

TEXAS INTERLOCAL COOPERATION AGREEMENTS

*Basics on Agreements Between Governmental Entities
and a Primer on Regulating Subdivisions in a City's ETJ*

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What is an Interlocal Agreement?

- An Interlocal Agreement is a contract between governmental entities.
- Under Section 791.011 of the Texas Government Code
 - A local government may contract with another local government or state agency;
 - To perform governmental functions/services; and
 - To study the feasibility of performance of governmental services by an interlocal contract

Also Known As...

- MOU
- Letter Agreement
- Mutual Aid Agreement
- Joint Operation Plan
- Cooperation Agreement
- ❖ Remember: it's a contract.

Who is a Local Government?

- Political Subdivision of the State
 - E.g., a municipality, county, special district, community college district, etc.
- Transportation Corporation created by a local government
 - Trans. Code Ch. 431
- Electricity Purchasing Corporation created by a local government
 - Loc. Gov't Code Ch. 304.

Basic Requirements

- An Interlocal Agreement must:
 - Be authorized by the governing body of each entity.
 - State the purpose, terms, rights, and duties of the parties.
 - State that payments will be made from current revenues/funds.
 - Fairly compensate the performing party.

“Each Party Authorized to Perform Individually”

- Each entity must have the authority to perform whatever function you are agreeing to perform together.
- A county cannot agree to provide law enforcement for a MUD because a MUD does not have law enforcement powers.
- A county and a school district cannot agree that the county will build school buildings because the county has no authority to build school buildings.

What is a “Governmental Function”?

Section 791.003 TEX. GOV'T CODE lists several functions:

- Police and detention services
- Records center services
- Fire protection
- Planning and engineering
- Streets, roads, drainage, and waste disposal
- Public health and welfare (including health care and hospital services)
- Trash collection
- Public fund investment
- Administrative functions
- Parks and recreation (including library and museum services)
- Anything else each party is authorized to perform individually

Law Enforcement Example

- An ILA may not extend the police power of a government beyond its jurisdiction.

- Example:

Comal County wants Bexar County to help patrol Comal County. Can they do this?

➤ Yes, but...

- A county can agree to provide law enforcement outside of its county, but the deputy sheriffs/constables are subject to the control of the sheriff in whose county they are patrolling. Tex. Att'y Gen. Op. No. GA-0189.
- They essentially become deputies of the sheriff of the county they are patrolling.

What is an Administrative Function?

- Functions normally associated with the routine operation of government
 - tax assessment/collection
 - personnel services
 - purchasing
 - records management
 - data processing
 - equipment repair
 - printing
 - warehousing

Supervision and Administration

To supervise performance of interlocal contract, the parties may:

- Create an administrative agency
- Designate an existing local government, or
- Contract with a tax-exempt organization that provides services for political subdivisions and derives more than 59% of its funding from political subdivisions.

Special Approval Requirement for Counties

- Before beginning a project to construct, improve, or repair a building, road, or other facility under an interlocal contract, the commissioners court of a county must give specific written approval for the project.

The approval must:

- (1) be given in a document other than the interlocal contract;
 - (2) describe the type of project to be undertaken; and
 - (3) identify the project's location.
- The county may not accept, and another local government may not offer payment for, a project undertaken without approval required by this section.
- A county is liable to another local government for the amount paid by the local government to the county for a project requiring approval under this section if:
 - (1) the county begins the project without the approval required by this section; and
 - (2) the local government makes the payment before the project is begun by the county.

Special Authority for Certain Contracts

- Regional Correctional or Jail Facilities
§§ 791.021-022 TEX. GOV'T CODE
- Community Correctional Facilities
§791.024 TEX. GOV'T CODE
- Purchasing Contracts
§791.025 TEX. GOV'T CODE
- Emergency Assistance
§791.027 TEX. GOV'T CODE
- Joint Payment of Road Construction
("Highway Projects")
§791.025 TEX. GOV'T CODE
- Regional Records Centers
§791.029 TEX. GOV'T CODE
- Health Care and Hospital Services
§791.030 TEX. GOV'T CODE
- Transportation Infrastructure
§791.031 TEX. GOV'T CODE
- Construction/Repair of Municipal Streets
§791.032 TEX. GOV'T CODE
- Facilities on State Highway System
§791.033 TEX. GOV'T CODE

Liability for Police and Fire

- Fire/Emergency Services (if contract exists):
 - Civil liability rests on governmental unit that would have been responsible for providing services had there been no contract – UNLESS otherwise agreed by parties in contract
- Law Enforcement Services (in absence of contract):
 - Civil liability rests on governmental unit that requests and obtains services

BUT: Liability limits and immunities of Texas Tort Claims Act or other law still apply.

Generally, you cannot indemnify another local government without a tax or sinking fund. (Tex. Const. art. VI, Sec. 7; Tex. Att’y Gen. Op. No. GA-0176.)

Subdivision Regulations in the ETJ

- Chapter 242 of the Local Government Code requires that a county and municipality enter into an Interlocal Agreement about which entity will regulate subdivisions in the city's ETJ.
- The options listed in Local Government Code Section 242.001(d) provide that the city and county can agree that:
 - The city regulates the entire area of the ETJ.
 - The county regulates the entire are of the ETJ.
 - The city and the county carve up the ETJ into city and county zones of regulation.
 - The city and the county create a “hybrid” of the city/county regulations that apply to the entire ETJ.
- This authority is independent of the Interlocal Cooperation Act in Chapter 791. Tex. Att'y Gen. Op. No. JC-518.

Collection of Taxes

- A county and another taxing entity located within the county can enter into an ILA for the Tax Assessor Collector to collect taxes for the other entity.
 - Tax Code § 6.23(a)(4).
- The fee structure for this is debatable but likely allows the county to be reimbursed for actual costs in collecting taxes.
- Absent an agreement, the Tax Assessor may have to collect the taxes for free.
- Certain entities have special provisions that require the Tax Assessor to collect taxes for them.

Hypothetical

Can Travis County pay for the autopsy of a body when the person died in Maverick County but was found in Travis County?

➤ No.

- Only the county in which the death occurs is authorized to pay for the autopsy under Tex. Code Crim. Proc. Art. 49.10(g).
 - Tex. Att'y Gen. Op. No. JC-0071.
- This illustrates the point that a governmental entity can only enter into an ILA for services it has the authority to perform. Because a county cannot pay to perform an autopsy of a body when the death occurred in a neighboring county, it cannot contact to do so.

Best Practices

- Centralize management of your interlocal agreements.
- Document and track the amount of funds authorized, who the agreements are with, and the number of agreements.
- Perform annual or biennia (every two years) audits of the agreements.
- Read Chapter 791 for exceptions.

Questions?

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