STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

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Mr. Robin J. Stowe
Corporation Counsel
Langlade County
800 Clermont Street, Rm. 102
Antigo, WI 54409

Dear Mr. Stowe:

¶ 1. You have requested an opinion regarding whether a county has the authority to exchange surplus funds for U.S. gold coins. I conclude that the answer is no. Wisconsin Stat. § 66.0603 provides the authorized list of investments that a county can make with county funds, and the statute does not authorize an investment in U.S. gold coins.

¶ 2. You advise that the Langlade County Finance Committee ("Finance Committee") is interested in purchasing U.S. gold coins using surplus county funds. The Finance Committee believes that, given current economic conditions, county funds deposited or invested in U.S. currency will lose value. You ask whether a county has the authority to make such a purchase.

¶ 3. Your question implicates principles concerning the powers of a county. "Counties have no inherent power to govern." *Ecker Bros. v. Calumet Cnty.*, 2009 WI App 112, ¶ 18, 321 Wis. 2d 51, 772 N.W.2d 240 (citation omitted). Instead, "[a] county is a creature of the legislature and as such, it has only those powers that the legislature by statute provided." *Jackson Cnty. v. State of Wis. Dep't of Natural Res.*, 2006 WI 96, ¶ 16, 293 Wis. 2d 497, 717 N.W.2d 713 (citing Wis. Const. art. IV, § 22). Accordingly, an analysis of your question begins with the relevant statutes governing county authority.

¶ 4. Wisconsin Stat. § 59.61 governs the management of county funds. The statute provides that counties must pay monies into the county treasury as prescribed by law and must keep an accounting of county funds. *See* Wis. Stat. § 59.61(1)(b), (c). Wisconsin Stat. § 59.61(2) provides that the county board must designate a county depository for county funds, such as a credit union, bank, savings bank, savings and loan association, or trust company.

¶ 5. Wisconsin statutes are specific in directing how county funds must be maintained and invested. Wisconsin Stat. § 59.61(3) establishes how county funds may be maintained. The statute provides that the county board may

> invest any funds that come into the county treasurer's hands in excess of the sum the treasurer is authorized by the board to retain for immediate use in the name of the county in the local government pooled-investment fund, in interest-bearing bonds of the United States or of any county or municipality in the state or in any other investment authorized by statute.

Wis. Stat. § 59.61(3). The "other investment[s] authorized by statute" referred to in Wis. Stat. § 59.61(3) are spelled out in Wis. Stat. § 66.0603, which provides a comprehensive list of the investments a county is authorized to make.

¶ 6. The threshold question is whether U.S. gold coins are an "investment" under Wis. Stat. § 59.61(3). "Investment" is not defined in Wis. Stat. § 59.61(3) or 66.0603. "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." *State ex rel. Kalal v. Circuit Court for Dane Cnty.*, 2004 WI 58, ¶ 45, 271 Wis. 2d 633, 681 N.W.2d 110 (citations and internal quotation marks omitted). Referring to a dictionary for a definition is one means of ascertaining a statutory word's plain meaning. *See id.*, ¶¶ 53-55.

¶ 7. Webster's New Collegiate Dictionary defines "invest" as "to commit (money) in order to earn a financial return." WEBSTER'S NEW COLLEGIATE DICTIONARY 603 (1979). Similarly, "investment" is defined as "the outlay of money usu[ally] for income or profit : capital outlay; *also* : the sum invested or the property purchased[.]" *Id.* Consistently, in *Brownie Oil Co. of Wis. v. Railroad Comm'n of Wis.*, the Wisconsin Supreme Court quoted approvingly from a Minnesota Supreme Court decision that defined "investment": "'The placing of capital or laying out of money in a way intended to secure income or profit from its employment is an "investment" as that word is commonly used and understood.'" 207 Wis. 88, 93-94, 240 N.W. 827 (1932) (quoting *State v. Gopher Tire & Rubber Co.*, 177 N.W. 937 (Minn. 1920)).

¶ 8. As you have described the Finance Committee's position, it appears that the purpose of the proposed exchange is to increase the value of surplus county funds, thereby securing a financial return. Based on the plain meaning of the word "investment," the exchange of surplus county funds for U.S. gold coins would be an investment within the meaning of Wis. Stat. § 59.61(3).

¶ 9. Your question thus turns on whether the investment of surplus county funds in U.S. gold coins is among the investments authorized under Wis. Stat. § 66.0603. The statute provides a list of specific investments in which a county may invest: (1) time deposits of the types specified in Wis. Stat. § 66.0603(1m)(a)1.; (2) bonds of the types specified in Wis. Stat.

§ 66.0603(1m)(a)2., 3., 3m., 3p., 3q., 3s., 3t., 3u., 5.a., and 5.b.; (3) securities of the types specified in Wis. Stat. § 66.0603(1m)(a)2., 3., 4., and 5.a.; and (4) repurchase agreements. Wis. Stat. § 66.0603(1m)(a)5.c. Counties, as "local governments" under Wis. Stat. § 25.50(1)(d), may also invest surplus funds in the local government pooled-investment fund that is administered by the State of Wisconsin Investment Board. Wis. Stat. § 66.0603(1m)(c). Finally, a county may loan money to a public depository under Wis. Stat. § 34.01(5) "if the agreement is secured by bonds or securities issued or guaranteed as to principal and interest by the federal government." Wis. Stat. § 66.0603(1m)(d). U.S. gold coins are not listed as an authorized investment in Wis. Stat. § 66.0603(1m).

¶ 10. "[A]s a general rule, where the statutes authorize certain specified investments, those investments not enumerated are not permitted." 77 Op. Att'y Gen. 274, 275 (1988) (citation omitted). Because a county has the authority only to make investments provided for by statute, and no statute authorizes an investment in U.S. gold coins, I conclude that a county is not authorized to exchange surplus funds for U.S. gold coins.

Sincerely,

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Attorney General

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