



MEMORANDUM

TO: Representative Alex Dallman
FROM: Richard Loeza, legislative analyst
DATE: March 12, 2021
SUBJECT: Countywide EMS and levy limit exemptions

You asked whether county boards that provided countywide Emergency Medical Services (EMS) by contracting out to existing municipal and private EMS providers are still eligible for the levy limit exemption in [Wis. Stat. § 66.0602 \(3\) \(e\) 6](#). This structure is currently in use by Portage County, and the Department of Revenue (DOR) has not taken issue with the county claiming the exemption. Although Wisconsin courts have heard a case relating to the overall legality of this EMS structure, the levy limit exemption for this EMS structure has not been directly challenged in court. If a case were brought, it is possible a court could find that this structure is not eligible for the levy limit exemption.

The memo proceeds by providing a brief overview of countywide EMS, then proceeds to discuss three approaches to countywide EMS systems for which the funding is exempt from levy limits: a consolidation approach, a supplemental approach, and a distributed approach.¹ Your question describes the distributed approach.

Overview

Levy limits under [Wis. Stat. § 66.0602](#) limit the amount by which any county's levy may increase in a year. Under [Wis. Stat. § 66.0602 \(3\) \(e\) 6](#), the amount counties levy for "a countywide emergency medical system" are not subject to the levy limit. The term "countywide emergency medical system" is not specifically defined, making it unclear what EMS structures meet the requirements of being "countywide systems."

Likely, the most important element of whether a system is "countywide" is whether the territory to which EMS are offered encompasses the entire county. All EMS programs, including those

¹ Some municipalities and counties cooperate to provide EMS through a joint EMS district under [Wis. Stat. § 66.0301 \(2\)](#) ([Wis. Stat. § 66.0602 \(1\) \(ak\)](#)). The amounts cities, villages, and towns levy to pay for charges assessed by a joint emergency medical services district do not count towards a municipality's levy limit. However, this design is distinct from a countywide service, as municipalities still fund and provide the services, and the district does not necessarily cover an entire county.

conducted by municipalities and counties, must designate the primary service area in which they will operate.² All EMS programs must also provide a plan for service provision, which must be approved by the Wisconsin Department of Health Services.³

There are three approaches to what counties claim is a countywide emergency medical system for the purpose of the levy limit exemption: a consolidation approach (e.g., Sawyer County), supplemental approach (e.g., Waushara County), and a distributed approach (e.g., Portage County). In all three approaches, the EMS directly administered by the county differ: either the county directly operates all governmental EMS in the county, provides supplemental services, or only provides administrative and financial services. Consistent across all approaches is that the services the county itself provides are provided across the entire county. However, LRB Senior Legislative Attorney Eric Mueller notes that, if challenged, it is unclear whether courts would find that systems relying on municipalities and private actors to ensure countywide coverage are a “countywide system.” There are no cases directly addressing this issue.

One clue as to whether a court would uphold these approaches comes from DOR. DOR calculates whether counties have exceeded their levy limits in a particular year. If DOR determines that a county has exceeded its levy limit, e.g., by claiming a levy limit exemption for which it is not eligible, then DOR may penalize the county by reducing the aid it receives under [Wis. Stat. § 79.02 \(1\)](#).⁴ In all three examples discussed below, DOR has not levied penalties and does not appear to have taken issue with each county’s claim for the levy limit exemption.⁵

The remainder of the memo looks at each approach and provides an example of a county employing it.

Consolidation approach

In a consolidation approach, a county assumes full responsibility for EMS provision across the county by consolidating all the municipal EMS agencies into a single county-level agency. This approach could occur under [Wis. Stat. § 59.03 \(2\)](#), which allows a county to assume municipal powers and responsibilities in a particular area, if it receives permission from all the municipalities involved.⁶ There are two ways a consolidated agency is funded under s. 59.03 (2). First, the involved municipalities can fund the county’s efforts by contracting to pay the county.⁷ Second, if every municipality in the county is involved in the consolidation, then the county can directly levy property taxes across the county to fund the service.⁸ [Sawyer County](#) employs a consolidated approach. The county agency is the only EMS in the county.⁹

² [Wis. Admin Code DHS 110.34 \(4\)](#).

³ [Wis. Stat. §§ 256.12 \(2\)](#) and [110.35 \(2\)](#).

⁴ [Wis. Stat. § 66.0602 \(6\) \(a\)](#).

⁵ Wisconsin Department of Revenue, “[Shared Revenue Payments](#),” <https://www.revenue.wi.gov/>.

⁶ A consolidated agency could also be formed through an intergovernmental cooperation agreement ([Wis. Stat. § 66.0301](#)).

⁷ [Wis. Stat. § 59.03 \(2\) \(e\)](#).

⁸ [Wis. Stat. § 59.03 \(2\) \(e\)](#).

⁹ “[Sawyer County Budget: Budget Presentation for Public Hearing](#)” (November 5, 2020), <https://www.sawyercountygov.org/>.

Supplemental approach

In a supplemental approach, a countywide EMS agency provides some EMS countywide to supplement those provided by municipalities and private agencies. For example, Waushara County offers its own EMS on top of municipal fire departments and a private EMS provider. However, the [Waushara County EMS agency](#) is the only provider in the county that offers paramedic-level service, while the municipal agencies provide only basic EMS.¹⁰ Because this county-level agency provides countywide services, the county claims the levy limit exemption. However, since there are several municipal agencies in Waushara County, it is unclear whether a court would agree that the supplemental approach constitutes a “countywide system,” if the exemption were challenged.

Distributed approach

In a distributed approach, counties provide central administration and funding to municipal or private EMS providers to ensure comprehensive coverage of the county. Even though contracted providers may not individually provide service to the entire county, the combined area covered by each provider does cover the entire county. Under this approach, counties claim that because services covering the entire county are paid for by the county itself, the county has a “countywide system” and its EMS expenses are exempt from the levy limit.

Portage County employs a distributed approach to providing countywide EMS.¹¹ The county contracts with two municipal providers to ensure countywide EMS coverage. In budget materials, the county notes that its countywide service is “all or nothing:” all municipalities must participate in order for the funding to be outside the levy limit.¹²

Portage County’s system was the subject of a lawsuit from 2015 to 2017.¹³ In that case, the Town of Grant hired its own EMS provider, for which the town levied taxes. However, the county’s service also levied taxes from, and provided EMS to, the Town of Grant. The Town of Grant and three of its residents sued Portage County for levying that tax. The Court of Appeals of Wisconsin found it was valid for a county board to, on its own initiative, levy funds for countywide EMS by contracting with other ambulance services under [Wis. Stat. § 59.54 \(1\)](#).¹⁴ Counties can provide a countywide EMS regardless of whether the services were supplemental to municipally provided services, or in lieu of them.¹⁵ Please note that Portage County’s use of the levy limit exemption was not specifically at issue in the case, just the validity of its EMS system’s structure.

¹⁰ Wisconsin Department of Health Services, “[Waushara County EMS Providers](#),” <https://www.dhs.wisconsin.gov/>.

¹¹ A summary of Portage County’s system can be found in “[Portage County Emergency Medical Services \(EMS\) Survey: City of Stevenspoint](#)” (February 6, 2018), <https://www.co.portage.wi.us/>, 1–2, 23.

¹² “[Portage County Emergency Medical Services \(EMS\) Survey: City of Stevenspoint](#)” (February 6, 2018), <https://www.co.portage.wi.us/>, 23.

¹³ [Town of Grant v. Portage County](#), 2017 WI App 60.

¹⁴ *Id.*, ¶ 15 to 17.

¹⁵ *Id.*, ¶ 41.

Conclusion

Counties have the power to contract for ambulance services, and may levy taxes for that service. In the distributed approach, counties claim that because they pay for service for the entire county, then the funds levied for such a service provide a “countywide system” eligible for the levy limit exemption under [Wis. Stat. § 66.0602 \(3\) \(e\) 6](#). Counties make this claim even though the individual agencies with which a county contracts do not cover the entire county, and the county does not directly operate contracted services. DOR has not taken issue with these claims. However, there is little case law on this topic and it is unclear how a court would decide what qualifies as a “countywide emergency medical system.”

If you have any questions or require additional information, please feel free to call Richard Loeza at 608-504-5890 or email richard.loeza@legis.wisconsin.gov.