



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 1-98

May 5, 1998

Mr. Dennis E. Kenealy
Corporation Counsel
Ozaukee County
Post Office Box 994
Port Washington, WI 53074-0994

Dear Mr. Kenealy:

You ask, in effect, how funds received from a county sales and use tax imposed under section 77.70, Stats., may be budgeted by the county board.

In my opinion, such funds may be budgeted to reduce the amount of the overall countywide property tax levy or to defray the cost of any item which can be funded by a countywide property tax.

Section 77.70 provides in part:

Any county desiring to impose county sales and use taxes under this subchapter may do so by the adoption of an ordinance, stating its purpose and referring to this subchapter. The county sales and use taxes may be imposed only for the purpose of directly reducing the property tax levy and only in their entirety as provided in this subchapter.

Prior to 1985, counties had the authority to impose sales and use taxes, but the Wisconsin Department of Revenue was required to distribute all of the net proceeds of such taxes to towns, cities and villages within the county imposing the tax. See sec. 77.70, Stats. (1983) and sec. 77.76(4), Stats. (1983). In 1971, the Attorney General opined that a county board could not require by ordinance that the net proceeds of a county sales and use tax be used solely to reduce property taxes levied by the various taxing jurisdictions but must instead be distributed to towns, cities and villages with no conditions attached. See 60 Op. Att'y Gen. 387 (1971). Prior to 1985 few, if any, counties imposed a sales and use tax, presumably because none of the proceeds of the tax could be used by county government and because counties could not control

how the net proceeds of such taxes would be used by other local units of government within the county.

In 1985, the Legislature amended the statute to allow county governments to retain the net proceeds of the sales and use tax, if those proceeds are used "only for the purpose of directly reducing the property tax levy." See sec. 77.70, Stats. (1985), as amended by 1985 Wisconsin Act 41. Although many counties have enacted sales and use taxes since 1985, I am aware of no litigation concerning the meaning of the quoted restriction on the use of county sales and use tax revenues since the passage of 1985 Wisconsin Act 41. It is likely that there has been no litigation because the property tax is almost the only source available to counties to raise revenues of their own accord.

Some counties illustrate property tax reductions by showing the receipt of sales and use tax revenues on individual property tax bills. Counties, however, lack statutory authority to implement a direct system of tax credits to individual property owners through distribution of property tax bills, the contents of which are specified by the Department of Revenue.

The countywide property tax levy is usually shown as a single line revenue source in the budget. The net proceeds of the sales and use tax are also a revenue item. The countywide property tax levy is clearly reduced to the extent that the net proceeds of the sales and use tax are shown as a budget item which is subtracted directly from the total property tax before determining the net property tax that must be levied. That budgeting method directly reduces the amount of countywide property tax which must be paid by each taxpayer.

Some counties have also budgeted the net proceeds of the sales and use tax as a revenue source used to offset the cost of individual items contained in the county budget. The same amount of countywide property tax reduction occurs whether the county board chooses to budget revenues from net proceeds of the sales and use tax as a reduction in the overall countywide property tax levy or as an offset against a portion of the costs of specific items which can be funded by the countywide property tax. With respect to the funding of specific items, I have considered the possibility that the statute could be construed to require that the net proceeds of the sales and use tax be used only to defray the cost of existing projects, as opposed to new items. A statute, however, should be construed so as to avoid unreasonable and absurd results. Estate of Evans, 28 Wis. 2d 97, 101, 135 N.W.2d 832 (1965). It would be unreasonable to construe the statutory restriction so that counties which had already started certain projects could use sales and use tax revenues to complete them while other counties contemplating the initiation of similar projects could not use

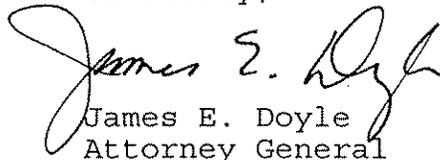
Mr. Dennis E. Kenealy
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sales and use tax revenues to fund them at all. Since there is no such county-by-county limiting language in the statute, it is my opinion that the extent of the authority to use sales and use tax revenues in connection with individual budget items does not vary from county to county. Counties may therefore also budget the net proceeds of the sales and use tax as an offset against the cost of any individual budgetary item which can be funded by the countywide property tax.

I recognize that, if possible, meaning should be ascribed to the word "directly" in section 77.70. Ordinarily, statutory language should not be rendered superfluous. State ex rel. Taylor v. Linse, 161 Wis. 2d 719, 723, 469 N.W.2d 201 (Ct. App. 1991). It is a basic principle of statutory construction that terms are ordinarily construed by our courts according to their ordinary and accepted meaning, by resort to a recognized dictionary, if necessary. State v. McCoy, 143 Wis. 2d 274, 287, 421 N.W.2d 107 (1988). Insofar as is relevant to your inquiry, Webster's Third New International Dictionary 641 (1986) defines the term "directly" as "without any intermediate step." The term "directly" has meaning in those instances where budgetary items cannot be funded through a countywide property tax. For example, under section 43.64(2), property taxpayers in certain taxation districts are exempt from any property tax levy for funding public library service. Similarly, under section 251.08, property taxpayers in certain taxation districts are exempt from any property tax levy for funding county health departments. Sales and use tax revenues may not be budgeted as a revenue item used to offset the cost of any specific budget item which cannot be funded through a countywide property tax. Although any revenue source frees up other funds to be used for other budgetary purposes, the budgeting of sales and use tax proceeds to defray the cost of items which cannot be funded by a countywide property tax constitutes indirect rather than direct property tax relief.

I, therefore, conclude that funds received from a county sales and use tax under section 77.70 may be budgeted by the county board to reduce the amount of the countywide property tax levy or to defray the cost of any budget item which can be funded by a countywide property tax.

Sincerely,


James E. Doyle
Attorney General

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Mr. Dennis E. Kenealy
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CAPTION:

Funds received from a county sales and use tax under section 77.70, Stats., may be budgeted by the county board to reduce the amount of the countywide property tax levy or to defray the cost of any item which can be funded by a countywide property tax.



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

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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 2-98

May 11, 1998

Mr. Matthew F. Anich
Corporation Counsel
Ashland County
220 Sixth Avenue West
Ashland, WI 54806-0677

Dear Mr. Anich:

You have asked whether all remainderpersons are required to sign Wisconsin Register of Deeds Association Form HT-110 (11/96), entitled, "Termination of Decedent's Property Interest," when more than one remainderperson survives the deceased holder of a life estate in property, and whether a register of deeds should refuse to record Form HT-110 if all remainderpersons have not signed the document. Because section 867.045, Wis. Stats., neither requires that all remainderpersons appear before the register of deeds for purposes of verifying the information required to complete the form, nor that any remainderperson sign the form, it is my opinion that all remainderpersons need not sign the form before it may be recorded.

Section 867.045, Stats., provides, in relevant part:

Administrative joint tenancy or life estate termination for certain property. (1) Upon the death of any person having an interest as a joint tenant or life tenant in any real property or in the vendor's interest in a land contract or a mortgagee's interest in a mortgage, the surviving joint tenant or remainderman may obtain evidence of the termination of that interest of the decedent by providing to the register of deeds of the county in which such property is located a certified copy of the death certificate for the decedent and by providing, on applications supplied by the register of deeds for that purpose, the name and address of the decedent and of the surviving joint tenant or remainderman and the date of the decedent's death. The surviving joint tenant or remainderman shall provide to the register of deeds the following information:

(j) In the case of real property, a copy of the property tax bill for the year preceding the year of the decedent's death and a legal description of the property, which description shall be imprinted on or attached to the application. The register of deeds shall record the bill.

(k) In the case of a joint tenancy or life estate, a copy of the deed that creates the interest.

(2) The register of deeds or other person authorized under s. 706.06 or 706.07 shall complete a statement at the foot of the application, declaring that the surviving joint tenant or remainderman appeared before him or her and verified, under oath, the correctness of the information required by sub. (1).

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(4) Upon the recording, the application shall be presumed to be evidence of the facts recited and shall terminate the joint tenancy or life estate

The statute requires no remainderperson's signature on the form known as HT-110. Rather, the statute provides that the remainderperson appear before the register of deeds and verify, under oath, the correctness of the information required under section 867.045(1). Therefore, it is my opinion that, upon verification, the properly completed form may be recorded without the appearances of all remainderpersons before the register of deeds, and without the signatures of all remainderpersons, where there is more than one remainderperson.

You have commented that the practice of registers of deeds varies from county to county with respect to the signature requirements of Form HT-110. This varied practice may have its origins in the requirements of a previous version of Form HT-110 showing a revision date of March 1977. The 1977 version of the form expressly required the signatures of all joint tenants. The Department of Revenue ("DOR") drafted this earlier version, pursuant to its statutory duty to prepare and furnish such forms to registers of deeds (see sec. 867.045(5), Stats. (1989-90)) prior to the amendment to section 867.045, that became effective on April 10, 1992 (1991 Wisconsin Act 133). The earlier requirement that all tenants sign the DOR-drafted form stemmed from DOR's desire to provide joint tenants with notice that tax consequences might ensue from such transfer at that time.

Inheritance tax is no longer employed in Wisconsin. Under current estate tax law, individual notification of such transfers

is not a concern. The drafting notes of 1991 Wisconsin Act 133 include analysis by the Legislative Reference Bureau, which states, in relevant part:

Under current law, there are several ways to terminate a joint tenancy or life tenancy upon the death of a person who holds an interest in the property that is held in that form. The department of revenue has distributed forms for that purpose but, because of the repeal of the inheritance tax, the department will discontinue that practice. Under this bill, the registers of deeds will assume responsibility for the form.

1991 Senate Bill 342. The version of Form HT-110 in use today, showing a revision date of November 1996, was prepared by the Wisconsin Register of Deeds Association and nowhere states that all persons receiving property thereunder must sign the application.

That the signatures of all remainderpersons, and that the appearances of all remainderpersons before the register of deeds are not required for proper completion of Form HT-110 pursuant to section 867.045, may be further supported by reference to the language of related statute section 867.046. Current Form HT-110 expressly may be used either to perfect the record as to the termination of a decedent's interest as a joint tenant or life tenant in any real property under section 867.045, or to perfect the record as to the termination of a decedent's interest in any real property, including an interest in survivorship marital property, under section 867.046.

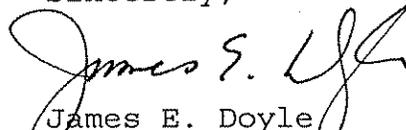
Interrelated statutes must be construed to produce harmonious results. Under sec. 867.046(2), Stats., "the decedent's spouse or a beneficiary of a marital property agreement may obtain evidence of the termination of that interest of the decedent and confirmation of the petitioner's interest in the property" by providing specified documents as well as information on an application supplied by the register of deeds. Thus, where section 867.046 provides that a beneficiary may use the application procedure provided in section 867.046(2), to perfect the record as to the termination of a decedent's property interest, it follows that not all such beneficiaries receiving property under section 867.046 need appear before the register of deeds to verify the information required for completion of the form, and sign Form HT-110.

Hence, in order to harmonize sections 867.045 and 867.046, it must be concluded that all remainderpersons who receive property under section 867.045 likewise need not appear before the register

Mr. Matthew F. Anich
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of deeds to verify the required information, and sign Form HT-110,
before the form may be recorded.

Sincerely,



James E. Doyle
Attorney General

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CAPTION:

Ashland County Corporation Counsel requests opinion clarifying the number of signatures required on Wisconsin Register of Deeds' "Termination of Decedent's Property Interest" form which is used upon death of a joint tenant in property, savings/checking accounts, securities to surviving joint tenants.



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

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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 3-98

September 3, 1998

Mr. Kenneth M. Wagner
Corporation Counsel
Calumet County Courthouse
206 Court Street
Chilton, WI 53014-1198

Dear Mr. Wagner:

You have asked whether county human service or law enforcement authorities may transport an alleged victim of sexual abuse from the child's school to another interview site for the purposes of conducting and videotaping an investigatory interview, without consent from the child's parents.¹ If transportation is authorized under those circumstances, you request clarification of the school district's responsibility for any child who is transported from school grounds.

Chapter 48, Stats., the Children's Code, authorizes county child protection workers to interview a child at any location. The statute is silent, however, on the issue of transportation to the interview site. It is my opinion that, read together, the various provisions of chapter 48 create implicit authority to transport a child to a child advocacy center when necessary to an investigation of child sexual assault. It is my opinion that transportation of a child victim for investigative purposes, like the investigative interview itself, may be accomplished without parental consent or knowledge when the county department determines it necessary.

¹The Calumet County Department of Human Services, Sheriff's Department and District Attorney's Office have developed a soundproof, distraction-free interview room, located in the Calumet County Department of Human Services. Interviews conducted there will be videotaped, and the tape-recorded interviews may ultimately be used by the criminal justice system in prosecution of the perpetrators.

Child Protection Investigative Authority Under Chapter 48

Wisconsin law entrusts county departments with the responsibility and authority to investigate "conditions surrounding . . . children in need of protection or services . . . and to take every reasonable action within its power to secure for them the full benefit of all laws enacted for their benefit." Sec. 48.57(1)(a), Stats.

Statutory direction for the investigation of suspected child maltreatment is detailed in section 48.981(3)(c)1. As you noted, the Children's Code authorizes county departments to interview a child at any location, without permission from the child's parents, if to do so is necessary to a determination of whether the child is in need of protection or services. Section 48.981(3)(c)1., as amended by 1997 Wisconsin Act 27, sec. 1703, provides, in relevant part:

The agency . . . may contact, observe or interview the child at any location without permission from the child's parent, guardian or legal custodian if necessary to determine if the child is in need of protection or services, except that the person making the investigation may enter a child's dwelling only with permission from the child's parent, guardian or legal custodian or after obtaining a court order to do so.

This section neither explicitly permits nor prohibits human service professionals from transporting a child for purposes of the interview. Because the statute could reasonably be interpreted to support either position, the question ultimately becomes one of legislative intent.

When faced with ambiguous statutes, Wisconsin courts will look to rules of statutory construction and to the legislative history of the statute. State v. Williams, 198 Wis. 2d 516, 544 N.W.2d 406 (1996). A court will favor statutory interpretation which fulfills the Legislature's objectives over an interpretation which does not. Belleville State Bank v. Steele, 117 Wis. 2d 563, 345 N.W.2d 405 (1984). In its effort to most accurately discern legislative intent, a court examines the scope, subject matter and object of the statute. Pulsfus Farms v. Town of Leeds, 149 Wis. 2d 797, 806, 440 N.W.2d 329 (1989). Where multiple statutes contained in the same chapter assist in implementing the chapter's goals and policy, the statutes should be read in pari materia and harmonized if possible. State v. Amato, 126 Wis. 2d 212, 216, 376 N.W.2d 75 (Ct. App. 1985). Ultimately, courts will construe the statute to give effect to its leading idea and will attempt to bring the entire statute into harmony with the legislative purpose. Williams, supra.

Chapter 48 Statement of Legislative Intent

The Legislature has indicated that chapter 48 is to be liberally construed to effectuate a number of express legislative purposes. Included among the stated purposes are: to recognize a child's need to be free from physical, sexual or emotional injury or exploitation, sec. 48.01(1)(ag), Stats., and to "ensure that children are protected against the harmful effects resulting from . . . the destructive behavior of parents or parent substitutes in providing care and protection for their children," sec. 48.01(1)(bg), Stats. The Legislature recognizes that agencies often share responsibility for children, and goes on to instruct that, "[t]his duty shall be discharged in cooperation with the court and with the public officers or boards legally responsible for the administration and enforcement of those laws." Sec. 48.57(1)(a), Stats., as amended by 1997 Wisconsin Act 292, sec. 251.

While emphasizing the importance of family unity, the Legislature recently amended the Children's Code "to more strongly emphasize that the best interests of the child must always be of paramount consideration under ch. 48, Stats." (Joyce L. Kiel and Don Salm, Wisconsin Legislative Council Staff, Information Memorandum 96-3, New Law Relating to Children in Need of Protection or Services, Involuntary Termination of Parental Rights and Other Matters Under the Children's Code and Juvenile Justice Code (1995 Wisconsin Act 275), May 17, 1996, at 13). Especially significant to the present question are additions to the Children's Code purpose statement which now encourage "innovative and effective prevention, intervention and treatment approaches, including collaborative community efforts" in policy development. Sec. 48.01(1)(br), Stats. Other sections of chapter 48 provide further evidence of the Legislature's intent to protect children through the use of collaborative investigation techniques.

Interview Protocol and Agency Collaboration

Section 48.981 provides direction to county departments and law enforcement agencies that conduct investigations of child maltreatment. Generally, law enforcement and county departments are required to initiate diligent and timely investigations. The statute specifies time periods during which investigations must be initiated and it delineates circumstances in which child protection workers must observe or interview the child.² The Children's Code

²Within 24 hours after receiving a report under par. (a), the agency shall, in accordance with the authority granted to the department under s. 48.48(17)(a)1. or the

(continued...)

places primary responsibility for investigation of intrafamilial abuse for purposes of child protection with the county departments. However, under section 48.981(3)(b)1., law enforcement officers are required to conduct immediate investigations when reports indicate that a child's health or safety may be in immediate danger.

In addition to statutory mandates concerning interview protocol, county departments receive guidance on child abuse investigations from investigation standards promulgated by the State Department of Health and Family Services.³ Sec. 48.981(3)(c), Stats. The Standards expressly support the need to protect child victims from further traumatization and to preserve evidence in the form of the child's statements.⁴

²(...continued)

county department under s. 48.57(1)(a), initiate a diligent investigation to determine if the child or unborn child is in need of protection or services. . . . If the investigation is of a report of child abuse or neglect or of child threatened abuse or neglect by a caregiver specified in sub. (1)(am)5. to 8. who continues to have access to the child or a caregiver specified in sub. (1)(am)1. to 4., or of a report that does not disclose who is suspected of the child abuse or neglect and in which the investigation does not disclose who abused or neglected the child, the investigation shall also include observation of or an interview with the child, or both, and, if possible, an interview with the child's parents, guardian or legal custodian.

Sec. 48.981(3)(c)1., Stats., as amended by 1997 Wisconsin Act 27, sec. 1703 and 1997 Wisconsin Act 292, sec. 274m.

³"These Standards provide county agencies with more specific direction in conducting child abuse and neglect investigations than is offered by the statute alone. The intent of this project is to enhance statewide consistency and good practice in intervening in instances of child maltreatment." Department of Health and Social Services, Division of Community Services, Bureau for Children, Youth and Families, Child Protective Service Investigation Standards (hereinafter "Standards"), August 5, 1994, at 3.

⁴"The first contact for intervention in investigating reports of maltreatment by Primary Caretakers is usually the identified child. This minimizes the potential for the child to be subjected to pressure to conceal information or be subjected to retribution before the CPS worker can intervene to address these dynamics." Standards at 7.

In recent years, social scientists have found that it is often best to avoid repeated interviews with child victims.⁵ This may be true to avoid traumatizing the child further and also to preserve the integrity of the child's statement as evidence. The Standards also recognize the usefulness of collaborative investigations between law enforcement officers and county child protection workers.⁶

The use of investigative tools, such as child-centered interview sites, interdisciplinary investigative teams and the use of videotaped interviews, is accepted practice in Wisconsin and in many other jurisdictions.⁷ These are specialized investigative methods intended to produce reliable evidence, reduce traumatization of child victims, and lead to more timely resolution of cases.⁸ This is true whether the investigation is being pursued for child protection purposes or for a criminal investigation.

The decision to actually implement collaborative investigative techniques is made at the county level, through a county department and/or county board's formal recognition of a multidisciplinary child protection team, or child advocacy center. Section 48.981(7) now permits free exchange of otherwise confidential child abuse and neglect reports between members of multidisciplinary child protection teams recognized by the county department, and to staff members of child advocacy centers recognized by the county board or department.

Doctrine of Implied Powers

In sum, the Legislature has entrusted county departments with the responsibility to interview children early, at any location, outside the presence of a primary caregiver, with sensitivity and

⁵See generally, Lucy S. McGough, Child Witnesses: Fragile Voices in the American Legal System (1994).

⁶"These investigations should involve law enforcement personnel, as dictated by the county agency's interagency agreements. It is the role of law enforcement staff to collect evidence related to possible criminal behavior." Standards at 9.

⁷In addition to provisions of chapter 48, section 908.08(1) permits use of videotaped statements of children in criminal trials, hearings and revocation hearings, in some circumstances, even where the child is available to testify.

⁸See generally, John B. Myers, Legal Issues in Child Abuse and Neglect (1992); Nancy Walker Perry and Lawrence S. Wrightman, The Child Witness: Legal Issues and Dilemmas (1991).

in a manner which preserves evidence in the form of the child's statement, and, where necessary, without the parent's knowledge or consent. Further, the Legislature recognized the authority of individual counties to create multidisciplinary child protection teams and child advocacy centers.

My office has previously observed that, "[a]lthough parental authority and responsibility to direct the upbringing, conduct, and education of a child is generally recognized, such authority is not unlimited." 81 Op. Att'y Gen. 126, 131 (1994). Clearly, investigation of child sexual abuse allegations, in some situations, may justify infringement on the parent's right to know and control the child's whereabouts during the school day.

Similarly, in some circumstances, investigation of child abuse allegations may justify infringing upon school officials' authority to control a child during the school day. County department staff who are conducting an investigative interview control the circumstances of that interview to the extent that the county department staff member may, in the exercise of professional judgment and in accordance with department standards, exclude school personnel from interviews. 79 Op. Att'y Gen. 49 (1990).

The Legislature cannot detail the precise means through which government agencies carry out their statutory obligations. The doctrine of implied powers explains that, "[w]here a statute confers powers or duties in general terms, all powers and duties incidental and necessary to make such legislation effective are included by implication." 2B Singer, Sutherland Statutory Construction, § 55.04 (Sands 5th ed. 1992), citing United States v. Sischo, 262 U.S. 165 (1923); Phelps Dodge Corp. v. National Labor Relations Bd., 313 U.S. 177 (1941); State of Maryland v. United States, 165 F.2d 869 (4th Cir. 1947). Certainly, there are limits to which the doctrine of implied powers may extend, but as is true with other questions of statutory construction, "[w]hether a power is to be implied turns on the intent of the legislature." Madison Metropolitan Sch. Dist. v. DPI, 199 Wis. 2d 1, 13, 543 N.W.2d 843 (Ct. App. 1995). Implied power may be found when the power rises fairly by implication from expressed powers, or if the power is necessarily implied by the statutes under which an agency operates. Id. If there is reasonable doubt as to the intent of the Legislature to extend power, the doctrine of implied powers is not applicable. Id.

In In Interest of R.W.S., 162 Wis. 2d 862, 471 N.W.2d 16 (1991), the Wisconsin Supreme Court looked to the statement of legislative intent in the Children's Code to find implied power to order restitution on read-in charges in a juvenile delinquency matter where the language of the statute did not explicitly permit or prohibit the order. The Court based its reasoning on the

objectives of chapter 48, and the Legislature's instruction that chapter 48 is to be liberally construed. "What is called a liberal construction is ordinarily one which makes a statute apply to more things or in more situations than would be the case under strict construction." R.W.S. at 871-72. In R.W.S., the court explained that the facts did not represent an "'unfettered [use of] discretion to craft unique and unspecified remedies in juvenile matters'" because there was no contrary statutory language and because the language of the relevant statute, construed in light of legislative intent, supported the implied power. R.W.S. at 874.

The Court's reasoning in R.W.S. suggests that the power to transport a child to a child-centered interview site may be implied under certain circumstances. The Legislature has granted county departments the authority to interview, contact or observe a child at any location. The only exception to that broad grant of power to interview a child at any location is that the county agency may not enter the parental home without consent or permission from the courts.⁹ Where the Legislature specifically enumerates exceptions to a statute, the Supreme Court presumes that the Legislature intended to exclude other exceptions based on the rule of expressio unius est exclusio alterius. In Interest of Angel Lace M., 184 Wis. 2d 492, 516 N.W.2d 678 (1994).

Child advocacy centers are the result of agencies' collaborative efforts toward a common goal: furtherance of the best interests of certain child victims and witnesses. The legislative guidance that chapter 48 is to be construed liberally, and its explicit statement that county departments may interview a child at any location, support a finding that children may be interviewed at child advocacy centers recognized by the county board or department. Because the Legislature has endorsed the county's authority to recognize and utilize child advocacy centers, it would be unreasonable to interpret the statutes in such a way as to preclude their use with the children who are potentially most vulnerable to continued harm--those whose parents may be the perpetrators. It is only reasonable, then, under R.W.S., to imply the power to transport a child from point A to point B to accomplish the stated legislative purposes.

⁹Historical drafting documents suggest that in creating this provision, the legislature rejected the more limiting language which permitted a child to be interviewed at school, in favor of the language currently in place. 1983 Wisconsin Act 172, Drafting File, Report of the Implementation of the Child Abuse and Neglect Act of 1978: Summary of Needs and Recommended Changes Task Assignment #2.3 Children's Service Planning Guideline, April 1982, at 12.

My conclusion, that staff of county departments or law enforcement officers working in collaboration with the county department may transport a child to a child advocacy center for purposes of an investigative interview, finds further support in chapter 950, Rights of Victims and Witnesses of Crime. In section 950.055(1), the Legislature sets out its intent to provide children with additional rights and protections during their involvement as victims or witnesses within the criminal justice or juvenile justice systems.¹⁰ Further, section 950.05(1)(c) encourages counties to provide victims and witnesses with "[e]scort and other transportation services related to the investigation or prosecution of the case, if necessary or advisable." The responsibility to provide and enforce the additional rights assured to children is assigned to the county board, making this section additionally supportive of a county's right to make use of child advocacy centers as recognized by the county board or department.¹¹

In conclusion, chapter 48, without further analysis, may be interpreted one of two ways: either to provide implicit authority to transport children to an investigative interview at a county recognized advocacy center or to render the advocacy centers unavailable to the most vulnerable victims. The authority to transport a child to an advocacy center is a power necessary to utilization of the advocacy center. I am satisfied that any other interpretation of this question would be contrary to the intent of the Legislature.

As a general matter, parents should, of course, be fully involved when services are provided to their children. Where circumstances suggest that is not possible, I encourage county departments to work closely with school personnel, the prosecutor, law enforcement and other colleagues in county government to ensure that child advocacy centers function as intended.

Your remaining questions relate to the extent, if any, of a school district's legal liability in cases where county personnel transport a child from school to conduct an interview. My office

¹⁰In addressing additional services, the Legislature specifically makes reference to use of videotaped depositions under sections 908.08 or 967.04(7).

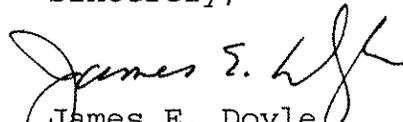
¹¹In each county, the county board is responsible for the enforcement of rights and the provision of services under this section. . . . To the extent possible, counties shall utilize volunteers and existing public resources for the provision of these services.

Mr. Kenneth M. Wagner

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is not generally authorized to advise school districts and, thus, cannot issue an opinion on those issues. See 77 Op. Att'y Gen. Preface (1988). I would note, however, that your request points to no statutory language in section 48.981(4), or elsewhere, which: (1) extends immunity to school district personnel unless they are involved in the conduct of the investigation itself; or (2) which alters the legal principle that "[a] teacher in the public schools is liable for injury to the pupils in his charge caused by his negligence or failure to use reasonable care." Grosso v. Wittemann, 266 Wis. 17, 20, 62 N.W.2d 386 (1954).

Sincerely,


James E. Doyle
Attorney General

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CAPTION:

County Departments have authority to transport a child to a county-recognized child advocacy center for the purpose of an investigatory interview without consent of the primary caretaker if to do so is necessary to an investigation of alleged child maltreatment. Ordinarily, transportation should be conducted without consent of the primary caretaker only when the primary caretaker may be the perpetrator of child maltreatment, or if the identity of the alleged perpetrator is unknown. Law enforcement officers may transport the child at the request of the county department for purposes of a collaborative interview or if the interview is being conducted by law enforcement as authorized by section 48.981(3)(b)1., Stats.