COURT OF APPEALS
DECISION
DATED AND FILED

June 28, 2011

A. John Voelker
Acting Clerk of Court of Appeals

Appeal No. 2010AP561 **Cir. Ct. No. 2008CV1313**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT III

VILLAGE OF HOBART,

PLAINTIFF-APPELLANT,

V.

BROWN COUNTY,

DEFENDANT-RESPONDENT.

APPEAL from a judgment of the circuit court for Brown County: MARC A. HAMMER, Judge. *Affirmed.*

Before Hoover, P.J., Peterson and Brunner, JJ.

¶1 BRUNNER, J. The Village of Hobart appeals a judgment declaring that Brown County may designate the law enforcement arm of the Oneida Tribe as the primary responsive agency to 911 calls originating within a 1,700-acre area of the Village. The Village contends that the designation is contrary to the statute

establishing the statewide emergency number, WIS. STAT. § 256.35, and violates the Village's mandatory obligation to provide police services under WIS. STAT. § 61.65(1)(a).[1]

¶2 We conclude that neither WIS. STAT. §§ 256.35 nor 61.65 prohibits the County from designating tribal police as the primary responsive law enforcement agency. We further conclude that by permitting county-tribal law enforcement programs, *see* WIS. STAT. §§ 59.54(12) and 165.90, the legislature intended to encourage law enforcement coordination between counties and tribes. Because the selection of a responsive law enforcement agency is one aspect of that coordination, we affirm.

BACKGROUND

¶3 The Oneida Tribe of Indians of Wisconsin occupies a reservation encompassing approximately 65,400 acres in Brown and Outagamie Counties. The tribe provides a wide array of governmental services and programs, including law enforcement services. The Oneida Police Department was established in 1985 and employs twenty fully trained and sworn officers. Tribal police officers have been deputized by the Brown County Sheriff so they may provide law enforcement assistance throughout Brown County.

¶4 In 2008, the County and the tribe entered into a fifteen-year service agreement that among other things clarified the relationship between the contracting parties' law enforcement agencies. The agreement, as later amended,

[1] All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

provided that the tribe would be the primary law enforcement agency "dispatched for 9-1-1 calls for police service originating within the geographic area designated in Attachment A." Attachment A describes a 1,700-acre area of the Oneida reservation with a high density of tribal members (the "service area").

¶5 The service area is located entirely within the Village. The Village is comprised of 21,566 acres located within the boundaries of the Oneida reservation. In 2001, the Village, in conjunction with the Town of Lawrence, formed the Hobart-Lawrence Police Department (the "Village police"). Until May 2008, the Village police had been dispatched to all 911 calls originating from the Village. There is no dispute that the Village police, the Brown County Sheriff, and the tribal police all share concurrent jurisdiction over the entire Village of Hobart.

¶6 The Village filed the present action on May 29, 2008. Along with injunctive relief, it sought a declaratory judgment invalidating the law enforcement terms of the service agreement on the ground that those terms infringed the Village's "exclusive authority over the provision of law enforcement services within its jurisdiction."

¶7 The circuit court granted a motion for summary judgment filed by the County. The Village filed a motion for reconsideration, which was denied.

DISCUSSION

¶8 Summary judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. WIS. STAT. § 802.08(2). We review a grant of summary judgment de novo, using the same methodology as the circuit court. ***Yahnke v. Carson***, 2000 WI 74, ¶10, 236

Wis. 2d 257, 613 N.W.2d 102. That methodology is well-established and need not be restated. *See* ***Tews v. NHI, LLC***, 2010 WI 137, ¶41, 330 Wis. 2d 389, 793 N.W.2d 860.

¶9 The Village challenges the County's authority to designate tribal police as the primary responsive agency for 911 calls within the service area. Resolution of this issue requires interpretation of the statutes governing the statewide emergency services number and county-tribal law enforcement programs.

¶10 The goal of statutory interpretation is to ascertain and give effect to the intent of the legislature. ***MCI Telecomms. Corp. v. State***, 203 Wis. 2d 392, 400, 553 N.W.2d 284 (Ct. App. 1996), *aff'd*, 209 Wis. 2d 310, 562 N.W.2d 594 (1997). We begin with the language of the statute, which we will generally give its common, ordinary, and accepted meaning. ***State ex rel. Kalal v. Circuit Court for Dane Cnty.***, 2004 WI 58, ¶45, 271 Wis. 2d 633, 681 N.W.2d 110. We interpret language "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." ***Id.***, ¶46. If this process of analysis leads to a plain, clear statutory meaning, the statute is applied according to that meaning. ***Id.***

¶11 WISCONSIN STAT. § 256.35 requires every "public agency" to establish and maintain a system for handling emergency calls within its jurisdiction, or to combine with another public agency to establish such a system. WIS. STAT. § 256.35(2)(a), (d). A "public agency" is "any municipality as defined in s. 345.05(1)(c) or any state agency which provides or is authorized by statute to provide … law enforcement … or other emergency services." WIS. STAT.

§ 256.35(1)(f). The Village contends, and the County concedes, that the tribal police department is not a public agency within the meaning of the statute.

¶12 However, the fact that the tribal police department is not a public agency for purposes of WIS. STAT. § 256.35 is not dispositive of the issue on appeal. While a public agency must establish and maintain the 911 system,[2] the statute does not require that a public agency also respond to the emergency. Subsection 256.35(2), by its plain terms, is principally concerned with the establishment and maintenance of a 911 system, not the identity of the responder in a particular emergency.

¶13 The Village argues that a responder must be a "public safety agency" or one of several other enumerated entities in WIS. STAT. § 256.35. The Village relies on § 256.35(2)(b), which provides, in pertinent part:

> Every basic or sophisticated system established under this section shall be capable of transmitting requests for law enforcement, fire fighting and emergency medical and ambulance services to the public safety agencies providing such services. Such system may provide for transmittal of requests for poison control to the appropriate regional poison control center under s. 255.35, suicide prevention and civil defense services and may be capable of transmitting requests to ambulance services provided by private corporations.

A "public safety agency" is defined as "a functional division of a public agency which provides fire fighting, law enforcement, medical or other emergency services." WIS. STAT. § 256.35(1)(g). The Village reads these provisions together

[2] There is no dispute that the 911 system at issue in this case was established and maintained by a public agency. The County has formed the Public Safety Communications Department, which manages and operates the countywide emergency communications center.

to mean that an emergency responder must be either a functional division of a public agency, or one of the other entities explicitly mentioned in § 256.35(2)(b).

¶14 We cannot agree with the Village's interpretation of the statute. WISCONSIN STAT. § 256.35(2)(b), by its plain language, governs the *capabilities* of the 911 system, not the identity of the responder. Paragraph (2)(b) requires that the system be capable of transmitting requests for emergency services to "public safety agencies" and other enumerated entities, but it does not prohibit the County from dispatching other emergency responders.

¶15 The Village next claims that the County's designation of the tribal police department as the primary responsive law enforcement agency violates the Village's mandatory obligation to provide police protection services. Pursuant to WIS. STAT. § 61.65(1)(a), "each village with a population of 5,000 or more shall … provide police protection services …." The Village has created a joint police department with the Town of Lawrence. *See* WIS. STAT. § 61.65(1)(a)3. The Village reasons that 911 calls must be transferred to the Village police because § 61.65(1)(a) requires it to provide police services and because that department is a "public safety agency" within the meaning of WIS. STAT. § 256.35.

¶16 The Village's conclusion does not follow from the statutes it cites. Nothing in the County's service agreement with the tribe prohibits the Village from providing police services or establishing its own police department. Indeed, the Village agrees that the Village police share concurrent jurisdiction over the service area with the County and tribal police. In addition, as we have already concluded, WIS. STAT. § 256.35 is primarily concerned with the establishment and maintenance of a 911 system, not the responder's identity in a particular

emergency. Thus, the fact that the Village police department is a "public safety agency" under that statute is not dispositive of the issue on appeal.

¶17 Further, the statutes permitting county-tribal law enforcement programs provide strong evidence that the County may designate the tribal police department as the primary responder to 911 calls within the service area. Any county with all or part of a federally recognized Indian reservation within its boundaries may agree with an Indian tribe to establish a cooperative county-tribal law enforcement program. *See* WIS. STAT. §§ 59.54(12), 165.90. These statutes permit a county and a tribe to agree on a wide range of matters, including the types of law enforcement services to be performed on the reservation, the identity of the service provider, and the identity of the person exercising supervision and control over the program's law enforcement officers. *See* WIS. STAT. § 165.90(2)(d), (e). These statutes suggest that the legislature sought to encourage law enforcement coordination between counties and tribes.[3]

¶18 Our conclusion is also consistent with the Attorney General's determination that WIS. STAT. § 146.70, the predecessor of the current WIS. STAT. § 256.35, permits a joint telecommunications agreement between a county and a tribe. *See* 80 Wis. Op. Att'y Gen. 91 (1991). Although the Attorney General was addressing a different, but related, issue, he concluded that a "joint agreement to accept calls concerning, for example, crimes in progress, is plainly an aspect of county-tribal law enforcement," and as such fell within the purview of WIS. STAT.

[3] It is not clear whether the state department of justice has approved the program plan in this instance, or whether the County and tribe currently receive aid under WIS. STAT. § 165.90. Those points have not been briefed by the parties and in any event are not dispositive of the issue on appeal, as we read § 165.90 only for an indication of legislative intent.

§§ 59.54(12)[4] and 165.90. Accordingly, the Attorney General determined that the statutes governing county-tribal relations controlled over the more general provisions of § 146.70. We find the Attorney General's reasoning instructive.[5]

¶19 The Village also argues that, as a fifteen-year arrangement, the County's agreement with the tribe violates WIS. STAT. § 256.35(9), which governs joint powers agreements. Subsection (9) essentially requires that public agencies combined under paragraph (2)(d) "annually enter into a joint powers agreement." Paragraph (2)(d) provides that public agencies "may combine to establish a basic or sophisticated system …." However, as we have stated, the tribe's and County's agreement does not establish a 911 system and is not made under the authority of § 256.35. The County has merely designated tribal police as the primary responder to 911 calls originating from a small segment of the Village. Thus, nothing in § 256.35(9) mandates an annual requirement with respect to the County's and tribe's agreement.

¶20 Finally, the Village contends that, contrary to WIS. STAT. § 256.35(9)(a), the service agreement does not require a dispatched vehicle to render service without regard to the vehicle's normal jurisdictional boundaries. The Village further argues that no service agreement with tribal law enforcement could ever contain such a requirement because WIS. STAT. § 165.92(2)(b) provides that a tribal officer's powers and duties "may be exercised or performed … only

[4] WISCONSIN STAT. § 59.07(141), which is cited in the Attorney General's opinion, was the predecessor of WIS. STAT. § 59.54(12). *See* 1995 Wis. Act 201, § 222.

[5] Although Attorney General opinions are not binding authority, courts may treat them as persuasive authority and gain guidance from their analyses. *See* ***Kocken v. Council 40***, 2007 WI 72, ¶51 n.34, 301 Wis. 2d 266, 732 N.W.2d 828.

on the reservation of the tribe or on trust lands held for the tribe ….” However, the Village again ignores that § 256.35(9) does not apply because the tribe and County are not “public agencies combined under [§ 256.35](2)(d).” Further, § 165.92(4) provides, “Nothing in this section limits the authority of a county sheriff to depute a tribal law enforcement officer[,] … including the authority to grant law enforcement and arrest powers outside the territory described in sub. (2)(b).” Tribal police officers have been deputized by the Brown County Sheriff and may provide assistance throughout Brown County. Neither § 256.35(9)(a) nor § 165.92(2)(b) prohibits the tribe’s and County’s service agreement.

By the Court.—Judgment affirmed.

Not recommended for publication in the official reports.