



MEMO

FROM: Paul Fontecchio, P.E.
RE: Wisconsin Public Purpose Doctrine
DATE: November 10, 2023

Wisconsin State Statute 83.018:

83.018 Road supplies; committee may sell to municipalities. The county highway committee is authorized to sell road building and maintenance supplies on open account to any city, village, town or school district within the county; and any such city, village, town or school district is authorized to purchase such supplies.

It is permissible for a county highway department to sell road sand or salt to municipalities, either for their own use or for resale, if, in good faith, county officials believe that the purchaser does not intend to resell the sand or salt for a private purpose. OAG 2-01

Under this statute, the Highway Commissioner is authorized to sell road building and maintenance supplies to a city, village, town, or school district within the county.

The referenced Opinion of the Attorney General 2-01 helps clarify this. The important part of the OAG 2-01 is the public purpose doctrine which is a constitutional rule that prohibits the use of public funds, public equipment or public supplies to provide a benefit that is primarily private, rather than public, in nature.

The Attorney General noted:

“Sales to private parties are not authorized by Wis. Stat. § 83.018, which authorizes county highway committees to sell road maintenance supplies to municipalities, but not to private parties. My review of the statutes has found no provision specifically authorizing a county highway department to sell supplies to private parties.”

Based on Statute 83.018 and OAG 2-01, the Brown County Highway Department is not able to:

- Sell road building materials or supplies to a city, village, town, or school district outside of the county.
- Use public funds or public equipment to provide a benefit for private use.
- Sell materials or supplies to private entities.