

Approved: January 26, 1993
Date

MINUTES OF THE SENATE COMMITTEE ON LOCAL GOVERNMENT.

The meeting was called to order by Chairperson Mark Parkinson at 9:00 a.m. on January 14, 1993 in Room 531-N of the Capitol.

All members were present except:

Committee staff present: Michael Heim, Legislative Research Department
Theresa Kiernan, Revisor of Statutes
Shirley Higgins, Committee Secretary

Conferees appearing before the committee:

Don Moler, League of Kansas Municipalities
John Torbert, Kansas Association of Counties
Gerry Ray, Johnson County Commission

Others attending: See attached list

The Chairman called the committee's attention to the purpose of the meeting today, the reason being for a panel discussion of the legal framework of local government.

Mike Heim, Legislative Research, began the discussion by stating that the State statutes are the basis of local government powers. He emphasized that the State controls local government except when there is a State Constitutional limitation.

Don Moler, League of Kansas Municipalities, followed with a presentation regarding city home rule powers which involve city ordinances in areas where State statutes are silent or in instances where local governments can modify state statutes. (See Attachment 1) He concluded by informing that State statutes apply nonuniformly to cities across the state.

John Torbert, Kansas Association of Counties, spoke on home rule for counties, explaining that county rule is by resolutions as opposed to charters. Also, he explained that counties are subject to all statutes that apply uniformly to all counties. City home rule has precedence over county home rule because city home rule is constitutional, but county home rule is statutory.

The meeting concluded with the presentation of Gerry Ray, Johnson County Commission, regarding practical examples of city and county home rule. She also distributed copies of a hand out which she had planned to distribute at yesterday's meeting. (See Attachment 2)

The Chairman announced that the committee will be meeting on Wednesday, January 20, for further panel discussion regarding a financial overview of local government, and on Thursday, January 21, for requests for introduction of bills.

The meeting was adjourned at 9:55 a.m.

HOME RULE

FOR KANSAS CITIES:

A GUIDE FOR CITY OFFICIALS

League of Kansas Municipalities

*Senate Local Gov't
1-14-93
Attachment 1*

HOME RULE FOR KANSAS CITIES: A GUIDE FOR CITY OFFICIALS

Kansas cities have enjoyed home rule powers since July 1, 1961. However, many city officials still are uncertain about what home rule means and how it may be used.

The purpose of this guide is to explain how Kansas home rule works, in lay terms. There is no attempt to explore all the legal complexities of this subject, merely an attempt to explain the basic principles of home rule.

Officials wanting more information on the legal aspects of home rule are directed to the publication *Home Rule for Kansas Cities*, a manual published by the League of Kansas Municipalities. For a summary of home rule, see also Chapter 3 of the *Handbook for the City Governing Body*, published by the League.

HOME RULE: WHAT IS IT?

Home rule, simply stated, is the right of the people of a city to govern themselves. Specifically, it refers to the constitutional grant of power to cities in Kansas to pass laws on matters of local affairs. To really understand what this means we must go back to a time when cities did not have home rule.

For the first 100 years of statehood, the cities of Kansas were entirely dependent on those powers granted to them by the state legislature. Instead of being free to govern themselves, cities were in fact prisoners of the legislature. No matter what the local need or the urgency of any local issue, a city could not take any action unless the legislature had passed a law specifically giving the city authority to take that action.

This state of affairs existed until July 1, 1961, when the home rule amendment to the Kansas Constitution (Article 12, Sec. 5) became effective. That was the day cities were granted home rule powers to legislate in regard to their local affairs and government and free themselves from state laws that applied to them but did not apply uniformly to all cities.

As stated by the Kansas Supreme Court in *Clafflin v. Walsh*, 212 Kan. 1 (1973): "No longer are cities dependent upon the state legislature for their authority to determine their local affairs and government. Since home rule, cities have power granted directly from the people through the constitution without statutory authorization."

Under home rule, all incorporated cities in Kansas have broad powers of self government. Cities do not have to take any action to gain home rule powers because the people of Kansas, by voting to amend the Kansas Constitution, directly conferred home rule powers on all cities.

Home rule is democracy in action. It means that the people of any city, through their elected representatives, have the power to govern themselves. By being able to pass laws in the exercise of their home rule powers, cities are free to experiment; to try new approaches to solve old and new problems. No longer must things be done in the "same old way."

The constitutional amendment creating home rule says that "cities are hereby empowered to determine their local affairs and government. . .". It also says to the courts that the power of cities to exercise home rule "shall be liberally construed for the purpose of giving to cities the largest measure of self-government."

Home rule, although a very broad grant of power, does not mean that cities are completely free of state legislative control. The home rule amendment places some very specific limitations upon the exercise of home rule. Those limitations are explained on page 4.

WHY HOME RULE?

There are a number of excellent reasons for granting the residents of cities the right to govern themselves. The right of self-determination is at the very heart of our system of government. Just as states feel they have a "right" to determine state affairs without interference from the national government, cities should have the right to determine local affairs.

Home rule permits cities to act promptly to deal with immediate problems and opportunities. Prior to home rule, cities were entirely dependent on the legislature for their ability to act. They could only do those things the state said they could do. No matter how urgent the problem, cities had to wait for the legislature to either come up with a solution or grant cities specific authority to seek their own solution.

Like people, there are no two cities completely alike. They do not have equal needs nor the same goals. Home rule permits each local governing body to tailor solutions to fit local needs. Also, home rule permits the governing body to take actions which enable the city to move towards achieving its long-range goals.

A common criticism of government is that it is not as responsive as it should be. Home rule not only gives elected officials greater authority to make their own decisions, it also forces them to accept responsibility for their decisions. The pre-home rule excuse that "We can't do it because the state won't let us" went out when home rule came in. Under home rule, elected officials become just as responsible for actions they fail to take as for those actions which they do take. Freedom from the state legislature carries responsibilities.

Home rule places primary responsibility for city affairs in the hands of the elected city officials. It gives them the authority to act in a positive and responsible manner in solving the problems of their city and to achieve city goals.

Home rule, while giving cities the responsibility for local affairs, also deters state legislative interference in local affairs. No longer does the legislature have the absolute right to grant certain powers to one city or group of cities while denying the same powers to other cities. Nor does the legislature have the power to bind one city to certain actions to the exclusion of other cities.

The legislature still has considerable authority to tell cities what to do and how to do it. But to exercise this authority in a binding manner, the legislature must make its enactments uniformly applicable to all cities. Unless the legislature does this, cities may, in effect, exempt themselves from that law's application.

HOME RULE: LIMITATIONS

Home rule power is not absolute. Cities must comply with state laws that apply uniformly to all cities and must conform to applicable federal laws and to the U.S. and Kansas Constitutions. In addition, the home rule power of cities is limited by the power of the state legislature to act exclusively in some areas and optionally in others. Those limitations are summarized as follows:

Exclusive State Powers. The home rule amendment vests absolute and exclusive power in the state legislature in regard to city incorporation and city boundary changes: annexation, merger, consolidation or dissolution of cities. Cities must comply with state law on these subjects.

Optional State Powers. By the terms of the home rule amendment, cities are also bound to follow state laws which apply uniformly to all cities. It does not matter whether these state laws deal with matters of local concern or matters of statewide concern. If a law applies uniformly to all cities, cities are required to follow it.

The Constitution further states that *if* the legislature chooses to exercise control, cities are bound by laws limiting or prohibiting the levy of any tax, excise, fee charge or other exaction if the law applies uniformly to all cities or to all cities of the same class. The legislature can create up to four classes of cities for this purpose. To date, with only one exception the legislature has not passed laws to limit or prohibit taxes which apply uniformly to cities within classes. The exception is a law creating two classes of cities for the purpose of levying a local sales tax.

The legislature may exercise exclusion control over limits of indebtedness of cities. Statutes prescribing limits on bonded debt or any other debt must be followed by cities and are not subject to home rule modification.

HOME RULE: WHEN AND HOW IT IS USED

Cities exercise their home rule powers whenever they pass two kinds of ordinances--an ordinary ordinance and a charter ordinance. The proper use of these two kinds of ordinances is explained below.

Ordinary Ordinances

The constitution says that: "Cities are hereby empowered to determine their local affairs and government. . . Cities shall exercise such determination by ordinance passed by the governing body with referendums only in such cases as prescribed by the legislature. . .". *This is the most significant language in the home rule amendment.* It gives cities the power to initiate legislation by ordinary ordinance without having to rely on state enabling statutes for the authority to do so. The term "ordinary" is not found in the constitution. It is used to classify those home rule ordinances which are not charter ordinances.

Ordinary home rule ordinances are the backbone of city home rule powers. Cities have exercised their home rule power through the enactment of ordinary ordinances on a wide variety of subjects, including: removal of junk vehicles from private property; human relations commissions; riot control; occupation taxes; and consumption of cereal malt beverages. Other types of ordinary ordinances by which cities exercise their home rule powers relate to governmental structure, administrative organization, personnel and procedural matters. Ordinary ordinances adopted under a city's constitutional home rule powers are enacted in the same manner as ordinances passed pursuant to state statutory authority. Generally an ordinance which a city passes without reliance upon enabling state legislation is an ordinary home rule ordinance.

The fact that the state legislature has passed laws on a subject does not necessarily deprive the city of the power to deal with the same subject by ordinary ordinance. A state law and an ordinance on the same subject may exist side by side if the ordinance is not in *conflict* with the state law. If a conflict exists between the provision of an ordinance and a state law, the ordinance is invalid.

Court decisions provide the guide for determining whether an ordinance conflicts with state law. In dealing with the technical issue of conflict the city should contact the city attorney.

Charter Ordinances

The home rule amendment provides that a city may, by charter ordinance, exempt itself from or provide substitute provisions for any state statute which applies to that city but is not "uniformly applicable to all cities." What does this mean? How does it work?

This means, first of all, that if the city disagrees with some state law which applies to that city--but does not apply in the same way to all cities--the city can, so to speak, get rid of that particular law. This is done by passing a charter ordinance which states in official language that the law no longer applies to the city. The city in effect repeals this state law insofar as it would apply to that city.

Suppose you like part of the state law but you wish part of it were different. You simply adopt a charter ordinance which essentially says "the city has changed this law as follows." Then you state the law as you have changed it. The city, in effect, amends the state law insofar as it would apply to that city.

Now obviously, you don't adopt charter ordinances in exactly the words used above. But after you get all the legal niceties down in the proper order, it comes out meaning what was said above. That is what the home rule amendment means when it states that cities may exempt themselves from the "whole or any part" of a state law, or may provide substitute provisions for any state law which applies to the city but does not apply uniformly to all cities.

While the form of a charter ordinance is similar to a regular or ordinary ordinance, there are a number of important differences. One of the major differences is that there are additional legal requirements which must be met in order to pass a charter ordinance. It takes a two-thirds vote of the city governing body and must be published once each week for two consecutive weeks.

Also the city must wait for 60 days following the final publication of the charter ordinance to permit citizens to file a protest petition requesting an election on the ordinance. If a valid protest petition is filed, the city governing body has two choices. It can forget the ordinance, in which case it does not become law. Or the city can set a date for a referendum on the charter ordinance. The law does not require the city to call an election if a valid protest petition is filed. The law, however, does provide that if a protest petition is filed, a charter ordinance cannot take effect unless an election is held and a majority of those voting vote for the charter ordinance. A defeat of the proposed charter ordinance at the polls does not in any way affect the governing body's ability to pass other charter ordinances, even one identical to the defeated one.

The governing body does not have to wait for a protest petition before it holds an election on whether to adopt a charter ordinance. If the governing body wants to hold such an election, it just passes an ordinance setting a date to vote on the charter ordinance. In such a case, the charter ordinance will become effective if it receives a majority vote of the people. When the charter ordinance does become effective, a certified copy must be filed with the Secretary of State.

The above is a brief summary of the method of enacting a charter ordinance. It may sound unnecessarily complex, but if you think of a charter ordinance as a repeal or an amendment to a state law, which it is, the special procedure appears reasonable. The city is in effect substituting its judgment as to what the law should be for that of the legislature.

The League of Kansas Municipalities maintains a library of thousands of charter ordinances enacted by approximately 500 Kansas cities. These charter ordinances cover a wide variety of subjects. Copies of sample charter ordinances are provided upon request.

APPLYING HOME RULE

A good way to explain how home rule works is to outline the options cities have because of home rule.

Suppose the city wants to take a particular action that is a matter of local affairs and government. A city may only act if it has authority to take that action. The authority will come either from state enabling legislation or home rule. The steps to be taken in making that determination may be summarized as follows:

1. Check the state statutes. The grant of home rule powers to cities does not mean that state statutes may be ignored. It is always necessary to see whether the legislature has already dealt with the subject on which the city proposes to take action. An ordinary ordinance which conflicts with state law is invalid, although local law which compliments or supplements state law is valid.

2. Assume that there is no state law on the subject the city wants to deal with. Before home rule this would end the matter--a city could not act without statutory authority. Now the absence of state legislation means that the city is free to pass an ordinance authorizing the action to be taken. It can do this because of the constitutional grant of power to determine local affairs and government. The city can provide its own enabling legislation. In other words, if the state legislature has not legislated to provide authority to the city, the city may legislate by ordinary ordinance to provide the authority.

3. Suppose that a check of the statutes discloses that the state legislature has passed a law on the subject and that the state law applies to the city. In that case several possibilities arise.

a) If the state law authorizes what the city wants to do, the exercise of home rule power is not necessary. The state legislature has provided authority to act, and it is generally best to use that authority, although the use of home rule is not necessarily preempted by the availability of state enabling legislation.

b) If the state law does not go far enough, the city may use its home rule power to pass an ordinance which supplements or adds to the state law. A state law and ordinance on the same subject can exist side by side if the provisions of the ordinance are not in conflict with the state law.

c) If the state law contains provisions which are contrary to what the city wants to do, so that a city ordinance would be in conflict with the state law and therefore invalid, the city may be able to make the state law inapplicable to the city by use of a charter ordinance. This will depend on whether the state law applies uniformly to all cities. If the state law applies uniformly to all cities, a charter ordinance cannot be used. All cities must follow the state law if it applies uniformly to all cities. If the state law does not apply uniformly to all cities, a charter ordinance may be used to exempt the city from that law's application.

CONCLUSION

The home rule amendment made two fundamental changes in state-local distribution of governmental powers. First, it granted cities the power to legislate on matters of local affairs and government. Second, it restricted the power of the state legislature to treat cities differently and to enact binding nonuniform restrictions on local affairs. Because they have the ability to exempt themselves by charter ordinance, cities are not bound to follow state laws (except in certain specified areas) unless those laws are uniformly applicable to all cities. The Kansas legislature has the final and ultimate power, but the home rule amendment places restraints on the manner in which the legislature exercises its ability to preempt local lawmaking on a given subject.

The use of home rule is as varied as the make-up of the many cities throughout the state. It reflects the individual needs, problems and desires of the hundreds of individual communities.

Home rule is not a panacea for all the problems faced by Kansas cities. Home rule is, however, a tool which can be used to provide imaginative solutions to many of the problems which beset local government.

Home rule is a challenge to those responsible for charting the course of their communities. It is a challenge to think big, to dream with imagination and to dare to shun the ordinary in quest of a better tomorrow and a brighter future.

One final tip to the elected city governing body member. If you think a proposed action is in the best public interest of your citizens, take the attitude that it can be done until proven otherwise. Don't always ask, "May we do this?" A better question, in these days of home rule, is "Why can't we do this?" THINK HOME RULE!

Cities now have great opportunities. They are free to try out new ideas and new means of accomplishing new or old functions and activities. City governing bodies now have the opportunity to provide their citizens with the best and most efficient and effective governmental operation possible, within their capabilities and financial resources. The challenge and the authority is there--all that remains is the acceptance of the challenge and the application of vision, imagination, initiative and dedication. This must come from local officials!

Special Committee on Home Rule
League of Kansas Municipalities
July 1973

This (home rule) was brought about by the people in amending the constitution which is the organic law of the land, is paramount over the governor, legislature and courts, and receives its force from the expressed will of the people.

Kansas Supreme Court
Van Sickle v. Shanahan,
(212 Kan. 426, 451) 1973

League of Kansas Municipalities
112 West Seventh Street
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September 15, 1989

Henry Ray

1-13-93

INTERLOCAL COOPERATION OPPORTUNITIES FOR ACTION IN A CHANGING ENVIRONMENT

The lives of governments, in this dynamic age we live in, like the lives of individuals, are growing more complicated and interrelated. The social, economic and technological changes of recent years; urbanization and the mobility of people, the continuing squeeze on public resources, especially the property tax; expanding and pervasive state and federal rules and regulations; and the growth in the number and complexity of the functions and activities of governments have ended the day -- if that day ever existed -- when governments could operate wholly apart, independently and separately from each other. These kinds of developments have ended the day when we could view our federal system -- our national-state-local intergovernmental system -- as a layer cake, as clearly separate and independent levels. They have also ended the day when the constituent units called local government can operate unchanged, under a framework created under conditions existing a century ago. This is especially true in Kansas, with about 4,000 separate local taxing units, plus a host of other boards and commissions.

Thus we seek solutions, to make our fragmented local government structure more effective, more efficient, and more responsive, in these changing times and in the future. One approach is interlocal cooperation.

What is Intergovernmental Cooperation?

Intergovernmental cooperation is the device by which two or more units voluntarily work together for some public purposes. It involves a variety of procedures and methods, including the establishment of a joint agency to perform a service, the joint construction of a public facility, the contracting of one unit for a service provided by another, the coordination of the activities of two or more governments to achieve a common objective, and similar formal or informal arrangements. It may be interlocal, horizontal cooperation, including only governments at the local level, such as between cities or between cities and counties. Or it may be vertical cooperation among different levels of government, such as between counties and the state. It varies from the simple exchange of ideas and information to the creation of a complex organization to provide a public service.

Principles of Cooperation

There are at least three essential criteria necessary to make an activity a matter of intergovernmental cooperation:

- * It must be voluntary.
- * The basic control must be vested in the elected governing bodies of the units involved.
- * It must preserve the identities of the existing units of government.

If an agreement or action does not meet these criteria, it should be called something else, not cooperation.

Why should governments cooperate? The following general reasons may be cited.

* Cooperation is advisable where a governmental problem does not recognize political boundaries -- where an area or regional approach is advisable. For example, water supply and flood protection are regional problems in some areas.

* Cooperation is sometimes necessary simply for economic reasons. For example, many small units simply cannot afford to provide certain services or own certain equipment, but collectively they can.

* Cooperation can be desirable for reasons of efficiency. For example, even if all the units in an area could afford to own separately an item of equipment or a facility for special, seldom-used purposes, it could be more efficient to provide for its joint use.

* Cooperation may promote the more equitable distribution of the cost of providing certain services. For example, when one unit provides a service used substantially by the residents of a nearby unit, cooperation may provide a means of fairly sharing the costs.

* Cooperation is advisable in some instances to prevent state or federal assumption of a function or activity which should be kept on a local government basis.

* Cooperation is advisable to prevent the growth of those special purpose districts which are not directly responsible to the public they serve or whose activities are not coordinated with general governments.

* Cooperation is sometimes necessary simply because of the interdependence of local units in an area. The lives and economic and social welfare of individuals, and governmental units are effected by what happens in their neighboring communities. While maintaining healthy competition, there may also be the need to work together with the mutual benefit of all.

Indeed, with all of this, perhaps the basic question is not "Why cooperate?" Perhaps the real question is "Why not cooperate?"

Legal Authority

Kansas statutes grant very broad authority for interlocal cooperation. There are five kinds of statutory authorization for formal cooperative ventures in Kansas.

1. The interlocal cooperation statute (K.S.A. 12-2901 et seq.).
2. The interlocal service statute (K.S.A. 12-2908 and 12-2909).
3. The functional consolidation statute (K.S.A. 12-3901 et seq.).
4. The general highway and public works statute (K.S.A. 19-4501 et seq. and K.S.A. Supp. 68-169).
5. Specific cooperation statutes found in numerous state laws.

A summary of these statutes and a listing of related state statutes is included in the League's Research/Information Bulletin No. 520, issued February 4, 1991.

*Senate Local Gov't
1-14-93
Attachment 2*

As a general rule, if two or more governmental units are empowered to do something separate, they may do the same thing cooperatively. If the will exists, a way can be found.

INTERGOVERNMENTAL COOPERATION

An Inventory of Legal Authority in Kansas

Kansas local governments have broad legal authority to cooperate as to the performance of public functions and services. The purpose of this article is to identify and briefly summarize those Kansas statutes relating to intergovernmental cooperation. It deals primarily with the legal aspects of formal interlocal cooperation actions, rather than the more informal type of cooperation, such as occurs through organizations typified by the League of Kansas Municipalities.

The article is divided into the following parts, based on the kind of legal authorization required for formal cooperative ventures:

- 1) Interlocal Cooperation Statute
- 2) Interlocal Service Statute
- 3) Functional Consolidation Statute
- 4) General Highway and Public Works Statutes
- 5) Specific Cooperation Statutes

It should be noted that there are sometimes three or more laws which may be used to accomplish the same objective. In some cases, there are lengthy state laws which specifically authorize local units to do something cooperatively as to a certain function or service which is also covered by a general state law. In this case, local units presumably have an option as to which statutory procedure they choose to follow.

Interlocal Cooperation Statute

Probably the single most important general statute on intergovernmental cooperation is found in K.S.A. 12-2901 *et seq.* It essentially permits any two or more local units to do cooperatively or jointly that which they are empowered to do separately. In addition, the agencies involved in the intergovernmental cooperation venture may include this state, any other state, the United States or any private agency.

As a result of a number of amendments which have been made to the statute since its enactment in 1957, the purposes specified in the statute as permissible areas of cooperation have been expanded. In addition, a League-sponsored bill enacted in 1979 provided that the specified areas of such agreements include but are not limited to those mentioned functions. As a result, the present statute permits cooperation in such areas as "economic development, public improvements, public utilities, police protection, libraries, data processing services, educational services, building and related inspection services, flood control and storm water drainage, weather modification, sewage disposal, refuse disposal, park and recreational programs and facilities, ambulance service, fire protection, the Kansas tort claims act or claims for civil rights violations." However, it is again emphasized, these specified areas are illustrative, and agreements under this statute are not limited to these specified functions.

Written agreements entered into under this statute are to be reviewed by the attorney general to determine if they are in

proper form and compatible with the laws of the state. Agreements between two or more public agencies establishing a council or other organization of local governments for the promotion of intergovernmental cooperation need not be submitted for review by the attorney general. While the interlocal cooperation statute applies to all governments, K.S.A. 72-8230, relating to interlocal cooperation by school districts, contains supplemental provisions which apply when only such districts are involved in exercising their powers under K.S.A. 12-2901 *et seq.*

Interlocal Service Contracts

A second general law, passed in 1982 and amended in 1983, provides broad authority for any city or county to contract with any other city or county to perform any governmental service, activity or undertaking, which each contracting city or county is authorized to perform by law. The statutes are found in K.S.A. Supp. 12-2908:2909. The approval of the attorney general is not required. The contract must be authorized by the governing bodies and must set forth the purpose, powers, rights, objectives and responsibilities of the contracting parties.

K.S.A. 12-2908. (a) Any city or county may contract with any other city or county to perform any governmental service, activity or undertaking which each contracting city or county is authorized by law to perform. The contract shall be authorized by the governing body of the city and county and shall state the purpose of the contract and the powers and duties of the parties thereunder.

(b) A contract entered into pursuant to this section shall not be regarded as an interlocal agreement under the provisions of K.S.A. 12-2801 *et seq.*, and amendments thereto.

K.S.A. 12-2909. (a) The board of county commissioners of any county and the governing body of any city located within the county may enter into a contract providing for the enforcement of the city's ordinances by the sheriff of the county or other officers of the sheriff's department. Any contract entered into pursuant to this section shall be submitted to and approved by the county sheriff. Failure of the sheriff to approve a contract within 30 days of its submission shall constitute disapproval thereof. All monetary consideration paid by a city to a county as part of the contract shall be expended by the county solely for law enforcement purposes. The sheriff and any officers of the sheriff's department assigned responsibility for enforcing a city's ordinances under the contract shall be designated therein and shall have all the powers of any other police officer of the city by virtue of the existence of the contract.

(b) A contract entered into pursuant to this section shall not be regarded as an interlocal agreement under

the provisions of K.S.A. 12-2901 et seq., and amendments thereto.

The approval of the attorney general is not required. The contract must be authorized by the governing bodies and must set forth the purpose, powers, rights, objectives and responsibilities of the contracting parties.

Because of its broad authorization and simplicity, this statute is being increasingly used when only cities and/or counties are involved in a service arrangement. When a joint public agency is needed, or where the joint or cooperative performance of a service is required, the interlocal cooperation act is commonly used.

Functional Consolidation Statute

A third general state law, passed in 1974, gives counties, townships, cities, school districts, library districts, park districts, road districts, drainage or levee districts, sewer districts, water districts, fire districts, and other taxing subdivisions created under state law, broad authority to consolidate operations, procedures and functions in the interest of efficiency and effectiveness. It is found in K.S.A. 12-3901 et seq., and is entitled, Governmental Organization.

Consolidation under this statute can be effected within a single governmental unit (internal consolidation), or through joint action of two or more governmental units (external consolidation). The governing body or governing bodies must first find by resolution that duplication exists and that operations, procedures or functions can be more efficiently and effectively exercised, and then designate the office or agency to perform the consolidated function, and the time, form and manner of implementation of the consolidation. Identical resolutions must be passed by each governing body when more than one governmental unit is involved in a consolidation. A public hearing must be held before a governing body votes on the elimination of an elective office.

Elimination of an elective office must be approved by a majority of the electors voting at an election called and held in the manner provided by the general bond law (K.S.A. 10-120). An election is also required if a proposed consolidation is "protested" by a petition signed by 10 percent of the qualified electors. Provision is also made for state agency review and approval or disapproval of consolidations of those functions or operations which are subject to control by a state officer or agency.

General Highway and Public Works Statutes

In addition to the above three statutes, there are two general statutes relating to highways and to public works generally.

K.S.A. 19-4501, et seq., enacted in 1972, grants counties with departments of public works broad powers to provide a variety of public works services to local units within the county, under written agreement (see Public Works Services in the listing of specific statutes).

In addition, K.S.A. 68-169, relating to cooperation as to highways, roads and streets, was amended and enlarged in 1975. This statute is reproduced below. It would permit, for example, county expenditures for streets and roads even if the street or road is not under the county's legal jurisdiction.

K.S.A. Supp. 68-169. Any county, city or political subdivision of this state shall have the authority to enter into written agreements with each other or with the secretary of transportation with respect to the planning, designing, financing, constructing, reconstructing, maintaining, acquiring of right-of-way or establishing the controlled access facilities of any existing or proposed highway, road, street or connecting link, including bridges, traffic control devices and other such improvements located thereon. Expenditures made pursuant to such agreements shall be considered proper expenditures of public funds, including state funds, notwithstanding the location of such improvement or facility outside the boundary or jurisdiction of such county, city or political subdivision. This section shall not be construed as amending or repealing any existing law relating to the same subject but shall be construed as supplementary thereto.

Specific Cooperation Statutes

In addition to the four general acts reviewed above, there are many specific statutes which authorize two or more governmental units to cooperate as to a certain function or service. The following is a list of statutory authorizations based on an inventory of provisions of Kansas Statutes Annotated. Excluded from this list are interlocal cooperation practices and opportunities not specifically provided for by statute or law. Also excluded are references to those state laws which require local units to act together and prescribe the procedure to be followed; compulsory joint actions are not considered cooperation for the purpose of this report. With limited exceptions, this list does not show the statutory authority for local units to cooperate with the state, other states, or the federal government.

The inventory includes a brief description of matters subject to cooperation, in alphabetical form, together with a citation to the applicable statute of authority. The latest K.S.A. Supplement and session laws should be checked to insure the statutory authority is current. The statute should be referred to in all cases.

Agriculture; County Extension Agents. Counties may jointly employ an extension agent. 2-615.

Air Pollution. See Health.

Airports. Any city and county may jointly operate, own or lease airports. 3-119a, 3-120.

Airports; Federal Aid. Cities and counties acting jointly may submit project applications under federal airport act. 3-606.

Airports. See Port Authorities.

Ambulances. Any municipality operating an emergency medical service may contract with any person or governmental entity for any emergency medical services. 65-6116.

Ambulances; Interlocal Cooperation. Any public agency may join with any other in cooperating on ambulance service. 12-2901 *et seq.*

Assessors; Appraisers. Any county may unite with another county or counties to employ an appraiser. 19-428.

Audits. Authorizes local units other than cities, schools and other counties to contract with county to have audit done at time of county audit. 12-150.

Bonds. Two or more public agencies may enter into interlocal agreements to create a joint and separate legal entity to issue bonds for any purpose for which each of the units is authorized to issue bonds (e.g. highways, buildings, disposal plants). 12-2904a.

Bridges. See Highways.

Buildings; City and School Community Buildings. Any city and the school district in which the city is located may jointly construct and operate community buildings. 12-1769.

Buildings; General City Authority. Any city may jointly provide and equip public buildings with any other city or county. (See also 19-15, 115 *et seq.*). 12-1769 *et seq.*

Buildings; General County Authority. Any county may jointly provide any public building with any other county or city. (See also 12-1736 *et seq.*). 19-15, 115 *et seq.*

Buildings; General Public Improvements. Any public agency may join with any other in cooperating on public improvements. 12-2901 *et seq.*

Buildings; Joint Township Authority. Any two or more adjoining townships in the same county may construct and use a joint township hall. 81-107.

Buildings; Public Building Commission. Any city or county may create a public building commission to construct and operate buildings and issue bonds for county business, city business, school district offices, parking facilities for state or federal offices and property constituting a part of the campus of any state university. 12-1757 *et seq.*

Buildings; Inspection Services. Any public agency may join with any other in cooperating on building and related inspection services. 12-2901 *et seq.*

Bus Transportation. See School Bus Transportation.

Data Processing; Interlocal Cooperation. Any public agency may join with any other in cooperating on data processing services. 12-2901 *et seq.*

Data Processing; Joint School District Agreements. Any two or more school districts may enter into cooperative agreements

for operation and maintenance of data processing centers. 72-8227.

Disaster Emergencies. Authorizes creation of interjurisdictional disaster agencies upon certain findings by Governor. 48-930.

Economic Development. Any public agency may undertake programs to promote economic and area development. 12-2901 *et seq.* (Counties; also see 19-4101 *et seq.*)

Education. See School Districts.

Educational Services. Interlocal Cooperation. Any public agency may cooperate. 12-2901 *et seq.*

Educational Services; Interlocal Cooperation. Two or more boards of education may enter into agreements for interlocal educational services. 72-8230 and 12-2901 *et seq.*

Emergency Medical Services. See Ambulances.

Employees. See Intergovernmental Personnel.

Energy; Joint Municipal Energy Agencies. Any two or more cities may create a municipal energy agency for the purpose of securing electricity or other energy and transmitting the same to the cities belonging to the agency. 12-885, *et seq.*

Engineering; County Engineer. Any county may unite with adjoining county or counties for hiring a county engineer for highway district subject to certain limitations. 28-118.

Fire Protection; Emergency. During emergencies, city and township fire departments may go anywhere in state to assist. 12-111.

Fire Protection; County District. Any county, by board action or by petition of the residents, may organize one or more fire districts in the county. County may contract with cities for fire protection. Cities may be included in district. Contracts may be made with any township or city of adjoining county or with rural fire protection districts of adjoining counties of another state. Agreements between district and any city may be made for joint construction, equipping and maintenance of buildings for housing fire equipment. 19-3601 *et seq.*

Fire Protection; Interlocal Agreements. Any public agency may join with any other in cooperating for fire protection by written agreement. 12-2901 *et seq.*

Fire Protection; Miscellaneous. In addition to general statutes above, see: Districts, 80-1501 *et seq.*, 80-1512, 19-3613 *et seq.*; Townships, 80-1535 *et seq.*, 80-1539.

Flood Control; Interlocal Agreements. Any unit of government may enter an interlocal agreement with any other governmental unit to provide for flood control. 12-2901 *et seq.*

Flood Control; Stormwater Drainage Districts. Any city and the county in which city is located may form a stormwater

drainage district including area inside city and in unincorporated areas. The district may construct and maintain main and lateral drains and provide for special assessments and bonds to finance the improvements. 12-6,102.

Garbage and Trash Disposal. See Refuse.

Health; Air Pollution. Any city, county, or combination thereof may conduct tests of air purity and establish local air quality conservation authority under state supervision. 65-3016.

Health; Board of. Any two or more cities and/or counties may establish a joint board of health. 65-205 *et seq.*

Health; Control of Contagious Disease. Joint action by counties and cities of the second or third class to control contagious diseases. 65-301.

Health; General. City-city, city-county and county-county agreements and contracts as to health services are generally authorized by 12-2901, 12-2908 and 12-3901; see part 1 of this report.

Health; Mental Health Centers. Counties may establish a community mental health center and/or facility for mentally retarded. 19-4001.

Health; Mental Health Clinic. Where joint health board exists, mental health clinic may be operated by such joint board. 65-211.

Health; Students; Inspections. The local health officer makes sanitary inspections of school buildings, provides certain tests and inoculations to students. 65-202, 72-5210.

Highways; Agreements for Arterial Highways. Counties may assume responsibility for the construction, reconstruction, maintenance and repair of city streets designated primary arterial highways, or secondary arterial highways if they are connecting cities between county roads. Counties and cities may agree upon the cooperative financing as to the construction, reconstruction, maintenance and repair of city streets designated as a primary arterial highway, or as a secondary arterial highway if such streets are connecting links between county roads. 68-580 *et seq.*

Highways; Bonds for County-City Projects. Bonds issued by counties or cities issued for projects authorized by 68-584 may be used for county roads or city streets.

Highways; City-County Boundary Streets. A city and county may enter into an agreement to authorize the city to construct or reconstruct roads or streets on the city boundary limits and assess the cost against an improvement district which includes property both inside and outside city limits. 12-693, 68-506, 63-572.

Highways; County Line Roads. Where a road forms the boundary line between two counties, the counties may divide the work of maintaining and repairing. 68-507.

Highways; General Agreements. Any county, city or political subdivision of the state has the authority to enter into agreements with each other and with the state with respect to financing, construction, maintaining or acquiring right of way for highways, roads and streets whether within or without the boundary or jurisdiction of the county, city or political subdivisions. 68-169.

Highways; Agreements for Construction Maintenance. County, township, and/or city may enter into agreements for the construction, reconstruction or maintenance of any roads or streets. 68-572, 68-560.

Highways; General Bridge Agreement. Any two counties, cities or townships separated by a stream may join in the construction of a bridge and agree upon the share of the cost. 10-204.

Highways; Maintenance of County Connecting Links. Any county and city with population under 5,000 may enter into an agreement to maintain connecting links within the city. 68-506f.

Highways; Rental of Machinery and Equipment. Any county and any township is authorized to rent to each other or to a city located within the county. 68-141a *et seq.*

Highways; Miscellaneous. See also: Bridges, 13-1024b, 68-1410 *et seq.*, 68-1404, 68-1412 *et seq.*, 68-1122; line roads, 68-109, 68-716, 68-572, 68-582.

Hospitals. Permits two or more adjoining subdivisions to create a hospital district. 80-2503, see also 14-6,110, 19-4603 *et seq.*

Housing; Financing. Cities and counties may join together in issuance of bonds for residential housing. 12-5231.

Housing Authorities; Joint Operation. Any two or more cities or counties or combination thereof may join or cooperate in the financing, planning, construction or operation of projects under the public housing act. 17-2348.

Industrial Development. See Port Authorities.

Insurance; Group-Funded Risk Pooling. Any five or more municipalities may enter into agreements to pool their liability for various public risks, excluding accident, health or life insurance. 12-2616 *et seq.*

Insurance; Worker's Compensation. Five or more common interest employers may establish group worker's compensation pools. 44- 581. See also Tort Claims.

Intergovernmental Personnel. Authorizes voluntary interchange of employees among federal, state, and local government for periods up to two years with two-year extensions possible. 75-4401 *et seq.*

Jails; Construction for Joint Usage: Any county may appropriate up to \$1,000 to assist in construction of a joint city-county jail in a city other than the county seat, with certain limitations. 19-1923.

Contracts; Contract for Usage. Any county may contract with any city for use of the city jail. 19-1929.

Jails. See Police Protection, Buildings.

Law Enforcement. See Police Protection.

Libraries; Board Contracts. Any county, city, school or township library board may contract with any other to furnish or receive library service. 12-1225, 12-1230, 72-1033, 72-1033a. See also School Libraries.

Libraries; Interlocal Cooperation. Any public agency may join with any other in cooperating on libraries. 12-2901 *et seq.* See also 75-2575.

Libraries; Regional Libraries. Any two or more adjoining counties or townships may establish and maintain a regional library, if approved by voters. 12-1231.

Libraries; Regional System of Cooperating Libraries. Any one or more library boards may petition the state library advisory commission for the establishment of a regional system of cooperating libraries. 75-2547 *et seq.*; 12-1234.

Machinery. See Highways, Interlocal Cooperation Act.

Mental Health. See Health.

Museums; Maintenance. Any county may maintain museums in any city, park district, or township used by county residents under agreements with the governing bodies thereof. 19-2801.
Oregon Trail. The state will cooperate with cities and counties to mark the route of the Oregon Trail. 68-1032.

Parks and Recreation; City-School District. Any city or school may cooperate to operate a recreation program or create a joint recreation commission. 12-1922 *et seq.*

Parks and Recreation; Interlocal Cooperation. Any public agency may join with any other in cooperating on park and recreational programs and facilities. 12-2901 *et seq.*

Parks and Recreation; Cooperation by Counties. Counties may contract for services or cooperate with another governmental agency to provide recreation activities and acquire property for same. 19-2801.

Parks and Recreation; Programs for Aging. Counties may contract for services or cooperate with another governmental agency to provide recreational activities and programs for aging. 19-2801.

Parks and Recreation; Miscellaneous. See also: 19-2844a, 19-2833a, 19-2841 *et seq.* 13-1356 *et seq.* 15-914 *et seq.*

Planning; Area. Any two or more cities or counties having adjoining planning jurisdictions or any county or city or cities within or adjacent to the county may jointly cooperate in the exercise and performance of planning powers. 12-716 *et seq.* See also 12-2901 *et seq.*

Planning; Board of Zoning Appeals. Any two or more cities or counties which have established a joint planning commission under 12-716 are authorized to establish a joint board of zoning appeals. 12-722 *et seq.*

Planning; County Use of City Planning Commission. Counties adopting zoning regulations for the unincorporated area may use the planning commissions of the county or cities located therein. 19-2933.

Planning; Subdivision Regulations Outside City. Any county and any city located therein shall establish a joint committee for subdivision regulation for the land area outside the city and within three miles of the city limits, if both the city and county seek to regulate such land. 12-705a, 19-2918b.

Police Protection; Interlocal Cooperation. Any public agency may join with any other in cooperating on police protection. 12-2901 *et seq.*

Police Protection; Contracts for Service. Any city or county may contract with any other city or county to perform governmental services; 12-2908. Cities may contract with counties as to the enforcement of city ordinances; 12-2909.

Police Protection; Consolidated Agencies. A county and cities therein may form a countywide law enforcement agency if approved by referendum. (limited application). 19-4401 *et seq.*

Police Protection; Joint Police and Municipal Judges. Authorizes two or more cities or city and county to appoint the same person as a law enforcement officer. Except in cities of first class, two or more cities may appoint the same person as municipal judge. 13-2102, 14-205, 15-1502, 15-209, 15-1602.

Police Protection; Use of Vehicles and Equipment (Johnson County). The county and cities therein may enter into agreements for the use or joint purchase of vehicles, broadcast equipment and other machinery used by law enforcement agencies. 19-2644 *et seq.*

Port Authorities. Cities and counties may establish joint port authorities to promote industrial development and commerce. 12-3401 *et seq.*

Public Improvements. Any public agency may join with any other in cooperating on public improvements. 12-2901 *et seq.*

Public Improvements. See also Buildings.

Public Works Services; County Department of. Any county public works department may provide public works services to political subdivisions in county under written agreements. Services that may be provided include: maintenance of public buildings, grounds, facilities, parks and recreation facilities; construction and maintenance of sewers, drainage and flood control, airports; solid waste; building, planning and related inspection services for land use purposes; maintenance and custody of machinery, equipment and other public works functions authorized by law. 19-4501 *et seq.*

Refuse Collection. See Parks and Recreation.

Refuse Disposal; Interlocal Cooperation. Any public agency may join with any other in cooperating on refuse disposal. 12-2901 *et seq.*

Refuse; Solid Waste Disposal. All counties may provide for the disposal of refuse through contract with cities therein. County may provide site or use city site. 19-2658 *et seq.*

Refuse; Disposal in Sedgwick County. Authorizes joint county and city garbage and trash disposal. 65-204.

Refuse; Resources Recovery. Cities or counties or combinations may establish resource recovery facilities. 65-3418.

Refuse; Solid Waste Management. Any two or more cities, counties, or combination of cities and counties may jointly plan and provide for the collection and disposal of refuse. 65-3410.

Roads. See Highways.

Sales Tax; Joint County Vote. The boards of any two or more contiguous counties by joint resolution may submit the question of imposing a sales tax to the voters of the involved counties on the same date. 12-187(c).

School Bus Transportation. Boards of education may contract with other units and with recreation commissions as to use of school buses for various purposes. 72-8302(b). See also 72-8307.

School Census. Boards of education may use any reasonable method of obtaining the annual census of all children under the age of 21. 72-1110.

School Districts, General. Board of education of two or more school districts may cooperatively perform any services, duties or functions required by law. 72-8230.

School Districts; Bilingual Education. Two or more boards of education may enter into agreements as to bilingual education. 72-9503.

School District; Data Processing. Two or more school districts may enter into agreements as data processing. 72-8227.

School Districts; Elementary Guidance. Two or more boards of education may enter into agreements as to elementary guidance programs. 72-9301.

School District; Special Education. Two or more school districts may enter into agreements as to special education services. 72-968.

School Districts; Vocational Education. Two or more school districts may enter into agreements as to vocational education. 72-4421.

School Libraries. School boards may contract with library boards as to public use of school library facilities. 72-1033. See also Libraries.

Sewage Disposal; Interlocal Cooperation. Any public agency may join with any other in cooperating on sewage disposal. 12-2901 *et seq.*

Sewerage; Water Pollution Act. Any city, county, township, township sewer district or other political subdivision authorized to levy taxes may improve their sewer system through a joint contract with one another. 12-3101 *et seq.*

Sewerage; Storm Water. See Flood Control.

Sewerage, Miscellaneous. In addition to general statutes above see: 14-714, 13-10, 107, 12-631g.

Sewer Districts. Governing body of county sewer districts (wastewater and storm water) may enter into interlocal agreements. 19-27a01 *et seq.*

Solid Waste. See Refuse.

Storm Water Control. See Flood Control.

Streets. See Highways.

Swimming Pools. See Parks and Recreation.

Taxes, Distribution. County board may enter into agreements with taxing subdivisions as to the distribution of taxes and interest thereon. 12-1678a(d).

Taxes, Delinquent Special Assessments. Cities and counties may agree on distribution of interest on delinquent special assessments. 79-2401a.

Tax Foreclosure. City may assist county in foreclosure action on delinquent tax liens or special assessments. 79-2801.

Tort Claims; Joint Insurance and Pooling. Any local unit through the interlocal cooperation act and the group-funded pool act may enter into agreements with other local units to provide for the purchase of insurance for the defense of employees and for liability claims under the tort claims act. 75-6111(b)(1) and (2); 12-2901 *et seq.*; 12-2616 *et seq.*

Township Roads. See Highways; also 68-560.

Traffic Control Devices. Any county, city, or other political subdivision may enter into agreements as to traffic control devices, even if outside their boundary or jurisdiction. 68-169.

Trash. See Refuse.

Utilities; Interlocal Cooperation. Any public agency may join with any other in cooperating on public utilities. 12-2901 *et seq.* See also Energy.

Water. See Flood Control, Utilities.

Water; Ports. See Port Authorities.

Weather Modification. Any public agency may join with any other in cooperating on weather modification. 12-2901 *et seq.*