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Thomas P. German, *Executive Secretary*

AGENDA

July 5, 2023

2:00 P.M.

Board of Commissioners of Public Lands
101 E. Wilson Street, 2nd Floor
Madison, Wisconsin

Routine Business:

1. Call to Order
2. Approve Minutes – June 20, 2023 (Attachment)
- 3a. Approve Loans
- 3b. Town of Sanborn State Trust Fund Loan application

Old Business:

4. None

New Business:

5. None

Routine Business:

6. Chief Investment Officer's Report
7. Executive Secretary's Report
8. Board Chair's Report
9. Future Agenda Items
10. Adjourn

AUDIO ACCESS INFORMATION

Conference Line Number: 608-571-2209
Conference ID Code: 207 822 241#

Board Meeting Minutes
June 20, 2023

Present were:

- | | |
|--|--|
| Sarah Godlewski, Board Chair | Secretary of State |
| Josh Kaul, Commissioner | Attorney General |
| John Leiber, Commissioner | State Treasurer |
| Tom German, Executive Secretary | Board of Commissioners of Public Lands |
| Rich Sneider, Chief Investment Officer | Board of Commissioners of Public Lands |
| Denise Nechvatal, Controller | Board of Commissioners of Public Lands |
| Chuck Failing, IT Specialist | Board of Commissioners of Public Lands |
| Thuy Nguyen, Office Manager | Board of Commissioners of Public Lands |

ITEM 1. CALL TO ORDER

Board Chair Godlewski called the meeting to order at 2:00 p.m.

ITEM 2. APPROVE MINUTES

MOTION: Commissioner Leiber moved to approve the minutes; Commissioner Kaul seconded the motion.

DISCUSSION: None.

VOTE: The motion passed 3-0.

ITEM 3. APPROVE LOANS

MOTION: Commissioner Kaul moved to approve the loans; Board Chair Godlewski seconded the motion.

DISCUSSION: Mr. Sneider commented on loan #2 to the Village of Summit. The Village has bundled everything together into a capital improvement program which includes mostly road work, the purchase of some vehicles and capital equipment. Loan #5 is to the City of Waupun is to finance TID 8 infrastructure improvements. This is to reimburse a developer for infrastructure improvements after the housing project met a \$4.8 million evaluation in accordance with the developer agreement. Loan #7 is to the Upper Nemahbin Lake District. Lake districts are an approved borrower type and in recent years more lake districts have been using the State Trust Fund Loan Program. The City of New Holstein is taking out multiple loans for utility work, including water main and sewer mains and some water meter replacements. Loan #12 to the Village of Landon in Waukesha County is for financing TID development incentive for two projects, a condo project, and an apartment project with the value upon completion estimated to be \$115 million. Loan #13 to the Town of Genesee is for financing a new public works building.

Commissioner Leiber asked why the City of New Holstein chose to take out multiple loans rather than one.

Mr. Sneider replied that he prefers separate loan purposes under separate loans just to improve the transparency for our loan program. It adds a little bit of flexibility for the community and improves the transparency of the loans for people who weren't part of the decision-making process.

VOTE: The motion passed 3-0.

The Board of Commissioners of Public Lands (BCPL) unanimously approved **\$11,947,706.89** in State Trust Fund Loans to support **13** community projects in Wisconsin.

1. Village of Suring / Oconto County / Finance purchase of snowplow truck / \$60,000.00
2. Village of Summit / Waukesha County / Finance 2023 Capital Improvement Program / \$950,000.00
3. Town of Lincoln / Vilas County / Finance roadwork / \$500,000.00
4. Town of Bloomfield / Walworth County / Finance roadwork / \$250,000.00
5. City of Waupun /Dodge and Fond Du Lac Counties / Finance TID 8 infrastructure improvements / \$447,110.89
6. Town of Northfield / Jackson County / Finance road relocation / \$800,000.00
7. Upper Nemahbin Lake District / Waukesha County / Finance dredging project / \$695,596.00
8. City of New Holstein / Calumet County / Finance water main replacement / \$800,000.00
9. City of New Holstein / Calumet County / Finance water main project (Sewer) / \$780,000.00
10. City of New Holstein / Calumet County / Finance water meter replacement / \$510,000.00
11. Town of Randall / Kenosha County / Finance purchase of maintenance vehicle / \$75,000.00
12. Village of Lannon / Waukesha County / Finance TID development incentives / \$2,080,000.00
13. Town of Genesee / Waukesha County / Finance new public works building / \$4,000,000.00

ITEM 4. OLD BUSINESS

None

ITEM 5. NEW BUSINESS

None

ITEM 6. CHIEF INVESTMENT OFFICER'S REPORT

Mr. Sneider reported that we have 74 loan applications totaling nearly \$77 million in various stages of the loan approval process. Some loans have already been approved by the board and are waiting for borrowers to request disbursement. Borrowers have a total of four months after approval by the board to request draws on their loan. This feature of the program reduces interest costs to the borrowers when they're funding longer term construction projects as they don't accrue interest until the loan is disbursed. Many of these loans will be coming before the board for approval over the next month or two. We expect the average number of loans to be considered at board meetings this summer to be higher than average.

Interest rates remain volatile, and the investment committee remains vigilant regarding the rates offered on new State Trust Fund loans. We have raised interest rates two times in the past month, and we will continue to keep an eye on the markets moving forward.

ITEM 7. EXECUTIVE SECRETARY'S REPORT

Executive Secretary German shared that he recently had a conversation with an employee of another state agency about how to set interest rates for their economic development revolving loan fund. A great amount of time and effort is being put into developing protocols for that agency's fund which had less than a total of \$1,000,000 to lend. BCPL lends more than 100 times that amount with a significantly smaller staff. Our staff's level of efficiency extends to every aspect of our agency, i.e., loan origination, administration implementation, real estate transactions and timber management. He commended the BCPL staff on their efficiency, talent, and hard work and for having had the best performance in the history of the agency. This has been a great year.

Investments continue to perform well even as the markets experience volatility and while the principal balance of the trust funds may fluctuate with the daily ups and downs of the market, the distributable earnings, the interest, and dividends from our investments continue to grow. The investment policy developed by BCPL, and our stakeholders has performed the way we hoped it would. He thanked and commended Mr. Sneider for his work on diversifying the portfolio. The portfolio includes several different sources of income combined to provide a strong, sustainable stream of distributable income. We are required to manage our trust funds differently than many modern endowments, which are allowed to lump principal and earnings together. Those constraints pose some challenges for our staff.

Another investment policy feature is the establishment of smoothing accounts of deferred distributions that could ensure distributions in the future if there were unforeseen upheavals in the markets that reduced earnings. At the end of this fiscal year, we anticipate that the smoothing accounts will have sufficient reserves. The smoothing funds themselves are now producing more distributable income. In essence, income from income.

The board recently authorized staff to offer four parcels of land for sale in four different counties. We opened the bids on June 9th. We received bids on three of the parcels. All the bids were for more than the appraised value. The bids ranged from 13% over appraised value to 39% over appraised value. The winning bids covered 124 acres for just over \$200,000. The winning bidders are providing us with information as to how they want the property titled and we will have land patents ready for signature soon. Thanks to Micah Zeitler, real estate specialist, for promoting the program and recruiting people to bid on those lands.

Finally, we have now surpassed \$800,000 in timber revenue for fiscal year 2023 and we are getting close to \$900,000. Previously, this amount would have been produced in a biennium, not one year. Timber is a commodity and prices fluctuate constantly. Therefore, we do not offer all our timber for sale at one time. We offer timber sales at least twice a year. This gives us a chance to bring our timber to market at two different times and potentially different price points. Recently, we advertised five sales that had a total acreage of 560 acres. We examined the properties, estimated the timber to be cut and established a total estimated minimum bid value of \$264,000. We received qualified bids on all the advertised timber sales with a high total bid value of over \$418,000. We are very happy with these results, as we are currently in one of the worst timber markets price wise that anyone can remember.

This has been a great year. Thank you to the board for supporting us and thank you to the staff for doing an awesome job.

ITEM 8. BOARD CHAIR'S REPORT

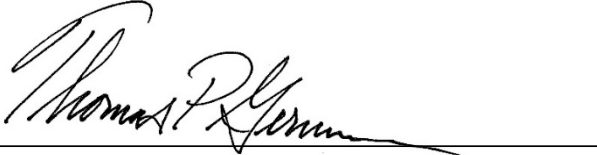
Board Chair Godlewski shared that she and staff are working on two distribution releases for the Normal School Fund because it's a record-breaking distribution providing 150 scholarships in addition to the other programs funded through the Normal School Fund. The distribution events would be in Madison in partnership with the university because they are the largest beneficiary of the fund, and UW-Stevens Point because they are the second largest beneficiary of the Normal School Fund. It is important to visit communities we work with outside of Madison. Additional details are to come after the budget has passed, after July when students are back on campus. Including the students is important since they are the recipients of these funds.

ITEM 9. FUTURE AGENDA ITEMS

None

ITEM 10. ADJOURN

Commissioner Kaul moved to adjourn the meeting; Commissioner Leiber seconded the motion. The motion passed 3-0; the meeting adjourned at 2:13 p.m.

A handwritten signature in black ink, appearing to read "Thomas P. German", written over a horizontal line.

Thomas P. German, Executive Secretary

Link to audio recording:

[https://bcpl.wisconsin.gov/bcpl.wisconsin.gov/Shared Documents/Board Meeting Docs/2023/2023-06-20/BoardMtgRecording.mp3](https://bcpl.wisconsin.gov/bcpl.wisconsin.gov/Shared%20Documents/Board%20Meeting%20Docs/2023/2023-06-20/BoardMtgRecording.mp3)

**BOARD MEETING
JULY 5, 2023**

**AGENDA ITEM 3a
APPROVE LOANS**

Municipality	Municipal Type	Loan Type	Loan Amount
1. Belgium Ozaukee County Application #: 02023101 Purpose: Finance roadwork	Town Rate: 5.00% Term: 5 years	General Obligation	\$1,000,000.00
2. Bloomfield Walworth County Application #: 02023105 Purpose: Finance roadwork	Village Rate: 5.50% Term: 3 years	General Obligation	\$200,000.00
3. Jackson Burnett County Application #: 02023106 Purpose: Finance New Highway Shop	Town Rate: 5.00% Term: 20 years	General Obligation	\$2,500,000.00
4. Jackson Burnett County Application #: 02023107 Purpose: Finance Fire Hall Addition	Town Rate: 5.00% Term: 20 years	General Obligation	\$2,500,000.00
5. Burlington Racine County Application #: 02023108 Purpose: Finance generator purchase	Town Rate: 5.00% Term: 5 years	General Obligation	\$71,529.22
6. Janesville Rock County Application #: 02023109 Purpose: Finance fire protection	Town Rate: 5.00% Term: 2 years	General Obligation	\$1,077,903.00
7. Fall Creek Eau Claire County Application #: 02023111 Purpose: Finance road and utility projects	Village Rate: 5.00% Term: 20 years	General Obligation	\$700,000.00
8. Riverview Oconto County Application #: 02023112 Purpose: Finance Construction of New Administration Building	Town Rate: 5.00% Term: 10 years	General Obligation	\$1,500,000.00

Municipality	Municipal Type	Loan Type	Loan Amount
9. Fox Lake Dodge County Application #: 02023113 Purpose: Finance repaving projects	City Rate: 5.00% Term: 10 years	General Obligation	\$200,000.00
10. Fox Lake Dodge County Application #: 02023114 Purpose: Finance housing project development incentives	City Rate: 5.00% Term: 10 years	General Obligation	\$80,000.00
11. Mountain Oconto County Application #: 02023115 Purpose: Finance addition to Town Office/Shop	Town Rate: 5.50% Term: 15 years	General Obligation	\$950,000.00
12. Clover Bayfield County Application #: 02023116 Purpose: Finance purchase of grader	Town Rate: 5.00% Term: 4 years	General Obligation	\$350,000.00
TOTAL			\$11,129,432.22

AGENDA ITEM 3b

Municipality	Municipal Type	Loan Type	Loan Amount
1. Sanborn Ashland County Application #: 020230104 Purpose: Finance repayment of taxes paid by Native Americans	Town Rate: 5.25% Term: 20 years	General Obligation	\$610,000.00

CORRESPONDENCE/MEMORANDUM

Date: June 21, 2023

To: Board of Commissioners of Public Lands
(BCPL)

From: Lynn Lodahl and Mike Murphy
Assistant Attorneys General

Subject: Regularity of Town of Sanborn trust fund loan application #02023104.

On June 13, 2023, Board of Commissioners of Public Lands staff requested review for regularity pursuant to Wis. Stat. § 165.015(2) of the Town of Sanborn loan application #02023104. Our review identified unusual elements that may warrant consideration by the commissioners. This memorandum identifies and discusses the issues that we were able to identify based on the application materials. This memorandum is not an attorney general opinion under Wis. Stat. § 165.015(1).

I. Facts regarding the Town of Sanborn loan application #02023104.

Facts known to us regarding the application are based on the application documentation received by the Department of Justice and facts furnished by BCPL staff. The application indicates that on June 8, 2023, the Town of Sanborn passed a resolution to borrow \$610,000.00 from State of Wisconsin Trust Funds for the purpose of “financing repayment of taxes paid by Native Americans.” The loan application indicates that two of the three town board members were present at the meeting, and both voted in favor of authorizing the loan.

Our understanding is that the town board previously authorized a loan in the amount of \$1,000,000 by a vote of all three board members. The town re-voted with two members because the third member would be a recipient of a tax refund financed by the loan, creating a potential conflict of interest. We also understand that one of the remaining two board members may have a relative that is receiving a tax refund, but the exact relationship between the board member and the person receiving the refund is unknown.

The application indicates that the 2022 equalized value of taxable land in the town was \$47,780,400 pursuant to Department of Revenue records. The application also provides a second equalized value in the amount of \$23,409,800. A note that accompanied the loan application indicates that the \$23,409,800 valuation is Sanborn’s estimate of the equalized value of taxable land following removal from the tax roll of lands with tribal membership. The loan application further indicates that

its only current outstanding indebtedness is \$142,015.25 owed to Northern State Bank.

II. Sanborn litigation and land taxability.

This loan application arises in the context of recent litigation concerning the taxability of land within the Town of Sanborn. In 2018, 42 members of the Bad River Band of Lake Superior Chippewa filed lawsuits against the Town of Sanborn. The plaintiffs alleged that, under an 1854 treaty between the United States and the Lake Superior Chippewa, state real property tax cannot be imposed on reservation land owned by tribal members. *See Arbuckle v. Town of Sanborn*, Case No. 18-CV-611 (W.D. Wis.) The plaintiffs own real property within the Bad River Reservation, had paid taxes on this property under protest, and, pursuant to their interpretation of the treaty, sought to recover the unlawful property taxes paid.

A group of four Chippewa bands, including the Bad River Band, filed a similar lawsuit in federal court against several entities including Sanborn. *See Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin (LCO), et al. v. Evers, et al.*, Case No. 18-CV-992 (W.D. Wis.).

On August 15, 2022, Seventh Circuit Court of Appeals agreed with the Tribes' interpretation of the 1854 treaty and the non-taxability of the properties. Based on the *LCO* decision, the *Arbuckle* plaintiffs have valid tax refund claims against Sanborn, subject to satisfying applicable state-law procedural refund requirements. The lawsuit was then voluntarily dismissed by the court on March 1, 2023.

Sanborn accordingly now has a tax refund due to 42 tribal members. Our understanding is that the final refund amount has not been determined, but it is expected to be in the range of \$1 million. Also as a result of the decision, properties previously understood to be taxable are no longer taxable. Our understanding is that Sanborn does not currently have funds available to pay the tribal members' individual tax refund claims and seeks the trust fund loan for the purpose of financing the payments.

III. Issues identified regarding Sanborn's loan application.

Based on the facts that we are aware of, we have identified two regularity issues: (1) whether Sanborn is eligible to borrow the amount requested, given the current value of its taxable property and its outstanding indebtedness; and

(2) whether the loan involves a conflict of interest on the part of the public officials submitting the loan application.

A. Whether the requested loan amount exceeds five percent of the valuation of the taxable property within the municipality as equalized for state purposes.

The amount of a trust fund loan to a municipality may not, “together with all other indebtedness of the municipality,” exceed five percent of “the valuation of the taxable property within the municipality as equalized for state purposes.” *See* Wis. Stat. § 24.63(1).

Here, this requirement raises two issues: (1) the value of Sanborn’s taxable property “as equalized for state purposes;” and (2) Sanborn’s total “indebtedness” for purposes of calculating its five percent borrowing limit.

1. *The equalized value of Sanborn’s taxable property.*

Equalized value is not the same as assessed value. The equalized value of each Wisconsin municipality is determined by DOR on an annual basis. It is “the estimated value of all taxable and real and personal property in each taxation district . . . as of January 1, and certified by DOR on August 15 of each year.” *See Wisconsin’s Equalized Values* (2009), available at <https://www.revenue.wi.gov/DOR%20Publications/wieqval.pdf> (last visited June 20, 2023).

A municipality’s equalized value is thus based on its assessed value of its taxable property as measured against the assessed values of taxable property from every other municipality in the state. Equalization operates to ensure that the state uses a consistent standard to estimate the taxable value of each municipality.

Sanborn’s equalized value, as most recently certified by DOR in August 2022, is \$42,780,400. As a result of the *LCO* and *Arbuckle* litigation, it is apparent that the value of Sanborn’s taxable property is significantly less today than it was in August 2022. Sanborn has apparently estimated that the current equalized value of its

taxable property is approximately \$23,409,800. Information included with the application does not indicate how this amount was calculated.¹

Wisconsin Stat. § 24.63(1) does not conclusively answer the question of what happens when a municipality's taxable property value materially changes and a town applies for a loan before DOR recalculates the equalized value. However, there are related laws that address municipal borrowing and help assess the situation when read together with Wis. Stat. § 24.63(1).

The five percent borrowing limit under Wis. Stat. § 24.63(1) reflects a parallel requirement in Wis. Const. art. XI, § 3(2), which provides:

No county, city, town, village, school district, sewerage district or other municipal corporation may become indebted in an amount that exceeds an allowable percentage of the taxable property located therein equalized for state purposes as provided by the legislature. In all cases the allowable percentage shall be 5 percent except as specified in pars. (a) and (b) [exceptions not applicable here].

The legislature has provided for equalization through Wis. Stat. § 67.03(1)(a), which provides that the aggregate amount of a municipality's existing indebtedness "shall not exceed 5 percent of the value of the taxable property located in the municipality as equalized for state purposes." Additionally, Wis. Stat. § 67.03(4) provides that "[t]he *last determination made by the department of revenue* of the full value of taxable property in any municipality under this section . . . shall be the equalized valuation of the taxable property."

The constitutional provision, the statutory provisions in chapter 67, and Wis. Stat. § 24.63(1) all refer to the value of taxable property as "equalized for state purposes," and Wis. Stat. § 67.03(4) provides that this value is the municipality's equalized value as "last determined" by the Department of Revenue. It is therefore reasonable to infer that the equalized value of Sanborn's taxable property for purposes of Wis. Stat. § 24.63(1) is the last equalized value certified by the Department of Revenue in August 2022.

¹ We understand, based on our conversations with the Department of Revenue, that the Department is unable to provide Sanborn's equalized value prior to August 2023 given that the valuation is partly dependent upon valuation data submitted by other municipalities.

Notably, the legislature has specifically addressed one circumstance where the Department of Revenue must calculate an assessment of equalized value outside its annual process, but that provision appears not to apply here. Under Wis. Stat. § 67.03(5)(a), “[w]hen the last determination made by the department of revenue of the full value of the taxable property in a municipality is not a true valuation of the taxable property therein because of a change in the territory thereof,” the Department of Revenue, upon application in writing by the municipal clerk, shall increase or decrease the last determination to adjust for the change in territory, “and the resulting adjusted valuation shall be the equalized valuation of the taxable property in the municipality.” Under that provision, where a municipality’s “territory” has changed, the Department’s previous certification of the municipality’s equalized value should not be used, but instead should be appropriately adjusted by the Department.

That provision does not apply here because Sanborn’s “territory” did not change based on the *LCO* decision. The common, ordinary, and accepted meaning of “territory” is “geographic area belonging to or under the jurisdiction of a governmental authority.” *Territory*, *Merriam-Webster.com Dictionary*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/territory> (last visited June 20, 2023); *see also State ex rel. Kalal v. Cir. Ct. for Dane Cnty.*, 2004 WI 58, ¶ 45, 271 Wis. 2d 633, 681 N.W.2d 110. The *LCO* decision held that Wisconsin property tax can no longer be imposed on reservation parcels owned by tribal members, even if such parcels are within the geographic boundaries of the town, but *LCO* did not otherwise alter Sanborn’s jurisdiction or governmental authority within its boundaries. We have located no legal authority indicating that changing the taxable status of specific parcels within a municipality’s boundaries constitutes “a change in the territory” of the municipality, within the meaning of Wis. Stat. § 67.03(5).

The fact that only Wis. Stat. 67.03(5)(a) contemplates having the Department of Revenue create an updated certification of equalized value suggests that, in other circumstances, the “last determination made by the department of revenue,” Wis. Stat. 67.03(4), should be used. *See Horizon Bank, Nat’l Ass’n v. Marshalls Point Retreat LLC*, 2018 WI 19, ¶ 95, 380 Wis. 2d 60, 908 N.W.2d 797 (discussing the “negative implication canon” of statutory construction).

Read together, Wis. Const. art. XI, § 3(2) and Wis. Stat. §§ 24.63(1), 67.03(1)(a), and 67.03(5)(a) support an argument that, under the circumstances presented here, the equalized value referenced in Wis. Stat. § 24.63(1) is the equalized value of the

municipality as last certified by the Department of Revenue. Here, that would mean that the applicable equalized value is \$42,780,400.

There are two important limitations on this argument. First, this situation appears to be unprecedented and not clearly addressed by the governing statutes. We are therefore unable to predict with confidence how a court would interpret the equalized value requirement. Second, the practical reality is that, even if Sanborn's "territory" has not changed, \$42,780,400 would not be a current equalized value if DOR conducted that analysis today. Sanborn estimates the current equalized value to be \$23,409,800, though we are unaware of the basis of that calculation.

2. Sanborn's other indebtedness.

A second issue is whether Sanborn's other indebtedness includes the tax refunds owed to tribal members pursuant to the *Arbuckle* stipulation in addition to the \$142,015.25 debt identified by Sanborn on its loan application. This is important because if total indebtedness includes the refund liability, that liability must be included when calculating the five percent borrowing limit. This is again a likely unprecedented situation. We are unaware of any previous instance of a municipality applying for a trust fund loan to finance payment of individual tax refund claims, or of any previous instance of a borrowing entity seeking a trust fund loan while encumbered by such a significant tax refund liability.

The five percent limit in section 24.63(1) does not limit the type of indebtedness. Likewise, dictionary definitions of indebted are broad and includes simply "owing money." *Indebted*, *Merriam-Webster.com Dictionary*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/indebted> (last visited June 20, 2023).

Here, that suggests that the five percent borrowing limit should include the tax refunds owed. We are unaware of the amount of the total tax refund liability. Notably, any amount that Sanborn borrows and uses to reduce the tax indebtedness need not be double counted, but the total borrowing may not cause the town to have indebtedness that exceeds five percent of its equalized tax value. If \$42,780,400 is used for the calculation, the five percent limit would be \$2,139,020. If \$23,409,800 is used, the five percent limit would be \$1,170,490.

Pursuant to Wis. Stat. § 74.41, Sanborn may submit a request to the Department of Revenue to have a portion of the refunds paid to taxpayers reimbursed

to it. *See Wis. Stat. § 74.41(1)*. Our understanding, based on our conversations with the Department of Revenue, is that Sanborn may be reimbursed by the Department for a portion of the refunds paid to taxpayers by early next year, provided that Sanborn timely applies for the reimbursement this year and otherwise meets the requirements of *Wis. Stat. §§ 74.41(1) and (2)*.

Particularly, *Wis. Stat. § 74.41(2)(bm)* provides that a tax amount refunded by a taxation district may be included on a specified form for a chargeback and submitted to the Department of Revenue if the tax was “refunded or rescinded for any of the 5 assessment years immediately preceding the year in which the form under sub. (1) or is submitted or refunded or rescinded because of a court determination and submitted under sub. (1) no later than one year after the date of the court’s determination.” Sanborn’s receipt of a chargeback depends on the Department of Revenue’s interpretation of this provision and whether Sanborn complies with it. We do not know with certainty whether Sanborn will definitely receive such a chargeback or, if so, in what amount.

B. Analysis regarding potential conflicts of interest.

A town’s trust fund loan application must be approved and authorized by a majority of the members of the town’s board of supervisors. *See Wis. Stat. § 24.66(2)*. Here, Sanborn’s board of supervisors is comprised of three people. Our understanding is that all three are tribal members. One of the supervisors is personally owed a tax refund that would be financed by the loan but did not participate in the loan application process. We understand that the current loan application was considered anew, approved, and authorized by the other two supervisors at a special meeting that the potentially conflicted member did not attend. That supervisor’s nonparticipation in the loan application process likely resolves any conflict issues as to that supervisor.

The two supervisors who authorized and submitted the loan application are not personally owed a tax refund, but we understand that at least one has a family member who is owed a tax refund, though we are unaware of the exact relationship. Whether the two voting supervisors are impermissibly conflicted is most likely governed by *Wis. Stat. §§ 19.59(1)(c) and 946.13(2)(b)*.

Wisconsin Stat. § 19.59(1)(c), part of Wisconsin’s code of ethics for local government officials, prohibits local public officials from:

1. Tak[ing] any official action substantially affecting a matter in which the official, a member of his or her immediate family, or an organization with which the official is associated has a substantial financial interest.
2. Us[ing] his or her office or position in a way that produces or assists in the production of a substantial benefit, direct or indirect, for the official, one or more members of the official's immediate family either separately or together, or an organization with which the official is associated.

Wis. Stat. § 19.59(1)(c). In that chapter, “immediate family” is defined to include the public official’s spouse and any relatives by marriage, lineal descent, or adoption who either receive more than one-half of their support from the public official, or who provide more than one-half of the public official’s support. *See* Wis. Stat. § 19.42(7).

The second statute, Wis. Stat. § 946.13, is a criminal statute that operates to prohibit public officers from having a private interest in a public contract. It provides that any public officer who, in his or her capacity as an officer, “participates in the making of a contract in which the officer . . . has a private pecuniary interest, direct or indirect,” is guilty of a Class I felony. Wis. Stat. § 946.13(1)(b). As used in that statute, the term “contract” is broad enough to include a trust fund loan.

That statute does not define the boundaries of what constitutes an “indirect” pecuniary interest for purposes of Wis. Stat. § 946.13. That conflict analysis is necessarily fact specific to each case, and we are unaware of any precedent that would govern this situation. However, a prior Attorney General opinion indicates that an indirect interest, even if present, can become “so attenuated that it virtually disappears,” and therefore would not amount to a violation of Wis. Stat. § 946.13(1). *See* 75 Op. Att’y Gen. 172, 173 (1986).

Here, all we know is that at least one of the authorizing supervisors may have a relative who will be among those receiving a refund. We do not know what that exact relationship is, so we cannot evaluate whether there is a conflict under either statute. Applying Wis. Stat. § 19.59, we do not know whether the family member receives more than half of their support from the official (or provides more than half of the official’s support). Applying Wis. Stat. § 946.13, we do not know whether either of the authorizing supervisors has a significant enough relationship with a person receiving a tax refund that it would be an indirect pecuniary interest for purposes of that statute.