Minnesota’s Joint Powers Law and What it Means for Recreational Use

The word “government” generically describes the thousands of individual organizations existing at the federal, state, or local level that provide a variety of services to their constituents. But because few programs or services are the exclusive responsibility of one unit or level of government, communication and coordination is critical.\(^1\) Intergovernmental collaborations help these governmental units provide a better, wide range of services to their communities.

With over 3,600 individual units in Minnesota alone, there are ample opportunities for collaboration.\(^2\) The Joint Powers Act helps communities to come together and use their collective resources more efficiently and effectively. From the health perspective, collaborative efforts provide greater access to programs and facilities that will keep our communities healthy and active.

This fact sheet provides an overview of intergovernmental collaboration in Minnesota.

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Minnesota governments have a long history of working together to provide various programs and services.
What is the Joint Powers Act?

The Joint Powers Act provides broad authority for government entities to enter into agreements and exercise powers common to all parties.1 The act broadly defines “government unit” as to include everything from cities, counties, and school districts, the University of Minnesota, licensed nonprofit hospitals, as well as federally recognized Native American tribes.4

What types of relationships do governments enter into?

Collaborative programs are often specifically tailored to the needs and interests of the participants.5 As a consequence, it can be difficult to define them by broad classifications. Nevertheless, most joint recreational programs fall into one of two basic types: consolidated services or service contracts.6

How do governments “consolidate” services?

To consolidate services, two or more government units create a separate “joint powers entity” to perform services on behalf of its members.7 The new entity is administered by a joint board comprised of representatives from each participating unit of government.8 Each member is responsible for contributing its share of the costs, but the joint board independently manages the operations.9 The consolidated approach has been useful when financing, constructing, and managing stadiums, aquatic centers, and other large-scale recreational programs and facilities that are more regional in nature and can require multiple sources of funding and participation.

What is a service contract?

Using the service contract approach, governmental entities enter into more traditional business relationships with one another. These agreements will provide for the services to be provided, cost, expectations and quality, liability, and any other factors that need to be addressed.10

Services contracts are very common. For example, many cities contract with the school districts to use school fields for athletic or other recreational programs when school is not in session.

How are insurance and liability issues addressed?

It depends on the relationship. In any collaboration, the goal is to avoid creating situations where the partners respond to any claims arising from the joint activities individually.11 This can put the parties into conflict, potentially litigation, with one another and erase any expected cost savings.12

With consolidated services, the new entity will generally obtain insurance in its own name and be solely responsible for any incidents or injuries that may occur. Sometimes, however, the joint entity will be insured through one of its member’s policies - usually the party who is in the best position to control the risk of liability.13 Either way, coverage should be structured to protect the member cities as well as the joint powers entity itself.14

With service contracts, the party performing the service generally carries the liability risk and coverage for any incidents or injuries that may occur. The rationale behind this approach is that the entity performing the service is in the best position to prevent any harm that may arise from such service.15
In regard to tort liability and the statutory damage caps, one single limit (generally $500,000 per person and $1,500,000 per incident) should apply regardless of the number of governmental units participating.\textsuperscript{16}

**What is the process for creating a joint power?**

All agreements should be in writing, regardless of their purpose, duration, or the dollar amounts involved.\textsuperscript{17} The agreement must state its purpose and the powers to be jointly exercised.\textsuperscript{18} It must also describe the method that will be used to accomplish their goals or the manner in which the parties will exercise their powers.\textsuperscript{19} The agreement must provide a method for disbursing funds consistent with how the members usually distribute their funds and provide for a strict accounting of all funds including all disbursements and receipts.\textsuperscript{20} Finally, the agreement must also include the terms for the agreement and the conditions for termination,\textsuperscript{21} including how property will be distributed and surplus moneys returned.\textsuperscript{22} The governing body for each participating entity must formally approve the joint power agreement.\textsuperscript{23}

Recognizing potential problems and delegating responsibilities helps mitigate future conflicts.

**Do any laws specifically address joint agreements for recreational programs and facilities?**

Yes. While the Joint Powers Act provides very broad authority for government collaborations, there is authority for certain specific cooperative programs in state law. These statutes may authorize certain sources of funding or particular procedures that must be followed when establishing such collaborations.\textsuperscript{24} For example, school districts can operate a community recreation program with certain public and nonprofit partners.\textsuperscript{25} Joint recreational boards or programs are common.

**What should schools consider before entering into a cooperative agreement?**

Whatever approach is used, the collaborative programs and services need to be done safely and responsibly.\textsuperscript{26} Schools should determine whether the terms of the agreement make sense financially and avoid relationships where the anticipated costs exceed the benefits. Furthermore, the parties need to recognize the hazards (such as injuries, lawsuits, insurance, and damaged relationships) that can arise when these collaborations are not successful.\textsuperscript{27} Finally, agreements should reflect the clear intent and responsibilities of the parties involved.
Endnotes

4. Id.
10. Id.
11. Id. at 7.
13. Id. at 5.
15. Id.
19. Id.
24. Id. at 17:4-5.
27. Id. at 5-6.