



## JOINT EXERCISE OF POWERS ACT

The Joint Exercise of Powers Act (Act) provides a flexible tool for government units to work cooperatively to provide services to their communities. Adopted by the legislature in 1943, the legislature modeled the Act after the similar California Act. Although the Act has undergone several changes since then, its primary purpose has remained the same - to allow governmental units to undertake the exercise of a governmental power jointly or cooperatively. Even though the Act embodies a simple concept, allowing communities to work together provides implications not discussed in the statute, but the town must nevertheless be aware.

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### I. WHO CAN USE THE ACT?

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The Minnesota Legislature drafted the Act to provide the greatest number of opportunities to cooperate by being as inclusive as possible. The Act does this by allowing all local government units of Minnesota, another state, state agencies, and federal agencies to participate in joint powers agreements (JPA).<sup>1</sup> The term “governmental unit” includes those entities listed by the Act.<sup>2</sup>

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 (MAT), to develop, coordinate, present, and evaluate training programs for local officials.<sup>3</sup>

#### A. Entering a JPA

The governing body decides whether to make a JPA of the governmental units. Meaning that for towns specifically, 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 unless the statute authorizing the activity requires elector authorization. For instance, a town

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<sup>1</sup> Minn. Stat. § 471.59, subd. 1. The following entities are included in the definition of governmental unit: cities; counties; towns; school districts; service cooperative under Minn. Stat. § 123A.21 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 under Minn. Stat. §§ 144.50-144.56; 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.

<sup>2</sup> *Id.*, at subd. 1(b).

<sup>3</sup> *Id.*, at subd. 9.

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 hall's building.<sup>4</sup> Also, many activities a town board may choose to undertake through a JPA will require a levy increase that must be approved by the electors.<sup>5</sup>

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## II. WHICH POWERS MAY BE EXERCISED JOINTLY?

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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.<sup>6</sup> In other words, each governmental unit that is a party to the agreement must have the independent authority to use 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 so that the Act achieves that inclusiveness. The law 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."<sup>7</sup> Although 'similar powers' is not explicitly defined, it would be best to apply the definition of "powers that are essentially the same." If you have any questions on whether these powers are similar, thus, letting the town enter a JPA, please reach out to your town attorney or MAT. However, common examples of similar authority would include fire protection and emergency services, like an ambulance service.

The independent authority to exercise the power requirement takes on special significance for towns. Since many town powers must receive prior authorization by the town electors, a town may not make a JPA until they obtain authorization for such power. Further, because electors set the town levy, more potential problems arise when a JPA requires a defined 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 JPA's needs.

### A. 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 units receiving the service they did not previously possess.

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<sup>4</sup> Minn. Stat. § 365.10, subd. 6 & 9.

<sup>5</sup> Minn. Stat. § 365.431.

<sup>6</sup> Minn. Stat. § 471.59, subd. 1.

<sup>7</sup> *Id.*

## 1. Counties Exercising Local Authority

Counties are expressly authorized to perform a service or function on behalf of another governmental unit that would be allowed to provide the service or function for itself.<sup>8</sup> Meaning, the town can create a JPA with the county to perform services that the town is already authorized to provide. This type of JPA would help in the cases where it would be a better use of town funds to contract for these services rather than hire an employee of their own. An example could include an agreement where the county performs building inspection services for the township.

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

## 2. 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 another governmental unit that does not possess it.<sup>9</sup> For example, a sheriff's contract for patrol time would be an example of the JPA under this exception, because a town cannot exercise this type of policing authority while a county may.

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.

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### III. AGREEMENT TERMS AND REQUIREMENTS

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The following are the required terms and issues that JPAs must address. When making a JPA, the town should work closely with their town attorney to make sure each of these issues are addressed adequately in the JPA.

1. *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."<sup>10</sup>
2. *Acting Parties*: The JPA may provide the exercise of the common power by one or more of the participating governmental units on behalf of the other participating units.<sup>11</sup>

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<sup>8</sup> *Id.*, at subd. 8.

<sup>9</sup> *Id.*, at subd. 10.

<sup>10</sup> *Id.*, at subd. 2.

<sup>11</sup> *Id.*, at subd. 1.

3. *Disbursement of Funds*: The JPA may provide for the payment into and disbursement of public funds to carry out the purposes of the agreement.<sup>12</sup> “[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.”<sup>13</sup> 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.”<sup>14</sup> 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. The agreement must also provide for strict accountability and provide for reporting of all funds and receipts.
4. *Distribution of Property*: The JPA must provide for the disposition of any property acquired through the joint exercise of powers.<sup>15</sup> The agreement must also provide for the return of any surplus funds upon the completion of the agreement’s purpose in proportion to the contributions of the contracting parties.<sup>16</sup>
5. *Joint Powers Board*: Government entities may create a joint board to carry out the JPA’s purpose. If the entities establish a joint board, the board must be representative of the parties to the agreement.<sup>17</sup> 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.”<sup>18</sup> Residency requirements for holding office in any governmental unit do not apply to an officer appointed to carry out a JPA.<sup>19</sup> Suppose that entities establish a joint board for educational purposes. In that case, the board may conduct public meetings via interactive television so long as they comply with the Open Meeting Law (Minn. Stat. Ch. 13D) in each location where board members are present.<sup>20</sup>
6. *Bonds or Obligations*: Government entities may create a joint board to issue bonds or obligations under any law allowing the parties to issue bonds or obligations independently.<sup>21</sup> 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 part of governmental units. The board may use the proceeds to carry out the purpose of the law authorizing the issuance of the bonds

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<sup>12</sup> *Id.*, at subd. 3.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*, at subd. 5.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*, at subd. 2.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*, at subd. 6.

<sup>20</sup> *Id.*, at subd. 2.

<sup>21</sup> *Id.*, at subd. 11.

or obligations.<sup>22</sup> 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 may not pledge the full faith and credit or taxing power of any part of governmental units.<sup>23</sup> If the government entities give the joint board the authority to issue bonds or other obligations, it must be composed solely of members of the governing bodies, establishing the joint board.

7. *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.<sup>24</sup>
8. *Procedural Requirements*: The authorization and procedures required under the Act do not dispense with the procedural requirements contained in any other act providing for the joint or cooperative exercise of governmental powers,<sup>25</sup> including the previously mentioned voter approval for some powers or raising the levy.
9. *Insurance Coverage*: Although not listed in the JPA, an important practical consideration is determining if the participating entities' insurance coverages cover the joint undertaking. 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 a JPA. The parties to the agreement should identify the coverages needed and make a provision in the agreement for acquiring and paying for the coverages.
10. *Liability*: The municipal tort caps cover a JPA. Each entity will not be liable to the court cap separately, but rather the JPA will be subject to the cap as a whole.<sup>26</sup>
11. *Termination*: JPAs "may be continued for a definite term or until rescinded or terminated in accordance with its terms."<sup>27</sup> members of a JPA to think about how to dissolve the JPA. The members need to determine the responsibilities of each member if dissolution occurs. Without an agreement, the JPA could force members to continue in the JPA even if it no longer desires to exist.
12. *Benefits*: Entities can form JPAs 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. Town officers reach out to their nearby communities and find ways in which they can work together.

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<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*, at subd. 12.

<sup>25</sup> *Id.*, at subd. 7.

<sup>26</sup> *Id.*, at subd. 1a(b).

<sup>27</sup> *Id.*, at subd. 4.