



LEGAL ISSUES RELATING TO COUNTY GOVERNMENT

Do More With Less?

Understanding Intergovernmental Agreements in Wisconsin

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Counties continue to face challenging financial times. In addition to limited funding sources, there is an increased demand for a variety of public services. Counties, to their credit, are looking for opportunities to “do things differently” rather than merely trying to “do more with less.” Along those lines, counties may look to intergovernmental agreements (IGAs) as an option to improve the efficient delivery of services without compromising the quality of those services. This article provides an overview of IGAs, their possible benefits, and drafting considerations to ensure the best possible cooperative agreement for providing vital county services.

► Intergovernmental agreements: An overview

Section 66.0301 of the Wisconsin Statutes provides statutory authority for counties to “contract with other municipalities and with federally recognized Indian tribes and bands in the state, for the receipt or furnishing of services or the joint exercise of any power or duty required or authorized by law.” This broad grant of authority allows a county to enter into a wide range of agreements with other municipalities for the joint performance of a public service, or for the sharing of responsibilities, resources or services. A county may use an IGA to provide a mandatory service, or an IGA may be used for other services that are not mandatory but still benefit the public, such as an ambulance service.

Importantly, however, a county may not agree to perform any power for which it does not have underlying

statutory authority. For example, a county does not have statutory authority to enter into a boundary agreement. As such, a county may not enter into an intergovernmental agreement with another municipality to mutually agree on county or municipal boundaries.

The provisions set forth in Wis. Stat. § 66.0301 do not supersede other statutory authority for counties to enter into cooperative agreements. For example, Wis. Stat. § 46.82(2) specifically allows two or more contiguous county boards of supervisors or an elected tribal governing board to contract for the delivery of mandated services to the aging population. Many counties use these consortium Aging and Disability Resource Centers for the delivery of more efficient and cost-effective services. A county’s ability to contract, and the requirements of such a cooperative contract, are not modified by Wis. Stat. § 66.0301. Like many policy choices facing counties, there are benefits and drawbacks to entering into an IGA.

► Benefits of intergovernmental agreements

The general purpose of an IGA may be obvious: to improve the quality of services and create efficiencies in their delivery by collaborating with another municipality.

Efficiency is generally the benchmark for an IGA, as the pooling of resources may reduce duplication of municipal efforts that cause wasteful spending and customer confusion. IGAs for emergency response, 911 coordination, and other law enforcement services are good examples of services that may be more efficiently performed by multiple

municipalities working together. In less densely populated areas, for example, smaller municipalities may benefit from contracting with a county sheriff's office or another larger municipality for law enforcement services that may not otherwise be available to residents.

Cost savings may be realized in various ways. Avoiding duplication of efforts to provide a service obviously eliminates costs, but other considerations may also play a significant role. Opportunities to share staffing, expensive and complex equipment, and compliance obligations, as well as to purchase jointly, may result in cost savings. One example is emergency response services.

While cost savings are important, counties understand the paramount importance of providing essential mandated services. Some communities may not have the resources or expertise to provide these vital services, and an IGA may be a beneficial option for greater access to more comprehensive services. Common examples of IGAs for these types of services include public health services and emergency preparedness consortia. The Western Wisconsin Public Health Readiness Consortium, for example, provides emergency expertise and preparedness resources to many areas in western Wisconsin that would otherwise not have access to such expertise. Income maintenance/public support agencies are another example of consortia that allow people in rural areas to access public resources. Wisconsin currently has 11 consortia for administering programs such as Badger Care Plus, Medicaid, and FoodShare.

► Drafting considerations to promote efficiency and avoid disputes

An IGA is a binding agreement between a county and another municipality that carries the legal force of a contract. While municipalities may have the best intentions and a positive outlook when entering into an

IGA, like any other contractual arrangement, there are potential challenges to consider. For example, questions of the proper performance of contractual duties, fiscal compliance, and personnel issues are areas that should be carefully addressed in an IGA to avoid ambiguity and confusion. Below are the most significant drafting considerations for an IGA:

- **The right people at the discussion table.** Of course, a county will want the subject matter experts involved in the IGA discussion. The department director or representative is the expert in a given field, and that knowledge is essential in properly documenting the shared obligations. Because a well-drafted IGA is critical in establishing a successful relationship with another municipality, it is important to engage corporation counsel early in the process. A county should also include its finance director or other finance official to provide fiscal data, short- and long-term analysis of cost savings, and other financial impacts. Counties are also encouraged to consult with the county human resource director regarding any

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shared personnel issues that should be addressed in the IGA.

- **Clarity of specific purpose and scope.** An IGA must be detailed in setting forth the purpose of the agreement, the scope of the agreement, and the services and obligations to be performed. An IGA should also address the parties' obligations if the demand for services changes.
- **Contract term and termination.** An IGA, like any contract, must have a specific term. The IGA should establish the initial term, and then address any renewal provisions, such as automatic renewals. There is always a chance that one party may not perform as required, so an IGA should have comprehensive notice of default and termination provisions.

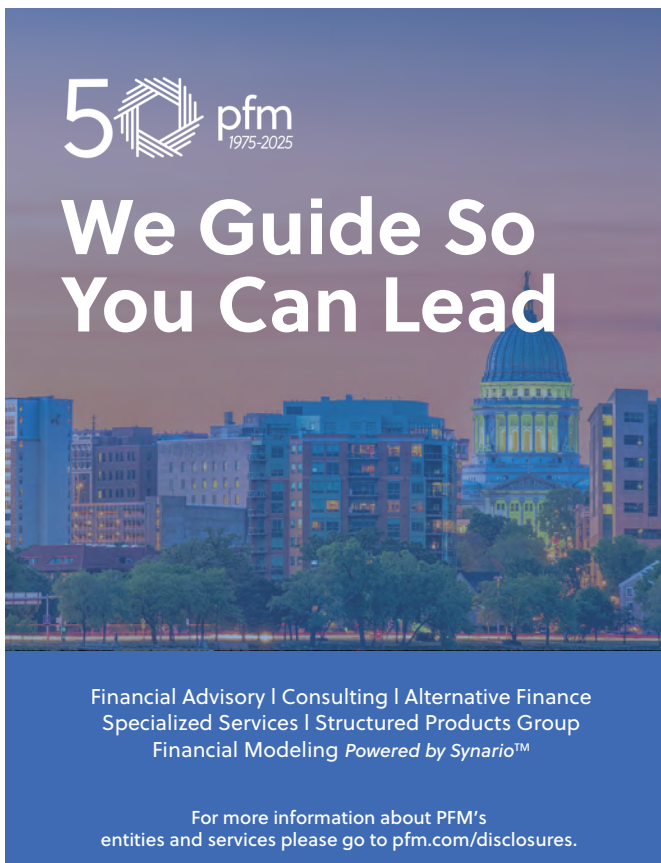
- **Governance and oversight.** Many municipalities that engage in shared services will form a joint or cooperative governing body, referred to as a "commission" in Wis. Stat. 66.0301(3), which has equal representation of each party's interests. Cooperative governing bodies may have bylaws or other procedural requirements to establish standards for performance monitoring, data collection, financial reporting and operational oversight. Clear lines of governing responsibility may avoid difficult questions of oversight or claims of one party's failure to properly oversee the operations and services.
- **Liability.** An IGA should clearly set forth each party's insurance requirements, indemnification obligations, and available remedies in the event one party breaches its obligations and the other party incurs liability.

► Conclusion

As counties continue to balance ongoing fiscal pressures and staffing challenges with the requirement to deliver mandated services, a properly drafted and faithfully implemented IGA may be an effective tool to manage and overcome these challenges and deliver services at a quality county residents need and deserve. This article is merely an overview of high-level considerations related to IGAs. Counties are encouraged to consult with their corporation counsel for a more in-depth discussion. ■

Attolles Law, s.c. works on behalf of Wisconsin counties, school districts and other public entities across the state of Wisconsin. Its president & CEO, Andy Phillips, has served as outside general counsel for the Wisconsin Counties Association for more than 20 years.

1. Wis. Stat. § 66.0301(1)(a) defines "municipality" broadly and includes a city, village, town, school district, public library system, public inland lake protection and rehabilitation district, sanitary district, farm drainage district, metropolitan sewerage district, sewer utility district, solid waste management system, local exposition district created pursuant to Wis. Stat. Ch. 229, a local professional baseball park district, a local professional football stadium or a local cultural arts district created under Wis. Stat. Ch. 229, a long-term care district, water utility district, mosquito control district, municipal electric company, county or city transit commission, commission created by contract under this section, taxation district, regional planning commission, housing authority, redevelopment authority, community development authority, or city-county health department. For purposes of a joint transit commission, "municipality" means any city, village, town or county.
2. Wis. Stat. § 66.0301(1)(c).
3. See wwphrc.org.



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