

Chapter X

Local Government as a Party to a Contract

D. Interlocal Agreements.

1. Definition.

An interlocal agreement is an agreement entered into pursuant to the Florida Interlocal Cooperation Act of 1969, Section 163.01 (the "Act") and Florida Statutes. Section 163.01(3)(a), Fla. Stat.

2. Purpose of the Act.

The Act "was enacted to permit local governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities on the basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs and development of local communities." Section 163.01(2), Fla. Stat.

3. Common Power, Privilege or Authority.

a. The Act provides that a public agency of the state may exercise jointly with any other public agency of the state, of any other state, or of the United States Government any power, privilege or authority which such agencies share in common and which each might exercise separately. Section 163.01(4), Fla. Stat.

b. An interlocal agreement may not be used to convey power not already possessed by each party. In AGO 2003-03 the Attorney General concluded that two municipalities may not by interlocal agreement agree that one city may use the facilities of the other to hold city commission meetings outside of the geographic boundaries of the city because the city desiring to hold the meetings outside of its boundaries did not have that extraterritorial power. See, however, AGO 84-40 in which a special district was authorized to extend its district powers beyond its boundaries by an interlocal agreement with the county. The opinion relies upon Sections 125.01(1)(p) and 125.0101, Fla. Stat. See also Rhea v. School Board of Alachua County, 636 So. 2d 1383 (Fla. 1st DCA 1994) (holding that a school board violated the sunshine law by holding a meeting at a location remote from the school district). See also AGO 97-10 (the Attorney General opined that the Metropolitan Planning

Organization could not use an interlocal agreement to extend the existing authority of the parties to the agreement to include the ownership and operation of a mass transit system when not all of the parties thereto possessed independent authority to provide transportation services). Furthermore, AGO 86-13 noted that a housing authority operating under Part I of Chapter 421, Florida Statutes could not enforce the housing discrimination laws of the county by interlocal agreement because the housing authority did not have the power to enforce such laws and could not derive the power to do so from an interlocal agreement. Of like import is AGO 84-86 in which the Attorney General opined that a municipality could not by interlocal agreement with the Sheriff have obtained the power to enforce traffic laws outside the municipal boundaries.

4. Use by Non-Public Entities Prohibited.

The Act may not be used by non-public agencies. The unauthorized participation of a private party in an entity created by interlocal agreement would remove the entity from the protection of Section 768.28, Fla. Stat. See AGO 93-24; see also AGO 2003-21 (noting that nongovernmental transportation coordinators or subcontractors are not public agencies under Section 163.01). The Act does not authorize a separate legal entity created there under to join with a public agency in an interlocal agreement. See AGO 77-16.

5. Separate Legal Entities Authorized.

A separate legal or administrative entity may be created by interlocal agreement to administer or execute the agreement, which may be a commission, board or council constituted pursuant to the agreement. See Section 163.01(7), Fla. Stat. Except as specifically authorized in the Act, no such separate legal or administrative entity created by interlocal agreement may levy any type of tax within the boundaries of any governmental entity participating in the interlocal agreement, issue any bonds in its own name or obligate financially any governmental unit participating in the interlocal agreement. See Section 163.01(7)(c), Fla. Stat.

- a. Section 163.01 (7)(d), Fla. Stat., authorizes creation of a separate entity by interlocal agreement in order to issue bonds for capital projects and make loans to counties and municipalities, whether or not parties to the interlocal agreement.
- b. Section 163.01 (7)(e), Fla. Stat., authorizes creation of a separate entity by interlocal agreement in order to issue bonds for the purpose of financing

acquisition of liability coverage contracts from one or more local government liability pools to provide liability coverage to for counties, municipalities or other public agencies of the state.

- c. Section 163.01 (7)(e)2, Fla. Stat., authorizes counties and municipalities by entering into an interlocal agreement to issue bonds for the purpose of acquiring liability coverage contracts from a local government liability pool.
- d. Section 163.01(7)(g), Fla. Stat., added by Chapter 97-216, Laws of Florida, allows a separate legal entity created under that section to acquire, construct and operate public facilities related to a governmental function or purpose, including but not limited to wastewater facilities, water or alternative water facilities and water reuse facilities, which may serve populations within or outside of the members of the entity. See Chapter 2004-336, Laws of Florida Providing Protection for the "Host Government" in the event of proposed acquisition of a utility system and which allows special districts to take the part in the creation of separate legal entity for the purposes set out in Section 163.01(7)(g), Fla. Stat.

6. Authorized Provisions.

The Act specifies that the interlocal agreement may provide for:

- a. The purpose and method of exercise of the power.
- b. The duration and method of early termination or rescission.
- c. The precise organization, composition or nature of any separate legal or administrative entity created and the powers thereof.
- d. The manner of providing financial support including payments or advances of public funds and repayment thereof and the personnel, equipment, or property of one or more of the parties thereto which may be used in lieu of other contributions or advances.
- e. The manner in which funds may be paid to and disbursed by any separate legal or administrative entity.
- f. A method or formula for equitably providing for and allocating and financing capital and operating costs, including debt service. The Act allows that method to be on any equitable basis consistent with law and lists a number of possibilities.

- g. The manner of employing, engaging, compensating, transferring or discharging employees, subject to applicable civil service and merit systems.
- h. The fixing and collecting of charges, rates, rents or fees including promulgation of rules and regulations and their enforcement by or with the assistance of the parties thereto.
- i. The manner in which purchases may be made or contracts entered into.
- j. The acquisition, ownership, custody, operation, maintenance, lease or sale of real or personal property.
- k. The disposition, diversion or distribution of property acquired.
- l. The manner in which any surplus property may be returned in proportion to the contributions of the parties.
- m. The acceptance of gifts, grants, assistance, funds or bequests.
- n. The making of claims for federal or state aid payable to the individual participants.
- o. The manner of responding for any liabilities and insuring such risks.
- p. The adjudication of disputes or disagreements and the effect of failure of participants to pay their shares of costs and expenses and the rights of the parties in such eventuality.
- q. The manner in which strict accountability of funds shall be provided for and the manner in which reports, including an annual independent audit, of all receipts and disbursements shall be prepared and presented to the participating parties.
- r. Any other necessary or proper matters. See Section 163.01(5)(a) through (r), Fla. Stat.

7. Unauthorized Provisions.

- a. Section 163.01(14), Fla. Stat. provides that the Act does not authorize the delegation of constitutional or statutory powers of state, county or city officers

- b. Discretionary powers may not be delegated absent legislative authority. See AGO 77-16. See AGO 74-220 (noting that two cities could likely not agree by interlocal agreement to have their police departments subject to the control of an independent entity created by interlocal agreement). See AGO 97-80 (opining that a county lacked the authority to impose a special assessment to repair roads outside the county on property located outside the county).

8. Administration.

The Act provides that the interlocal agreement may provide for one or more parties of the agreement to administer or execute the agreement. One or more of the parties thereto may agree to provide all or a part of the services provided for. The parties may provide for the mutual exchange of services without payment of any contribution other than services. See Section 163.01(6), Fla. Stat.

9. Validation.

An interlocal agreement, which is evidence of debt, may be validated under Chapter 75, Fla. Stat. even when no bonds are being issued. See State v. City of Daytona Beach, 431 So2d 981 (Fla.1983).

10. Transfer of Services.

A transfer of services may be accomplished by interlocal agreement without the necessity of complying with Section 4, Article VIII, Florida Constitution (the "Transfer of Powers" section), as long as the ultimate responsibility for providing those services is not transferred. If that responsibility is transferred, the Transfer of Powers section requires dual referendum. See AGO 95-49; Broward County v. City of Ft Lauderdale, 480 So2d 631 (Fla. 1985); see also AGO 90-77. A mutual aid agreement, although authorized by law, cannot be used to completely transfer a service. AGO 96-78. A mutual aid agreement authorized by Part I of Chapter 23, Fla. Sta. the "Florida Mutual Aid Act", may be used to allow one jurisdiction to provide routine law enforcement assistance within the boundaries of another jurisdiction. See AGO 2002-46. A mutual aid Acquisition may not be used to completely assume law enforcement services. See AGO 96-78.

11. Filing Required.

The interlocal agreement and any amendments thereto must be filed with the clerk of the circuit court of each county where a party to the agreement is located prior to becoming effective. See Section 163.01 (11), Fla. Stat.

12. Strict Construction.

An entity created by interlocal agreement would likely be treated the same as a special district or administrative agency for purposes of its powers. That is to say, it would have no home rule or inherent powers and would only have such powers as may be lawfully delegated to it. Such an entity would be treated the same as a municipality prior to the advent of municipal home rule. In that regard, the powers, granted by general and special law were traditionally more strictly construed. The implied powers accorded administrative agencies must be indispensable to powers expressly granted, i.e., those powers that are necessarily or fairly or reasonably implied as an incident to those powers. See AGO 2002-30. An administrative agency or officer possesses no power not granted by statute, either expressly or by necessary implication, and any reasonable doubt as to the lawful existence of a particular power sought to be exercised must be resolved against the exercise thereof. See State ex rel. Greenberg v. Florida State Board of Dentistry, 297 So.2d 628 (1 D.C.A. Fla., 1974), cert. dismissed, 300 So.2d 900 (Fla. 1974); See also, City of Cape Coral v. GAC Utilities, Inc. of Florida, 281 So.2d 493 (Fla. 1973).

Such strict construction accords with the maxim of Dillon's Rule, which says that, a local government's authority is limited to that expressly granted or fairly implied by the legislature and that any ambiguity is resolved against the local government. See John F. Dillon, Commentaries on the Municipal Corporations § 237 (5th ed. 1911).

13. Statutory Sources of Power.

- a. Non-charter counties are given the power to "enter into agreements with other governmental agencies within or outside the boundaries of the county for the joint performance by one unit in behalf of the other, of any other agency's authorized functions." Section 125.01(1)(p), Fla. Stat. See AGO 91-25 (a county was authorized to enter into an agreement to provide detention facilities for a municipality). Section 125.0101, Fla. Stat. authorizes non-charter counties to contract with a municipality or special district within the county for fire protection, law enforcement, library services and facilities, beach erosion control, recreation services and facilities, water, streets, sidewalks, street lighting, garbage and trash collection and disposal, waste and sewage collection and disposal, drainage, transportation, and other essential facilities and municipal services. The funding shall be as may be agreed between the parties, however, the county may not levy any service charge, special assessment or tax within the municipality or special district based upon that section.

- b. The Florida Mutual Aid Act, Part I of Chapter 23, Fla. Stat., authorizes several types of cooperation agreements between law enforcement agencies and authorizes extraterritorial powers. See also Section 166.049, Fla. Stat. mandating that the Chief of Police have a mutual aid agreement in place. See also Section 166.0495, Fla. Stat., authorizing a municipality to enter into an interlocal agreement with one or more adjoining municipalities within the same county to provide law enforcement services.
- c. Section 365.171, Fla. Stat. authorizes two or more counties to establish a combined "911" telephone service and receive fees authorized by law for such service.
- d. Section 401.23, Fla. Stat. authorizes mutual aid agreements for advanced life support services.
- e. Section 154.05, Fla. Stat. authorizes one or more counties to combine in the maintenance and establishment of a single full time county health department.
- f. Section 373.1962, Fla. Stat. authorizes creation of regional water supply authorities.
- g. Section 395.401, Fla. Stat. authorizes creation of regional transit systems
- h. Section 421.11 authorizes interlocal agreements with housing authorities.
- i. Section 489.127, Fla. Stat. authorizes counties and municipalities to enter into interlocal agreements for enforcement of the construction licensing law.
- j. Section 1013.355, Fla. Stat. authorizes creation of an educational benefit district by interlocal agreement.
- k. Section 125.325, Fla. Stat. authorizes an entity created under Section 163.01, the membership of which consists of at least three counties; to issue bonds and loan proceeds to a public agency
- l. Various provisions of the Local Government Comprehensive Planning and Regulation Act, including Section 163.3167, Fla. Stat., authorize mutual agreements for the implementation of that act.

- m. Section 163.400, Fla. Stat. authorizes cooperation agreements for community redevelopment purposes.

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