead guilty, no contest or not guilty. If the person pleads guilty or no contest, the court shall accept the plea, enter a judgment of guilty and impose a forfeiture

(c) If the alleged violator makes a cash deposit and fails to appear in court, the citation may serve as the initial pleading and the violator shall be considered to have tendered a plea of no contest and submitted to a forfeiture The court may either accept the plea of no contest and enter judgment accordingly or reject the plea. . . . If the court rejects the plea of no contest, an action for collection of the forfeiture . . . may be commenced. A city, village or public inland lake protection and rehabilitation district may commence action under s. 66.12(1) and a county or town may commence action under s. 778.10. . . .

(d) If the alleged violator does not make a cash deposit and fails to appear in court at the time specified in the citation, the court may issue a summons or warrant for the defendant's arrest or consider the nonappearance to be a plea of no contest and enter judgment accordingly if service was completed as provided under par. (e) or the county, town, city, village or public inland lake protection and rehabilitation district may commence an action for collection of the forfeiture A city, village or public inland lake protection and rehabilitation district may commence action under s. 66.12(1) and a county or town may commence action under s. 778.10. . . . If the court considers the nonappearance to be a plea of no contest and enters judgment accordingly, the court shall promptly mail a copy or notice of the judgment to the defendant. . . .

(e) A judgment may be entered under par. (d) if the summons or citation was served as provided under s. 968.04(3)(b)2 or by personal service by a county, town, city, village or public inland lake protection and rehabilitation district employe.

Section 66.12, concerning actions for the collection of forfeitures for violations of municipal ordinances and regulations, provides in part:

Actions for violation of ordinances. (1) COLLECTION OF FORFEITURES AND PENALTIES. (a) An action for violation of an ordinance or bylaw enacted by a city, village or public inland lake protection and rehabilitation district is a civil action. All forfeitures and penalties imposed by any ordinance or bylaw of the city, village or public inland lake protection and rehabilitation district, except as provided in ss. 345.20 to 345.53, may be collected in an action in the name of the city or village before the municipal court or in an action in the name of the city, village or public inland lake protection and rehabilitation district before a court of record. If the action is in municipal court, the procedures under ch. 800 apply and the procedures under this section do not apply. If the action is in a court of record, it shall be commenced by warrant or summons under s. 968.04 or, if applicable, by citation under s. 778.25 or 778.26. . . .

. . . .

(c) If the circuit court finds a defendant guilty in a forfeiture action based on a violation of an ordinance, the court shall render judgment as provided under ss. 800.09 and 800.095.^[1] . . .

¹Chapter 800 contains municipal court procedure. Section 800.09(1) and (2) provides for the entry of judgment if the court finds the defendant guilty or if the defendant pleads guilty or no contest. Section 800.095(1)-(6) provides for arrest and subsequent imprisonment unless the defendant is unable to pay the judgment. Section 800.095(7) provides: "USE OF ORDINARY CIVIL REMEDIES. In addition to the procedures under this section, a municipality may enforce the judgment in the same manner as for a judgment in an ordinary civil action."

Section 778.01, concerning collection of forfeitures imposed by statute, provides in part:

Where a forfeiture imposed by statute shall be incurred it may be recovered in a civil action unless the act or omission is punishable by fine and imprisonment or by fine or imprisonment. The word forfeiture, as used in this chapter, includes any penalty, in money or goods.

Section 778.10, concerning collection of forfeitures for violations of county, town, city or village ordinances or regulations, provides in part:

Municipal forfeitures, how recovered. All forfeitures imposed by any ordinance or regulation of any county, town, city or village, or of any other domestic corporation may be sued for and recovered, under this chapter, in the name of the county, town, city, village or corporation. . . . If the ordinance or regulation imposes a penalty or forfeiture for several offenses or delinquencies the complaint shall specify the particular offenses or delinquency for which the action is brought, with a demand for judgment for the amount of the forfeiture

Section 799.01 provides in part:

Applicability of chapter. (1) EXCLUSIVE USE OF SMALL CLAIMS PROCEDURE. Except as provided in ss. 799.02(1) and 799.21(4) and except as provided under sub. (2), the procedure in this chapter is the exclusive procedure to be used in circuit court in the following actions:

. . . .

(b) Forfeitures. Actions to recover forfeitures except as a different procedure is prescribed in chs.

23,^[2] 66,^[3] 345^[4] and 778,^[5] or elsewhere, and such different procedures shall apply equally to the state, a county or a municipality regardless of any limitation contained therein.

Section 799.04 provides in part:

Relation of this chapter to other procedural rules.
(1) GENERAL. Except as otherwise provided in this chapter, the general rules of practice and procedure in chs. 750 to 758 and 801 to 847 shall apply to actions and proceedings under this chapter.

Section 799.10 provides in part:

Case file, case docket. (1) CLERK TO MAINTAIN DOCKET AND CASE FILE. The clerk shall maintain a docket of small claims cases under this chapter, which docket may be in loose leaf or card form, and a case file for each case in which there are papers other than the ones listed in s. 799.07 to be filed.

²Section 23.795(1) provides for arrest and subsequent imprisonment unless the defendant is unable to pay the judgment. Section 23.79(5), concerning forfeitures for conservation violations, provides that "[a]ll civil remedies are available in order to enforce the judgment of the court, including the power of contempt under ch. 785."

³Section 66.119(3)(c) and (d) effectively incorporates by reference either sections 778.09(1) and 778.10 or sections 66.12(1)(c), 800.09 and 800.095, depending upon the type of municipal plaintiff that initiates the action.

⁴Section 345.20(2)(a), concerning forfeitures for traffic violations, provides that the procedures contained in sections 345.21 to 345.53 are to be followed and that "[w]here no specific procedure is provided in ss. 345.21 to 345.53, ch. 799 shall apply to such actions in circuit court." Section 345.47(1)(a) provides that the court may order imprisonment if the judgment is not paid and the defendant is able to do so. Section 345.47(1)(d) provides for the issuance of a warrant for nonpayment. Section 345.47(1)(c) and (d) provides for suspension of operating privileges for nonpayment.

⁵Section 778.09(1) provides for imprisonment for nonpayment, but constitutional limitations preclude enforcement where the defendant is unable to pay. See 66 Op. Att'y Gen. 148, 151 (1977).

(2) ENTRIES; WHAT TO CONTAIN. Entries in the docket shall include:

.....

(f) The judgment or final order entered, date of entering it and the amount of forfeiture or damages, costs and fees due to each person separately;

(g) Satisfaction of forfeiture, or commitment for nonpayment of forfeiture or judgment;

(h) The date of mailing notice of entry of judgment or final order as provided in s. 799.24;

.....

(4) TIME OF DOCKET ENTRIES. Entries in the docket shall be made not later than the time of the entry of the judgment or final order, or as soon thereafter as possible. No docket entries need be made in uncontested cases where the action is for a money forfeiture charging violation of a parking regulation.

Section 799.24(1) provides:

ENTRY OF JUDGMENT OR ORDER; NOTICE OF ENTRY THEREOF. When a judgment or an order is rendered, the judge, court commissioner or clerk shall immediately enter it in the case docket and note the date thereof which shall be the date of entry of judgment or order. The clerk, except in municipal and county forfeiture actions, shall mail a notice of entry of judgment to the parties or their attorneys at their last-known address within 5 days of its entry. Any such judgment shall be a docketed judgment for all purposes upon payment of the fee prescribed in s. 814.62(3)(c). The clerk shall enter the docketed judgment in an appropriate judgment record.

Sections 799.01(1)(b) and 799.04(1) contain the order of priority of chapters 23, 66, 345, 778, 799, 750 to 758, and 801 to 847. As explained in 77 Op. Att'y Gen. 270, 271 (1988):

These statutes tell us that in actions to recover forfeitures for violations of statutes [or ordinances],

the procedures set forth in chapters 23, 66, 345 and 778⁶ have priority. Where those chapters are not applicable [or do not contain any procedure], chapter 799 is accorded the next level of priority in establishing the procedure to be used. Finally, where chapter 799 is not applicable [or does not contain any procedure], the rules of practice and procedure in chapters 750 to 758 and 801 to 847 are.

Starting in reverse order of priority, chapters 801 to 847 do contain collection remedies for judgments in civil actions. See, e.g., ch. 812 (garnishment), ch. 815 (executions) and ch. 816 (supplementary proceedings). Under section 815.05(8), postjudgment interest also accrues at the rate of twelve percent per annum. Chapter 785 and section 815.02 also provide for the enforcement of non-monetary aspects of a judgment through the initiation of contempt proceedings.

The "exclusive procedure" language contained in section 799.01 was intended by the Legislature to overrule the supreme court's decision in State v. Hervey, 113 Wis. 2d 634, 642, 335 N.W.2d 607 (1983), and eliminate a plaintiff's option to commence an action using either the procedures contained in chapter 799 or those contained in chapters 801 to 847. See 77 Op. Att'y Gen. at 272. Despite that language, by virtue of the explicit provisions contained in section 799.04(1), the provisions of chapters 801 to 847 generally do apply to proceedings under chapter 799, including forfeiture actions, except where chapter 799 contains contrary procedures. See 52 Op. Att'y Gen. 157, 158 (1963), which concludes that "[a] small claims judgment docketed in the county court has equal force and effect as a judgment docketed in the circuit court"

One issue which you raise is whether section 799.24(1) contains a contrary procedure with respect to municipal forfeiture actions, since the second sentence of that statute provides that, "except in municipal and county forfeiture actions," the clerk is required to mail notice of entry of judgment to the parties. The very next sentence of that statute then provides that "[a]ny such judgment shall be a docketed judgment for all purposes upon payment of the fee" Section 799.24(2) also indicates that a "docketed judgment" constitutes a lien on land under section 806.15. You suggest that, if section 799.24(1) precludes the docketing of judgments in municipal forfeiture actions, it could be argued that such a provision precludes the use of ordinary

⁶Sections 778.103 and 778.104 also provide that, to the extent that any conflict exists, the procedures contained in chapters 23 and 345 are controlling over those found in chapter 778.

collection remedies which generally follow the docketing of civil judgments.

A plain reading of the two sentences to which you refer indicates that they are independent of each other. The second sentence of section 799.24(1) deals only with the mailing of notice of entry. The phrase "[a]ny such judgment" in the next sentence is all inclusive, referring to all judgments, not just those with respect to which notice of entry has been mailed. The cross reference to section 814.62(3) concerning payment of the applicable fee incorporates by reference section 814.61. Neither section 814.61 nor section 814.62(3) prescribes a fee for mailing notice of entry.

Even though the statutory language is not ambiguous, a court "may undertake historical analysis to reinforce and demonstrate that a statute is plain on its face." State v. Dodd, 185 Wis. 2d 560, 566-67, 518 N.W.2d 300 (Ct. App. 1994). Section 799.10(2)(f) requires the clerk to docket judgments in civil forfeiture actions involving proceedings using small claims procedure under chapter 799. Chapter 299, Stats. (1961), which contains what essentially is present small claims procedure, was enacted in chapter 519, Laws of 1961. See 52 Op. Att'y Gen. at 160. As initially enacted in chapter 519, section 9, Laws of 1961, section 299.24(1), Stats. (1961), provided that, except in certain cases involving enforcement of parking regulations, all judgments in small claims proceedings were docketed in county court. Under section 299.24(2), Stats. (1961), upon payment of a fee separate from the small claims docketing fee, a transcript of that judgment could be obtained and docketed in circuit court and "be carried into execution . . . in the same manner and with like effects as the judgments thereof" Following the issuance of 52 Op. Att'y Gen. 157, that provision was repealed and the clerk was directed to enter small claims judgments in an appropriate judgment docket book. See ch. 407, sec. 16, Laws of 1963.

Shortly after chapter 299 was initially enacted, it was amended by what might now be characterized as a trailer bill, chapter 618, Laws of 1961. Both the clause indicating that service of notice of entry by the clerk is not required in municipal forfeiture actions and the sentence indicating that a docketed judgment is a lien on land were inserted in section 299.24(1), Stats. (1961), at that time. See ch. 618, secs. 5-7, Laws of 1961. The drafting file indicates that the clause "except in municipal and county forfeiture actions" was inserted as a separate amendment at the request of Milwaukee County. It is a reasonable inference from the legislative history that the county did not want its clerk's office burdened with having to docket and mail notice of entry in every municipal forfeiture action. I discern no intention on the part of the Legislature at that time to alter the

preexisting requirement in the initial sentence of section 299.24(1), Stats. (1961), that all judgments in small claims proceedings be "entered in the case docket." I therefore construe the phrase "[a]ny such judgment shall be a docketed judgment" to refer to all judgments actually docketed under the procedure contained in chapter 799.

That construction also harmonizes the provisions of section 799.24(1) with those contained in section 799.10. Section 799.10(2)(f), which governs small claims judgment docketing procedure, contains no indication that judgments in forfeiture actions are not to be docketed. Section 799.10(2)(g), which requires the clerk to docket satisfactions of judgment in forfeiture actions, also suggests that the judgments in forfeiture actions must first be docketed. Section 799.10(4) indicates that such judgments are not to be docketed only in certain forfeiture actions involving parking violations. Only section 799.10(2)(h), which requires docketing of notice of entry of judgment, is generally inapplicable in municipal forfeiture actions.

Since there are no procedures in chapter 799 which are contrary to or inconsistent with the ordinary collection remedies found in chapters 801 to 847, it is necessary to examine the provisions of chapters 23, 66, 345 and 778 in order to ascertain whether they contain procedures contrary to or inconsistent with the use of ordinary civil collection remedies. Chapter 23 affirmatively indicates that such remedies may be utilized to collect forfeitures for conservation violations, since it provides that "[a]ll civil remedies are available in order to enforce the judgment of the court" Sec. 23.79(5), Stats.

Chapter 66 contains a number of different provisions. Section 66.119(2)(b), concerning municipal citations, provides that "[i]ssuance and filing of a citation does not constitute commencement of an action" but that "[t]he issuance of a citation by a person authorized to do so . . . shall be deemed adequate process to give the appropriate court jurisdiction over the subject matter of the offense for the purpose of receiving cash deposits, if directed to do so, and for the purposes of sub. (3)(b) and (c)." Section 66.119(3)(b) permits the entry of judgment only if the defendant appears personally and pleads guilty or no contest. Since section 66.119(3)(c) does not contemplate the imposition of any forfeiture greater than the cash deposit, no further collection is possible under that statute. Section 66.119(3)(d) permits the entry of judgment only if the defendant has been personally served. Although the question is a close one, it appears that section 66.119 contemplates that a proceeding commenced by the issuance of a citation is to be treated as an ordinary civil action if the defendant is personally served under section 66.119(3)(e) or appears personally and admits liability by pleading guilty or no

contest. In those situations, a judgment is to be entered, and postjudgment docketing and collection procedures applicable to proceedings under chapter 799 would apply. Since there is nothing in section 66.119 which is inconsistent with the docketing and collection of such judgments under the procedures contained in chapters 799 and 801 to 845, it appears that ordinary remedies for the collection of judgments in civil actions may be utilized once such judgments are entered under section 66.119(3)(b) or (d).

Under section 66.12(1)(a), municipal forfeitures "may be collected in an action in the name of the city or village before the municipal court or in an action in . . . a court of record." With respect to those municipalities which do have municipal courts, section 800.095(7) provides that "a municipality may enforce the judgment in the same manner as for a judgment in an ordinary civil action." Those municipalities that do not have access to municipal courts must bring such actions in circuit court under section 66.12(1)(c), which provides: "If the circuit court finds a defendant guilty in a forfeiture action based on a violation of an ordinance, the court shall render judgment as provided under ss. 800.09 and 800.095." Even if this provision were construed so as not to expressly incorporate the substantive provisions contained in section 800.095, there still would be no inconsistency between the provisions of section 66.12 and the use of ordinary civil collection remedies under chapters 801 to 845.

Chapter 345, concerning forfeitures for traffic violations, contains language deferring to the provisions of chapter 799, which, as I have indicated, incorporates the provisions of chapters 801 to 845 concerning ordinary collection remedies. Section 345.20(2)(a) provides that "[w]here no specific procedure is provided in ss. 345.21 to 345.53, ch. 799 shall apply to such actions in circuit court." I find no procedure in sections 345.21 to 345.53 which is contrary to or inconsistent with those involving the use of ordinary collection remedies.

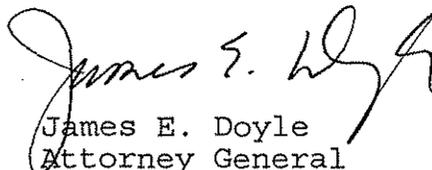
Although chapter 778, concerning collection of forfeitures for violations of county, town, city or village ordinances, does not contain language deferring to the provisions of chapter 799, section 778.01 also indicates that forfeitures imposed by statute may be "recovered in a civil action" except where an act is punishable by fine or imprisonment. Section 778.10 also indicates that municipal forfeitures "may be sued for and recovered" in the form of a "judgment." This language is entirely consistent with the use of ordinary remedies for the collection of judgments in civil actions.

I therefore conclude that a judgment rendered in a civil action in circuit court for payment of a forfeiture can and should be docketed, does accumulate postjudgment interest at the rate of

Mr. Robert J. Zeman
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twelve percent per annum and may be enforced using those collection remedies which are available in connection with judgments entered in other civil proceedings.

Sincerely,



James E. Doyle
Attorney General

JED:FTC:vmz

CAPTION:

A judgment rendered in circuit court for payment of a forfeiture can and should be docketed, does accumulate postjudgment interest at the rate of twelve percent per annum and may be enforced using those collection remedies which are available in connection with judgments entered in other civil proceedings.



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

JAMES E. DOYLE
ATTORNEY GENERAL

Burneatta L. Bridge
Deputy Attorney General

114 East, State Capitol
P.O. Box 7857
Madison, WI 53707-7857
608/266-1221

OAG 3-95

June 1, 1995

Mr. William D. Bussey
Corporation Counsel
Bayfield County
Post Office Box 1316
Bayfield, Wisconsin 54814

Dear Mr. Bussey:

In previous correspondence, Bayfield County Sheriff Ralph W. Neff furnished us with a proposed agreement for the housing of certain tribal prisoners in the Bayfield County jail. Under that agreement, the sheriff's department of Bayfield County would, for a certain dollar amount per day, furnish services to such tribal prisoners "the same as those provided to other inmates . . . includ[ing] secure detention, meals, restrooms, showers, etc." You now ask whether counties possess statutory authority to enter into such agreements to house persons in the county jail who have been arrested by tribal law enforcement officers for violations of tribal ordinances or ordered incarcerated by tribal courts.

In my opinion, the answer is no.

Section 59.07, Stats., provides in part:

The board of each county may exercise the following powers, which shall be broadly and liberally construed and limited only by express language:

(1)

. . . .

(c) Transfers. Direct the clerk to lease, sell or convey or contract to sell or convey any county property, not donated and required to be held for a special purpose, on such terms as the board approves. In addition any county property may, by gift or otherwise, be leased, rented or transferred to the United States, the state, any other county within the state or any municipality or school district within the county. . . .

. . . .

(47) CONTRACT WITH U.S. FOR CUSTODY OF FEDERAL PRISONERS. Empower the sheriff or superintendent of the house of correction to contract with the United States to keep in the county jail or house of correction any person legally committed under U.S. authority, but not for a term exceeding 18 months.

Section 302.31 provides in part:

Use of jails. The county jail may be used for the detention of persons charged with crime and committed for trial; for the detention of persons committed to secure their attendance as witnesses; to imprison persons committed pursuant to a sentence or held in custody by the sheriff for any cause authorized by law; for the detention of persons sentenced to imprisonment in state penal institutions or a county house of correction, until they are removed to those institutions; for the detention of persons participating in the intensive sanctions program; for the temporary detention of persons in the custody of the department; and for other detentions authorized by law. The county jail may be used for the temporary placement of persons in the custody of the department, and persons who have attained the age of 18 years but have not attained the age of 25 years who are in the legal custody of the department of health and social services under s. 48.355(4) or 48.366 and who have been taken into custody pending revocation of aftercare supervision under s. 48.357(5) or 48.366(5) or corrective sanctions supervision under s. 48.357(5).

Section 302.445, as created by 1993 Wisconsin Act 48, provides:

Confinement of county jail prisoners in tribal jails. The county board and the sheriff of any county may enter into an agreement with the elected governing body of a federally recognized American Indian tribe or band in this state for the confinement in a tribal jail of county jail prisoners. The sheriff retains responsibility for the prisoners for providing custody, care, treatment, services, leave privileges and food and determining good time as if they remained county jail prisoners, except that the sheriff may delegate, under the agreement, any of the responsibility to the tribal chief of police. The tribal jail is subject to s. 301.37(4) but is not subject to the requirements for county jails unless otherwise provided under the agreement.

The Wisconsin Supreme Court has repeatedly reiterated that "'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.'" St. ex rel. Teunas v. Kenosha County, 142 Wis. 2d 498, 504, 418 N.W.2d 833 (1988) (citation omitted). No statute expressly or by necessary implication grants counties the authority to enter into agreements to house tribal prisoners in the county jail.

Section 59.07(1)(c) authorizes the county board to "[d]irect the clerk to lease, sell or convey or contract to sell or convey any county property, not donated and required to be held for a special purpose, on such terms as the board approves." This statute might permit the county board to lease buildings or land to an Indian tribe for purposes which are authorized under federal, state and tribal law. However, it contains no language permitting a county board to lease county jail facilities to an Indian tribe or permitting an Indian tribe to avail itself of the law enforcement powers of the sheriff which are utilized to administer the county jail.

The sheriff is a constitutional officer whose responsibility at common law to be the keeper of the jail cannot be altered by the Legislature or the county board. Manitowoc County v. Local 968B, 168 Wis. 2d 819, 824, 829, 484 N.W.2d 534 (1992); State ex rel. Milwaukee County v. Buech, 171 Wis. 474, 482, 177 N.W. 781 (1920). A sheriff also has no authority to enter into contracts except as expressly provided by statute. 79 Op. Att'y Gen. 75, 84-85 (1990); 78 Op. Att'y Gen. 85, 85-86 (1989). Consequently, those statutes which permit entities other than the state to enter into agreements to house prisoners in the county jail require the participation and affirmative consent of both the sheriff and the county board.

Under section 59.07(47), the county board may "[e]mpower the sheriff . . . to contract with the United States to keep in the county jail . . . any person legally committed under U.S. authority, but not for a term exceeding 18 months." Under this statute, the contract must be with the "United States." The proposed agreement furnished to our office is not authorized under the language contained in section 59.07(47), since it is with an individual Indian tribe or band rather than with the United States.

Section 302.445 does authorize the county board and the sheriff to enter into joint agreements with the elected governing body of any federally recognized American Indian tribe or band in this state. But section 302.445 provides "for the confinement in a tribal jail of county jail prisoners." Under this statute, the sheriff also retains responsibility for such persons as if they remained in the county jail. While the proposed agreement does not appear to alter the sheriff's responsibility over the jail, it

would permit confinement of tribal prisoners in county jails. Section 302.445 only permits confinement of inmates of the county jail in tribal jails. It contains no corresponding language authorizing confinement of tribal prisoners in county jails.

In 73 Op. Att'y Gen. 115, 118 (1984), it was determined that statutory language contained in section 48.22(5) permitting county boards to contract with privately operated shelter care facilities or home detention programs was insufficient to permit the county board to contract for secure detention facilities because secure detention facilities were not specifically mentioned in that statute:

Subsection (5) does not include secure detention facilities as services which a county may purchase from a private operator. In a case involving the Children's Code the Court applied the maxim, expressio unius est exclusio alterius and stated: "[I]f the legislature did not specifically confer a power, it is evidence of legislative intent not to permit the exercise of the power." State ex rel. Harris v. Larson, 64 Wis. 2d 521, 527, 219 N.W.2d 335 (1974).

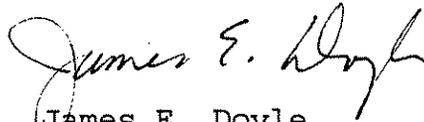
The same reasoning is equally applicable to the language contained in sections 59.07(47) and 302.445, both of which permit the use of jail facilities only in specific instances different than the ones contemplated by the proposed agreement.

The phrases "committed . . . or held in custody . . . for any cause authorized by law" and "for other detentions authorized by law" in section 302.31 also do not permit the detention of tribal prisoners in county jails. "Under the rule of ejusdem generis, where a general term is preceded or followed by a series of specific terms, the general term is viewed as being limited to an item of the same type or nature as those specifically enumerated." Hatheway v. Gannett Satellite Network, 157 Wis. 2d 395, 400, 459 N.W.2d 873 (Ct. App. 1990). See Quesenberry v. Milwaukee County, 106 Wis. 2d 685, 693, 317 N.W.2d 468 (1982). All of the types of detention described in that statute are detentions permitted by state law. The phrase "authorized by law" must therefore be construed to be limited to detentions authorized by state law. Since there is no state statutory provision permitting counties to contract for the detention of tribal prisoners in county jails, tribal prisoners may not be incarcerated under such agreements.

Mr. William D. Bussey
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I therefore conclude that counties currently lack statutory authority to enter into agreements to house persons in the county jail who have been arrested by tribal law enforcement officers for violations of tribal ordinances or ordered incarcerated by tribal courts. Securing the necessary authority would require amendment of existing law.

Sincerely,



James E. Doyle
Attorney General

JED:FTC:dah

CAPTION: Counties lack statutory authority to enter into agreements to house persons in the county jail who have been arrested by tribal law enforcement officers for violations of tribal ordinances or ordered incarcerated by tribal courts.