

STATE OF MINNESOTA

Office of the State Auditor



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State Auditor

Best Practices Review:

Collaboration Part 2: Getting it Right

Description of the Office of the State Auditor

The mission of the Office of the State Auditor is to oversee local government finances for Minnesota taxpayers by helping to ensure financial integrity and accountability in local governmental financial activities.

Through financial, compliance, and special audits, the State Auditor oversees and ensures that local government funds are used for the purposes intended by law and that local governments hold themselves to the highest standards of financial accountability.

The State Auditor performs approximately 150 financial and compliance audits per year and has oversight responsibilities for over 3,300 local units of government throughout the state. The office currently maintains five divisions:

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Government Information - collects and analyzes financial information for cities, towns, counties, and special districts;

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Pension - monitors investment, financial, and actuarial reporting for approximately 730 public pension funds; and

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Best Practices Review:

Collaboration Part 2: Getting it Right



October 14, 2013

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Preface

The Office of the State Auditor (OSA) conducts best practices reviews which “examine the procedures and practices used to deliver local government services, determine the methods of local government service delivery, identify variations in cost and effectiveness, and identify practices to save money or provide more effective service delivery.”¹ The best practices reviews include recommendations to improve the cost-effectiveness of services.

This best practices review is the second part of a three-part series focused on collaborations involving local governments. The topic for this series of reviews on collaboration was suggested by the Collaborative Governance Council (CGC).² The Council recommended a series of reviews on best practices for collaboration in government conducted by the Office of the State Auditor. Part One of this series focused on initiating, building, and maintaining relationships.

In the course of its work, the Council became aware of certain issues that arose between local governments and their community partners as they worked collaboratively. Examples include the absence of an agreed-upon and documented process to address cost increases in a fire service contract and the absence of an agreed-upon process for a local government to leave a collaboration when the collaboration is no longer meeting its needs. The State Auditor’s Best Practices Advisory Committee agreed, finding the collaboration topic to be timely, particularly in light of tight budgets and continued interest in improving and streamlining government.³

This Review identifies the types of decisions that a local government should make early in the process of collaboration and the steps that should be taken as a result of those decisions. The Review also identifies resources tailored to local governments to assist local government decision makers.

¹ Minn. Stat. § 6.78.

² The CGC was established by the Legislature in 2010, and the State Auditor serves as its Chair. Minn. Stat. § 6.81. The CGC’s membership includes representatives from the League of Minnesota Cities (LMC); the Association of Minnesota Counties (AMC); the Minnesota Association of Townships (MAT); the Minnesota School Boards Association (MSBA); Education Minnesota; the Service Employees International Union (SEIU); and the Association of Federal, State, City and Municipal Employees (AFSCME). *See* Office of the State Auditor, “Collaborative Governance Council Legislative Report 2011,” www.auditor.state.mn.us/other/councils/CollaborativeGovernance/Collaborative_Governance_Council_Legislative_Report.pdf.

³ The Advisory Committee is composed of representatives from the AMC, the LMC, the Association of Metropolitan Municipalities, the MAT, the Minnesota Municipal Utilities Association, and the Minnesota Association of School Administrators. Minn. Stat. § 6.78.

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Introduction

Minnesota’s local governments and their community partners have been working together to accomplish common goals for decades. State law encourages collaboration. The authority to act cooperatively can be found in individual statutes and in the Minnesota Joint Powers Act.⁴ The Joint Powers Act provides broad authorization for two or more local governments to cooperate with each other and with others to reach common goals. The Act allows local governments to jointly or cooperatively undertake the exercise of common governmental powers.⁵

The Act is inclusive, allowing all local units of government of this state or another state, all state and federal agencies, all federally recognized Indian tribes, and many other entities named in the Act to work together with or without a formal joint powers agreement.⁶ Local governments are not limited to working jointly only with those entities that have “common powers.” A county, for instance, may enter into an agreement with any other governmental unit to perform, on behalf of that unit, any function which that unit would be authorized to provide for itself.⁷

Collaborations enable local governments to improve service delivery and/or deliver services at a lower cost. A collaborative effort may be simple or complex; it may be short- or long-term; it may include two or more participants. A collaboration’s likelihood of success increases if certain decisions are made early in the process.

Problems may arise in collaborative efforts where, had certain steps been taken, problems may not have occurred. When local governments collaborate with other government entities and/or community partners, getting it right early can save time and money and preserve important relationships. If certain steps are not taken, collaborative efforts can increase costs and/or may diminish the quality of services.

This Review is designed as a guide for local government officials or employees considering working with other local governments and/or community partners on collaborative efforts of varying size, scope, or complexity.

⁴ Minn. Stat. § 471.59.

⁵ *Id.*

⁶ The participating local governments and the joint board, if one is established, benefit from statutory limits on liability. Minn. Stat. § 471.59, subd. 1a. The Act also authorizes local governments to partner with organizations that represent local governments (*i.e.*, LMC, MAT, and others) to develop training programs for local officials. Minn. Stat. § 471.59, subd. 9.

⁷ Minn. Stat. § 471.59, subd. 8.

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Scope and Methodology

The goal of this Review is to identify the steps to best practices for local governments considering collaborative efforts with other local governments or with community partners. To gather information for this Review, the Office of the State Auditor (OSA) conducted a literature review to identify the types of decisions that a local government should make early in the process of collaboration and the steps that should be taken as a result of those decisions. The OSA contacted the League of Minnesota Cities Insurance Trust (LMCIT), the Minnesota Counties Intergovernmental Trust (MCIT), the Minnesota Association of Townships (MAT), and the Minnesota Association of School Business Officials (MASBO) to gather information on the services provided to member entities to assist in identifying and managing risks associated with collaborations.

The OSA has extensive expertise in local government finances and legal compliance because of our oversight of local governments. We drew upon the well-developed expertise of OSA staff for this Review.

The OSA wants to thank all of the local government associations for providing the needed information. We also want to thank the CGC and the State Auditor's Advisory Committee for its strong support of the topic and for its suggestions of topics to be included in the series of Reviews on Collaboration.

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Steps to Best Practices

The following steps have been identified as best practices for local governments considering collaborative efforts with other local governments or with community partners. Potential community partners may include certain nonprofits, federally-recognized Indian tribes, and agencies of the State of Minnesota.⁸

Step 1: Approach

Determine the best model or approach.

Collaboration can begin when an opportunity and a common need are identified. Early in the decision-making process a model that fits a need of a specific collaborative effort should be identified.

There are three basic models for meeting mutual needs. Selecting or combining elements from one or more of these three models may suit a particular collaboration better than using any one of the three models identified below. The three basic service models are:

- ***Mutual Aid:*** Two or more local governments agree to assist each other by providing a particular service under specific circumstances. Some types of mutual aid assistance commonly provided in Minnesota are fire-fighting, law enforcement, and ambulance services. An agreement may be informal and money may or may not change hands. It is recommended that a written agreement exist. If a written agreement does not exist, the terms of the oral agreement should be documented in the entities' meeting minutes.
- ***Service Contract:*** At least one participant contracts with and pays a community partner or other local government to perform a particular service. Services commonly obtained by contract in Minnesota are fire-fighting, law enforcement, parks and recreation, utility billing, inspections, and public works.
- ***Consolidated Service:*** Two or more local governments and/or their community partners create a new entity with a separate governing board made up of representatives of the participating entities to accomplish a common goal. The operations are financed by the participating entities. The new board employs the staff, manages the operations, and collects and expends funds. Services that have been consolidated include economic development, transportation, information technology, law enforcement, sanitation, dispatch, parks and recreation, and public works.

⁸ This is not an exhaustive list. See Minn. Stat. § 471.59, subd. 1 (containing an extensive list of entities authorized to jointly use common or similar governmental powers to reach common goals).

Step 2: Governance

Agree on a governance model.

Decisions should be made concerning governance or management. In Minnesota, the Joint Powers Act allows two or more local governments and their community partners a flexible range of choices as to how to work together to accomplish common goals. The participating entities should:

- Confirm that participating local governments have the legal authority to provide service;⁹
- Identify how the legal authority to enter into contracts will be exercised;¹⁰
- Design a process to determine the effectiveness and efficiency of the service; and
- Determine the cost to provide the service and the bases to determine the cost.

The entities may remain separate when working together. Entities usually remain separate for mutual aid agreements, service contracts, or shared resources, and a new governance structure is generally not required. If it is determined that a joint board is needed, however, the participants must:

- Design the structure and the composition of the board;
- Set the term of office of the board members;
- Determine how the board members are appointed;
- Determine the decision-making process; and
- Define the powers of the board.

The governing bodies of the participating local governments must take an official action (i.e. resolution or a motion which should be reflected in the meeting minutes) to enter into the agreement before powers can be jointly or cooperatively used.¹¹ In addition, if another act provides for the cooperative exercise of governmental powers, local governments must fulfill any additional procedural requirements contained in that act.¹² For example, in a town, the town board must authorize a joint powers agreement. This town board action does not satisfy additional applicable requirements for town elector approval.¹³

⁹ Minn. Stat. § 471.59.

¹⁰ The city council or county board generally has authority to conduct city or county business including entering into contracts. *See* Minn. Stat. §§ 373.01, 373.02 (counties); 412.201, 412.221 (statutory cities). City or county department heads generally do not have the legal authority to enter into contracts. *See, e.g., City of Geneseo v. Utilities Plus*, 533 F.3d 608 (8th Cir. Minn. 2008). The authority to pay claims, however, may sometimes be delegated by the governing body. *See* Minn. Stat. §§375.18, subd. 1b (counties); 412.271, subd. 8 (cities).

¹¹ Minn. Stat. § 471.59, subd. 1.

¹² Minn. Stat. § 471.59, subd. 7.

¹³ *See generally* Minn. Stat. § 365.10 (annual town meeting; powers of electors).

Step 3: Documentation

Put any agreement in writing.

It is important to document the details of any cooperative or collaborative agreement. The act of documenting an agreement forces the participating entities to clarify their expectations and articulate their understandings of the agreement.

A document that details an agreement also serves educational and historical purposes as it can inform new staff and newly-elected officials not present when the original agreement was entered into. The document can be useful for making sure the parties to the agreement are performing as intended.

The written agreement to jointly or cooperatively exercise common or similar powers should identify and include at least the following:

Governance:

- Name of all the parties involved;
- Specific statutory authority for the activities;
- The start/end date of the agreement;
- The purpose of the agreement;
- The service to be provided;
- The powers to be exercised jointly;
- How services will be delivered;
- Roles and responsibilities of the parties; and
- Applicable laws to be followed by entities including the Minnesota Government Data Practices Act (Minnesota Statutes, chapter 13).¹⁴

Finances:

- The cost of the service;
- Method used to handle and disburse public funds (which should agree as far as practical with the methods used to disburse public funds required by law for the parties to the agreement);
- Parties responsible for accounting of all funds;
- Require a report of all receipts and disbursements be provided to the governing board for approval on a regular basis;
- Audit requirement, if necessary; and
- Insurance coverage considerations.¹⁵

¹⁴ See Minn. Stat. §§13.03 subd. 4; 13.05, subds. 6 and 11.

¹⁵ Determining whether a joint undertaking needs additional or independent insurance coverage is an important practical consideration that should be addressed before the agreement is finalized.

Termination:

- The terms and conditions under which the agreement will terminate; and
- The disbursement of property acquired jointly, along with excess cash, at termination.

With the Joint Powers Act, the Minnesota Legislature limited liability for local governments participating in joint activities.¹⁶ In general, a single liability limit applies regardless of the number of governmental units participating in an activity. A local government may, however procure insurance in excess of the liability limit provided by Minnesota Statutes section 466.04 subd. 1, thereby waiving the liability limit to the extent of coverage.¹⁷ A local government remains responsible for its own independent acts or omissions not directly related to the joint activity.

The Resources Section of this Review contains information on where to locate sample joint powers agreements, and model service contracts provided by city, county, township and school district local government associations.¹⁸

Step 4: Reporting/Audit Requirements

Identify reporting and/or audit requirements.

Once the approach and governance model have been decided for the collaborative effort, it is important to identify reporting and/or audit requirements and deadlines.

All local governments must report financial information to the Office of the State Auditor.¹⁹ If the new collaborative effort is a “special district,” additional reporting is required.²⁰ If a “special district” is not subject to financial audit and reporting requirements under other law, it must have an annual audit completed in accordance with minimum auditing procedures prescribed by the State Auditor if its total annual revenues are greater than the statutory audit threshold amount.²¹ If a special district’s total annual revenues are equal to or less than the annual audit threshold, it must have an Agreed-Upon Procedures engagement as prescribed by the State Auditor at least once every five years. For the years in which an audit is not required, a special district must

¹⁶ See Minn. Stat. § 471.59, subd. 1a.

¹⁷ See Minn. Stat. § 471.59, subd. 1a (c).

¹⁸ Some local government associations also serve as insurance trusts to their members. General guidance on contract drafting, including contract templates, is available on the LMC website at www.lmc.org, the MAT website at www.mntownships.org and the MCIT website at www.mcit.org/Default.aspx (for members only).

¹⁹ See, e.g., Minn. Stat. § 6.74.

²⁰ A “special district” is a public entity with a special or limited purpose, financed by property tax revenues or other public funds, that is not included in a city, county, or town financial report as a component of that local government, that is created or authorized by law, and that is governed by:

- persons directly elected to the governing board of the district,
- persons appointed to the governing board of the district by local elected officials,
- local elected officials who serve on the board by virtue of their elected office, or
- a combination of these methods of selection.

The special taxing districts identified in Minn. Stat. § 275.066 are special districts. See Minn. Stat. § 6.465, subd. 3.

²¹ Minn. Stat. § 6.756, subd. 2. Audit threshold information is made available on the OSA website in early February of each year. See www.auditor.state.mn.us/default.aspx?page=faq.

prepare and submit to the Office of the State Auditor a Special District Financial Reporting Form and unaudited Financial Statement. The Form must be submitted to the OSA within 180 days after the special district's fiscal year ends.

Each special district must file with the Office of the State Auditor within 60 days of adoption all district governance documents, including articles of incorporation, bylaws, or agreements, and any amendments to these documents.²²

Step 5: Legal Review

Legal counsel should be involved in all agreements.

Legal counsel for each local government participating in a joint effort should be involved in all agreements, including joint powers agreements, mutual aid agreements, and service contracts. Legal counsel should be involved in the drafting of the agreement and should complete a legal review of the agreement before final signatures.

The League of Minnesota Cities Insurance Trust (LMCIT) provides a no-cost contract review service for its member cities.²³ Contracts are reviewed to identify problematic language, including incomplete or unclear decision-making processes and unclear definitions of responsibility and liability. This service does not replace the services of a city attorney.²⁴ The LMCIT works directly with city attorneys.

Minnesota Counties Intergovernmental Trust (MCIT) provides its member entities a service that includes contract and joint powers agreement review from a risk management perspective. MCIT also provides its members with regional and on-site training aimed at assisting members in identifying and managing risks associated with collaborative ventures.²⁵

Step 6: Annual Review

Review the agreement annually.

An annual review of each collaborative agreement should be conducted covering at least the following general areas:

- Whether outcomes are meeting expectations;
- Whether participating in the activity or providing the service jointly was cost effective;
- Whether the needs of the participating entities have changed; and
- Whether there is a way to better accomplish the purpose.

²² Minn. Stat. § 6.756, subd. 1. For reporting forms and due dates, see the OSA website at www.auditor.state.mn.us/default.aspx?page=reportingformsandduedates.

²³ See www.lmc.org/page/1/contracts.jsp.

²⁴ For additional information about this service, see www.lmc.org/page/1/contracts.jsp.

²⁵ MCIT members may contact at info@mcit.org if they want additional information about these services.

If collaborating participants decide that their needs have changed or that there is a better approach to service delivery or the governance of it, the original written agreement should be modified or amended to reflect any changes. Each participating partner should also have legal counsel review the agreement before final signatures.

Resources

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A: Information Resources

The League of Minnesota Cities (LMC): The League of Minnesota Cities is a membership organization founded in 1913 and serving more than 800 member cities. LMC serves its members by providing advocacy, education and training, policy development, and risk management.

Resource Library: LMC's Resource library contains manuals, memos, and model documents on many topics. It is up-to-date and searchable.²⁶

City Collaboration Lookup: LMC provides an online lookup tool that contains over 1900 examples of collaboration involving cities. It can be searched by city name or by service category or by both.²⁷

League of Minnesota Cities Insurance Trust (LMCIT): LMCIT is a cooperative joint-powers organization formed by Minnesota cities, and one of the first municipal self-insurance pools in the country. LMCIT helps cities minimize risks and reduce losses. It has made available on its website various informational items relevant to cooperative agreements and joint powers.²⁸

Contract Review Service: LMCIT offers a program to help member cities avoid common contract liability exposures by identifying defense and indemnification language that may cause problems. Advice and recommendations on insurance coverage also are provided to help ensure contracted activities fall within the scope of LMCIT coverages. There is no charge to its members for this service.²⁹

Minnesota Counties Intergovernmental Trust (MCIT): MCIT is a member services organization created by counties and made available to other public entities through an intergovernmental joint powers agreement. MCIT provides property, casualty and workers' compensation coverage to Minnesota county governments and related organizations. It provides risk management and loss control services tailored to the unique business of public entities and other related organizations. MCIT's resource library contains articles and model forms on joint powers agreements and mutual aids, available to **members only**.³⁰

The Minnesota Association of Townships (MAT): MAT is a voluntary membership organization representing all but a few of Minnesota's 1,784 organized townships and nearly 9,000 elected township officers. MAT's information library has a comprehensive index by topic. It is updated periodically.³¹

²⁶ It can be found at: <http://www.lmc.org/page/1/resource-library.jsp>.

²⁷ It can be found at: <http://www.lmc.org/page/1/aboutcollaborationlookup.jsp>.

²⁸ For additional information relevant to joint powers, see <http://www.lmnc.org/page/1/joint-powers.jsp>.

²⁹ For additional information about this service, see <http://www.lmc.org/page/1/contracts.jsp>.

³⁰ It can be found at: http://www.mcit.org/resource_library.aspx.

³¹ To access the information library index, see http://www.mntownships.org/index.asp?SEC=BA7C7F28-F711-48B6-BAEE-803CD0F91D51&Type=B_BASIC.

The Minnesota Association of School Business Officials (MASBO): MASBO was founded in 1950. The membership consists of over 600 school district personnel representing Minnesota school districts who serve in areas of business administration, superintendancy, accounting, buildings and grounds, transportation, food service, personnel/payroll/benefits, and purchasing. MASBO is an affiliate of the Association of School Business Officials, International. A focus is professional development of its members.³²

³² It can be found at: <http://www.mnasbo.org/displaycommon.cfm?an=1&subarticlenbr=14>.

B: Sample Agreements and Model Language

The League of Minnesota Cities Insurance Trust (LMCIT), Minnesota Counties Intergovernmental Trust (MCIT), Minnesota Association of Townships (MAT), and the Minnesota Association of School Business Officials (MASBO) have developed sample agreements and model language for cities, counties, and towns to consider using when working collaboratively with other local governments.

City

The model documents listed below are available on the [LMCIT website](#):

1. Model Mutual Aid Agreement; and
2. Model Fire Contract between a city and town.

County

The model documents listed below are identified as available **for members only** on the [MCIT website](#):³³

1. Model Joint Powers Agreement for Joint Powers Entity;
2. Sample Contract for Sharing Employees; and
3. Model Mutual Aid Agreement for Emergency Management and Homeland Security.

Township

The model documents listed below are available on the [MAT website](#):

1. Sample Fire Contract;
2. Contract for Service[s];
3. Contract for Health, Social, or Recreational Services;
4. Mowing Services Contract; and
5. Road Contractor Services Agreement.

School District

The model document listed below is currently available on the [MASBO website](#):

1. Joint Purchasing Agreement (found under Online Resources/Document Library/Joint Powers/Joint Powers Blank Agreement tab).

MASBO is currently re-working the relevant section of its website.

³³ In order to view the documents use the drop-down menu and select the 'JPA/Mutual Aids' tab.

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Appendix 1: Selected Relevant Legal Citations

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Selected Relevant Legal Citations³⁴

Definitions

Minn. Stat. § 6.465, subd. 3 (defining “special district”).

Collaboration, generally

Minn. Stat. § 6.81 (collaborative governance council).

Contract for Services

Minn. Stat. § 134.12, subs. 2, 3 (authorizing intergovernmental contracts for libraries and sharing of library materials).

Minn. Stat. § 365.181 (contract for fire service; cost data; assessments).

Minn. Stat. § 394.32 (contract for planning assistance and land use controls enforcement).

Minn. Stat. § 436.05 (contracts for police services).

Powers

Minn. Stat. § 123B.02 (general powers of independent school districts).

Minn. Stat. § 365.10 (annual town meeting; powers of electors).

Minn. Stat. § 365.431 (amount voted at town meeting is tax limit).

Minn. Stat. § 366.01 (town board powers listed).

Minn. Stat. § 368.01 (powers of certain metropolitan area towns).

Minn. Stat. § 412.221 (powers of city council).

Minn. Stat. § 414.02 (municipal incorporation).

Minn. Stat. § 465.717 (creation of corporations; authority to incorporate a joint powers entity).

Minn. Stat. § 471.59 (Minnesota Joint Powers Act).

³⁴ This list is not exhaustive. It provides examples and illustrates how the Legislature has promoted and encouraged collaboration in and with local governments and their community partners.

Joint Powers for Services

Minn. Stat. § 123A.22 (cooperative centers for vocational education).

Minn. Stat. § 123A.78 (educational facilities).

Minn. Stat. § 124D.90 (school enrichment partnership program).

Minn. Stat. § 125A.01-.25 (special education interagency services).

Minn. Stat. § 125A.259 to .48 (interagency early childhood intervention system).

Minn. Stat. § 129.11 (school facilities with districts in bordering state).

Minn. Stat. § 134.195 (library operated by city and school district).

Minn. Stat. § 273.072 (agreements for joint assessment).

Minn. Stat. § 365.17 (joint fire equipment with adjacent towns).

Minn. Stat. § 436.06 (joint municipal police department).

Minn. Stat. § 471.16 (recreational facilities/programs for seniors).

Minn. Stat. § 471.24 (joint maintenance of cemeteries).

Minn. Stat. § 471.345, subd. 15 (cooperative purchasing venture).

Minn. Stat. § 471.476 (ambulance service).

Insurance Coverage

Minn. Stat. § 471.59, subd. 1a (c) (procurement of insurance in excess of liability limits waives liability limits).

Minn. Stat. § 471.981 (authorizing self-insurance coverage, including joint pools).

Reporting/Audit Requirements

Minn. Stat. § 6.74 (information collected by the State Auditor).

Minn. Stat. § 6.756 (audit and filing requirements for special districts).

Minn. Stat. § 123B.77 (accounting, budgeting, and reporting requirements for joint powers agreements and others).

Miscellaneous

Minn. Stat. § 16C.05 (contract management).

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