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BY THE COURT:

DATE SIGNED: March 24, 2020

Electronically signed by John P. Zakowski
Circuit Court Judge

STATE OF WISCONSIN CIRCUIT COURT BRANCH VI BROWN COUNTY

BROWN COUNTY,

Plaintiff,

v.

BROWN COUNTY TAXPAYERS ASSOCIATION
and FRANK BENNETT,

Defendants/Third-Party Plaintiffs,

v.

Case No.: 18CV640

PETER BARCA, Secretary,
Wisconsin Department of Revenue,

Third-Party Defendant.

DECISION AND ORDER

Before the Court are cross-motions for summary judgment from Plaintiff Brown County ("County") and Defendants/Third-Party Plaintiffs Brown County Taxpayers Association ("BCTA") and Frank Bennett ("Bennett"; collectively, "Taxpayers"). For the following reasons, the County's motion will be **GRANTED** and the Taxpayers' motion will be **DENIED**.

PROCEDURAL POSTURE

On May 17, 2017, the Brown County Board of Supervisors, relying on Wisconsin Statutes section 77.70[1], enacted a Sales and Use Tax Ordinance ("Ordinance") creating a 0.5% sales and use tax on purchases made in Brown County. The Ordinance listed nine specific capital projects to be funded by the sales and use tax revenue. The County Clerk signed the Ordinance on May 19, 2017, the County Executive signed it on May 23, 2017, and the Board Chair signed it on May 24, 2017. Brown County published its proposed Notice of the 2018 Annual Budget to the public on October 13, 2017, and that budget provided that the revenue from the sales and use tax were to be used for the nine specific capital projects listed in the Ordinance. The Board of Supervisors made minor amendments to the proposed budget proposal and adopted it as the County's 2018 budget on November 1, 2018. The County Executive signed the budget with no vetoes on November 7, 2018.

The Taxpayers filed Brown County case number 18CV13, seeking a declaratory judgment on the validity of the Ordinance on January 2, 2018. The Honorable William M. Atkinson, Brown County Circuit Court judge, dismissed the action, without prejudice, in his March 1, 2018, Decision and Order, on the grounds that the suit was improper due to the Taxpayers' failure to provide notice under Wisconsin Statutes section 893.80. On March 1, 2018, the Taxpayers served a Notice of Claim on the County, seeking the same relief. The County disallowed that claim on or about May 22, 2018. The County, knowing an additional legal challenge to the Ordinance was likely on the way, preemptively filed this suit, seeking its own declaratory judgment that the Ordinance is valid in its current form. Conversely, the Taxpayers filed a counterclaim, asserting that the Ordinance is unlawful and void as a matter of law.

[1] All subsequent references to the Wisconsin Statutes are to the 2017–18 version unless otherwise indicated.

STANDARDS

I. Summary Judgment

Summary judgment will be granted only "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." WIS. STAT. § 802.08(2). A material fact is one that would influence the outcome of the case. *Metro. Ventures, LLC v. GEA Associates*, 2006 WI 71, ¶ 21, 291 Wis. 2d 393, 717 N.W.2d 58. An issue is "genuine" if a jury could find for the non-moving party based upon evidence provided in the record. *Id.* When reflecting on summary judgment motions, courts view affidavits and other proof in the light most favorable to the party opposing the motion, but consider evidentiary facts in the record true if they are not contested by other proof. *L.L.N. v. Clauder*, 209 Wis. 2d 674, 684, 563 N.W.2d 434 (1997).

Essentially, summary judgment is only appropriate if evidentiary facts indicate that "the law resolving the issue is clear." *Rady v. Lutz*, 150 Wis. 2d 643, 647, 444 N.W.2d 58 (Ct. App. 1989). Any reasonable doubt whether a genuine issue of material fact exists shall be resolved in favor of the non-moving party, and the moving party has the burden of proving there is no issue of material fact and they are entitled to judgment as a matter of law. *Burdick Hunter of WI, Inc. v. Hamilton*, 101 Wis. 2d 460, 470, 304 N.W.2d 752 (1981). When the moving party establishes a prima facie case for summary judgment, the non-moving party has the burden to establish that there is a genuine issue for trial. *Helland v. Kurtis A. Froedtert Mem'l Lutheran Hosp.*, 299 Wis. 2d 751, 764, 601 N.W.2d 619 (Ct. App. 1995).

II. Statutory Interpretation

"When construing statutes, meaning should be given to every word, clause and sentence in the statute, and a construction which would make part of the statute superfluous should be avoided wherever possible." *Hutson v. State Pers. Comm'n*, 2003 WI 97, ¶ 49, 263 Wis. 2d 612, 665 N.W.2d 212 (quoting *Kollasch v. Adamany*, 104 Wis. 2d 552, 563, 313 N.W.2d 47 (1981)). Additionally, courts "should not read into the statute language that the legislature did not put in." *State v. Matasek*, 2014 WI 27, ¶ 20, 353 Wis. 2d 601, 846 N.W.2d 811 (quoted source omitted). "[S]tatutory language is interpreted in the context in which it is used; not in isolation but as part of a whole; in relation to the language of surrounding or closely-related statutes; and reasonably, to avoid absurd or unreasonable results." *State ex rel. Kalal v. Circuit Court for Dane County*, 2004 WI 58, ¶ 46, 271 Wis. 2d 633, 681 N.W.2d 110. "Statutory language is given its common, ordinary, and accepted meaning, except that technical or specially-defined words or phrases are given their technical or special definitional meaning." *Id.* ¶ 45. For additional guidance, dictionaries are an acceptable source to determine common, ordinary, and accepted meanings of statutory words. *Id.* ¶ 53–54 (*See also State v. McCoy*, 143 Wis. 2d 274, 287, 421 N.W.2d 107 (1988)).

If the meaning of the statute is clear, there is no ambiguity, and where statutory language is unambiguous, there is no need to consult extrinsic sources of interpretation such as legislative history. *Id.* ¶ 46 (citing *Bruno v. Milwaukee Cty.*, 2003 WI 28, ¶¶ 7, 20, 260 Wis. 2d 633, 660 N.W.2d 656). However, "a statute is ambiguous if it is capable of being understood by reasonably well-informed persons in two or more senses." *Id.* ¶ 47 (citation omitted). "If a statute is ambiguous, the reviewing court turns to the scope, history, context, and purpose of the statute." *Prison Litig. Reform Act in State ex rel. Cramer v. Schwarz,* 2000 WI 86, ¶ 18, 236 Wis.

2d 473, 613 N.W.2d 591. It is statutory interpretation which is central to the court's decision. The court sees the purpose of the sales tax was to fund projects that otherwise would have had to have been financed through borrowing, thereby driving up property taxes, a kind of third rail in today's political landscape. Is this permissible under the language of Wis. Stat. 77.70?

ANALYSIS

The statutory provision at issue in this case reads as follows:

> 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 rate of the tax imposed under this section is 0.5 percent of the sales price or purchase price. Except as provided in s. 66.0621 (3m), 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.

WIS. STAT. § 77.70.

The question the parties ask this Court to answer is what it means "only" to "directly reduc[e]" the property tax levy in Brown County, Wisconsin. In the preceding sentence, the Court identified the operative words whose meanings the parties have skillfully debated. While seemingly simple in isolation, those three words—only, direct, and reduce—when used in the single sentence quoted above create the heart of the dispute here. Indeed, the parties do not dispute the County's authority to impose the Ordinance. The dispute is whether, in application, the Ordinance is "only" "directly reducing" the property tax levy in Brown County in compliance with Wisconsin Statutes section 77.70. *Id.*

Here, the Court elects to define these three words to provide additional guidance for the task at hand. According to the dictionary, the word "only" means: "as a single fact or instance and nothing more or different." MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 867 (11th ed. 2003). Next, the word "direct" means: "from point to point without deviation"; "from the source without

interruption or diversion"; and "without an intervening agency or step." (*Id.* 353.) Lastly, the word "reduce" means: "to diminish in size, amount, extent, or number." (*Id.* 1044.)

Indeed, the parties both insist that resolution of this matter involves nothing more than looking at the plain meaning of those three words. Therefore, in an effort to keep this decision simple for the parties, the Court will begin by analyzing the only interpretation of Wisconsin Statutes section 77.70—a Wisconsin Attorney General's Opinion from 1998. Then the Court analyze the arguments of the parties in the context of both the language of Wisconsin Statutes section 77.70 and the Attorney General's Opinion.

I. The Attorney General Opinion

On May 5, 1998, then Attorney General, James E. Doyle, issued an opinion to Ozaukee County Corporate Counsel, Mr. Dennis E. Kenealy. In response to Mr. Kenealy's inquiry, Attorney General Doyle offered his opinion as to "how funds received from a county sales and use tax imposed under section 77.70, Stats., may be budgeted by the county board." (Wis. Op. Att'y Gen. OAG 1-98, 1 (1998), https://www.doj.state.wi.us/sites/default/files/dls/ag-opinion-archive/1998/1998.pdf.) In the opinion, the Attorney General cites Wisconsin Statutes section 77.70 and emphasizes the same language the parties here argue over: "The county sales and use taxes may be imposed only for the purpose of directly reducing the property tax levy…" (*Id.*) In interpreting that sentence, the Attorney General opined that "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." (*Id.*) In arriving at that opinion, the Attorney General provided a brief history of Wisconsin Statutes section 77.70.

According to the Attorney General, prior to 1985 few, if any, Wisconsin counties imposed a sales and use tax, likely because the counties could not control how revenue from the sales and

use tax would be used by local units of government within the county—such as towns, cities, and villages. (*Id.*, 1–2.) It was in 1985 that the Wisconsin Legislature amended section 77.70 to allow county governments to retain the sales and use tax revenue, provided the sales and use tax revenue was used "only for the purpose of directly reducing the property tax levy." (*Id.* 2.) Once a county enacted a sales and use tax, the Attorney General explained the various ways it could potentially put the sales and use tax into practice.

One method of accounting for sales and use tax revenue which demonstrated a direct reduction of the property tax levy, was to show the sales and use tax revenue as a single line revenue source in the budget. (*Id.*) The Attorney General stated: "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." (*Id.*)

A second method of accounting for sales and use tax revenue was explained as follows:

> 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. (*Id.*)

Focusing on the issue funding of "specific items" in a county's budget with sales and use tax revenue, the Attorney General considered whether the "specific items" in a county's budget had to be existing at the time of the sales and use tax enactment, or whether new budget items could be funded, too. (*Id.*)

Looking at the plain language of the statute, the Attorney General concluded it would be "unreasonable" to construe Wisconsin Statutes section 77.70 in a way such that counties which

had started certain projects could fund and finish them with sales and use tax revenue, whereas other counties that were not yet funding similar projects could not use sales and use tax revenue to fund prospective budget items. (*Id.,* 2–3 (citing *Estate of Evans*, 28 Wis. 2d 97, 101, 135 N.W.2d 832 (1965)).) Again, the Attorney General went back to language of the statute, and found that because there was no such limiting language in the statute, it was his opinion there was no county-by-county restriction on authority to use sales and use tax revenue to fund individual budget items. (*Id.,* 3.) Therefore, counties could "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." (*Id.*)

As additional guidance to the querist, the Attorney General particularly counseled that meaning should be given to the word "directly" in the statute. (*Id.*) Indeed, the Attorney General even provided a dictionary definition of "directly" as: "without an intermediate step". (*Id.*) For sales and use tax revenue to "directly" reduce the property tax levy, the Attorney General opined that such revenue could be put only towards budget items that could be funded from the countywide property tax levy to begin with. (*Id.*) The Attorney General continued: "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." (*Id.*)

In concluding, the Attorney General found 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." (*Id.*)

II. The County's Argument

The County argues that the Ordinance is valid under the plain language of Wisconsin Statutes section 77.70, and that the County's interpretation of that Wisconsin Statute is supported by years of consistent application by the Wisconsin Attorney General, the Wisconsin Department of Revenue ("WIDOR"), and other Wisconsin counties. (Pl.'s Br. Supp. Mot. Summ. J. 2.) In putting Wisconsin Statutes section 77.70 into practice, the County argues it only had to comply with three statutory requirements. First, that the County had to adopt an ordinance authorizing the tax; second, that the tax must be imposed at the rate of 0.5 percent; and, three, that the tax may imposed only for the purpose of directly reducing the property tax levy.[2] (*Id.* 2–3.)

The Ordinance mandates that the 0.5 percent sales and use tax "*shall be utilized*", for a temporary 72 month period, "*only* to reduce the property tax levy by funding [nine] specific capital projects." (Ordinance § 9.02 (emphasis in original).) Further, the Ordinance mandates that the sales and use tax *"[s]hall not be utilized* to fund any operating expenses other than lease payments associated with the [nine] specific capital projects". (*Id.*) The nine specific capital projects include:

> (1) Expo Hall Project – $15,000,000.00;
> (2) Infrastructure, Roads and Facilities Projects – $60,000,000.00;
> (3) Jail and Mental Health Projects - $20,000,000.00;
> (4) Library Project – $20,000,000.00;
> (5) Maintenance at Resch Expo Center Project – $10,000,000.00;
> (6) Medical Examiner and Public Safety Projects – $10,000,000.00;
> (7) Museum Project – $1,000,000.00;
> (8) Parks and Fairgrounds Project – $6,000,000.00; and
> (9) Stem Research Center Project – $5,000,000.00.

(*Id.* (emphasis in original).) The County believes the quoted language above demonstrates the Ordinance's compliance with Wisconsin Statutes section 77.70. (Pl.'s Br. Supp. Mot. Summ. J. 7–8.)

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[2] The property tax levy is calculated by adding the operating levy—revenue necessary to fund county operations—to the debt levy—revenue necessary to pay the county's debts. (Compl. ¶ 23; Pl.'s Br. Supp. Summ. J. 6.)

The Ordinance also contains a mill rate[3] freeze which the County argues provides an additional safeguard against violating Wisconsin Statutes section 77.70. Specifically:

> While this temporary sales and use tax Ordinance is in effect, the Brown County Mill Rate shall not exceed the 2018 Brown County Mill Rate. If the Brown County Mill Rate does exceed the 2018 Brown County Mill Rate during the 72 months that this temporary 0.5 percent Brown County sales and use tax is in effect, then this sales and use tax shall sunset on December 31 of the year the Brown County Mill Rate exceeds the 2018 Brown County Mill Rate.

(*Id.* at 8; Ordinance § 9.03.) The County argues this mill rate freeze "guarantees compliance" with Wisconsin Statutes section 77.70's requirement that a sales and use tax be "imposed only for the purpose of directly reducing the property tax levy", because the whole "purpose" of the sales and use tax is to prevent the operating levy from increasing. (Pl.'s Br. Opp'n to Def.'s Mot. Summ. J. 5.) Further, there is a sunset provision:

> Subject to the following contingencies being met *on or before August 15, 2017*, this Ordinance shall take effect on January 1, 2018, and shall sunset 72 months thereafter, unless during said 72 month period any general obligation debt, excluding refunding bonds, is issued by Brown County in which case this Ordinance shall sunset on December 31 of the year any general obligation debt, excluding refunding bonds, is issued…

(Pl.'s Br. Supp. Mot. Summ. J. 8; Ordinance § 9.04 (emphasis in original).) In sum, the Ordinance would sunset before the 72-month term completes if the County's mill rate increased—i.e. property taxes go up—and if the County ever issued new debt, other than a refinance of existing debt. (Pl.'s Br. Supp. Mot. Summ. J. 8.)

In continuing to develop its argument, the County suggests that Wisconsin Statutes section 77.70 is an enabling statute that "*allows* a county to impose a sales and use tax…", but it contains no proscriptions on "*how* sales and use tax proceeds are to be used." (*Id.* 14–15 (emphasis in

[3] The mill rate is the amount, say for example $1.00, per $1,000.00 of the assessed value of real property, used to calculate the amount of property tax against the property. (Pl.'s Br. Supp. Summ. J. 8, n.10 (citation omitted); BLACK'S LAW DICTIONARY 1015 (8th ed. 2004).

original).) As touched on briefly in the prior paragraph of this decision, the County argues that the "purpose" of Wisconsin Statutes section 77.70 is what matters—and the purpose of the statute is to enable counties to directly reduce their property tax levy, not restrict how the counties spend the sales and use tax revenue. (*Id.* 15.) In furtherance of its argument that Wisconsin Statutes section 77.70 does not limit *how* sales and use tax revenue is to be spent, it points to the absence of any specific limiting language in the statute—such as "offset," "deduct," "subtract," or "retire"—that would make clear to counties they were to only to subtract the sales and use tax revenue from the property tax levy. (*Id.* 16.)

As contrast, the County points out that the sales and use taxes created under Wisconsin Statutes sections 77.705 and 77.706—known as the Miller Park Stadium Tax and the Lambeau Field Tax respectively—both contain language mandating that proceeds from the tax "shall be used exclusively to retire" each stadium district's debts. (*Id.*); WIS. STAT. §§ 77.705, 77.706. No such limiting language is found in Wisconsin Statutes section 77.70. Further, between these three separate statutes, the County emphasizes that the phrase "only in their entirety" simply refers to the amount of the sales and use taxes—it is not language that limits how the proceeds from the sales and use tax must be spent. (Pl.'s Br. Supp. Mot. Summ. J. 17.)

Continuing the theme of its argument, that Wisconsin Statutes section 77.70 is an enabling statute that allows counties to enact a sales and use tax, but is not a restraint on how counties spend the revenue from the tax, the County points to Wisconsin Statutes sections 66.0602(2)–(2m). There, the County points out a required a decrease in a county's levy limit—a cap that limits increases in the operating levy to the percentage of the county's new net construction[4]—should its

[4] A similar definition is offered by the Taxpayers: a county's levy is fixed at its current level, and can only be raised if the county experiences a net positive growth in property values due to new construction." (Def.'s Br. Supp. Mot. Summ. J. 16.)

debt levy in the current year be less than its debt levy in the previous year in an amount equal to the difference between the two years. WIS. STAT. § 66.0602(2)–(2m); (Pl.'s Br. Supp. Mot. Summ. J. 6, 17–18.) Further, a county must reduce its levy limit in the current year if it receives fee revenue collected for a covered service—such a garbage collection, fire protection, or snow plowing. WIS. STAT. § 66.0602(2m)(b)1.–(b)2. The County notes that a negative adjustment for delineated revenue streams, as is found in Wisconsin Statutes section 66.0602(2m), is nowhere to be found in section 77.70. (Pl.'s Br. Supp. Mot. Summ. J. 18.) In other words, the County argues that if the Legislature intended section 77.70 to require a negative adjustment to a county's property tax levy based on revenue from a sales and use tax, it would have added such language to section 77.70. (*Id.*) Indeed, the County points out that the levy limits in Wisconsin Statutes section 66.0602 were enacted in 2006, and section 77.70, in 1985—therefore, the Wisconsin Legislature has had ample opportunity to add either direct offset language as found in the Miller Park and Lambeau Field taxes, or a negative adjustment to account for revenue from a sales and use tax, but has declined to exercise either option.[5] (*Id.*)

The County does not dispute that some of the nine specific capital projects it is funding with revenue of the Ordinance, are new spending projects, or were projects that had not started as of the date of the Ordinance. (Compl. Ex. A.) Therefore, the County supports the Attorney General's interpretation of Wisconsin Statute section 77.70 which concluded that revenue from a sales and use tax may be used "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." (Pl.'s Br. Supp. Summ. Mot. J. 19; Wis. Op. Att'y Gen. OAG 1-98, 3 (1998).) The County also points out

[5] The County also notes that the WIDOR does not interpret Wisconsin Statues section 77.70 as requiring an offset—dollar for dollar or otherwise—because there is nothing on Form SL-202c, Section D: Adjustments to Allowable Levy Limits, which addresses revenue from sales and use taxes. (Pl. Br. Supp. Mot. Summ. J. 21–22.; Klingsporn Aff. ¶ 20, Ex. B, at 2.)

that the Attorney General's opinion was issued eight years before the enactment of the levy limits statutes. (Pl.'s Br. Supp. Mot. Summ. J. 20.) Further, the County cites *Schill v. Wisconsin Rapids Sch. Dist.*, 2010 WI 86, 327 Wis. 2d 572, 786 N.W.2d 177:

> A well-reasoned attorney general's opinion interpreting a statute is, according to the court's rules of statutory interpretation, of persuasive value. Furthermore, a statutory interpretation by the attorney general is accorded even greater weight, and is regarded as presumptively correct, when the legislature later amends the statute but makes no changes in response to the attorney general's opinion.

Schill v. Wisconsin Rapids Sch. Dist., 327 Wis. 2d 572, ¶ 126 (citations omitted).

Lastly, the County argues that finding the Ordinance invalid would lead to "absurd results". *Bank Mut. v. S.J. Boyer Constr. Inc.*, 2010 WI 74, ¶ 24, 326 Wis. 2d 521, 785 N.W.2d 462. Specifically, the absurd result would be that Brown County would have to borrow to meet its budget obligations. (Pl.'s Br. Supp. Mot. Summ. J. 23.) As of December 21, 2018, the date of its brief in support its motion for summary judgment, the County's 2019 budget and levy had already been set and approved. (Klingsporn Aff. ¶ 36.) For example, a repeal of the Ordinance on December 22, 2018, would have resulted in the County having to borrow to fund its existing obligations and/or decreasing its budget by approximately $24,500,000.00 to account for the anticipated sales and use tax revenue. (*Id.* ¶¶ 35–37.) Borrowing, would obviously cost the taxpayers interest. (*Id.* ¶ 29.) Also, a potential financial shortfall may hurt the County's credit rating. (*Id.* ¶ 38.) The County also alleges that revenue from the sales and use tax will result in a $140.20 decrease from 2018–2023 for a median value home—$163,200.00—in Brown County. (*Id.* ¶ 32.) Without the sales and use tax, the County alleges that property taxes on that same home would increase by $356.48 in that same time period. (*Id.* ¶ 33.)

III. The Taxpayers' Argument

The Taxpayers frame their argument with a very interesting analogy. To avoid diluting the impact of the Taxpayers' hypothetical by attempting to rephrase it here, it is presented in its entirety.

> If you give your daughter $10,000 on the condition that she use it to reduce her burdensome credit card debt, can she use it for anything she wants? Can she use the money to finance a vacation to Europe on the theory that she could have charged the trip on her credit card and her balance is "reduced" because she didn't have to borrow the money? What does it mean to "reduce" something? What does it mean to say that money has to be used for a specific purpose? These simple questions are at the heart of this case.

(Def.'s Br. Supp. Mot. Summ. J. 1.) The Taxpayers ask: "Did the [C]ounty's property tax levy decrease by the amount of sales and use tax raised?" (*Id.*) They answer "no"—instead, the Ordinance resulted in additional spending and an increase in the County's property tax levy. (*Id.* 2.) Therefore, the Ordinance is void. (*Id.*)

Similar to the Court, the Taxpayers begin by defining the operative words in Wisconsin Statues section 77.70. The Taxpayers define the word "reduce" in the exact same way as the Court—"to diminish in size, amount, extent, or number." (*Id.* 6.) The word "direct" they define as "stemming immediately from a source", "marked by the absence of an intervening agency, instrumentality, or influence." (*Id.*) The Taxpayers argue that "directly reducing the property tax levy" can only mean, to "diminish the amount of the levy in a manner stemming immediately from the source—the sales tax revenue—without any intervening steps." (*Id.*) The Taxpayers bolster this argument by defining the word "only" as "a single fact or instance and nothing more or different." (*Id.*) In essence, the single use of county sales and use tax proceeds is paying down, dollar for dollar, the property tax levy. (*Id.* 1.) Implicit in this argument, is the position that funding projects not in existence at the time of the sales and use tax is impermissible. (*Id.* 6–7.)

The Taxpayers support their plain language interpretation and resulting dollar-for-dollar offset function of Wisconsin Statutes section 77.70 with legislative history and the practices of other counties implementing a sales and use tax. The Taxpayers point out that during the 1980's property tax relief was a widespread topic of discussion in Wisconsin. (*Id.* 8.) While the state legislature was working on a bill that would refine the operation of sales and uses taxes by Wisconsin counties, then-Senator Russ Feingold suggested much of the language at issue here—that sales and use tax proceeds be used "only" for "property tax relief." (*Id.* 8–9; Kamenick Aff. Ex. I, R. 69 at 177.) Senator Feingold's proposed language eventually became the statute we are analyzing today. (*Id.* 9; *Id.* Ex. L & M, R. 69 at 180–181.) It is the earliest counties to adopt sales and use taxes, which the Taxpayers argue did it right—that those counties' sales and use tax ordinances embody the intent of the statute, which is to provide property tax relief, not create new spending. (Def.'s Br. Supp. Mot. Summ. J. 9.)

There are 66 counties in Wisconsin with sales and use taxes, and the various sales and use tax ordinances fall into four separate categories according to the Taxpayers. (*Id.* 10.) The first is the counties whose ordinances simply quote the language in Wisconsin Statutes section 77.70. (*Id.*) Examples of this first category included Ashland, Columbia, and Florence Counties—their ordinances from 1987, 1989, and 2016, respectively. (2nd Kamenick Aff., R. 51 at 26, 40, & 49.) The second category includes counties that included additional language restricting the use of the sales and use tax revenue. (Def.'s Br. Supp. Mot. Summ. J. 10–11.) This second category includes Grant County's ordinance adopted in 2002, which spells out the dollar-for-dollar reduction in the property tax levy by the amount of the sales and use tax revenue. (2nd Kamenick Aff., R. 51 at 54.) The third category includes counties that have, according to the Taxpayers "ignored" the statutory restriction of Wisconsin Statutes section 77.70 and have dedicated sales and use tax

revenue to broad categories of new spending, including capital projects. (Def.'s Br. Supp. Mot. Summ. J. 11). Washington County is an example of this third category, where it proposes to spend its sales and use tax revenue on items including an "approved Capital Improvement Program", an "approved private economic development projects and debt retirement from capital projects, and by applying sales tax revenue as a direct offset to the county property tax levy in the annual operating budget." (2nd Kamenick Aff., R. 52 at 55.) The last category, includes Brown County and its Ordinance, as well as Waupaca County[6], which dedicate sales and use tax revenue to specific new projects. (Def.'s Br. Supp. Mot. Summ. J. 11.)

The Taxpayers argue that the Attorney General Opinion improperly encouraged counties to stray from what it contends is the purpose of Wisconsin Statute section 77.70—a dollar-for-dollar offset of the property tax base. (*Id.* 13.) At the time of the Opinion, some counties were using sales and use tax revenue to pay for new projects (*Id.*; *See* Wis. Op. Att'y Gen. OAG 1-98, 2 (1998).) The Attorney General therefore incorrectly interpreted Wisconsin Statutes section 77.70 and concluded "that there was no meaningful distinction between using sales and use taxes to pay for existing expenses (lowering the actual property tax levy) and using such taxes to pay for new expenses (preventing the property tax levy from rising)". (Def.'s Br. Supp. Mot. Summ. J. 13–14.) This conclusion, the Taxpayers argue, shifted the focus from the intent of Wisconsin Statute section 77.70—using sales and use tax revenue "only" for property tax reduction—and instead to what types of projects said revenue could be used for. (*Id.* 14.) Such an analysis, when put into practice by counties allows for at best, indirect, and not direct, reduction of the property tax levy. (*Id.*)

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[6] Waupaca County's ordinance proposed to construct a new and necessary Courthouse with its sales and use tax proceeds. (2nd Kamenick Aff., R. 52 at 57.)

Even if the Court were to conclude that the Attorney General Opinion is correct, the Taxpayers argue the Ordinance should still be declared void. This result is required because the Attorney General Opinion was issued prior to the Wisconsin Legislature enacting the levy limits found in section 66.0602. (*Id.* 15.) The Taxpayers argue that because the County could not have raised its property tax levy by enough to fund the nine specific projects delineated in the Ordinance, the Ordinance fails even under the Attorney General's interpretation. (*Id.*) The Taxpayers argument is that in that age before levy limits, the Attorney General must have based his opinion on the assumption that any county budget item paid for by sales and use tax revenue, would also have been fundable by a property tax increase. (*Id.* 15–16.) Post-2006, counties can no longer raise property taxes to any rate they desire absent a voter referendum. WIS. STAT. § 66.0602(4).

Because the County was limited, by statute, to a levy increase of $4,453,035.00 in 2018, it could not have raised the property tax levy to cover the $18,000,000.00 in spending the budget proposed. (Def.'s Br. Supp. Mot. Summ. J. 17.) This illustration is the crux of the Defendant's argument—that the County did not use its sales and use tax revenue generated under the Ordinance "only" to "directly" reduce the property tax. To further its point, the Taxpayers argue that the County could not have borrowed to fund the budget, either. Borrowing was not possible, according to the Taxpayers, because the County did not complete any of the prerequisites for borrowing, chiefly via a referendum or a vote of three-fourths the majority of the county board. (*Id.* 18.); *See* WIS. STAT. § 67.045.

The Taxpayers provide a closing to their argument that is as interesting as its opening, and to avoid any dilution of its message, they close as follows:

> Using sales tax revenue to avoid a hypothetical property tax hike that might have occurred (had Brown County attempted to borrow money and had it been able to successfully navigate the process for doing so) is hardly a direct property tax reduction. It is, instead, a Rube Goldberg interpretation of the law. First, assume

> that the County would have borrowed to pay for these projects had it not passed a sales tax. Second, assume that the County could and would have met the prerequisites to borrow for the projects. Third, assume that paying for debt service on *borrowing* is just as good as paying for the projects *directly*. Finally, assume that avoiding an increase actually counts as a reduction. This circuitous and uncertain route is not "reducing" anything, much less "directly reducing the property tax levy."

(Def.'s Br. Supp. Mot. Summ. J. 19 (emphasis in the original).)

IV. The Court's Decision

The court has spent considerable time evaluating and digesting the briefs, affidavits, and arguments of counsel. There have been some hyperbolic arguments of chaos ensuing if the court decides one way or another. The court has endeavored to find the correct legal, not political, decision. As the Court stated at the beginning of this decision, the task at hand is to determine what it means to "only" to "directly reduc[e]" the property tax levy in Brown County, Wisconsin, under Wisconsin Statute section 77.70.

Both the County and the Taxpayers argued that the answer to that query involved merely reading the statute, and naturally their respective argument was correct. However, after dozens of filings and oral argument, the Court was still tasked with answering a question that proved more difficult than at first blush. The Court thanks both the County and the Taxpayers for their thorough and sincere efforts at articulating and presenting their positions with the utmost quality and fervent zeal.

Ultimately, the Court concludes that the Taxpayer's position—that Wisconsin Statutes section 77.70 requires a dollar-for-dollar reduction of the property tax levy with sales and use tax revenue generated by the Ordinance—is not the solely lawful operation required by the plain language of the statute. The Taxpayer's interpretation of Wisconsin Statute section 77.70 and the implications of putting that interpretation into practice reads mechanisms into the statute that

simply are not present because the Wisconsin Legislature did not put them there. It is not the Court's duty to read new words and mechanisms into a statute when those words and mechanisms were not put there by the Wisconsin Legislature. *See Matasek*, 353 Wis. 2d 601, ¶ 20. If Wisconsin Statute section 77.70 were to require a dollar-for-dollar reduction of a county's property tax levy, then the Wisconsin Legislature would have said so in the body of the statute, and it would have spelled out the process for Wisconsin counties to follow. For example, whether a county must draft its budget based on estimated sales and use tax revenue, or, whether it must bank that revenue for a year and then proceed using a liquidated figure. While a dollar-for-dollar offset of the property tax base is certainly one example of a direct reduction, the Court concludes it is not the exclusive mandate based off the plain language of the statute, as the Taxpayers suggest.

The Court believes this conclusion is supported by applying the rules of statutory interpretation to the plain language of Wisconsin Statute section 77.70. Indeed, "statutory language is interpreted in the context in which it is used; not in isolation but as part of a whole; in relation to the language of surrounding or closely-related statutes; and reasonably, to avoid absurd or unreasonable results." *State ex rel. Kalal*, 271 Wis. 2d 633, ¶ 46. The Court's reasoning under this framework follows. Also, the Attorney General Opinion which also supports the Court's conclusion that the Ordinance is not void as a matter of law, as argued by the Taxpayers, will be discussed in turn, as well.

a. The Context of WIS. STAT. § 77.70

Wisconsin Statutes section 77.70 is found in Subchapter V of Chapter 77 of the Wisconsin Statutes. Subchapter V is entitled "County and Special District Sales and Use Taxes". The first sentence of Wisconsin Statute section 77.70 states: "Any county desiring to impose county sales and use taxes under this subchapter *may* do so…" WIS. STAT. § 77.70 (emphasis added). When the

word "may" is used in a statute, discretionary authority is implied. *Liberty Grove Town Bd. v. Door Cnty. Bd. of Supervisors*, 2005 WI App 166, ¶ 10, 284 Wis. 2d 814, 702 N.W.2d 33 (citation omitted). Therefore, Wisconsin Statute section 77.70 gives Wisconsin counties the "discretion" to enact a sales and use tax. *See id.* However, the Wisconsin Legislature limited a county's discretion by requiring that "the county sales and use taxes may be imposed *only for the purpose of directly reducing the property tax levy…*" at the rate of 0.5 percent. WIS. STAT. § 77.70 (emphasis added). This statute, in the Court's opinion, is an enabling statute, with minor qualifiers, that when read in a vacuum leaves its actual operation far from as cut and dry as the Taxpayers insist.

The statute sections that follow, however, begin to add context and clarity to the scope of the discretion that the Wisconsin Legislature delegated to the counties under the statute section at issue. They do so through the revenue spending limitation the Wisconsin Legislature placed on two tax districts which it did not place on counties. Wisconsin Statutes sections 77.705 and 77.706—the Miller Park Stadium Tax and the Lambeau Field Tax respectively—both start with the same permissive language that both taxing districts "*may* impose a sales tax and a use tax under this subchapter…" WIS. STAT. §§ 77.705–77.706 (emphasis added). However, the stadium tax sections include a mandatory restriction on exactly how the sales and use tax revenue must be spent. Each section states that sales and use tax revenues "*shall* be used *exclusively to retire the district's debt*." *Id.* (emphasis added). Indeed, the use of "[t]he word "shall" is presumed to be mandatory when it appears in a statute." *Liberty Grove Town Bd.*, 284 Wis. 2d 814, ¶ 9. Therefore, in the stadium tax section, there is but one use for the revenue, specifically to pay the districts' debts dollar-for-dollar, as opposed to some other project associated with the stadium district. As a result, the districts have no discretion in how they spend their sales and use tax revenue.

The Taxpayers suggest this Court should *interpret* Wisconsin Statute section 77.70 in such a way that it operates in the same way the stadium tax sections were *actually written* by the Wisconsin Legislature. Unfortunately, the specificity of the stadium tax sections in not present in Wisconsin Statutes section 77.70 since paying a county's debts is but one avenue to directly reduce the property tax levy. To further the point with an example—the Wisconsin legislature could have refined its intentions when drafting Wisconsin Statutes section 77.70. It could have concluded it is best for Wisconsin counties not pay the interest costs associated with borrowing, and therefore, provided that counties "may" enact a sales and use tax "exclusively to retire the county's debt," and once a county's debt has been retired, the sales and use tax "shall sunset on the last day of the quarter in which certification that the county's debt is retired has been provided to the Department of Revenue." Unfortunately, such specificity in not found in Wisconsin Statute section 77.70, and therefore, the Court cannot conclude that as a matter of law the Taxpayers are correct in asserting that the only interpretation of the statute's language is that it requires the dollar-for-dollar offset as they advocate.

The Wisconsin Legislature was certainly capable of placing such restrictions on the counties, but it did not do so. Indeed, Wisconsin Statute section 66.0602 is an excellent example of the Wisconsin Legislature's capabilities of controlling the operational aspects of a county's budget. There, as has been discussed in this decision, a dollar-for-dollar negative adjustment to a county's levy limit is required when a county's debt levy in the current year is less than its debt levy in the previous year. WIS. STAT. § 66.0602(2m)(a). The following paragraphs provide further evidence of legislative design—a county "shall reduce its levy limit… by an amount equal to the estimated amount…" of certain types of revenue. WIS. STAT. § 66.0602(2m)(b)2.–3. Most pertinent to this decision, Wisconsin Statute section 66.0602 was enacted in 2006, whereas section

77.70 was enacted in 1985—therefore, the Wisconsin Legislature had ample opportunity to amend section 77.70 to provide a dollar-for-dollar offset or other specific restriction on a county's use of its sales and use tax revenue, but it has not done so. (Pl.'s Br. Supp. Mot. Summ. J. 18; Def.'s Br. Supp. Mot. Summ. J. 16.) Therefore, the unreasonable and absurd result the Court will avoid here is reading mechanisms into Wisconsin Statute section 77.70 that the Wisconsin Legislature did not place there, though it had the opportunity and the know-how to do it. *State ex rel. Kalal*, 271 Wis. 2d 633, ¶ 46; *See also Matasek*, 353 Wis. 2d 601, ¶ 20.

A second unreasonable result would be for this Court to usurp the decisions of the County's elected officials. The Court firmly believes the directive that a sales and use tax "may be imposed" and the revenue used "only for the purpose of directly reducing the property tax levy…" left ample discretion to Wisconsin counties' elected officials as to how they would directly reduce their respective property tax levies. WIS. STAT. § 77.70. The statute, which is an enabling statute, permits that counties "desiring to impose" a sales and use tax "may do so by the adoption of an ordinance." *Id.* The wording of "desiring to impose" implies a legislative process that is to occur at the county level. *Id.* Whether a county "desires", or does not "desire" to "impose" a sales and use tax, is a matter for the voters to decide through their elected representatives. *Id.* And if a county "desires" to impose a sales and use tax, it may do so by "[adopting] an ordinance"—another legislative process to be carried out by voters and their elected representatives. *Id.*

Brown County's Ordinance was no exception to the legislative process. On May 8, 2017, the Brown County Executive Committee conducted a regular meeting which was open to the public. (Chintamaneni Aff. Ex. A, R. 77 at 1.) At that meeting, County Executive Troy Streckenbach discussed the proposed Debt Reduction, Infrastructure & Property Tax Cut Plan—i.e. the Ordinance—which included the sales and use tax at issue here. (Chintamaneni Aff. Ex. B,

R. 78 at 2–5, 11.) The meeting minutes record that various county supervisors debated and questioned aspects of the Ordinance. (*Id.* at 2–5.) Nowhere does a county supervisor articulate their understanding of Wisconsin Statute section 77.70 to require the dollar-for-dollar offset as the Taxpayers argue. (*Id.*) Even though the meeting was open to the public and the Taxpayers were free to comment and provide input, only three taxpayers attended the meeting—but not *the* Taxpayers in this case. (*Id.* at 1–2, 5.) The May 8, 2017, meeting minutes record that two of the three members of the public who spoke at the meeting were supportive of the sales and use tax, and the third did not directly address it. (*Id.*) Further, the County Executive hosted nine public events at which the Plan and sales and use tax was to be discussed. (Chintamaneni Aff. Ex. C, R. 79.)

Public notice was also given of the May 17, 2017, regular meeting of the Brown County Board of Supervisors, at which the Board would discuss the Ordinance. (Chintamaneni Aff. Ex. D, R. 80 at 1.) A copy of the Ordinance, which at that time was just a proposal, was attached to the public notice. (*Id.* at 10.) At the May 17, 2017, meeting, only two members of the public spoke against the Ordinance. (Chintamaneni Aff. Ex. E, R. 81 at 2.) It was at this meeting, that the Brown County Board of Supervisors adopted the Ordinance by a vote of 23 to 3. (*Id.* at 6.)

The point the Court makes here is to demonstrate the legislative process Wisconsin Statute section 77.70 requires of Wisconsin counties should they wish to impose a sales and use tax. The Court will say it again, the parties have done an excellent job of researching, articulating, and presenting their arguments in favor of their respective positions. However, this Court is not the proper venue for the Taxpayers to have started their campaign. The Taxpayers had ample opportunity to present their interpretation of Wisconsin Statute section 77.70 to any one of the 26 county supervisors or to the County Executive. Indeed, the Taxpayers could have held their own

town hall meetings. The fact that none of the county supervisors or corporate counsel discussed an interpretation of Wisconsin Statute section 77.70 that aligns with the Taxpayer's position at the May 8, 2017, County Executive's presentation, leads the Court to believe that it is the first audience to hear the Taxpayer's full argument. This is not meant as a criticism but simply an observation of fact. As a result, it would be an unacceptable usurpation of the legislative process for this Court to undue the County's thoughtful and intensive legislative process—especially in light of the substantial effort the Taxpayers have gone in this case to persuade this Court, when it could have put the same effort towards persuading voting taxpayers, county supervisors, or the County Executive.

The plain language of Wisconsin Statute section 77.70, as analyzed herein under the *Kalal* framework, does not support the Taxpayer's interpretation that a dollar-for-dollar offset—of sales and use tax revenues towards the property tax levy—is the singular method for Wisconsin counties to directly reduce their property tax levies. WIS. STAT. § 77.70. To the contrary, the 1998 Attorney General Opinion supports this conclusion, and it will be discussed next.

b. The Attorney General Opinion Supports the Ordinance's Validity

As the Attorney General discusses in his opinion, prior to 1985, few if any counties had imposed sales and use taxes. (Wis. Op. Att'y Gen. OAG 1-98, 1 (1998).) The Attorney General presumed few counties had imposed sales and use taxes because the imposing county had no control over how the revenue would be spent—instead the imposing county had to distribute the revenue to political subdivisions within the county "with no conditions attached." (*Id.*, 1–2.) Once Wisconsin Statute section 77.70 was amended, it allowed county governments to keep sales and use tax revenue, but only at the rate of 0.5 percent and "only for the purpose of directly reducing the property tax levy…" (*Id.*, 2.); WIS. STAT. § 77.70. The Court finds that amendment to be very

significant for purposes of this decision. The Wisconsin Legislature revisited a statute that allowed counties to impose a sales and use tax—but gave them no control over how the revenue should be spent—and amended it so that the only restriction on how the imposing county spent the revenue was to directly reduce the property tax levy.

The Attorney General noted that at the time of his opinion, there had been no litigation regarding what it means "only" to "directly reduc[e]" the property tax levy, despite many counties enacting sales and use taxes pursuant to Wisconsin Statute section 77.70. (*Id.*, 2.) Indeed, in the parties' pleadings, they have not cited any cases, either. The Attorney General, again presuming, stated the lack of litigation was due to the fact that the property tax is "almost the only source available to counties to raise revenues of their own accord." (*Id.*) The drastic statutory amendment, coupled with the lack of litigation, makes the Court conclude that Wisconsin Statutes section 77.70 is as the County suggests—an enabling statute whose *purpose* is to directly reduce the property tax levy, not a restriction on *how* sales and use tax revenue is to be spent. Implicit in the amendment is a wide latitude of discretion given to counties on how they can directly reduce their property tax levy. The Wisconsin Legislature has reinforced its delegation of that discretion by remaining silent while 66 of Wisconsin's 72 counties have enacted sales and uses taxes, of which there is great diversity in their chosen method on how to directly reduce their respective property tax levy. (Pl.'s Br. Supp. Mot. Summ. J. 5; Def.'s Br. Supp. Mot. Summ. J. 10; *See also* 2nd Kamenick Aff. Ex. C., R. 51 at 25–60, R. 52.)

The Attorney General opined that by including sales and use tax revenue as a revenue source on its budget, and by subtracting the sales and use tax revenue from the total property tax, and then determining the net the property tax that must be levied, a county has directly reduced its property tax levy. (Wis. Op. Att'y Gen. OAG 1-98, 1 (1998).) This method is what the Taxpayers

argue is essentially the only acceptable operation of Wisconsin Statute section 77.70. However, the Attorney General continued, that the same amount of property tax reduction occurs whether the county board—through its own legislative process—decides to budget the sales and use tax revenue as a reduction of the overall county property tax levy, or apply it towards individual budget items that are funded by a countywide property tax. (*Id.*) The Attorney General also addressed the situation here, where a county might commit sales and use tax revenue towards new projects, as opposed to existing projects.

The Attorney General concluded it would be absurd and unreasonable result to construe Wisconsin Statute section 77.70 such that counties which had started projects could commit sales and use tax revenue to those existing projects, but counties that were still contemplating starting a project could not commit that revenue towards it simply because it was new. (*Id.*, 2–3.) Referring to the statute, the Attorney General noted the absence of any language suggesting a limitation on the kinds of budget items counties could fund with sales and use tax revenue. (*Id.*, 3.) Thereafter, he concluded counties could budget sales and use tax revenue to offset the cost of any budgetary item which could be funded by a countywide property tax. (*Id.*) Just at the Attorney General found the lack of limiting language significant, so does the Court here. If there was to be a distinction between the kinds of budget items counties could fund with sales and use tax revenue—such as between existing projects and prospective projects—the Wisconsin Legislature would have said so in the statute, such as it did in the two stadium district taxes. *See* WIS. STAT. §§ 77.705–77.706.

The Court acknowledges that, as the Attorney General opined, the Taxpayers' position of the dollar-for-dollar offset is an acceptable interpretation of Wisconsin Statute section 77.70—*but it is not the only lawful interpretation*—and the plain language of the statute simply does not mandate it to be so. The Court is not unsympathetic to the Taxpayers' line of reasoning. However,

this Court's conclusion is provided additional support by the Attorney General Opinion. In his opinion the Attorney General advised that counties do not have the "statutory 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." (Wis. Op. Att'y Gen. OAG 1-98, 2 (1998).) If the Wisconsin Legislature intended that Wisconsin counties should issue property tax credits resulting from sales and use tax revenue directly to property owners-truly without any intermediate step as the Taxpayers suggest – it would have delegated them the authority to do so. But, because the Wisconsin Legislature did not delegate that authority, then Wisconsin Statute section 77.70 is not limited to operate in the sole fashion the Taxpayers argue, and "direct" reduction of the property tax levy may necessarily come in more than one manner.

To hold otherwise would force a county looking to fund both new and existing projects, even those with sales and use taxes in place at the time of the budget, to: 1) drain its fund balance; 2) go into debt through one of the options provided in Wisconsin Statute section 67.045(1); 3) reallocate funds within its operating budget; or 4) raise property taxes, either within the applicable limit or in excess of the levy limit through a referendum under Wisconsin Statute section 66.0602(4). (*See* Klingsporn Aff. ¶ 6.) It is these limited funding options that punch a hole in the Taxpayers' scenario of the wayfaring daughter. The wayfaring daughter can get a job, counties on the other hand, do not have as many options. Their funding sources are limited and Wisconsin Statutes section 77.70 enables counties to reduce their property tax levies through several different avenues as their elected officials or their voters decide.

The Court agrees with the "presumptively correct" opinion of the Attorney General. *See Schill v. Wisconsin Rapids Sch. Dist.*, 327 Wis. 2d 572, ¶ 126 (citations omitted). By including, as sources of revenue, both estimated sales and use tax revenue in its 2018 adopted budget, and actual

sales and use tax revenue in its 2019 proposed budget the County has thereby fulfilled the "purpose" of Wisconsin Statute section 77.70, which is to directly reduce its property tax levy. (Klingsporn Aff. Ex. D, R. 61 at 29; Klingsporn Aff. Ex. E, R. 64 at 63.) The County has directly reduced its property tax levy by paying for projects which were fundable by its property tax levy. The Taxpayers' argument that funding new projects is not a direct reduction of the property tax levy is not persuasive in light of the Attorney General's presumptively correct opinion. *Schill v. Wisconsin Rapids Sch. Dist.*, 327 Wis. 2d 572, ¶ 126.

The Taxpayers' argue that even in light of the Attorney General Opinion, the Ordinance still violates Wisconsin Statute section 77.70 for this reason—the County did not have room in its 2018 levy limit to pay for the new spending projects, and therefore the new budget is an evasion of the levy limits to increase spending. (Def.'s Br. Supp. Mot. Summ. J. 17.) To bolster that point, the Taxpayers interpret the Attorney General's words that sales and use tax revenue "may not" be put towards any item "which cannot be funded" by the countywide property tax to mean that because there was not enough room in the levy limit for the nine specific capital projects, the sales and use tax revenue could not be budgeted towards them. (*Id.* at 15–17.) Necessarily then, the County could only have committed sales and use tax revenue towards new projects to the extent it had room within the levy limit, or if it borrowed.

The Court, throughout the process of rendering a decision on this case, has found this Taxpayer argument the most compelling. How can the County claim "only" to be "directly reducing" its property tax levy with sales and use tax revenue, when it is increasing spending beyond what it could without the sales and use tax revenue? Phrased another way, if the County is generating $145,000,000.00-plus in sales and use tax revenue over 72 months, then why are property taxes not being reduced by $145,000,000.00-plus over those 72 months?

The answer is that the Wisconsin Legislature, through Wisconsin Statute section 77.70, delegated the discretion to Wisconsin Counties to determine the way in which they would directly reduce their property tax levy with sales and use tax revenue based on their respective needs. To that end, the reality is that the Wisconsin Legislature did not put a dollar-for-dollar offset mechanism in the statute, though it has had many opportunities to do so. Picture an economically depressed county that has very little new construction or incoming investment while it also faces an aging and deteriorating infrastructure. The Taxpayers' interpretation of Wisconsin Statute section 77.70 would result in a dollar-for-dollar reduction of the property tax levy in that county, yet it would leave the county faced with borrowing as the most likely "solution" to its economic problems since it has no other option to pay for necessary capital projects. If the depressed county borrowed, then its property tax levy would go up due to an increased debt levy. That result is unreasonable and reinforces in the Court's mind its conclusion that the Wisconsin Legislature purposefully drafted Wisconsin Statute section 77.70 to enable counties, through their elective bodies, to decide how they would directly reduce their property tax levy. Indeed, the Attorney General further articulated the counties' options under the statute, and as a matter of law, the Court finds Brown County has complied with Wisconsin Statute section 77.70.

Here, the County Board drafted, proposed, and passed the Ordinance which included the nine new specific capital projects to be funded by sales and use tax revenue, but that also ensured that the property tax levy was reduced over the course of the life of the Ordinance. To that effort, the County Board added to the Ordinance the mill rate freeze and the sunset provision should the County borrow during the 72-month plan. Those budget decisions were made by a group of elected officials and the intelligent and talented people on whose work they rely. As the affidavits and exhibits in the record demonstrate, the elected officials and County employees alike did ample

research and put considerable thought and effort into determining how the sales and use tax revenue would reduce the property tax levy over 72 months while also funding the new projects outlined in the budget. (*See generally* Klingsporn Aff. Ex.s A–E; Chintamaneni Aff. Ex. B, R. 78 at 2–5.)

Wisconsin Statute section 77.70 says that its purpose is to reduce the property tax levy through sales and use tax revenue. The County has put forth credible, admissible evidence to prove that the result of the Ordinance is a reduction in the property tax levy. The meeting minutes from the May 8, 2017, executive committee meeting demonstrate that the County Executive and the various County supervisors all understood the Ordinance would reduce the property tax levy. (Chintamaneni Aff. Ex. B, R. 78 at 2–5.) The Taxpayers' argument of the dollar-for-dollar offset inserts restrictions on the counties that the Attorney General acknowledged as a lawful interpretation of Wisconsin Statute section 77.70, but he did not limit the statute to that singular operation—and the County supervisors did not articulate that as their understanding of the statute, either. (*Id.*) The Taxpayers' interpretation ignores the discretion counties need when tailoring their budgets and spending projects—especially given the wide variety of economic realities Wisconsin counties face.

Brown County is fortunate to be the destination county that it is. Apparent to the naked eye, Brown County has the Green Bay Packers, the University of Wisconsin-Green Bay, St. Norbert College, Northwest Technical College, Georgia Pacific, Schreiber Foods, Schneider Trucking, the Botanical Garden, a curling club, golf courses, an arena and other concert venues, several first-rate hospitals, numerous breweries, and a variety of shopping and dining options. To the untrained eye, Brown County is one of the only counties that has a consolidated 911 center; it is one of the few counties that does county-wide voting machines; and one of the few counties that

has a library system and a museum. (*Id.* at 3.) The County also pays for the drug task force unit. (*Id.*) Geographically, Brown County is on the edge of some of the best things Wisconsin has to offer. The Fox River and Bay of Green Bay offer outdoor recreation year-round. To the west, the Wisconsin Northwoods and Upper Peninsula of Michigan are easily accessible—and to the east, Door County and the Lake Michigan shoreline are a very short drive.

Indeed, hundreds of thousands of people a year visit Brown County. Overwhelmingly, these guests add millions of dollars to the local economy by availing themselves of everything Brown County has to offer. Necessarily, this added traffic causes intensified depreciation of the infrastructure. Further, and most unfortunately, not all visitors to Brown County are here for lawful and productive purposes—and as a result, additional stress is placed upon government services and law enforcement resources. The sales and use tax rightly places a portion of these costs on all visitors as opposed to property owners only. (*Id.* at 4.) By increasing the pool of taxpayers, Brown County property owners receive additional tax relief. (Amicus Br. WI Cnty.s Assoc., 6.)

The plain language of Wisconsin Statute section 77.70 coupled with the Attorney General Opinion require that the County's motion for summary judgment be granted, while the Taxpayers' motion for summary judgment be denied. The statute simply cannot be read in a way such that a dollar-for-dollar offset is the only lawful operation. If that were the case, the Wisconsin Legislature would have spelled out that specific operation within section 77.70. The Wisconsin Legislature, presumably aware of section 77.70, and aware of the various uses Wisconsin counties have put it to, has not amended the language despite having had ample opportunity to do so—especially in light of the Attorney General Opinion from 1998. Further, to usurp the legislative decision-making process from the Brown County Board is not this Court's role. The Taxpayers, as far as the Court can surmise based on the record before it, did not avail themselves of the opportunities to dialog

with their elected officials and present their argument to them. The County, for its part, has satisfied this Court that as a matter of law, the Ordinance complies with the only "purpose" of Wisconsin Statutes section 77.70, because it directly reduces the property tax levy with sales and use tax revenue generated by the Ordinance.

CONCLUSION AND ORDER

Based upon the foregoing, it is hereby **ORDERED** that Plaintiff Brown County's Motion for Summary Judgment is **GRANTED**.

It is hereby further **ORDERED** that Defendants/Third-Party Plaintiffs Brown County Taxpayers Association's Motion for Summary Judgment is **DENIED**.