



Intergovernmental Agreements:

Steps to drafting a beneficial intergovernmental agreement

by Robert Britz and Vicki Johnson
Ottosen Britz Kelly Cooper & Gilbert, Ltd.

Intergovernmental agreements are common methods for neighboring jurisdictions to pool resources such as fire and police services, to provide for the joint ownership of fire apparatus and equipment, to engage in joint planning, and to agree upon boundaries. The result of intergovernmental cooperation through these agreements is significant cost savings, efficiency, and coordinated growth management. In Illinois mutual, long-term intergovernmental agreements are permitted among communities under both Article VII, §10 of the Illinois Constitution and various state statutes that authorize intergovernmental agreements (See, for example, 65 ILCS 5/11-12-13). This article highlights the purpose, goals, and elements of establishing a practical, beneficial intergovernmental agreement.

An intergovernmental agreement must contain clear, concise language to limit potential friction between participating parties. In order to develop and implement a shared vision for the community's future goals through mutually beneficial agreements, communication should be established and maintained with surrounding local governments when engaging in intergovernmental agreements.

The Illinois Constitution authorizes an expansive intergovernmental and public-private contractual authority. Article VII, §10 provides that units of local government and school districts need not seek specific statutory authority before undertaking an intergovernmental activity. Article VII, §10(a), of the Illinois Constitutions provides:

Units of local government and school districts may contract or otherwise associate among themselves, with the State, with other states and their units of local governments and school districts, and with the United States to obtain or share services and to exercise, combine, or transfer any power or function, in any

manner not prohibited by law or by ordinance. Units of local government and school districts may contract and otherwise associate with individuals, associations, and corporations in any manner not prohibited by law or by ordinance. Participating units of government may use their credit, revenues, and other resources to pay costs and to service debt related to intergovernmental activities.

Consistent with this constitutional provision is the Intergovernmental Cooperation Act which provides that units of local government may contract with each other "to perform any governmental service, activity or undertaking to combine, transfer, or exercise any powers, functions, privileges, or authority which any of the public agencies entering into the contract is authorized by law to perform." (5 ILCS 220/5)

The Illinois Constitution and the Intergovernmental Cooperation Act contain minimal guidelines for drafting an agreement. The Intergovernmental Cooperation Act requires only that a "contract shall set forth fully the purposes, powers, rights, objectives and responsibilities of the contracting parties," and the state legislature has not prohibited the power to cooperate (5 ILCS 220/5). However, it is important to

examine local ordinances to determine any local limitations on the participating parties.

In addition to the general authority conferred on units of local government by the Illinois Constitution and the Intergovernmental Cooperation Act, the Illinois Fire Protection District Act (70 ILCS 705) also contains express authority for fire protection districts to enter into arrangements with other fire protection districts or municipalities (cities and villages) for the joint ownership of "fire fighting equipment, communication equipment, rescue and resuscitator equipment and real and personal property necessary for the care and housing of such equipment." (70 ILCS 705/10b) Section 10b recognizes the high cost of equipment which can prevent a single district from acquiring a needed piece of fire apparatus and equipment and provides express authority for fire protection districts to develop creative solutions for the ownership of fire and rescue apparatus on a collective basis which enables multiple fire departments to have access to equipment which otherwise would not be available to them individually. By the implementation of Section 10b through a well prepared intergovernmental agreement, fire protection districts can, therefore, do together what they could otherwise not do alone.

Robert Britz is a shareholder with the law firm of Ottosen Britz Kelly Cooper & Gilbert, Ltd. at the firm's Elburn office. Mr. Britz engages in the general practice of law with an emphasis in municipal and local government law, as well as real estate, estate planning, probate, and business matters. You can contact Mr. Britz at 630-365-6441 or by e-mail at rbritz@obkcg.com.

Vicki Johnson, a graduate of Quincy University, is in her third year of law school at Northern Illinois University College of Law. Previously, Vicki clerked for Will County Circuit Court Judge Kinney and worked as a teacher's assistant for developmentally and physically handicapped children. Vicki divides her time among the Elburn, Joliet, and Naperville offices.

The Department of Local Government Affairs and Northeastern Illinois Planning Commission publishes a pamphlet, "Intergovernmental Cooperation in Illinois" (1976) that includes a section on "Elements of a Good Agreement or Contract." Several of the key elements of a good intergovernmental agreement are listed below:

Parties - The parties to the agreement should be expressly identified, with a designation of what type of legal entity each party is (e.g., municipal corporation, body politic and corporate, etc.).

Purpose - The purpose should state what the agreement intends to accomplish. The purpose should include the nature of the joint undertaking, functions to be performed, and the benefits accruing to a party.

Work or service to be performed - There must be a specific enumeration of the works or services to be performed by each party, personnel supplied, timing of the work, responsibility for administration, coordination among parties, qualitative and quantitative measures regarding the work or services, area to be served, sharing of equipment, and other capital investments. It is important to specifically state who is to perform what task in order to avoid disputes between parties.

Finance - The source of funding must be included (e.g., joint contributions or service charges).

Administration - The contract must state who is to administer the program and the nature of the administrator.

Fiscal procedures and record-keeping - The agreement should provide for adequate record-keeping, particularly financial records, the respective rights of the parties to inspect them, when they may be inspected, who is to keep them, the rights of the parties to challenge their accuracy, and periodic joint review and audit.

Personnel - The agreement must state who provides what personnel, for what period of time, how and by whom the personnel are to be paid etc.

Legal basis - It is recommended that the agreement state explicitly that it is being entered into under and by virtue of the provisions of Article

VII, §10 of the Illinois Constitution, the Intergovernmental Cooperation Act, and other relevant statutory and constitutional provisions.

Legal liabilities and insurance - Appropriate provisions should be included regarding the respective areas of liability of each of the contracting parties. If insurance is purchased, provisions should cover how and by whom the insurance is obtained.

Property - Provisions should state what apparatus, equipment, and facilities are to be used, and on what basis and what reimbursement is made for that use.

Duration, termination, withdrawal, and amendment - The contract should clearly specify: intended duration, provisions for extension, legal consequence of a contracting party withdrawing from the agreement, right of any party to withdraw unilaterally from or terminate the agreement, procedure for termination based on mutual consent, and impossibility of performance.

Once a local government understands the fundamentals of drafting a good agreement, it must recognize the advantages of creating such an agreement. Some advantages include:

- increasing efficiency by establishing optimum-size operating units on a function-by-function basis;
- sharing expensive, underutilized equipment, facilities, and manpower;
- avoiding start-up costs associated with purchasing new equipment or hiring staff to provide a service;
- enhancing the service capabilities of smaller local governments to provide specialized, previously unaffordable services to their residents;
- eliminating duplication of effort; and
- increasing overall service efficiency.

When deciding if an intergovernmental agreement is the appropriate step to take, ask yourself, "What's best for the public?" Remember that once the cooperating governments are ready to enter into agreement, their intergovernmental agreement must be carefully drafted and specific so that disputes do not arise that could end the cooperative effort. ■