



*New York State Assembly, Sheldon Silver, Speaker
Legislative Commission on State-Local Relations
Assemblymember Tim Gordon, Chair*

Cooperative Agreements Among Local Governments

Constitutional & Statutory Authority

Counties, Cities, Towns, Villages and School Districts – “...two or more such units may join together pursuant to law in providing any municipal facility, service, activity, or undertaking which each of the units has the power to provide separately.” May contract joint or several indebtedness. [Constitution article VIII, §§ 1, 2-a; State Finance Law § 54(10)(H); Local Finance Law § 15]

A County outside New York City, City, Town, Village, Board of Cooperative Educational Services, Fire District, School District, Town Improvement District or County District may enter into agreements to perform among themselves or for one of the other of their respective functions on a cooperative or contract basis, or for the provision of a joint service or a joint water, sewage or drainage project. [General Municipal Law, Article 5-G] Agreements must be approved by the municipal corporation or district governing body by a majority vote. [General Municipal Law § 119-o].

Towns, Villages, Fire Districts, Special Improvement Districts or other Improvement Districts, Library Districts and other districts created by law except School Districts, City Districts and County Districts – Local government entities may consolidate upon joint resolution of the governing body or bodies endorsing a proposed joint consolidation agreement. The governing body or bodies must conduct one or more public hearings with prior published notice on the proposed agreement, approve a final version of the joint consolidation agreement, and, in the case of the consolidation of towns or villages, conduct a referendum. [General Municipal Law article 17-A]

Counties, Cities, Towns, Villages, School District, Improvement Districts and District Corporations are authorized to make interlocal agreements with governmental units of other states. [General Municipal Law Article 14-G]

Any County outside New York City, City, Town, Village, School District, Board of Cooperative Educational Services or Fire District is authorized to form Intergovernmental Relations Councils “...to strengthen local governments and to promote efficient and economical provision of local governmental services within or by such participating municipalities.” [General Municipal Law article 12-C, § 239-n]

School Districts and BOCES – May share services of a superintendent, associate superintendent, assistant superintendent or any other employee with districtwide administrative or supervisory responsibilities. [Education Law article 40-A]

Special Districts

School Districts – See above.

Fire Districts – See above.

Business Improvement Districts – Municipalities may enter into cooperative agreements for the operation and management of BIDs provided the BIDs are contiguous and the goals and objectives compatible. [General Municipal Law § 980-n]

Selected Court Cases

Joyce E. Bochman, v. Town of Cheektowaga and Cheektowaga Central School District, 2004, 2 Misc.3d 966, 773 N.Y.S.2d 840, 186 Ed. Law Rep. 531. Background: Special education teacher, who was employed by board of cooperative educational services, brought action against school district to recover for injuries she sustained when she slipped and fell on school district property. District moved for summary judgment dismissing complaint, on ground that action was barred by Workers' Compensation Law, and teacher cross-moved for partial summary judgment dismissing district's affirmative defense based on Workers' Compensation Law.

Board of cooperative educational services was not engaged in joint venture with school district to provide special education services, as would render board employee an employee of school district for purpose of Workers' Compensation Law; there was no express agreement between board and district to create joint venture, board's mere use of district facilities did not imply joint venture, and such boards were not authorized by law to enter joint ventures with their component districts. McKinney's Workers' Compensation Law § 1 et seq.

Nothing found in article 40 of the Education Law suggests that boards of cooperative educational services are authorized or intended to engage in joint ventures with their component districts to provide special education programs. Sharing the control of those programs and management of school buildings owned by component districts in which the boards of cooperative educational services occupy only limited space is inconsistent with the legislative scheme found in the Education Law. Finally, a joint venture for the delivery of special education services may not be implied. Boards of cooperative educational services are authorized to provide special education services to component school districts only with approval of the commissioner of education (Education Law § 1950[4][d][1]). Formal contracts for those services must be filed with the commissioner (id.; § 1950[4][d][4]).

American Ref-Fuel Co. of Niagara, L.P. v. Northeast Southtowns Solid Waste Management Bd., 2002, 291 A.D.2d 861, 737 N.Y.S.2d 494. Intermunicipal solid waste management board lacked authority to act on behalf of all of its members in awarding solid waste disposal contract; although board purported to act on behalf of its 36 participating municipalities pursuant to an agreement authorizing the board to coordinate the solicitation of bids, that agreement was signed by only 13 members and approved by the majority vote of only six of the governing bodies of those 13 members.

Opinions of the Comptroller and Attorney General

Comptroller Opinion 2002-12. Pursuant to a municipal cooperation agreement, two villages may combine their water, sewer and street departments under the supervision of a single superintendent of public works. All officers and employees performing services for the combined department, including the superintendent, may be designated as officers and employees of one of the villages.

Comptroller Opinion 2001-14. General Municipal Law, §§ 800(2), (3), 801, 803. An intermunicipal agreement does not constitute a “contract” within the meaning of General Municipal Law, § 800; therefore, a member of a town board, who is also employed by a village located partially within the town, does not have a prohibited interest in an agreement between the town and the village for the provision of services by the village that are related to his or her village employment. Although the disclosure requirements of General Municipal Law, § 803, are not applicable, the town board member, to avoid even the appearance of divided loyalties, should disclose his or her relationship as a village employee and refrain from participation in town board discussions and decisions regarding town agreements with the village that pertain to matters relating to his or her village employment.

Comptroller Opinion 2000-17, Town Law §§197, 197-a. If a town, on behalf of a water district, contracts with a water authority for the construction of a water system by a contractor engaged by the authority, the authority must solicit bids in accordance with Town Law §197 for the construction of the town's particular water system as a discrete project. The authority may not solicit bids for individual categories of estimated construction work to be performed in the aggregate for districts in several towns.

Comptroller Opinion 2000-24, General Municipal Law, §§ 119-n(c), 119-o. Two non-contiguous villages may enter into a municipal cooperation agreement pursuant to General Municipal Law, Article 5-G, for the provision of police protection as a joint service.

Comptroller Opinion 98-10, Village Law, §6-602; Highway Law, §142-c; General Municipal Law, §119-o; Municipal Home Rule Law, §10(1). A town may not raise town taxes within a village to generate revenues to reimburse the town for the cost of repairs and maintenance of village streets performed by the town pursuant to a contract with the village.

Comptroller Opinion 98-21. Article 5-G does not provide authority for town and fire district to jointly contract with private ambulance company.

Comptroller Opinion 97-2. Insurance Law, Article 47; General Municipal Law, §§ 92-a, 119-o. A school district may not reimburse a former school board member who participates in a municipal cooperative health benefit plan for Part B Medicare premiums paid by the former school board member. 1985, Opinion of the State Comptroller 85-3, p. 3, superseded to the extent inconsistent.

Comptroller Opinion 96-7, Town Law, §§176(10), 176-b; General Municipal Law, §119-o. Several fire districts may enter into a cooperation agreement to implement an advertising campaign for the purpose of recruiting volunteer firefighters for the fire companies of the fire departments of the districts. The costs of the campaign may be apportioned by property valuations, population or any other equitable method or formula as agreed to by the parties to the agreement.

Comptroller Opinion 96-19, General Municipal Law, §119-o; Town Law, §§64(2), 81(1)(c), 176(14), 220(3). A town and a fire district located therein may, pursuant to General Municipal Law, article 5-G, enter into a municipal cooperation agreement to jointly acquire real property and construct a building thereon for use as a combined town hall and fire station. Both the town and the fire district must comply with all statutory requirements applicable to the individual undertaking and financing of such a project.

Attorney General Opinion 96-44, NY Const, Art IX, § 1(c); General City Law, Art. 4, §§ 40, 44, 45; General Municipal Law §§ 119-n(c), 119-o(1). The City of Olean may enter into inter-municipal agreements with other similar cities for the reciprocal recognition of certifications of employing or master plumbers provided that examinations and qualifications have been standardized to meet the needs of the participating cities. A city may not waive the requirement that an employing or master plumber be certified even where the applicant wishes to undertake no more than one job in the city in any calendar year.

Comptroller Opinion 95-7, General Municipal Law, §§119-n(b); 119-o(1); Town Law, §§61, 203, 210, 215, 341(10). A town improvement district which is governed by a separate board of commissioners is a district for purposes of article 5-G of the General Municipal Law. The district commissioners, as the governing body of the district, may, by a majority vote, authorize the district to enter into a municipal cooperation agreement with other districts and/or municipal corporations.

Attorney General Opinion 94-5. Municipalities may not enter into agreement whereby the taxing power is delegated to an administrative agency.

Comptroller Opinion 94-10. General Municipal Law, §§ 119-o, 239-o. A town human rights commission must be established and operated on a townwide basis. A town and one or more villages may establish a joint townwide-village human rights commission.

Comptroller Opinion 93-6. In order for a town to enter into a municipal cooperation agreement, it must have the authority to perform separately the function which would be the subject of the agreement.

Comptroller Opinion 91-1, General Municipal Law, §§103, 119-o; Municipal Home Rule Law, §10(1)(i); County Law, §408-a. There is no State statute which authorizes counties to extend their contracts for public work to political subdivisions to allow political subdivisions to participate in such contracts as an exception to competitive bidding requirements. Neither a county nor any other local government may provide, by local law, an exception to competitive bidding requirements for procurements through county contracts for public work. Municipal corporations, however, may enter into agreements to cooperatively bid contracts for public work or to have one municipality perform the competitive bidding procedures for other participating municipalities in connection with projects being undertaken by individual municipalities.

Comptroller Opinion 89-57, Highway Law, §142-c; General Municipal Law, §§103, 119-o. The town board may authorize the superintendent of highways to utilize town highway equipment and personnel to repair and improve a village street of a village located within the town. The work would be performed upon such terms and conditions as may be agreed upon by the town board and village board. Such agreements between the town and village are not subject to competitive bidding requirements. 1971 Opns St Comp No. 71-76, unreported is superseded.

Comptroller Opinion 88-40, General Municipal Law, §119-o(2)(a), (c),(h): (1) The respective governing boards of municipalities engaged in a joint service need not be directly responsible for the immediate control and supervision of a joint service, but rather, the municipal cooperation agreement may provide for delegation of that responsibility to other officers. (2) If a municipal cooperation agreement provides that moneys available for a joint service are held in the custody of the fiscal officer of one of the participants, the agreement may also provide that claims for the expenses of a joint service will be audited by the auditing body of the municipal cooperation whose fiscal officer is to have custody of the moneys of the joint service. (3) A municipal cooperation agreement may provide how to allocate moneys remaining at the conclusion of each year which are to be returned to each municipality.

Comptroller Opinion 88-46, Education Law, §§ 1604-a, 1723-a; General Municipal Law, §§ 11, 119-o. Pursuant to a cooperative investment agreement, school districts and municipalities may, on a cooperative basis, temporarily invest unneeded funds in instruments and obligations in which all the participants are authorized to invest. The fiscal officer of a participating school district or municipality may be given custody of the funds and the authority to invest those funds. Authority over the investment of funds may not be delegated to an advisory board. Prior opinions relative to cooperative investment agreements superseded to the extent inconsistent.

Comptroller Opinion 88-64, Public Housing Law, §§ 32(1), 37(1)(aa), 99; General Municipal Law, § 119-o. A municipal housing authority may provide its employees with health and dental benefits, but may not do so jointly with the municipality for which the authority was established.

Comptroller Opinion 85-23. When several municipalities are party to agreement to acquire real property, there must be a joint pledge of full faith and credit for joint indebtedness.

Comptroller Opinion 84-50. A town and a village may jointly engage a building inspector to enforce zoning ordinances of both municipalities and to issue building permits.

Comptroller Opinion 84-63. County sewer or water district may enter into a joint agreement or water project agreement with another municipality or district and thereby assist in providing sewer or water improvements.

Comptroller Opinion 81-262. A municipality may withdraw from a joint activity in which two or more municipalities participate by amendment of the ordinance, local law or resolution which authorized such joint participation, with the approval of all other participants. Upon such approval and amendment, the municipality may then contract for services with the joint enterprise.

Comptroller Opinion 81-390, State Constitution, Article VIII, § 1; General Municipal Law, § 119-o(1). A town may not enter into an agreement with a private college to install lights on an athletic field owned by the college in exchange for use of the field at certain times.