JOINT EXERCISE OF POWERS ACT

I)  INTRODUCTION

The Joint Exercise of Powers Act (Act) provides a flexible tool government units can use to work cooperatively to provide services to their communities. Adopted by the legislature in 1943, the Act was modeled after the California Act. Although the Act has undergone a number of changes since then, its primary purpose has remained the same -- to allow governmental units to jointly or cooperatively undertake the exercise of a governmental power. Even though the Act embodies a simple concept, the implications of allowing communities to work together are extensive.

II)  WHO CAN USE THE ACT?

A)  “GOVERNMENTAL UNITS”

The Act is drafted to provide the greatest number of opportunities to cooperate. An important part of increasing opportunities is being as inclusive as possible. The Act does this by allowing all local units of government of this state or another state, state agencies, and federal agencies to participate in joint powers agreements (JPA). All of these governmental entities are included in the definition of the term “governmental unit” used by the Act.

Governmental units are also authorized to cooperate under the Act with organizations that represent governmental units and local officials, such as the Minnesota Association of Townships, for the purpose of developing, coordinating, presenting, and evaluating training programs for local officials.

B)  ENTERING INTO A JPA

The decision of whether to enter into a JPA is made by the governing body of the governmental units. For towns, the decision is made by the supervisors. There is no provision requiring town boards to seek or receive elector authorization at an annual town meeting in the JPA. However, the statute authorizing the particular activity may require elector authorization. For instance, a town board may decide to build a community hall in cooperation with a city, but the town board may not proceed unless the town electors authorize the building of the hall. Furthermore, many of the activities a town board may
choose to undertake through a JPA will require a levy increase that must be approved by the electors.

III) WHICH POWERS MAY BE EXERCISED JOINTLY?

A) COMMONALITY OF POWERS

A fundamental part of the Act is the restriction that only powers held in common among the governmental units may be exercised jointly under a JPA. In other words, each governmental unit that is a party to the agreement must have the independent authority to exercise the power before that is the subject of the JPA. One governmental unit may not, for the most part, borrow authority from another governmental unit that it lacks on its own.

Realizing the powers granted to the numerous governmental units may not always be identical, the statute provides some degree of flexibility. The statute indicates that not only may powers held in common be exercised jointly, but also “any similar powers, including those which are the same except for the territorial limits within which they may be exercised.” No further explanation is provided of what is meant by “similar powers,” but it is safe to assume it is limited to those powers, which authorize essentially the same activity.

The requirement that each governmental unit wishing to enter into JPA must have the independent authority to exercise the power takes on special significance for towns. Because many town powers are conditioned upon the board receiving authorization from the town electors, a town may not enter into a JPA to exercise such powers until authorization is received. Also, the fact that the electors set the town levy creates a potential problem when a JPA requires a certain contribution from each party each year. This unique requirement to towns could lead to a situation in which the electors do not approve a sufficient levy to cover the needs of the JPA.

B) COMMONALITY EXCEPTIONS

The Act provides two exceptions to the commonality requirement. Both relate to providing services to another governmental unit. It is important to note that neither exception grants powers to governmental unit receiving the service that it did not previously possess.

a) Counties Exercising Local Authority

Counties are expressly authorized to perform a service or function on behalf of another governmental unit that would be authorized to provide the service or function for itself. Commonality is not required in that the county need
not be authorized to exercise the power itself. The county can exercise the power on behalf of and within the other local governmental unit.

This exception involves the unique situation of a JPA without commonality of powers and a governmental unit exercising a power it does not possess independently of the JPA.

b) Governmental Units Performing Services For Another

The second exception allows a governmental unit to provide a service or function that it is authorized to provide for itself to another governmental unit that does not possess the authority. Whereas, the first exception allows a county to exercise a local power it does not possess, the second allows a governmental unit to carry its authority into another governmental unit to provide a service or function the local governmental unit is not authorized to provide for itself.

IV) AGREEMENT TERMS AND REQUIREMENTS

Purpose and Manner: All JPAs must “state the purpose of the agreement or the power to be exercised and it shall provide for the method by which the purpose sought shall be accomplished or the manner in which the power shall be exercised.”

Acting Parties: The JPA may provide for the exercise of the common power by one or more of the participating governmental units on behalf of the other participating units.

Disbursement of Funds: The JPA may provide for the payment into and disbursement of public funds to carry out the purposes of the agreement. “[T]he method of disbursement shall agree as far as practicable with the method provided by law for the disbursement of funds by the parties to the agreement.” Contracts and purchases made “shall conform to the requirements applicable to contracts and purchases of any one of the parties, as specified in the agreement.” For example, each party to a JPA agreement would not need to go through the municipal contracting procedures to purchase a piece of equipment for the joint activity. One of the parties could be designated to go through that procedure on behalf of the entire group. Also, the agreement must provide for strict accountability and reporting of all funds and receipts must be provided for.

Distribution of Property: The JPA must provide for the disposition of any property acquired through the joint exercise of powers. The agreement must also provide for the return of any surplus funds upon the completion of the purpose of the agreement in proportion to contributions of the contracting parties.

Joint Powers Board: A joint board may be created to carry out the purpose of the JPA. If a joint board is established, the board must be representative of the parties to the agreement. Boards created by a JPA are “deemed to comply with statutory or charter provisions for a board for the
exercise by any one of the parties of the power which is the subject of the agreement.” Residency requirements for holding office in any governmental unit do not apply to an officer appointed to carry out a JPA. If the joint board was established for educational purposes, the board may conduct public meetings via interactive television provided the Open Meeting Law (Minn. Stat. § 471.705) is complied with in each location where board members are present.

Bonds or Obligations: A joint board may be created to issue bonds or obligations pursuant to any law allowing the parties to issue bonds or obligations independently. The bonds or obligations must be issued in the same manner and are subject to the same conditions and limitations, which would apply if the individual governmental unit were to issue the bonds or obligations. Obligations or other forms of debt incurred are the obligations of the joint board issued on behalf of the party governmental units. The board may use the proceeds to carry out the purpose of the law authorizing the issuance of the bonds or obligations. The governing bodies of the governmental units party to the agreement must expressly grant the authority to the joint board to issue obligations or other forms of indebtedness. A joint board is prohibited from pledging the full faith and credit or taxing power of any of the party governmental units. If a joint board is given the authority to issue bonds or other obligations it must be composed solely of members of the governing bodies, which established the joint board.

Police Power: If the JPA authorizes the exercise of police/law enforcement powers, the officer(s) appointed to fill that role has the complete authority of a peace officer provided the person is licensed or eligible to be licensed as a peace officer in the state.

Procedural Requirements: The authorization and procedures required under the Act does not dispense with the procedural requirements that may be contained in any other act providing for the joint or cooperative exercise of governmental powers.

Insurance Coverage: Although not listed in the JPA, an important practical consideration is determining if the joint undertaking is covered by the participating entities’ insurance coverages. The need to seek additional or expanded coverage for joint activities is common. All parties should speak with their insurance provider to determine coverage for the JPA before entering into a JPA. As such, the parties to the agreement should identify the coverages needed and make a provision in the agreement for acquiring and paying for the coverages.

Liability: Recent changes in state law have made it so a JPA is covered by the municipal tort caps. Each individual entity will not be liable to the court cap separately but rather the JPA will be subject to the cap.

Termination: JPAs “may be continued for a definite term or until rescinded or terminated in accordance with its terms.” It is important for members of a JPA to think about how the JPA will be dissolved if needed. The members need to determine the responsibilities of each member if dissolution occurs. Without such an agreement, a member could be forced to continue in a JPA even if it no longer wants to do so.
Benefits: JPAs can be formed to provide a wide array of services or to purchase equipment. JPAs can result in significant cost savings for the members and are a useful tool in stretching the public’s dollar. The only way JPAs can come into existence is through communication with neighboring municipalities. It is important that town officers reach out to their neighboring communities and find ways in which they can work together.
Notes

1. Minn. Stat. § 471.59, subd. 1. The following entities are included in the definition of governmental unit: cities; counties; towns; school districts; independent firefighting corporations; other political subdivisions of this or another state; another state; Federally recognized Indian tribes; the University of Minnesota; the Minnesota Historical Society; licensed nonprofit hospitals; certified rehabilitation facilities and extended employment providers; certain licensed day and supported employment services; any agency of the state of Minnesota; all United States agencies; and any instrumentality of the above that has independent policy making and appropriation authority.

2. Minn. Stat. § 471.59, subd. 9.


5. Minn. Stat. § 471.59, subd. 1.


7. Minn. Stat. § 471.59, subd. 10.

8. Minn. Stat. § 471.59, subd. 2.


10. Minn. Stat. § 471.59, subd. 3.

11. Minn. Stat. § 471.59, subd. 3.

12. Minn. Stat. § 471.59, subd. 3.

13. Minn. Stat. § 471.59, subd. 5.

14. Minn. Stat. § 471.59, subd. 5.

15. Minn. Stat. § 471.59, subd. 2.


17. Minn. Stat. § 471.59, subd. 6.

18. Minn. Stat. § 471.59, subd. 2.
19. Minn. Stat. § 471.59, subd. 11.
20. Minn. Stat. § 471.59, subd. 11.
21. Minn. Stat. § 471.59, subd. 11.
23. Minn. Stat. § 471.59, subd. 7.
24. Minn. Stat. § 471.59, subd. 4.