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Information Brief

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The Joint Exercise of Powers Act

The Minnesota Legislature has been a national leader in promoting interlocal cooperation. Local governments in Minnesota have for decades provided many local services through cooperative and joint action authorized by the legislature. Under the fiscal stresses of the nineties, the legislature and local governments are showing increased interest in using interlocal cooperation to deliver local services efficiently.

The legislature has encouraged and fostered cooperative local action in four ways:

- through an overarching, general enabling law, called the Joint Exercise of Powers Act, that authorizes local cooperative action for any activity;
- through the Board of Government Innovation and Cooperation;
- through special laws that apply only to specific local units of government; and
- through 100 or more laws that authorize local cooperative action to carry out particular local functions or activities (e.g., waste management).

The first of these legislative initiatives, the Joint Exercise of Powers Act (section 471.59) is the fundamental component in the legal system for interlocal cooperation in Minnesota. This act, first put in place in 1943 and amended many times since, is the subject of this information brief.

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Summary of the Joint Exercise of Powers Act

Commonality Requirement

Minnesota Statutes, section 471.59, the Joint Exercise of Powers Act, is a broad grant of authority for local units of government, including an instrumentality of a governmental unit to cooperate with one another, local governmental units of another state, another state, and agencies of the state of Minnesota or the United States. It permits two or more governmental units to exercise jointly, or cooperatively by agreement, any power common to the contracting parties or any similar powers (subdivision 1). In other words, they may do jointly what each can do individually. The act contemplates two basic forms of cooperation:

(1) a cooperative arrangement in which the units party to the agreement participate in the governing and administration of the function; and

(2) an arrangement in which one unit provides a service for another unit.

The latter allows for the service contract whereby one unit purchases a service from another unit.

Exceptions to Commonality Requirement

The act provides two exceptions to the requirement that each entity possess a power individually in order to exercise it cooperatively. The exceptions are:

(1) a county, by agreement, may perform an activity on behalf of another governmental unit if the requesting unit has authority to do it even though the county does not have authority to provide it for itself; and

(2) a governmental unit, by agreement, may, if so requested, perform an activity on behalf of another governmental unit if the provider has authority to do it for itself even if the requesting unit is without such authority.

See pages 11 to 12 for further discussion of these provisions.

Broad Application of Authority

The act is a general law that confers general powers for interlocal cooperation. This means it is non-specific about what particular services or functions may be furnished in an agreement between participants. However, it must be read in conjunction with other laws that authorize cooperation in a particular activity, as the act does not dispense with any procedural requirements contained in laws that provide for the joint exercise of the particular governmental power. Where

a statute makes express provision for participation by one governmental unit with another governmental unit, the specific statute controls.

Voluntary Participation

The voluntary nature of any joint or cooperative agreement is a central element of the act. A governmental entity is not required or directed to enter into any arrangement for the pursuit of an activity under the general authority of section 471.59. It is the decision of the respective governing bodies of the political subdivision whether to engage in interlocal cooperation within the provisions of the act. One unit of government cannot force another unit to come together to supply a service together or to provide a service on behalf of another unit.

Benefit Requirement

Also, a mutual benefit must be present in a cooperative effort. A benefit must accrue to each party to an agreement in order to satisfy a *quid pro quo* test.

Joint Boards

Parties to an agreement may establish a joint board to administer the provision of the service or function. The board is to be representative of the parties to the agreement.

Parties to a joint powers agreement may establish a joint board to issue revenue bonds under any law which authorizes any of the governmental units establishing the board to independently issue bonds. The proceeds from the obligations are to be used to carry out the purposes of the law under which the obligations are issued. The joint board may issue obligations only pursuant to express authority granted by the participating units.

See pages 4 to 11 for further discussion of these boards and their powers, especially the power to issue bonds.

Disbursement of Funds

Public funds may be disbursed to carry out the purposes of an agreement. Purchases on contracts under an agreement may be legally adjusted to the procedures of any one of the participants.

Termination of Agreement

An agreement may continue for a specified term, or until rescinded or terminated in accordance with its terms.

Distribution of Property

A joint agreement must provide for the distribution of property acquired as the result of a joint or cooperative exercise of power after the purpose has been completed or the agreement terminated.

Issues in the Law and Practice of Joint Exercise of Powers

Recent developments in law and practice have somewhat changed the legal basis of the act and expanded local authority to use the act.

(1) the character of the joint boards that may be established under the act and the powers the boards may exercise;

(2) the commonality of powers rule; and

(3) the authority to establish joint boards to issue bonds under subdivision 11 of the act.

What is a Joint Powers Board and What Powers Can One Exercise?

Subdivision 2 of section 471.59 contains the sentence:

> *When the agreement provides for use of a joint board, the board shall be representative of the parties to the agreement.*

This short provision raises two questions about the act: Neither the subdivision nor other provisions of the Joint Exercise of Powers Act set forth what powers a joint board may exercise. Nor does the law say whether the exercise of powers by such a board is in the nature of a delegation of powers or an agency relationship. Is the joint board a single and separate entity possessing the powers held by the individual governmental units and common to them? If a single entity is created, what is its nature? Is a hybrid governmental unit created?[1]

On the question of a single entity, the delegation of fundamental powers and what powers a joint board may possess, there is a divergence of views between the state attorney general and the Minnesota courts. The courts seem to advocate the single entity concept while the attorney general takes the opposite view.

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[1] Discussion of joint power boards as single entities includes only those Attorney General Opinions and court cases directly involving situations where joint boards were created. For a detailed treatment of the subject, see Floyd R. Olson, *The Joint Exercise of Power, Interlocal Cooperation or Interlocal Confusion*, 42 Minnesota Bench and Bar, No. 7, 25-30, (August 1985).

View of the Attorney General

In 1975, the attorney general advised the Anoka County Law Enforcement board, a joint powers board, that the five cities and Anoka County could not delegate their power to levy a tax to the joint board for the purpose of carrying out responsibilities prescribed in the agreement.[2] Although the Joint Powers Act permits governmental units participating in a joint agreement to provide for the exercise of common or similar powers by one or more such units on behalf of the others, and to this extent allows for delegation of some governmental power, the legislative power to tax could not be delegated under section 471.59. The power to tax could not be delegated because "any such delegation may only be made to a governmental unit or units participating in a joint agreement and this necessarily excludes any joint board or similar instrumentality which is a creation of, rather than a participant in, such agreement."

In 1977, the city of Stillwater, the town of Stillwater, and Washington County entered into an agreement that established a joint board under section 471.59 to which the parties wished to delegate complete authority and jurisdiction for planning and land use control in a prescribed area. The five members of the board (committee) were required to consult with their governing bodies which retained the right to instruct their members to vote for or against particular proposals. The question put to the attorney general was as follows:

> *Does the establishment of the joint planning and zoning committee pursuant to the described agreement constitute a lawful delegation of planning and zoning authority by the governing bodies of the above named governmental units?*[3]

The attorney general replied in the negative.

> *The power to plan and zone is conferred on those governing bodies by statute and may be delegated by them only in the manner, and to the extent, authorized by statute.*

The opinion noted that there was no statute authorizing the described delegation and therefore came within the prohibition of the general rule that, "A council cannot delegate its legislative power, or its administrative power calling for judgment or discretion to a committee or otherwise, but it may delegate mere ministerial duties."

The opinion also pointed out that the office (attorney general's) had previously held that where "a municipal governing body acting singly is not authorized to delegate a particular power and responsibility to an administrative board, it may not do so jointly pursuant to this statute [section 471.59]." Since none of the governing bodies could delegate their powers to plan and zone to an administrative board, none could do it jointly under the Joint Powers Act.

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[2] Op. Att'y. Gen., 1007, November 21, 1975.

[3] Op. Att'y. Gen., 1007, July 8, 1977.

The force of the opinions of the attorney general is that legislative or discretionary powers cannot be delegated to a board formed by joint agreement from the governmental units that formed the agreement or discretionary powers in the absence of specific statutory authority to make such delegation.

View of the Minnesota Courts

In sharp contrast to the view taken by the attorney general concerning the delegation of powers and the single entity notion regarding joint boards, the Minnesota courts have taken a position that tends to support the idea of a single entity. The following is a brief review of several court cases that involve a joint powers board relative to the single entity question.

Local Government Information Systems v. Village of New Hope[4]

In this case, several metropolitan municipalities joined together to establish a joint organization to manage an information system for the participants—Local Government Information System or LOGIS. The dispute arose from New Hope's refusal to pay its annual share of the LOGIS budget as determined by the LOGIS board. Suffice it to say that New Hope's arguments were rejected by the Minnesota Supreme Court. The case is pertinent to the subject in review in that LOGIS was a duly formed entity with powers to prepare and adopt a budget to purchase equipment and provide for operating expenses, and present it to the participants. Also, the suit was brought forward by LOGIS under its name which implied the right to sue or be sued.

Joint Independent School District No. 287 (Suburban Hennepin County Area Vocational Technical Schools) v. City of Brooklyn Park[5]

This case touches more directly upon the concept of the nature of a joint powers agreement as a single entity with a joint board. Joint Independent School District No. 287 (JISD) was organized in 1969 under section 471.59 by the agreement of 13 independent school districts located in suburban Hennepin County.[6] JISD objected to an assessment for a sewer project. One of the

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[4] *Local Gov't Info. Sys. v. Village of New Hope*, 311 Minn. 258, 248 N.W. 2d 316 (1976)

[5] *Joint Indep. Sch. Dist. No. 287 (Suburban Hennepin County Area Vocational Technical Sch.) v. City of Brooklyn Park*, 256 N.W. 2d 512 (Minn. 1977). *See also Arrowhead Regional Corrections Board v. Aitkin County*, 534 N.W. 2d 557 (Minn. App. 1995).

[6] A special law passed in 1967 authorized the school districts to create a joint school district board. Laws 1967, ch. 822, § 3, delineated the status of the joint board, and section 4 granted the board "all the powers granted by law to any or all of the participating school districts." Technically, the act did not require local approval by the school districts because of an amendment to the local approval section of the Minnesota Statutes (section 645.021) enacted in the same legislative session and made to apply to all special laws enacted in 1967 as well as to future special laws. However, all but four of the school districts approved the law and filed a local approval certificate with the secretary of state. In 1969, apparently two of the four school districts that did not so approve and file, decided to participate in the joint venture as well as a school district not cited in the 1967 special law, and independent school district No. 287 was formed under the general Joint Exercise of Powers Act (§ 471.59).

grounds for the objection was that it was an "instrumentality" in which case it would be allowed to make its own determination of the amount to be paid to the city of Brooklyn Park for the improvement, and not a "governmental unit" in which case it could not independently determine the amount. Minn. Stat § 435.19. The Supreme Court held the position that JISD was a "governmental unit" and not an "instrumentality" for purposes of section 435.19. The Court said:

> *In arriving at this determination ["governmental unit"], initial reference is made to JISD's name which indicates that it is a school district and as such includable under section 435.19, subdivision 1, as a "governmental unit." Additionally, JISD was formed by an agreement between 13 independent school districts entered into pursuant to Minnesota Statutes, section 471.59. This statute allows governmental entities to join together as a single entity in order to accomplish a common goal. The consolidated group formed pursuant to section 471.59, subdivision 1, can exercise any power common to the contracting parties. Accordingly, the parameters of the group's (JISD) powers are determined with reference to the powers possessed by the individual participants ....*

In the Matter of the Greater Morrison Sanitary Landfill SW-15[7]

This case, which was decided in the Minnesota Court of Appeals, bears directly upon the question of separate entity status for joint powers boards. The action involved liability for resources and costs associated with a closure order for a landfill in Morrison County issued by the Minnesota Pollution Control Agency.

The Greater Morrison Sanitary Landfill Board was established under section 471.59 by agreement by a number of local units of government. A board of directors, all members of the Landfill Board, managed the business and affairs of the Landfill Board. Over the years, many of the governmental units withdrew from membership on the board. In 1986, the board decided to dissolve and assign the permit for operation to Morrison County. The county never formally accepted this assignment, and in 1988 the MPCA issued a closure order as indicated above. At issue were two questions:

(1) Can governmental entities comprising the Landfill Board, which board was created pursuant to the Joint Exercise of Powers Act, Minn. Stat. § 471.59, be held individually liable for the actions of the Landfill Board? and

(2) Is the closing of a solid waste landfill facility the sole responsibility of the owners and operators at the time the facility is closed, or is it the responsibility of all owners and operators during the entire existence of the landfill?

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[7] *In the Matter of the Greater Morrison Sanitary Landfill*, SW-15, 435 N.W. 2d 92 (Minn. App. 1989)

In the analysis of the final question, the Court stated:

> *It is not clear whether a separate legal entity is created when governmental units act pursuant to the Joint Exercise of Powers Act, Minn. Stat. section 471.59. Neither is it clear, if an entity is indeed created, whether that entity has the attributes of a corporation or partnerships, or simply an agent acting on behalf of the principal member governmental units.*

and continuing:

> *We believe that the entity, if any, created through the joint exercise of powers, is in the nature of a hybrid potentially possessing attributes of all the forementioned legal relationships. The precise nature of any one such entity, however, must be determined on a case by case basis upon a thorough analysis of the purpose for and responsibilities of the entity.*

Although in this decision the court embraces the idea of a separate entity, the result is not a satisfactory answer to the general question. The court believes that if an entity is created through a joint exercise of powers, it is in the nature of a hybrid and for purposes of determining governmental liability, it may possess the attributes of a corporation, partnership or an agent acting on behalf of the participants. However, apparently it is not possible to make a general determination; the precise nature of a joint board must be determined on an ad hoc basis by close examination of the purpose and responsibilities of the particular entity.

In re the Proposed Placement of the Following Teachers on Unrequested Leave of Absence from Independent School District No. 566, Daniel Battaglia, Douglas Blechinger, Gregory Ciurleo and Rosanne M. Haynes[8]

This case, which was decided by the Court of Appeals in 1990, involved the reinstatement of several teachers who were placed on an unrequested leave of absence by a school district. The situation included a joint powers board established under section 471.59 to administer a cooperative secondary education program between two school districts. The joint board has decision-making authority on all issues regarding certified personnel. Two issues were before the court:

(1) Was the hearing officer's determination that sufficient grounds existed for placing teachers on ULA supported by substantial evidence? and

(2) Was the Joint Powers Board's, and subsequently the Askov District's, decision to place relators, rather than certain Sandstone teachers, on ULA arbitrary or contrary to law?

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[8] *In re the Proposed Placement of the Following Teachers on Unrequested Leave of Absence from Indep. Sch. Dist. No. 566, Daniel Battaglia, Douglas Blechinger, Gregory Ciurleo, and Rosanne M. Haynes*, 451 N.W. 2d 46 (Minn. App. 1990)

In the analysis, the court remarked on the powers of joint boards as follows:

> *In the case of the Askov and Sandstone districts entered into an agreement for a cooperative secondary education program under Minnesota Statutes section 122.535. The program was ultimately administered by a joint powers board established under Minnesota Statutes section 471.59 (1986). A joint powers board may 'exercise any power common to the contracting parties or any similar powers, including those which are the same except for the territorial limits within which they may be exercised.' Minnesota Statutes section 471.59, subdivision 1 (1986).*

The court continued:

> *The joint powers agreement here does speak to the use of a joint seniority list. While the joint powers statute permits the board to exercise the districts' common powers, (emphasis supplied) the earlier cooperation agreement under section 122.535 prohibits use of joint seniority lists unless each district negotiates such a provision with it bargaining representative, the Askov [school district] teachers' agreement does not contain such a provision. The Askov and Sandstone districts do not have the power unilaterally to implement a combined seniority list.*

The differences are apparent between the Office of Attorney General and the Minnesota Court of Appeals vis a vis joint powers boards established under section 471.59. The attorney general gives strict interpretation to the legislative and discretionary powers that may be delegated to a joint board. In the absence of specific statutory authority, fundamental powers cannot be delegated to a joint board from participants on the board. The powers of a local unit of government cannot be delegated to a joint board to act on its behalf by agreement of the parties.

On the other hand, the courts tend to support the concept of joint powers boards as a separate entity. A joint board may "exercise any power common to the contracting parties."[9] Powers of a merged entity are determined "with reference to the powers possessed by the individual units."[10] Still there is uncertainty whether a single or separate legal entity is created with a joint powers board formed under the Joint Exercise of Powers Act. But if an entity is created by means of the joint exercise of powers, it is a hybrid and may possess the attributes of a corporation or partnership or an agent acting on behalf of the governmental units participating in the agreement, at least for purposes of determining liability. The precise nature of any one such entity must be determined on a case by case basis in the context of the purpose and responsibilities of each entity.[11] Yet it is suggested that a joint powers board may "exercise any power common to the contracting parties or any similar powers, including those which are the same except for the

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[9] *Brooklyn Park*, 256 N.W. 2d at 515

[10] *Id.*

[11] *Greater Morrison*, 435 N.W. 2d at 96

territorial limits within which they may be exercised"[12] (repeat of language contained in subdivision 1 of section 471.59).

Obviously the question of the status or nature of joint powers boards is not resolved in final form. There is, however, a gathering of court decisions and analysis that give weight to the notion of a single entity.

Tort Liability

The treatment of joint powers boards in regard to tort liability lends credence to the concept of these boards as single entities. In 1986, the legislature adopted a measure that included joint powers boards established under section 471.59, or other law, in the definition of "municipality for purposes of tort liability for political subdivisions." Joint boards by statute are subject to tort liability and limits, insurance coverage and defenses, just as other municipalities under Minnesota Statutes, chapter 466.

The Morrison Sanitary Landfill case, discussed earlier, relates to tort liability and the status of joint powers boards in a closure order for the landfill issued by the Minnesota Pollution Control Agency. In this case, individual parties (local governmental units) to the agreement that created the board were held liable for resources and costs in carrying out the MPCA's order. However, the court concluded that whatever the legal entity is created by the formation of a joint board, if indeed any entity is created, that entity may possess the characteristics of a corporation, partnership, or agent. The exact nature of a joint board must be determined on a case by case basis.

Are Bonds Issued by Joint Boards Tax Exempt?

This is a discussion of the third development that relates to the authority to establish joint boards to issue bonds under subdivision 11 of section 471.59.

Subdivision 11 was added to section 471.59 through the efforts of the city of Minneapolis for authority to establish a joint powers board that could issue revenue bonds under a joint powers agreement with the city of St. Paul and the Housing and Redevelopment Authorities of the two cities. The general law was amended to accommodate future activity by any governmental units as defined in subdivision 1.

At the time, the Joint Powers Act did not expressly authorize a joint board formed under the Act to issue obligations on behalf of governmental units in an agreement. The Internal Revenue Service did not consider joint powers boards established under section 471.59 to be a political subdivision, a pure "on behalf of" issuing entity or "constituted authority" which among other specific powers are specifically authorized to issue obligations on behalf of political subdivisions.

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[12] *Sch. Dist. No. 566*, 451 N.W. 2d at 48

Without such designation, interest on bonds is not exempt from federal income tax. Subdivision 11 endeavored to make obligations issued by the joint board under its provisions eligible for tax exempt treatment under federal regulations by achieving "constituted authority" status for the joint boards.

A private letter ruling from the Internal Revenue Service, however, indicated that the housing finance board established under subdivision 11 for the Minneapolis-St. Paul venture was not a "constituted authority" within the meaning of the IRS regulations. This was so because the subdivision did not specifically permit the joint board to issue the revenue bonds on behalf of the state or local units of government for a specific purpose. Instead, the subdivision generally authorized the board to issue obligations under any law under which the units of government were independently permitted to issue bonds.

In an attempt to remedy the IRS position, an amendment to subdivision 11 was adopted in 1986 that authorized a joint board to issue obligations only under the express authority of the governmental units and clarified the language that any issue of bonds by the joint board is on behalf of the governmental units.

Still, it is not altogether clear that the language of the 1986 amendment is sufficient to satisfy the problem of specificity. Perhaps it is as far as practicability will permit given the general nature of section 471.59.[13]

How Broad are the Exceptions to the Commonality Requirement?

Subdivisions 8 and 10 (described in detail in the appendix) remit the necessity for "commonality" for the exercise of powers under section 471.59. Under some readings, this remission could be a very broad grant of new authority.

For 30 years, the Joint Exercise of Powers Act was based upon the requirement that in order to enter into an agreement to do an activity, each individual unit must possess the power or similar power to do it for itself. Subdivision 8 (enacted in 1973) and subdivision 10 (enacted in 1982) permit cooperation irrespective of their "commonality." Subdivision 1, of course, continues the need for common powers in order to engage in cooperation under section 471.59.

Subdivision 8 allows a county to enter into an agreement with another governmental unit to provide on behalf of that unit a service or function that the requesting unit may provide for itself. The county has no original power but acts only as the agent for the other unit.

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[13] As an addendum to the Minneapolis-St. Paul housing finance board it is noted that a special law was enacted in the first Special Session 1985, to accomplish the desired purpose. It is coded in Minnesota Statutes section 462C.12. See Appendix page 20 for a description of two additional amendments to subdivision 11 not directly related to the discussion above.

Subdivision 10 permits a governmental unit to enter into an agreement to provide a service or function on behalf of another governmental unit that the supplying unit may provide for itself. Thus, a governmental unit may request another governmental unit that is authorized to do an activity to do it on behalf of the requesting unit although the unit does not possess the power to furnish the service or function for itself. Under a liberal construction, this subdivision could be an exceptional grant of authority.

Advantages and Disadvantages of Interlocal Cooperation

Interlocal cooperation as exemplified by the Joint Exercise of Powers Act offers several distinct advantages for the delivery of services or functions by governmental units. At the same time, however, there are some disadvantages associated with this method of action. The following is a list of advantages and disadvantages for the joint or cooperative exercise of powers by local units of government.[14]

Advantages

- **Geographical base.** Cooperation is helpful in expanding the geographical base for conditioning governmental functions. It is a tool useful in solving problems without respect to political boundaries.

- **Efficiency.** Cooperation allows for the possibility of lower unit costs in the delivery services. Local units of government may achieve economies of scale by utilizing cooperative efforts in governmental activities.

- **Flexibility.** Cooperation is flexible and versatile. Cooperative agreements have the advantage of allowing for adopting to new conditions as circumstances change. Agreements can be tailored to the requirements of the specific functions. Needs can be anticipated and planned for in advance of the agreement to render the function. Cooperation also permits flexibility of boundaries by being able to include other governmental units in the agreement should the need for the service emerge in other units.

- **Control.** Cooperation may avoid the establishment of special districts. Under a cooperative agreement, a governmental service may be provided without the creation of a new special entity with its own governmental structure. The parties to an agreement ultimately control the function.

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[14] *See* Leigh Grosenik (hereafter Grosenik), State Planning Agency, A Manual for Interlocal Cooperation in Minnesota, (1969).

- **Limited.** Cooperation is politically feasible and protects the political identity of the local community. In a joint powers arrangement, no governmental boundaries are destroyed and no governmental units are restructured. There is no merger of local governments or mandated consolidation of functions.

- **New ideas.** Cooperation can result in the improved administration of a function. A cooperative arrangement may set forth new ideas and efficiencies in the delivery of a service and in the solution to problems of the area or locality. Cooperation also permits diverse perspectives that may not be available to one community.

Disadvantages

- **Consensus.** By its very nature, a joint power agreement is arrived at by consensus of the entities that are a party to the pact. Any proceeding is based on the voluntary agreement of each governmental unit. A member can withdraw from the arrangement according to the terms of the particular agreement, and thereby render it ineffective.

- **Monopoly.** Monopoly of a service can occur in the furnishing of a service under a service-contract arrangement. If the provider has control over the service, exploitation of the user may result both in the regulation of costs and policy.

- **The particularism of cooperation.** Because cooperative agreements are limited to specific governmental activities or functions, joint action can result in an uncoordinated approach to the delivery of local services. The lack of focusing on the complete view may make it more difficult to coordinate services and obtain a balance of needs and resources. Interlocal cooperation may not always be without coordination.

- **Cooperation as a limited approach to problems.** There may be instances when a voluntary cooperative effort is insufficient to the task at hand. A problem may transcend the resources of the local governments, or be of a nature that would require so large a participation as would result in a cumbersome and ineffective arrangement, or may require so many local entities to agree that it is impossible to form an arrangement. In such cases, local cooperative efforts can fall short.

Appendix

The appendix details the provision of section 471.59, including a number of amendments adopted to particular subdivisions. Since the adoption of the Joint Exercise of Powers Act in 1943, six subdivisions have been added for a total of 13.

Provisions of the Joint Exercise of Powers Act

The Joint Exercise of Powers Act as originally adopted contained seven sections which became subdivisions when it was coded as section 471.59 in Minnesota Statutes. For 30 years, the number of subdivisions remained constant although several amendments modified the law. Since 1943, six new subdivisions have been added which brings the total to 13. The following discussion focuses first upon the original seven subdivisions with amendments, and second upon the five subdivisions adopted subsequent to the passage of the original act. The text of the subdivisions is as appears in the 1990 Statutes.

Subdivision 1

> Subdivision 1. **Agreement.** Two or more governmental units, by agreement entered into through action of their governing bodies, may jointly or cooperatively exercise any power common to the contracting parties or similar powers, including those which are the same except for the territorial limits within which they may be exercised. The agreement may provide for the exercise of such powers by one or more of the participating governmental units on behalf of the other participating units. The term "governmental unit" as used in this section includes every city, county, town, school district, other political subdivision of this or another state, another state, and any agency of the state of Minnesota or the United States, and includes any instrumentality of a governmental unit. For the purpose of this section, an instrumentality of a governmental unit means an instrumentality having independent policy making and appropriating authority.

From 1943 to the present, five amendments have been adopted that altered subdivision 1. These are as follows:

Laws 1949, chapter 448 added the words "or cooperatively" after the word "jointly" and "or any similar powers including those which are the same except for the territorial limits within which they may be exercised" after "contracting parties" in the first sentence. Also, the definition of "governmental unit" was broadened to include "other political subdivision." Other political subdivisions include special districts, e.g., hospital districts, conservation districts, sewer districts, water shed districts, and other units that are deemed political subdivisions. At least the first part

of this amendment was in response to possible difficulties of interpretation that would not allow contracting for services with another municipality.[15]

Laws 1961, chapter 662 added the sentence "The agreement may provide for the exercise of such powers by one or more of the participating governmental units on behalf of the other participating units." This amendment was necessary because of an adverse attorney general opinion in 1957 that held that section 471.59 did not authorize service contracting for the furnishing of a service by one governmental unit to another unit, but only permitted a joint or cooperative exercise of common powers for mutual benefit.[16] Thus the 1961 amendment clarified that one unit may provide a service for the participating unit under a service contract.

Laws 1965, chapter 744 inserted the words "of this or any adjoining state, and any agency of the State of Minnesota or the United States." Before this amendment, there was no general authority for governmental units to enter into agreements for the exercise or powers with governmental units of adjoining states, although there did exist some authority for cooperation in several specific activities. This change permits such agreements generally and is particularly important for metropolitan areas like Fargo-Moorhead and Duluth-Superior.

Laws 1975, chapter 134 again changed the third sentence relating to the definition of "governmental unit" by adding the words "and include any instrumentality of a governmental unit," and defined "instrumentality of a governmental unit" as "an instrumentality having independent policy making and appropriating authority." This addition appears broad enough to include utility commissions, housing authorities, library boards, port authorities, and a number of independent boards and commissions in certain home rule charter cities, e.g., the Minneapolis Park and Recreation Board, and the Minneapolis Library Board.

Laws 1990, chapter 573 once more widened the definition of "governmental unit" by eliminating the requirement for contracting with another state, deleting "any adjoining" before the word "state" and inserted "another," and authorized the cooperative exercise of powers between governmental units and other states.

Subdivision 2

> Subd. 2. **Agreement to state purpose.** Such agreement shall state the purpose of the agreement or the power to be exercised, and it shall provide for the method by which the purpose sought shall be accomplished, or the manner in which the power shall be exercised. When the agreement provides for use of a joint board, the board shall be representative of the parties to the agreement. Irrespective of the number, composition, terms, or qualifications of its members, such board is deemed to comply with statutory or charter provisions for a board, for the exercise by any one or the parties of the power which is the subject of the agreement.

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[15] *Id.* at 7.

[16] Op. Att'y. Gen. 785-D, May 21, 1957.

Since 1943, two amendments have been adopted that modified subdivision 2. These are as follows:

Laws 1965, chapter 744, section 2, amended subdivision 2 by adding the last two sentences to the subdivision relating to the use of a joint board which is to be representative to the parties to the agreement. The last sentence states that "Irrespective of the number, composition, terms, or qualifications of its members, such board is deemed to comply with statutory or charter provisions for a board for the exercise by one of the parties of the power which is the subject of the agreement." At least one reason for the amendment was to make clear that a joint board, if established, need only be representative of the parties to the agreement and that any necessary modification in the size, composition, and terms of the board and its members can be made to accommodate the fact that two or more governmental units are involved irrespective of what might be required for a board under the charter provisions of the individual numbers.[17]

Laws 1991, chapter 44 inserts a new sentence between the second and third sentence of the subdivision that reads "The joint board that is formed for educational purposes may conduct public meetings via interactive television if the board complies with section 471.705 in each location where board members are present." This amendment came in response to requests from education districts to conduct meetings via interactive television if the boards comply with the Open Meeting Law.

Subdivision 3

> Subd. 3. **Disbursement of funds.** The parties to such agreement may provide for disbursements from public funds to carry out the purposes of the agreement. Funds may be paid to and disbursed by such agency as may be agreed upon, but the method or disbursement shall agree as far as practicable with the method provided by law for the disbursement of funds by the parties to the agreement. Contracts let and purchases made under the agreement shall conform to the requirements applicable to contracts and purchases of any one of the parties, as specified in the agreement. Strict accountability of all funds and report of all receipts and disbursements shall be provided for.

Subdivision 3 has been amended once since adoption of the Act in 1943. The amendment is as follows:

Laws 1965, chapter 744 inserted a sentence between the second and third sentences of the subdivision. It states that "Contracts let and purchases made under the agreement shall conform to the requirements applicable to contracts and purchases of any one of the parties, as specified in the agreement." The amendment makes it clear that contracts and purchases under a joint or cooperative agreement can be legally adopted to the procedure of any one of the participating parties as specified in the agreement.[18]

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[17] Grosenick, *supra* note 14, at 9.

[18] *Id.* at 10

Subdivision 4

> Subd. 4. **Termination of agreement.** Such agreement may be continued for a definite term or until rescinded or terminated in accordance with its terms.

Subdivision 4 reads as it was originally enacted and has not been amended. It simply authorizes cooperative agreements to continue for a specified term, or be discontinued as provided in the agreement.

Subdivision 5

> Subd. 5. **Shall provide for distribution of property.** Such agreement shall provide for the disposition of any property acquired as the result of such joint or cooperative exercise of powers, and the return of any surplus moneys in proportion to contributions of the several contracting parties after the purpose of the agreement has been completed.

Subdivision 5 has been amended once since the date of original adoption in 1943. The amendment is as follows:

Laws 1949, chapter 448 simply added the words "or cooperative" before the term "exercise of powers." This amendment is in keeping with the changes to subdivision 1 by chapter 448 relating to the insertion of the words "or cooperative." Subdivision 5 is a common provision in general authorization of intergovernmental agreements.

Subdivision 6

> Subd. 6. **Residence requirement.** Residence requirements for holding office in any governmental unit shall not apply to any officer appointed to carry out any such agreement.

Subdivision 6 is the original language of the statute and has not been amended. Municipal residency requirements as a condition of employment are prohibited under current Minnesota law. The cities of Minneapolis and St. Paul by special law have authority to establish residency requirements.

Subdivision 7

> Subd. 7. **Not to affect other acts.** This section does not dispense with procedural requirements of any other act providing for the joint or cooperative exercise of any governmental power.

Subdivision 7 has been amended once since the original act. The amendment is as follows:

Laws 1949, chapter 448 simply added the words "or cooperative" before the word "exercise" in keeping with the amendments to subdivisions 1 and 5 as explained above.

Subdivision 7 is important in that it establishes the requirement that section 471.59 is not to be construed or authorize the use of the Joint Exercise of Powers Act without regard to specific requirements of other laws that may regulate the procedures of cooperatively providing a service. An interlocal agreement made under section 471.59 is subject to any requirements contained in other general law relating to the joint furnishing of the particular service. Section 471.59 does not offer an alternative method for undertaking interlocal cooperation for a service or function already controlled by general acts.

Subdivision 8

> Subd. 8. **Services performed by county, commonality or powers.** Notwithstanding the provisions of subdivision 1 requiring commonality of powers between parties to any agreement, the board of county commissioners of any county may by resolution enter into agreements with any other governmental unit as defined in subdivision 1 to perform on behalf of that unit any service or function which that unit would be authorized to provide for itself.

Subdivision 8, which was added to section 471.59 by Laws 1973, chapter 541, relaxes the requirement of commonality of powers for cooperative agreements for the provision of a service or function by a county with respect to other units of government as defined by subdivision 1.[19] Stated simply, this subdivision permits a county to enter into an agreement with another unit of government to provide a service or perform a function on behalf of the requesting unit that it has the power to provide for itself. It is not necessary for the county to hold the power in common with the other unit, only that the unit has the power. Thus, even if the county is not empowered to engage in the activity in the first instance, the county may cooperatively engage in the activity if so requested by the entity that does possess the power in the first instance. Subdivision 8 allows for a service-contract arrangement whereby the county performs the service or function on behalf of the requesting unit. No original power exists in the county. A county cannot provide the activity for itself unless otherwise empowered to do so.

Subdivision 9

> Subd. 9. **Exercise of power.** For the purposes of the development, coordination, presentation and evaluation of training programs for local government officials, governmental units may exercise their powers under this section in conjunction with organizations representing governmental units and local government officials.

Subdivision 9, which was added to section 471.59 by Laws 1980, chapter 532, permits the creation by cooperative agreement of an organization for the coordination, presentation, and evaluation of local government officials. The current Government Training Service entity was established under authority granted in this subdivision.

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[19] Laws 1973, chapter 541, contains certain restrictions regarding the performance of a service or function at cost and also the exclusion of Ramsey County. These restrictions were repealed in 1975 (Laws 1975, ch. 124, § 2).

Subdivision 10

Subd. 10. **Services performed by governmental units; commonality of powers.** Notwithstanding the provisions of subdivision 1 requiring commonality of powers between parties to any agreement, the governing body of any governmental unit as defined in subdivision 1 may enter into agreements with any other governmental unit to perform on behalf of that unit any service or function which the governmental unit providing the service or function is authorized to provide for itself.

Subdivision 10 was added to section 471.59 by Laws 1982, chapter 507, section 27. As in the case of subdivision 8, the commonality requirement for the joint exercise of powers is dispensed with. Under this subdivision, a governmental unit as defined in subdivision 1 may enter into agreements with another governmental unit to perform on behalf of that unit or units, an activity that the providing unit has the authority to provide for itself even though the requesting unit does not possess the authority to provide it for itself. The entity that has the power to do a service can act only if requested to do so by the entity that does not have the power to perform the activity for itself. Subdivision 10 allows for a service-contract arrangement whereby one unit performs a service or function for another unit as by purchasing the activity.

Subdivision 10 is somewhat the reverse of subdivision 8 in that in the former a power to do something need not be possessed by the requesting unit, while in the latter, the requesting unit has the power to do something but not the unit (county) to which the request is made.

Subdivision 11

Subd. 11. **Joint powers board.** (a) Two or more governmental units, through actions of their governing bodies, by adoption of a joint powers agreement that complies with the provisions of subdivisions 1 to 5, may establish a joint board to issue bonds or obligations under any law by which any of the governmental units establishing the joint board may independently issue bonds or obligations and may use the proceeds of the bonds or obligations to carry out the purposes of the law under which the bonds or obligations are issued. A joint board established under this section may issue obligations and other forms of indebtedness only in accordance with express authority granted by the action of the governing bodies of the governmental units that established the joint board. Except as provided in paragraph (b), the joint board established under this subdivision must be composed solely of members of the governing bodies of the governmental unit that established the joint board. A joint board established under this subdivision may not pledge the full faith and credit or taxing power of any of the governmental units that established the joint board. The obligations or other forms of indebtedness must be obligations of the joint board issued on behalf of the governmental units creating the joint board. The obligations or other forms of indebtedness must be issued in the same manner and subject to the same conditions and limitations that would apply if the obligations were issued or indebtedness incurred by one of the governmental units that established the joint board, provided that any reference to a governmental unit in the statute, law, or charter provision authorizing the issuance of the bonds or the incurring of the indebtedness is considered a reference to the joint board.

(b) Notwithstanding paragraph (a), one school district, one county, and one public health entity, through action of their governing bodies, may establish a joint board to establish and govern a family services collaborative under section 121.8355. The school district, county, and public health entity may include other governmental entities at their discretion. The membership of a board established under this paragraph, in addition to members of the governing bodies of the participating governmental units, must include the representation required by section 121.8355, subdivision 1, paragraph (a), selected in accordance with section 121.8355, subdivision 1, paragraph (c).

(c) Notwithstanding paragraph (a), counties, school districts, and mental health entities, through action of their governing bodies, may establish a joint board to establish and govern a children's mental health collaborative under section 245.491 to 245.496, or a collaborative established by the merger of a children's mental health collaborative and family services collaborative under section 121.8355. The county, school district, and mental health entities may include other entities at their discretion. The membership of a board established under this paragraph, in addition to members of the governing bodies of the participating governmental units, must include the representation provided by section 245.493, subdivision 1.

Subdivision 11, which was added by Laws 1983, chapter 342, article 8, section 15, has been amended three times since its adoption. These amendment are as follows:

Laws 1986, chapter 495, article 2, section 15, inserted the words "by adoption of a joint powers agreement that complies with the provisions of subdivisions 1 through 5," in the first sentence; inserted the word "express" before the word "authority" in the second sentence; and added the words "issued on behalf of the governmental unit creating the joint board" after the words "joint board" in the fourth sentence.

Laws 1996, chapter 412, article 3, section 35, added paragraph (b) relating to the establishment of a joint board for family services collaboratives under Minnesota Statutes, section 121.8355 (family services and community-based collaboratives).

Laws 1997, chapter 203, article 5, section 24, added paragraph (c) relating to the establishment of a joint board for children's mental health collaboratives under Minnesota Statutes, sections 245.491 to 245.496 (children's mental health integrated fund) or collaboratives established by a merger of a children's mental health collaborative and a family services collaborative.

Subdivision 11, paragraph (a), permits the parties to a joint powers agreement to establish a joint board, that may be a delegated authority, to issue revenue bonds under a law by which the governmental units establishing the joint board may issue such bonds, and the board may use the proceeds of the issue to accomplish the purpose of the law under which the bonds were issued. The joint board issues obligations only upon the express authority granted by the governing bodies of the parties to the agreement. Any bonds issued by the joint board become the obligation of the joint board. General obligation bonds may not be issued by the joint board. Paragraph (b) permits one school district, one county, and one public health entity to establish and govern a family services collaborative. Other governmental entities may be included with the approval of

the organizing entities. It requires certain representatives on the joint board. Paragraph (c) is essentially the same as paragraph (b) but relates to boards formed for children's mental health collaboratives or a collaborative established by the merger of a children's mental health collaborative and a family services collaborative.

Subdivision 12

> Subd. 12. **Joint exercise of police power.** In the event that an agreement authorizes the exercise of peace officer or police powers by an officer appointed by one of the governmental units within the jurisdiction of the other governmental unit, an officer acting pursuant to that agreement has the full and complete authority of a peace officer as though appointed by both governmental unit and licensed by the state of Minnesota, provided that:
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> (1) the peace officer has successfully completed professionally recognized peace officer preemployment education which the Minnesota board of peace officer standards and training has found comparable to Minnesota peace officer preemployment education; and
>
> (2) the officer is duly licensed or certified by the peace officer licensing or certification authority of the state in which the officer's appointing authority is located.

Subdivision 12 was added by Laws 1984, chapter 497. This subdivision provides that in the joint exercise of law enforcement powers, an officer appointed by one of the governmental units who is to exercise the powers within the jurisdiction of the other unit, the officer has the authority of a peace officer as though appointed by both governmental units and licensed by the state of Minnesota if the two conditions listed in the subdivision are met.

Subdivision 13

> Subd. 13. **Joint powers board for housing.** (a) For purposes of implementing a federal court order or decree, two or more housing and redevelopment authorities, or public entities exercising the public housing powers of housing and redevelopment authorities, may by adoption of a joint powers agreement that complies with the provisions of subdivisions 1 to 5, establish a joint board for the purpose of acquiring an interest in, rehabilitating, constructing, owning, or managing low-rent public housing located in the metropolitan area, as defined in section 473.121, subdivision 2, and financed, in whole or in part, with federal financial assistance under Section 5 of the United States Housing Act of 1937. The joint board established pursuant to this subdivision shall:
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> (1) be composed of members designated by the governing bodies of the governmental units which established such joint board and possess such representative and voting power provided by the joint powers agreement;
>
> (2) constitute a public body, corporate, and politic; and

(3) notwithstanding the provisions of subdivision 1, requiring commonality of powers between parties to a joint powers agreement, and solely for the purpose of acquiring an interest in, rehabilitating, constructing, owning, or managing federally financed low-rent public housing, shall possess all of the powers and duties contained in sections 469.001 to 469.047 and, if at least one participant is an economic development authority, sections 469.090 to 469.1081, except (i) as may be otherwise limited by the terms of the joint powers agreement; and (ii) a joint board shall not have the power to tax pursuant to section 469.033, subdivision 6, or 469.107, nor shall it exercise the power of eminent domain. Every joint powers agreement establishing a joint board shall specifically provide which and under what circumstances the powers granted herein may be exercised by that joint board.

(b) If a housing and redevelopment authority exists in a city which intends to participate in the creation of a joint board pursuant to paragraph (a), such housing and redevelopment authority shall be the governmental unit which enters into the joint powers agreement unless it determines not to do so, in which event the governmental entity which enters into the joint powers agreement may be any public entity of that city which exercises the low-rent public housing powers of a housing and redevelopment authority.

(c) A joint board shall not make any contract with the federal government for low-rent public housing, unless the governing body or bodies creating the participating authority in whose jurisdiction the housing is located has, by resolution, approved the provision of that low-rent public housing.

(d) This subdivision does not apply to any housing and redevelopment authority, or public entity exercising the powers of a housing and redevelopment authority, within the jurisdiction of a county housing and redevelopment authority which is actively carrying out a public housing program under Section 5 of the United States Housing Act of 1937. For purposes of this paragraph, a county housing and redevelopment authority is considered to be actively carrying out a public housing program under Section 5 of the United States Housing Act of 1937, if it (1) owns 200 or more public housing units constructed under Section 5 of the United Sates Housing Act of 1937, and (2) has applied for public housing development funds under Section 5 of the United States Housing Act of 1937, during the three years immediately preceding January 1, 1996.

(e) For purposes of sections 469.001 to 469.047, "city" means the city in which the housing units with respect to which the joint board was created are located and "governing body" or "governing body creating the authority" means the council of such city.

Subdivision 13, which is the last subdivision on the Joint Exercise of Powers Act, was added by Laws 1996, chapter 471, section 39. The legislative enactment resulted from a class action housing discrimination lawsuit brought against the Minneapolis Public Housing Authority and others. The defendants sought additional legislative authority in order to carry out the settlement agreement.

Subdivision 13 permits two or more housing and redevelopment authorities (HRAs) or other public entities exercising HRA powers enter into a joint powers agreement to implement a federal

court order or decree by acquiring an interest in, rehabilitating, constructing, owning, or managing low-rent public housing in the seven county metropolitan area that is financed with federal assistance. A joint board has all of the powers of an HRA and, if one participant is an economic development authority (EDA), the powers of an EDA. The joint powers agreement may limit the joint board's power and the board may not levy a property tax or exercise the power of eminent domain. The joint board may not contract with the federal government to provide low-rent public housing unless the governing bodies that established the participating authority have approved that low-rent housing project. Subdivision 13 does not apply to an HRA or similar authority that is within the jurisdiction of an county HRA that is actively carrying out a public housing program under Section 5 of the United States Housing Act of 1937.