

# Intergovernmental Cooperation in Wisconsin

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There is no shortage of local government in Wisconsin. With 1,924 general purpose local governments (72 counties, 190 cities, 412 villages, and 1,250 towns) and an additional 1,172 special purpose districts<sup>1</sup> (e.g., school and technical college districts, drainage districts, utility districts, etc.), it is no surprise that Wisconsin ranks 11th among states in terms of having the most units of local government.<sup>2</sup> But when local governments abound, so do opportunities for intergovernmental cooperation. Although cooperation isn't always easy, municipalities should investigate possible opportunities and decide whether they are worth pursuing. Revered former Packers general manager and coach Vince Lombardi once said, "People who work together will win, whether it be against complex football defenses, or the problems of modern society."<sup>3</sup>

This legal comment provides a brief overview of the legal authority for intergovernmental cooperation in Wisconsin and a quick overview of things that should be detailed in any intergovernmental cooperation agreement.

## Why consider intergovernmental cooperation?

Sometimes thinking about cooperation is coerced. For example, the comprehensive planning process under Wis. Stat. § 66.1001(2)(g) requires municipalities to address intergovernmental cooperation as one of nine elements required in a municipality's comprehensive plan.

It requires municipalities to compile "objectives, policies, goals, maps, and programs for joint planning and decision making with other jurisdictions, including school districts, drainage districts, and adjacent local governmental units, for siting and building public facilities and sharing public services." A municipality must, among other things, analyze its relationship to "school districts, drainage districts, and adjacent local governmental units, and to the region, the state and other governmental units" and "incorporate any plans or agreements to which the local governmental unit is a party under s. 66.0301, 66.0307 or 66.0309." Finally, the municipality must "identify existing or potential conflicts" with other governmental units specified and "describe processes to resolve such conflicts."

Even where the law does not force municipalities to think about cooperation opportunities, there are many good reasons why municipalities should do so. Municipal services are increasingly expensive to provide while municipal sources of revenue are largely stagnant or shrinking. Some possible gains to be achieved when governments cooperate include increasing efficiencies; reducing costs; achieving economies of scale; taking advantage of special expertise; avoiding unnecessary duplication of services; and the ability, collectively, to gain access to newer technologies/equipment that could not be gained individually.

Additionally, some problems are just best tackled together. For example, it's widely known that stormwater does not respect municipal boundaries. And municipalities don't exist in isolation. What breathes life into one municipality or, conversely, sucks life out of it will often affect surrounding municipalities. When municipalities are able to work in tandem toward similar goals instead of competing against each other – for example, to increase economic development and tourism in the region – they all may realize benefits more broadly.

Some examples of areas where governments are successfully collaborating or cooperating include: providing fire protection; ambulance service; law enforcement services; recycling; recreation; wellhead protection; animal control; sanitary services; public transit; public library services; land use planning; stormwater management; municipal courts; and sharing of equipment and staff.<sup>4</sup>

## Legal Authority and Limitations

Several sources of statutory authority support intergovernmental cooperation. The broadest grant of authority, and the one most commonly relied on, is Wis. Stat. § 66.0301<sup>5</sup> which allows any municipality to contract with other municipalities and with federally recognized Indian tribes and bands in Wisconsin for the *receipt or furnishing of services* or the *joint exercise of any power or duty required or authorized by law*.

1. <https://wispolicyforum.org/research/an-abundance-of-government/>.

2. *Id.*

3. <http://www.vincelombardi.com/quotes.html>.

4. In 2012, Wisconsin's Local Government Institute (LGI) compiled case studies from municipalities collaborating and cooperating to provide, among others, the services listed. These case studies are available at LGI's website, <http://www.localgovinstitute.org/library/case-studies/articletype/categoryview/categoryid/3>.

5. Wisconsin Stat. § 66.0301 was formerly 66.30. It was renumbered when Chapter 66 of the Wisconsin Statutes was reorganized and modernized by 1999 Wis. Act 150, effective January 1, 2001.

“Municipality” is defined very broadly in § 66.0301(a) to include not only cities, villages, towns, and counties, but also the state and its agencies and departments, and special purpose government districts such as school districts, public library systems, public inland lake protection and rehabilitation districts, sanitary districts, farm drainage districts, metropolitan sewerage districts, sewer utility districts, solid waste management systems, local exposition districts, professional sport stadium districts, local cultural arts districts, long-term care districts, water utility districts, mosquito control districts, municipal electric companies, county or city transit commissions, commissions created by contract under §66.0301, taxation districts, regional planning commissions, housing authorities, redevelopment authorities, community development authorities, or city-county health departments. For purposes of cooperative boundary agreements under § 66.0301(6), “municipality” is defined more narrowly to include only cities, villages, and towns.<sup>6</sup> Similarly, for purposes of establishing joint transit commissions, the definition of “municipality” includes only cities, villages, towns, and counties.<sup>7</sup>

Although Wis. Stat. § 66.0301 states that it shall be interpreted liberally in favor of cooperative action between municipalities and between municipalities and Indian tribes and bands in Wisconsin, there are some limitations. An important limitation is that if municipal or tribal parties to a contract have varying powers or duties under the law, each may act under the contract to the extent of its lawful powers and duties. “Thus, the extent to which any group of municipalities may join together in a given enterprise under § 66.30 [now § 66.0301] is limited to the powers possessed by the least of them.”<sup>8</sup> Given this limitation, it is important for cities and villages to understand whether entities they are contracting with under § 66.0301 have the requisite authority to perform pursuant to the agreement.

In that regard, it’s helpful to understand that towns and counties are different than cities and villages. Unlike cities and villages which have broad home rule authority pursuant to statute and the Wisconsin constitution,<sup>9</sup> towns lack home rule authority and require specific statutory authorization to exercise power. General and miscellaneous powers of towns are set forth in Wis. Stat. §§ 60.22 and 60.23 and include, among other powers, the authority to cooperate with the state, counties, and other units of government under §66.0301. Counties have “organizational and administrative” home rule authority as set forth in Wis. Stat. § 59.03, which vests counties with “all powers of a local,

6. Wis. Stat. § 66.0301(1)(c).

7. Wis. Stat. § 66.0301(1)(b).

8. 60 Op. Att’y Gen. 313 (1971).

9. See Wis. Stat. §§ 61.34(1) and 62.11(5) and Wis. Const. Art. XI, sec. 3(1).



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legislative and administrative character, including, without limitation because of enumeration, the subject matter of water, sewers, streets and highways, fire, police and health ....” Counties can pursue efforts to “consolidate municipal services and functions in the county.”<sup>10</sup> County provision of law enforcement services to a city or village must comply with the provisions of Wis. Stat. § 62.13(2s).<sup>11</sup> Finally, Wis. Stat. § 59.794 contains some limitations specific to Milwaukee County.

A few additional limitations under § 66.0301 are that no commission created by contract under § 66.0301(2) may, directly or indirectly, do any of the following: (1) Acquire, construct or lease facilities used or useful in the business of a public utility engaged in production, transmission, delivery or furnishing of heat, light, power, natural gas, or communications service, by any method except those set forth under chapter 66 or chapters 196, 197, or 198; (2) Establish, lay out, construct, improve, discontinue, relocate, widen, or maintain any road or highway outside the corporate limits of a village or city or acquire lands for those purposes except upon approval of the department of

10. Wis. Stat. § 59.03(2)(b)

11. Wis. Stat. § 59.03(2)(c); Wis. Stat. § 62.13(2s). Villages with populations of 5,000 or more are constrained by Wis. Stat. § 61.65(1)(a)4.

► p.20

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transportation and the county board of the county and the town board of the town in which the road is to be located.

## Municipal interstate cooperation

In addition to cooperating with Wisconsin municipalities, municipalities also have authority to cooperate with out-of-state municipalities<sup>12</sup> and federally recognized American Indian tribes or bands to receive or furnish services, or for the joint exercise of any power or duty required or authorized by statute.<sup>13</sup> With the exception of agreements relating to the receipt, furnishing, or joint exercise of fire fighting or emergency medical services, such agreements do not take effect unless approved by Wisconsin's attorney general. The attorney general must send a copy of the agreement to the governor who must consult with the department or any agency affected by the agreement. The attorney general's failure to disapprove an agreement within 90 days of its submission constitutes approval.<sup>14</sup>

## Other grants of authority for intergovernmental cooperation

In addition to the broad and general grants of authority for intergovernmental and interstate cooperation under Wis. Stat. §§ 66.0301 and 66.0303, there are some specific statutory grants of authority, some of which contain detailed procedures. Some cross reference § 66.0301. Others do not. Unless those statutes expressly provide otherwise, an intergovernmental cooperation agreement under § 66.0301 might still be a proper vehicle for addressing the subject matter. The following examples are not intended to be a comprehensive list:

- Cooperative boundary agreements (§ 66.0307)
- Revenue sharing (§ 66.0305)
- Mutual assistance
  - health departments § 66.0312
  - fire departments § 66.03125
  - law enforcement § 66.0313
  - state of emergency § 66.0314
- Joint local water authorities (§ 66.0823)
- Joint municipal courts (§ 755.01(4))
- Joint police and fire departments (§§ 60.55, 60.56, 61,65 and 62.13)
- Joint libraries (§ 43.53)
- Building and maintaining dock walls and shore protection walls (§ 30.31(5))
- Joint employment of appointive officers and employees (§ 61.34(2))
- Financing and undertaking housing projects (§ 66.0311)
- Tourism (§ 66.0615(1m)(b))

## What to include in intergovernmental agreements<sup>15</sup>

Before a municipality enters into an intergovernmental cooperation agreement, the municipality should consult with its municipal attorney to ensure that the agreement is properly crafted to achieve its objectives, avoid ambiguity, and protect the municipality. At a minimum, it's suggested that intergovernmental cooperation agreements contain the following information or provisions:

- Preamble stating the purpose of the agreement, the parties to the agreement, naming and defining the body being created
- Governance and voting provisions
- Who are the members of the body? How are they selected? What happens in the event of vacancies?

- Holding of meetings; drafting of bylaws and amendments to bylaws
- Cost allocation and budget
- Powers of body
- Agreement terms and extension and termination
- Title to and ownership of property
- Indemnification
- Limitation/allocation of liability
- General terms and conditions (e.g., severability; handling of disputes and choice of law; no third party beneficiary, provisions, location of principal offices, etc. and service)

## Conclusion

At a time when municipal services are becoming increasingly expensive to provide and municipal revenue sources are stagnant or shrinking, municipalities may want to investigate opportunities for cooperating with other municipalities to furnish or receive services or jointly provide services or exercise authority. Wisconsin law provides ample authority for intergovernmental cooperation and a properly drafted agreement can help ensure objectives are attained in an equitable manner with the rights and responsibilities of the parties spelled out.

## Powers of Municipalities 937

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12. For purposes of municipal interstate cooperation, Wis. Stat. § 66.0303(1) defines "municipality."

13. Wis. Stat. § 66.0303.

14. Wis. Stat. § 66.0303(3), (4) and (5).

15. Outlines from a 2000 presentation by Stafford Rosenbaum attorney Matthew Dregne on *Joint Commissions Created by Sec. 66.30 Agreements* and a 2013 presentation by Boardman & Clark Attorney Richard Heinemann, *A Primer on Intergovernmental Cooperation*, were helpful in writing this article.