

California State Association of Counties Institute

Intergovernmental Collaboration — Fostering Effective Relationships Across Boundaries

# Legal Issues

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# Consolidation of Services

- Consolidation trend is accelerating because of governmental fiscal crisis
- Consolidation can take many forms
- Presentation focuses on two main forms:
  - Contracting for service
  - Joint powers agreements
- Alternatives to true consolidations

# Considerations Across Options

- Labor issues
  - Hiring and layoffs
  - Meet and confer?
  - Helpful to have labor buy-in early in process
- Review of obligations, assets, resources, liabilities
  - Debt
  - Equipment, facilities, and office space may be surplus and have value
  - Adequacy of property tax revenues
  - Financial stability of partners across the term of the arrangement
  - Workers' compensation: focus on the movement of employees rather than the form of consolidation; examine options for shifting or sharing risk of injuries incurred prior to consolidation

# Agreements for Services

- Various statutes permit one agency to provide municipal services to another agency
- Typical example is the Sheriff providing police services to a city
- Legal authority
  - Gov. Code, §§ 54981 [any local agency to another], 55632 [police and fire to a neighbor], 51301 [counties to cities]

# Agreements for Services

- Pros
  - Simple for agency being served
  - No governance issues
  - Parties have complete control/flexibility to implement
  - No LAFCO/voter approval required
  - Tends to be less political, with issues resolved at the administrative level

# Agreements for Services

- Cons
  - Highly dependent upon competency of parties, particularly of the service provider
  - Difficult to enforce standards of service
  - Difficult to develop an equitable formula for allocating overhead costs
  - Can be difficult to transition existing employees to new service provider
  - Loss of local control (real or perceived)
  - Initial success may depend on competency of individuals managing or providing services; risk of decline after those individuals leave

# Agreements for Services

- The typical “boilerplate” contract terms are anything but boilerplate
  - Indemnity
  - Insurance
  - Each agreement must be tailored to address the potential risks from providing and contracting for the specific service(s)

# Agreements for Services

- City/County agreements are highly regulated
  - Contract may not have a term greater than five years (though the term may be automatically renewed for additional five year periods) (Gov. Code, § 51302)
  - When a contract unifies a county and city department, any reduction in employees in either department must be done based on seniority, without preference given to the employees of either party (Gov. Code, § 51305)
  - When a county provides services to a city, all pension rights held by city employees transferred to the county shall be assumed by the county (Gov. Code, § 51306)



# Agreements for Services

- City/County agreements are highly regulated (cont.)
  - Any person pensioned at the execution of a contract for the provision of city services by a county has a vested property right in the pension fund for the payment of his or her pension (Gov. Code, § 51308)
  - Counties must charge “costs incurred in providing the services” contracted for, and may not charge “general overhead costs of operation of the county government.” (Gov. Code, § 51350) “General overhead costs . . . are those costs which a county would incur regardless of whether or not it provided a service under contract to a city”

# Joint Powers Agreements

- Legal authority
  - Government Code section 6502 allows two or more public agencies to “jointly exercise any power common to the contracting bodies”
- Can jointly exercise powers without creating a separate agency (JPA)
- Sometimes overlooked that the two agencies must both be able to perform the service to be provided by the JPA

# Joint Powers Agreements

- Typical examples:
  - Transit service
  - Fire service
- Atypical example:
  - Cities creating a single police department

# Joint Powers Agreements

- Pros
  - Can be crafted to facilitate transition of existing employees to JPA
  - Overhead costs easily allocated
  - Parties have complete control/flexibility to implement
  - Liability can be shifted to JPA (limited liability)
  - No LAFCO/voter approval required

# Joint Powers Agreements

- Cons
  - Governance issues when one party is larger than another
  - Loss of local control
  - “Political” disputes
    - Perception that one party receives better service
    - Location of JPA’s offices
    - Loss or gain of facilities, equipment, land

# Joint Powers Agreements

- Other considerations:
  - Helps if all parties have uniform standards of service
  - Completely separate management or joint management by parties?
  - Organization of administrative aspects (e.g. billing for services)
  - Selecting which equipment to retain
  - Adjustment of cost sharing based on demographic changes within member communities
  - Allocation of assets and liabilities upon dissolution

# Questions?

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