

LC Staff Brief

Intergovernmental Cooperation



*Wisconsin
Legislative
Council*

One East Main Street
Suite 401
Madison, WI 53703-3382

P.O. Box 2536
Madison, WI 53701-2536

Phone: (608) 266-1304
Fax: (608) 266-3830
www.legis.state.wi.us/lc

August 23, 2010
10-03

CONTENTS

INTRODUCTION	1
PART I -- General Statutory Authority – Sections 66.0301 and 66.0303, Stats.	3
<i>Section 66.0301, Stats. – Intergovernmental Cooperation</i>	<i>3</i>
Definition of Municipality	3
General Authority for Intergovernmental Cooperation	3
Regional Projects	4
Public Utility Facilities and Roads	4
Boundary Line Agreements	4
<i>Section 66.0303, Stats. – Municipal Interstate Cooperation</i>	<i>5</i>
<i>Legislative History</i>	<i>6</i>
<i>Interpretation: Opinions of the Attorney General and Case Law</i>	<i>8</i>
Opinions of the Attorney General	8
Appellate Cases	10
PART II -- County Authority to Provide Local Government Services to Cities, Villages, and Towns – Section 59.03 (2), Stats.	11
<i>The Current Statute</i>	<i>11</i>
General Authority	11
Methods of Approving	12
Financing	12
Miscellaneous	12
<i>Legislative History</i>	<i>12</i>
PART III -- Other Statutory Authority for Intergovernmental Cooperation	15
<i>Statutory Provisions Cross-Referencing Section 66.0301, Stats.</i>	<i>15</i>
<i>Other Statutes Authorizing Intergovernmental Cooperation</i>	<i>19</i>

Intergovernmental Cooperation

INTRODUCTION

This Staff Brief provides information on current law relating to intergovernmental cooperation.

- **Part I** describes the statutes that provide general authority for intergovernmental cooperation (ss. 66.0301 and 66.0303, Stats.).
- **Part II** describes county authority to provide local government services to cities, villages, and towns (s. 59.03 (2), Stats.).
- **Part III** describes other statutory authority for intergovernmental cooperation.

This Staff Brief was prepared by Jessica Karls-Ruplinger and Scott Grosz, Staff Attorneys, Legislative Council, staff for the Joint Legislative Council's Special Committee on Local Service Consolidation. Although the Special Committee is directed to study local service consolidation, the information about intergovernmental cooperation in this Staff Brief provides useful background information to begin the committee's discussion. Generally, efforts related to local service *consolidation* may often be affected through current Wisconsin law relating to intergovernmental *cooperation*.

Statutory references in this Staff Brief are to 2007-08 Wisconsin Statutes, as affected by 2009 Wisconsin Acts.

PART I

GENERAL STATUTORY AUTHORITY – SECTIONS 66.0301 AND 66.0303, STATS.

Since 1939, s. 66.0301, Stats.,¹ has granted local units of government in Wisconsin general authority to enter into agreements for the cooperative exercise of their authority. Referencing this statute, a 1959 article stated: “The Wisconsin statutes are unusually flexible in the possibilities they afford for joint [municipal] activities.” [James R. Donoghue, “County Government and Urban Growth,” 1959 Wis. L. Rev. 30, p. 52.] Since that comment was made, several changes have been made to s. 66.0301, Stats., to increase that flexibility. This Part of the Staff Brief provides general background information on s. 66.0301, Stats., the primary statutory source of authority for intergovernmental cooperation by local units of government.

Section 66.0301, Stats. – Intergovernmental Cooperation

Definition of Municipality

For purposes of s. 66.0301, Stats., which states the general authority for intergovernmental cooperation between and among “municipalities” (and Indian tribes and bands), “municipality” is defined as:

[T]he state or any department or agency thereof, or any city, village, town, county, school district, public library system, public inland lake protection and rehabilitation district, sanitary district, farm drainage district, metropolitan sewerage district, sewer utility district, solid waste management system created under s. 59.70 (2), local exposition district created under subch. II of ch. 229, local professional baseball park district created under subch. III of ch. 229, local professional football stadium district created under subch. IV of ch. 229, local cultural arts district created under subch. V of ch. 229, transit authority created under s. 66.1039, long-term care district under s. 46.2895, water utility district, mosquito control district, municipal electric company, county or city transit commission, commission created by contract under this section [s. 66.0301], taxation district, regional planning commission, housing authority created under s. 66.1201, redevelopment authority created under s. 66.1333, community development authority created under s. 66.1335, or city-county health department. [s. 66.0301 (1) (a), Stats.]

However, the statute provides that if the purpose of the intergovernmental cooperation is the establishment of a joint transit commission, “municipality” means any county, city, village, or town. [s. 66.0301 (1) (b), Stats.] In addition, for purposes of a boundary line agreement, “municipality” means any city, village, or town. [s. 66.0301 (1) (c), Stats.]

General Authority for Intergovernmental Cooperation

The general authority for intergovernmental cooperation among local units of government in this state is found in s. 66.0301 (2), Stats., which provides, in part, that:

In addition to the provisions of any other statutes specifically authorizing cooperation between municipalities, unless those statutes

¹ Section 66.0301, Stats., was previously numbered s. 66.30, Stats.

specifically exclude action under this section [s. 66.0301, Stats.], any municipality may contract with other municipalities and with federally recognized Indian tribes and bands in this state, for the receipt or furnishing of services or the joint exercise of any power or duty required or authorized by law. If municipal or tribal parties to a contract have varying powers or duties under the law, each may act under the contract to the extent of its lawful powers and duties.

Note that the contractual authority for the receipt or furnishing of services or the joint exercise of any power or duty is limited to those services, powers, or duties “required or authorized by law.” Further, if the municipal or tribal parties to a contract have varying powers or duties, each party may act under the contract only to the extent of the party’s lawful powers and duties. Thus, to act under a s. 66.0301, Stats., contract, a municipality or tribe must have independent authority (i.e., authority conferred outside s. 66.0301 (2), Stats.) to exercise the power or duty. This requirement is the most general restriction in s. 66.0301 (2), Stats., on the intergovernmental cooperation authority provided by the subsection.

Section 66.0301 (3), Stats., provides that any contract entered into under s. 66.0301 (2), Stats., may provide a plan for administration of the function or project. The plan for administration may include provisions regarding proration of expenses, deposit and disbursement of funds, submission and approval of budgets, creation of a commission, selection and removal of commissioners, and formation and letting of contracts. In addition, any contract entered into under s. 66.0301 (2), Stats., may bind the parties to the contract for the length of time specified in the contract. [s. 66.0301 (2) and (3), Stats.]

Lastly, s. 66.0301, Stats., “shall be interpreted liberally in favor of cooperative action between municipalities and between municipalities and Indian tribes and bands.” [s. 66.0301 (2), Stats.]

Regional Projects

Section 66.0301 (4), Stats., expressly allows a commission created by contract under s. 66.0301 (2), Stats., to finance the acquisition, development, remodeling, construction, and equipment of land, buildings, and facilities for regional projects under s. 66.0621, Stats. Further, participating municipalities acting separately or jointly can finance the regional projects, or an agreed share of the projects’ costs, under ch. 67, Stats.

Public Utility Facilities and Roads

A commission created by contract under s. 66.0301 (2), Stats., may not, directly or indirectly, construct, acquire, or lease facilities used in the business of a public utility engaged in furnishing, production, delivery, or transmission of power, heat, light, natural gas, or communications service, except by a method set forth in ch. 66, 196, 197, or 198, Stats. [s. 66.0301 (5) (a), Stats.]

In addition, a commission created by contract under s. 66.0301 (2), Stats., may not, directly or indirectly, construct, establish, lay out, maintain, improve, discontinue, relocate, or widen any road or highway outside the corporate limits of a city or village or acquire lands for such purposes, except by approval of the Department of Transportation (DOT) and the county board of the county and the town board of the town in which the road will be located. [s. 66.0301 (5) (b), Stats.]

Boundary Line Agreements

Section 66.0301 (6), Stats., allows any two cities, villages, or towns whose boundaries are immediately adjacent at any point to enter into a written agreement determining all or a portion of the common boundary line between the municipalities. A boundary line agreement may include one or more of the following provisions: (1) that specified boundary lines apply on the effective date of the agreement; (2) that specified boundary line changes will occur during the term of the agreement and the approximate dates on which the changes will occur; (3) that specified boundary line changes may occur during the term of the agreement and the approximate dates on which the changes may occur; (4) that a required boundary line change or an optional boundary line change is subject to conditions set forth in

the agreement; or (5) that specified boundary lines may not be changed during the term of the agreement. [s. 66.0301 (6) (a), Stats.] A boundary line change in an agreement is accomplished by the enactment of an ordinance by the governing body designated in the agreement. [s. 66.0301 (6) (e), Stats.]

Further, a boundary line agreement may provide that no other procedure may be used to change a boundary that is affected by the agreement, except an annexation. After the boundary line agreement has expired, the boundary may be changed. [s. 66.0301 (6) (d), Stats.]

The maximum term of a boundary line agreement is 10 years. When an agreement expires, all provisions of the agreement expire, except that any boundary determined under the agreement continues in effect until subsequently changed. [s. 66.0301 (6) (b), Stats.]

Before a boundary line agreement may take effect, it must be approved by the governing body of each municipality by the adoption of a resolution. Each municipality is required to hold a public hearing, or a joint public hearing with the other municipality, on the agreement. Each municipality must provide notice of the proposed agreement and public hearing at least 20 days before the public hearing by: (1) publishing a class 1 notice; and (2) providing notice by certified mail to each property owner whose property is located in the municipality and in, or immediately adjacent to, the territory whose jurisdiction will change. [s. 66.0301 (6) (c) 1., Stats.]

After each municipality adopts a resolution to approve the boundary line agreement, each municipality must publish the agreement as a class 1 notice in the territory whose jurisdiction may be changed under the agreement. The agreement must be approved in a referendum of the electors residing in the territory whose jurisdiction may be changed under the agreement if, within 30 days after the publication of the agreement, a petition for a referendum is filed with the clerk of each municipality that is a party to the agreement. The referendum must be conducted jointly by the municipalities and in the same manner as annexation referenda. [s. 66.0301 (6) (c) 2., Stats.]

Any action to contest the validity of a boundary line agreement must be commenced prior to 60 days from the date that the agreement becomes effective. [s. 66.0301 (6) (f), Stats.]

Section 66.0303, Stats. – Municipal Interstate Cooperation

Section 66.0303 (2), Stats., authorizes any municipality, as defined in s. 66.0301 (1) (a), Stats., to contract with municipalities of another state or with Indian tribes or bands located in another state for the receipt or furnishing of services or the joint exercise of any power or duty required or authorized by statute to the extent that the laws of the other state or the United States permit the joint exercise of the power or duty.

A proposed interstate agreement under authority of s. 66.0303 (2), Stats., must be submitted to the Attorney General, who is required to determine whether the agreement is in proper form and compatible with Wisconsin law. Upon receipt of a proposed agreement, the Attorney General is required to provide a copy of the agreement to the Governor, and the Governor is required to consult with any state agency affected by the agreement. The Governor is required to supply the Attorney General with any comments the Governor may have concerning the agreement. If the Attorney General fails to disapprove a proposed agreement within 90 days of submission, the agreement is considered approved. [s. 66.0303 (3) (a), Stats.] The requirement that a proposed agreement be submitted and approved by the Attorney General does not apply to an agreement between a municipality of this state and a municipality of another state that relates to the furnishing, receipt, or joint exercise of emergency medical services or fire fighting services. [s. 66.0303 (3) (b), Stats.]

An agreement entered into under authority of s. 66.0303 (2), Stats., has the status of an interstate compact (presumably for enforcement purposes). Despite the agreement's status as an interstate compact, if any case or controversy involving performance or interpretation of the agreement or liability under the agreement arises, the municipalities that are party to the agreement, not the state, are ultimately the responsible parties and the state may commence an action to recover any damages or

liability which the state may incur as the result of the case or controversy. An action by the state to recover any incurred damages or liability may be maintained against any municipality whose act or omission caused or contributed to the incurring of damage or liability by the state. [s. 66.0303 (4), Stats.]

Legislative History

The predecessor statute to s. 66.0301, Stats., was first enacted in 1939, effective July 3 of that year. [Ch. 210, Laws of 1939.] In its original form, the entire statute consisted of one sentence: “Any city, village, town, county or school district may, by action of the governing body thereof, enter into an agreement with any other such governmental unit for the joint or co-operative [sic] exercise of any power or duty required or authorized by statute and as part of such agreement may provide a plan for prorating any expenditures involved.”

The statute remained unchanged until the 1951 Legislative Session when it was affected by four different acts [Ch. 241, SEC. 1; Ch. 268, SEC. 3; Ch. 293, SECS. 1 and 2; and Ch. 734, SEC. 22, Laws of 1951]. Since the 1951 Session, the statute has been affected by additional acts. Many of the acts made technical changes to the statute or changes to the definition of “municipality.” Others made revisions and additions to the general authority for intergovernmental cooperation under the statute or extended authority for specific types of intergovernmental cooperation.

Express authority for local governmental units to contract for “joint projects,” as long as each portion of the project was within the scope of the authority of the particular governmental unit, was granted by Ch. 293, Laws of 1951.

Chapter 192, Laws of 1959, was developed by the Legislative Council’s Interim Committee on Urban Problems. Among the changes made by that legislation to strengthen the statute were:

1. Municipalities were specifically authorized to contract for the furnishing of services.
2. Specific authorization was given to establish a plan for administering the function for which a contract under the statute is negotiated. According to the report of the Legislative Council Interim Committee on Urban Problems, this provision “is intended to eliminate possible conflicts among various provisions in existing statutes.” [*Report of the Interim Urban Problems Committee to the 1959 Wisconsin Legislature*, p. 26 (January 1959).]
3. Express provision was made that any contract under authority of the statute “may bind the contracting parties for the length of time specified therein.” This provision was intended to preclude a participating municipality from withdrawing from an agreement under the statute for the duration of the contract. [*Id.*]

Chapter 238, Laws of 1965, granted express authority in the statute and related statutes for municipalities to cooperate in regional projects. That legislation was the product of another Legislative Council committee, the Urban Problems Committee (1963–65 interim). The Urban Problems Committee was directed to review 1963 Senate Bill 566, relating to the creation of multipurpose service districts to administer public services over areas including more than one governmental unit. 1963 Senate Bill 566 had been introduced at the request of the Fox River Valley Planning Commission and the 11-member municipalities of that Commission. It is reported that the Commission had concluded that Senate Bill 566 was urgently needed to permit the municipalities in the Fox Valley to establish machinery for providing certain areawide services. [General Report of the Wisconsin Legislative Council, at 163 (May 1965).] Senate Bill 566 set forth a procedure for creating a multipurpose service district, the composition of the governing body of the district, and the powers and functions to be exercised by the district. The Urban Problems Committee concluded that creation of multipurpose service districts as contemplated by Senate Bill 566 would be an unnecessarily complicated means of accomplishing the desired purpose. The Urban Problems Committee developed instead the legislation expressly permitting regional projects under the statute.

Chapter 171, Laws of 1969, added the provision to the statute allowing a municipality to contract with municipalities of another state for the receipt or furnishing of services or the joint exercise of powers or duties. 1999 Wisconsin Act 150 renumbered this provision to s. 66.0303, Stats.

Perhaps the most significant change to the general authority under the statute regarding intergovernmental cooperation was made by Ch. 123, Laws of 1975. That legislation repealed and recreated the general intergovernmental authority found in the statute; the Ch. 123 language is essentially the language that currently exists in s. 66.0301 (2), Stats. A significant provision of Ch. 123, Laws of 1975, was the addition to the intergovernmental cooperation authority of language stating that the authority is “in addition to the provisions of any other statutes specifically authorizing cooperation between municipalities, unless such statutes specifically exclude action under” the statute. The Legislative Reference Bureau analysis to 1975 Senate Bill 112, which became Ch. 123, Laws of 1975, explained:

This bill specifies that... [the intergovernmental cooperation authority of the statute] is in addition to any other statutes authorizing cooperation unless specifically excluded.

The legislation was requested by the League of Wisconsin Municipalities. Although there is nothing in the drafting file to 1975 Senate Bill 112 directly on point, it is reasonable to infer that Senate Bill 112 was a reaction to opinions of the Attorney General that had concluded that specific statutes on intergovernmental cooperation superseded the general authority of the statute.

Chapter 123, Laws of 1975, also stated with greater clarity the mutuality of powers requirement of the statute and added the directive that the statute be interpreted liberally in favor of cooperative action between municipalities.

1999 Wisconsin Act 150 renumbered the statute to its present location, s. 66.0301, Stats.

Since the 1993-94 Legislative Session, the following entities have been added to the definition of “municipality” in the statute:

- Local professional baseball park districts. [1995 Wisconsin Act 56, SEC. 25.]
- Local professional football stadium districts. [1999 Wisconsin Act 167, SEC. 38.]
- Local cultural arts districts. [1999 Wisconsin Act 65, SEC. 22.]
- Transit authorities. [2009 Wisconsin Act 28, SEC. 1466.]
- Long-term care districts (previously, family care districts). [1999 Wisconsin Act 9, SEC. 1621; 2007 Wisconsin Act 20, SEC. 1876.]
- Housing authorities. [2009 Wisconsin Act 112, SEC. 1.]
- Redevelopment authorities. [2009 Wisconsin Act 112, SEC. 1.]
- Community development authorities. [2009 Wisconsin Act 112, SEC. 1.]
- City-county health departments. [2001 Wisconsin Act 16, SEC. 2021n.]

2007 Wisconsin Act 43 added the provision to the statute that allows any two municipalities whose boundaries are immediately adjacent at any point to enter into a written agreement determining all or a portion of the common boundary line between the municipalities.

Interpretation: Opinions of the Attorney General and Case Law

Opinions of the Attorney General

Section 66.0301, Stats., and its predecessor statute, s. 66.30, Stats., have been the subject of a relatively large number of opinions by the Attorney General. Many of these opinions deal with the mutuality of powers requirement, including whether a proposed party to an agreement under the statute has the authority to act under the proposed agreement. Most of the opinions by the Attorney General on the statute do not appear to be particularly instructive in the context of conveying background information on the statute. Opinions of the Attorney General that may be of interest regarding the interpretation of the statute are summarized below.

Delegation of Legislative Authority and Police Powers

In 61 OAG 229 (1972), the Attorney General was asked whether a city may delegate its powers relating to city parks to a county park commission. The Attorney General's Opinion on that particular issue is no longer relevant since subsequent legislation expressly allows such delegation. [s. 27.075, Stats.] However, the Attorney General cited some general principles of law regarding municipal contractual authority that appear to be relevant to the scope of authority under the statute:

Municipal corporations have no power to alienate, delegate or otherwise bargain away the police power which they are responsible for exercising in the interest of safeguarding the health, comfort and general welfare of their inhabitants.... [Citations omitted; 61 OAG, at 231.]

It is difficult to appreciate how your county could effectively exercise the powers of the city [under relevant statutory provisions] unless the city could surrender its authority under the statutes to the county. However, a municipality's legislative power cannot be delegated. [Citations omitted.]

...

Finally, although sec. 66.30, Stats., provides authority to various municipalities to contract for the exercise of any "power or duty required or authorized by statute," the statute cannot be considered as a vehicle for shifting responsibility for the basic functions of government. 58 OAG 72, 77 (1969). Cooperative agreements between municipalities under sec. 66.30, Stats., are intended to assist in the implementation of such local governmental powers and duties, not as a substitute for them.... [61 OAG, at 232.]

See, however, the discussion of s. 59.03 (2), Stats., in Part II of this Staff Brief.

Indemnification of Section 66.30, Stats., Commissioners

In 74 OAG 208 (1985), the Attorney General was asked whether s. 895.46, Stats., relating to indemnification of public officers and employees for official actions, covers members of a joint commission formed by two or more municipalities under s. 66.30, Stats., for the purpose of constructing, operating and maintaining a wastewater treatment facility. Under s. 895.46, Stats., a municipality is required to pay legal expenses and judgments, in excess of any insurance coverage, incurred by a public officer or employee for acts within the scope of employment. The commission in question consisted of three categories of members: (1) voting members, drawn from the governing bodies of the municipalities party to the agreement; (2) voting citizen members, appointed by the governmental units party to the agreement; and (3) a nonvoting member, appointed by a private party which had entered into a contract with the commission.

The Attorney General first addressed the question whether a voting member of the commission who is also a member of the governing body of a municipality party to the s. 66.30, Stats., agreement is a public officer and, therefore, protected by s. 895.46, Stats. The Attorney General answered the question in the affirmative. The Attorney General first reviewed the provisions of s. 66.30 (2), Stats., and the terms of the agreement in question and concluded that the commission formed by the agreement is a governmental instrumentality or body formed for the joint exercise of powers held by the contracting municipalities and, therefore, is performing a governmental function. [74 OAG, at 210 and 211.]

The Attorney General then concluded that a voting member of the commission who is also a member of the governing body of a municipality party to the agreement is a “public officer” for purposes of s. 895.46, Stats. The Attorney General reviewed the powers of the commission and of the commission members in question in the context of the law relating to who is a public officer. The quintessential test of determining whether someone is a public officer is whether that person has authority to independently exercise the sovereign power [74 OAG, at 215]. Under the agreement in question, the commission jointly exercises the municipal power possessed by each of the contracting municipalities to operate a sewerage system; therefore, when a voting member of the commission uses voting power, that member is definitely exercising a portion of the sovereign power of government for the benefit of the public. [74 OAG, at 212 and 213.]

The Attorney General next addressed the question whether voting members of the commission who are not members of the governing bodies of the municipalities party to the agreement but who are residents of the municipalities are public officers. The Attorney General answered the question in the affirmative, based on the same reasons used in addressing the previous question.

Finally, the Attorney General addressed the question whether the nonvoting member of the commission, appointed by a private party which has entered into a contract with the commission and with the contracting municipalities, is a public officer for purposes of s. 895.46, Stats. The Attorney General answered that question in the negative, noting that such commission member under the terms of the agreement cannot serve as an officer and is powerless to vote. The Attorney General concluded that such a member is plainly not a public officer, primarily because that member does not possess a portion of the sovereign power of government. [74 OAG, at 217.]

Effect of Other, More Specific Statute not Referencing Section 66.30, Stats.

76 OAG 286 (1987) involved the authority of counties in connection with receiving and investigating reports of abused or neglected children. The Opinion is noteworthy because part of the Attorney General’s discussion appears to suggest that unless the use of s. 66.30, Stats., is expressly mentioned under a statute granting specific municipal authority, the authority to use s. 66.30 (2), Stats., may be in doubt, at least where the specific authority is enacted more recently than the general authority under s. 66.30, Stats.

Section 48.981 (3) (c), Stats., requires the county department of social services, after receiving a report of child abuse or neglect, to initiate an investigation to determine whether the child is in need of protection or services. In addressing whether a county may contract with another county to obtain investigative services under the section from the other county’s department of social services, the Attorney General noted that s. 48.981 (3) (c), Stats., does not specifically exclude action under s. 66.30, Stats., “thereby leading one to conclude that such a contract would be allowable. This approach is consistent with the admonition that s. 66.30, Stats., is to be interpreted liberally in favor of cooperative action between municipalities.” [76 OAG, at 290 and 291.]

The Attorney General then went on to note:

On the other hand, however, it is a well-established standard of statutory construction that a more recent and specific statute controls and exists as an exception to a general statute. [Citations omitted.] The general provisions concerning local cooperation originated with the enactment of section 66.30 under chapter 210, Laws of 1939. Section 48.981 originally was created by chapter 333, Laws of 1965, but it was

later repealed and recreated to resemble the present statute by chapter 355, Laws of 1977.

...I am concerned that the power of the county to contract under section 66.30 (2) might not extend to the investigatory contracts anticipated under section 48.981 (3) (c). [76 OAG, at 290.]

It is difficult to reconcile the Attorney General's concern that a county may not contract for investigative services under s. 66.30 (2), Stats., with the plain language of that subsection.

Appellate Cases

There have been few cases directly involving interpretation of s. 66.0301, Stats., and its predecessor statute, s. 66.30, Stats., by appellate courts in Wisconsin. None of the reported cases that have addressed the statute appear particularly instructive regarding the substance of the statute and, therefore, the cases are not summarized here. [See *City of Racine v. Town of Mount Pleasant*, 61 Wis. 2d 495, 213 N.W. 2d 60 (1973); *Village of Butler v. Renner Manufacturing Company*, 70 Wis. 2d 1, 233 N.W. 2d 380 (1975); *Tanck v. Dane County Regional Planning Commission*, 81 Wis. 2d 76, 260 N.W. 2d 18 (1977); *Village of McFarland v. Town of Dunn*, 82 Wis. 2d 469, 263 N.W. 2d 167 (1978); *Fond du Lac County v. Town of Rosendale*, 149 Wis. 2d 326, 440 N.W. 2d 818 (Ct. App. 1989); and *State ex rel. Herro v Village of McFarland*, 303 Wis. 2d 749, 737 N.W.2d 55 (Ct. App. 2007).]

PART II

COUNTY AUTHORITY TO PROVIDE LOCAL GOVERNMENT SERVICES TO CITIES, VILLAGES, AND TOWNS – SECTION 59.03 (2), STATS.

Section 59.03 (2), Stats.,² provides a very broad grant of authority to county boards to provide an array of local government services to all cities, villages, and towns within the county that request such services be provided. This statute, as originally created in 1927, was applicable only to Milwaukee County but was revised in 1977 to apply to all counties. A very significant distinction between s. 59.03 (2), Stats., and s. 66.0301, Stats., which was discussed in Part I of this Staff Brief, is that the latter statute provides that if parties to a contract have varying powers or duties under the law, each may act under the contract only to the extent of its lawful powers and duties. Section 59.03 (2), Stats., does not contain this restriction and, therefore, is much broader in the services that may be provided under it. For example, even though county boards (since 1984) have no independent authority to provide fire protection services, s. 59.03 (2), Stats., authorizes counties to provide such services upon the request of cities, villages, and towns, while s. 66.0301, Stats., does not.

The Current Statute

General Authority

The broad authority provided under s. 59.03 (2), Stats., is contained in paragraph (a) of the statute, which reads as follows:

Except as elsewhere specifically provided in these statutes, the board of any county is vested with all powers of a local, legislative and administrative character, including without limitation because of enumeration, the subject matter of water, sewers, streets and highways, fire, police, and health, and to carry out these powers in districts which it may create for different purposes, or throughout the county, and for such purposes to levy county taxes, to issue bonds, assessment certificates and improvement bonds, or any other evidence of indebtedness. The powers hereby conferred may be exercised by the board in any municipality, or part thereof located in the county upon the request of any such municipality, evidenced by a resolution adopted by a majority vote of the members-elect of its governing body, designating the particular function, duty or act, and the terms, if any, upon which the powers shall be exercised by the board or by a similar resolution adopted by direct legislation in the municipality in the manner provided in s. 9.20. The resolution shall further provide whether the authority or function is to be exercised exclusively by the county or jointly by the county and the municipality, and shall also find that the exercise of such power by the county would be in the public interest. Upon the receipt of the resolution, the board may, by a resolution adopted by a majority vote of its membership, elect to assume the exercise of the function, upon the terms and conditions set forth in the resolution presented by the municipality.

² Section 59.03 (2), Stats., was previously numbered s. 59.083, Stats.

This statutory language authorizes county boards to provide local government services either throughout the county, in specific cities, villages, and towns within the county, or within districts that comprise all or portions of cities, villages, and towns within the county.

Methods of Approving

Services under s. 59.03 (2), Stats., may be provided to a city, village, or town that requests such services either by a vote of its governing body or by the electors of the city, village, or town by direct initiative under s. 9.20, Stats. The county board may agree to provide the services by adoption of a resolution by a majority of its membership. [s. 59.03 (2) (a), Stats.]

Section 59.03 (2) (b), Stats., authorizes the county board, by a resolution adopted by a majority of its membership, to propose to some or all of the cities, villages, or towns located in the county that the county provide services under s. 59.03 (2), Stats. If the governing body of the city, village, or town accepts the proposal by the county, or if the voters of the city, village, or town approve the proposal by direct initiative under s. 9.20, Stats., the county may exercise such powers.

Section 59.03 (2) (c), Stats., provides a means for the voters in a city, village, or town to disapprove or modify a request for county services or acceptance of a county proposal to provide services that is approved by the governing body of the city, village, or town. Under this subsection, any request for services or acceptance of a county proposal to provide services approved by a governing body may not take effect until 60 days after the governing body approves the resolution. If, during these 60 days, a direct initiative petition under s. 9.20, Stats., to modify or disapprove the request, is filed, the resolution of the governing body is invalid and the issue is resolved by the electors of the city, village, or town through direct initiative.

Financing

Section 59.03 (2) (e), Stats., provides that a city, village, or town may enter into any necessary contracts with the county and appropriate money to pay the county reasonable expenses incurred in rendering the services. In addition, par. (e) provides that if services are made available to, and accepted by, each city, village, or town in the county on the same terms, the expenses of providing the services may be paid by county taxes levied and collected as are other taxes for county purposes.

Miscellaneous

Section 59.03 (2) (e), Stats., provides that the procedure provided under this statute for the request for, or acceptance of, county services by cities and villages is prescribed as a special method of determining the local affairs and government of such cities and villages under art. XI, s. 3, Wis. Const. Article XI, section 3, Wisconsin Constitution, provides, in part, that:

Cities and villages organized pursuant to state law may determine their local affairs and government, subject only to this constitution and to such enactments of the Legislature of statewide concern as with uniformity shall affect every city or every village. The method of such determination shall be prescribed by the Legislature.

Section 59.03 (2) (f), Stats., provides that the powers conferred under s. 59.03 (2), Stats., are in addition to all other grants of power and are limited only by express language.

Legislative History

The predecessor statute to s. 59.03 (2), Stats., was first enacted in 1927. As originally enacted, the section only applied to Milwaukee County. The statute remained unchanged until the 1935 Legislative Session, when it was affected by Ch. 450, Laws of 1935. This Act amended the statute to expressly allow the exercise of powers under the statute in districts within the county, which Milwaukee County was authorized to create for different purposes, or throughout the entire county. Act 450 also

added the language allowing the county to propose to cities, villages, and towns within the counties that the county perform services under the statute. In addition, Act 450 authorized voters of a city, village, or town, by direct initiative, to request Milwaukee County to provide one or more services; to approve the county's proposal to provide services; or to reject or modify a resolution adopted by the governing body to request or approve the provision of county services.

Probably the most significant change to the statute occurred when, in Ch. 29, Laws of 1977, the statutory section was made applicable to all counties within the state and not just Milwaukee County.

In 1996, the statute was renumbered to its present location, s. 59.03 (2), Stats., by 1995 Wisconsin Act 201.

PART III

OTHER STATUTORY AUTHORITY FOR INTERGOVERNMENTAL COOPERATION

In addition to the general authority for intergovernmental cooperation granted by ss. 66.0301 and 59.03 (2), Stats., described in Parts I and II, the Wisconsin statutes contain a substantial number of provisions granting specific authority for such cooperation. Issues of intergovernmental cooperation have been a recurring topic of study by the Legislative Council. In the Staff Brief to the Special Committee on Shared Governmental Services, Legislative Council Staff described previous efforts to study intergovernmental cooperation, stating:

It is interesting to note that the League of Wisconsin Municipalities reported to the Legislative Council's 1959 Interim Urban Problems Committee: "The existence of numerous statutes providing for joint cooperation between municipalities may create some uncertainty as to the authority of municipalities to proceed independent of such specific statutes." [*Report of the Interim Urban Problems Committee to the 1959 Wisconsin Legislature*, p. 25 (January 1959).] The League suggested that the Interim Urban Problems Committee consider developing legislation to address the proliferation of statutes on joint cooperation, eliminating those statutes that may be unnecessary and organizing the remainder of the statutes into a uniform provision. However, time limitations did not permit the Interim Urban Problems Committee the "intensive and thorough study which would be needed to develop" legislation to accomplish the suggestion. [*Id.*]

Since the time the Interim Urban Problems Committee declined the task, it appears there has been no systematic attempt to deal with the large number of specific statutes authorizing intergovernmental cooperation in the face of the general authority of s. 66.30, Stats. However, ... Ch. 123, Laws of 1975, appears to have addressed this concern (at least partially) by indicating that the authority under s. 66.30 is "in addition to the provisions of any other statutes specifically authorizing cooperation between municipalities unless such statutes specifically exclude action."

[*Statutory Framework for Local Governmental Cooperation in Delivery of Services*, Staff Brief 94-10, p. 19 (September 23, 1994).]

This Part identifies those statutory provisions that explicitly cross-reference to authority granted under s. 66.0301, Stats., for intergovernmental cooperation and some, but not all, of those statutes that grant authority for intergovernmental cooperation without express mention of s. 66.0301, Stats.

STATUTORY PROVISIONS CROSS-REFERENCING SECTION 66.0301, STATS.

Current statutory provisions relating to shared governmental services that specifically cross-reference s. 66.0301, Stats., are identified below.

1. Section 30.31 (5), Stats., provides that towns, villages, cities, and counties have the powers conferred by s. 66.0301, Stats., for purposes of cooperating in erecting, maintaining, or

repairing a dock wall or shore protection wall along the shore of any waterway adjoining or within the limits of the municipalities.

2. Section 33.22 (4), Stats., restricts a public inland lake protection and rehabilitation district from exercising town sanitary district powers in any territory included in an existing town sanitary district except by contract under s. 66.0301, Stats., (or unless the sanitary district merges with the public inland lake protection and rehabilitation district).
3. Section 36.11 (19) (a), Stats., permits the University of Wisconsin System Board of Regents to enter into contracts under s. 66.0301, Stats., to furnish services for educational study and research projects to school districts.
4. Section 46.2895 (4) (g) and (6) (f), Stats., permits a long-term care district to provide employee benefits, including a pension plan, and to participate in a plan of liability insurance for officers, employees, and agents, by contract under s. 66.0301, Stats.
5. Section 49.49 (7), Stats., permits the operation of a nursing home or intermediate care facility by two or more cities, villages, or towns under s. 66.0301, Stats.
6. Section 59.52 (7), Stats., authorizes counties to join with the state, other counties, and municipalities in a cooperative arrangement as provided by s. 66.0301, Stats., including the acquisition, development, remodeling, construction, equipment, operation, and maintenance of land, buildings, and facilities for regional projects, whether or not the project is located within the county.
7. Section 59.56 (3) (h), Stats., authorizes cooperative agreements under s. 66.0301, Stats., between county university extension programs and “other educational programs of importance to the citizens of the county.”
8. Section 59.58 (2) and (3), Stats., permits a county, by contract under s. 66.0301, Stats., to establish a joint municipal transit commission, in cooperation with any county, city, village, town, or Indian tribe or band.
9. Section 59.58 (3), Stats., authorizes a county to contract under s. 66.0301, Stats., to establish a joint transit commission with other municipalities [as defined under s. 66.0301 (1) (b), Stats.].
10. Section 59.692 (4) (a), Stats., expressly provides that s. 66.0301, Stats., applies to the section on county zoning of shorelands on navigable waters, s. 59.692, Stats., and requires that, for purposes of the section, any agreement under s. 66.0301, Stats., must be “effected by ordinance.” If the municipalities are served by a regional planning commission, the commission may, if it agrees, be empowered by the ordinance of agreement to administer each ordinance enacted under s. 59.692, Stats., throughout the enacting municipality, whether or not the area otherwise served by the commission includes all of that municipality.
11. Sections 59.693 (9) (a) and (c), 60.627 (8) (a) and (c), 61.354 (8) (a) and (c), and 62.234 (8) (a) and (c), Stats., provide that s. 66.0301, Stats., applies to the sections on county, town, village, and city construction site erosion control and stormwater management zoning and require that, for purposes of these sections, any agreement under s. 66.0301, Stats., must be “effected by ordinance.” [If it consents, the Dane County Lakes and Watershed Commission may be given authority by Dane County or by a town, village, or city served by the Commission to administer an ordinance enacted under these sections for the entire county, village, or city, even if the area otherwise served by the Commission does not include all of Dane County or the village or city. Section 66.0301, Stats., expressly does not apply to this particular provision.]

12. Section 60.23 (1), Stats., authorizes town boards to cooperate with the state, counties, and other units of government under s. 66.0301, Stats., including cooperative arrangements involving the acquisition, development, remodeling, construction, equipment, operation, and maintenance of land, buildings, and facilities for regional projects, whether or not located in the town.
13. Section 60.23 (20), Stats., authorizes a town to enter into a contract with any other governmental unit under s. 66.0301, Stats., to provide for the removal and disposition of dead animals.
14. When incorporating or annexing a town sanitary district, s. 60.79 (2) (c), Stats., permits a city or village and the town sanitary district to divide the district's assets and liabilities by agreement under s. 66.0301, Stats.
15. Section 66.0125 (2), Stats., provides that if a community relations–social development commission is established on an intergovernmental basis with a county, the provisions of s. 66.0301, Stats., apply as optional authority and may be utilized by participating municipalities to effectuate the purposes of s. 66.0125, Stats., relating to community relations–social development commissions.
16. Section 66.0304, Stats., permits certain political subdivisions to create a commission for the issuance of conduit revenue bonds by agreement under s. 66.0301, Stats., except that upon its creation all of the initial members of this commission must be political subdivisions that are located in this state. Only one commission may be formed under this section.
17. Section 66.0309 (12) (b), Stats., authorizes a regional planning commission to enter into a contract with any local unit of government within the region under s. 66.0301, Stats., to make studies and offer advice on land use, thoroughfares, community facilities, public improvements, and encouragement of economic and other development.
18. When two or more municipalities levy a room tax in the same tourism “zone,” s. 66.0615 (1m) (b) 2., Stats., requires the municipalities to create a commission under s. 66.0301, Stats., to administer the room tax and provide or contract for tourism promotion in the zone.
19. Section 66.0825, Stats., provides that powers granted under s. 66.0825, Stats., relating to municipal electric utilities, do not limit powers of cities, villages, and towns to “enter into intergovernmental cooperation or contracts or to establish separate legal entities under ss. 66.0301 to 66.0311.”
20. Section 66.1021 (10) (a), Stats., authorizes a city, village, or Indian tribe or band to contract under s. 66.0301, Stats., to establish a joint municipal transit commission with the powers and duties of a city transit commission under s. 66.1021, Stats.
21. Section 66.1113 (2) (c), Stats., permits two or more contiguous political subdivisions that are premier resort areas to enter into a contract under s. 66.0301, Stats., to pay for premier resort area infrastructure expenses, in addition to any other authority they have to act under s. 66.0301, Stats.
22. Section 66.1201 (9) (w), Stats., authorizes a housing authority to exercise any powers of a s. 66.1333, Stats., redevelopment authority if done in concert with a redevelopment authority under a s. 66.0301, Stats., contract.
23. Section 66.1333 (5) (a) 9., Stats., authorizes a redevelopment authority to exercise any powers of a s. 66.1201, Stats., housing authority if done in concert with a housing authority under a s. 66.0301, Stats., contract.

24. Section 74.10, Stats., authorizes a county and a taxation district within the county to contract under s. 66.0301, Stats., for the county to receive all payments of property taxes for which the taxation district has sent property tax bills.
25. Sections 101.65 (1) (b), 101.76 (1) (b), and 101.86 (1) (b), Stats., authorize cities, villages, towns, and counties to jointly exercise jurisdiction related to the one- and two-family dwelling code, the modular home dwelling code, and the electrical code, respectively, under s. 66.0301, Stats.
26. Section 118.40, Stats., authorizes two or more school boards to enter agreements under s. 66.0301, Stats., to establish charter schools and virtual charter schools.
27. Section 121.54 (5), Stats., permits two or more school boards to provide transportation for residents of the district participating in vocational education programs organized cooperatively between school districts under s. 66.0301, Stats.
28. Under s. 174.10 (2), Stats., the municipalities in a county with a population of 500,000 or more may form an intergovernmental commission by contract under s. 66.0301, Stats., for the purpose of providing animal control services. If an intergovernmental commission is formed, the county and the commission may enter into an agreement under which the intergovernmental commission assumes the county's responsibility for activities related to dog licensing.
29. Section 200.11 (9), Stats., authorizes a metropolitan sewerage district to provide services to a territory outside the district, including territory in a county not in that district, under s. 66.0301, Stats., subject to other specified statutory provisions.
30. Sections 229.44 (5) and (6), 229.68 (5) and (6), 229.824 (5) and (6), and 229.844 (5) and (6), Stats., permit local exposition districts, baseball park districts, football stadium districts, and cultural arts districts to provide employee benefits, including an employee pension plan, and to participate in governmental plans of insurance or self-insurance under s. 66.0301, Stats.
31. Section 236.10 (4), Stats., provides for the cooperative exercise of the authority to approve or review plats by cities, villages, towns, and counties under s. 66.0301, Stats. Additionally, s. 236.10 (4), Stats., permits a city, village, town, or county to agree, under s. 66.0301, Stats., to have a regional planning commission review plats and submit an advisory recommendation with respect to their approval.
32. Section 251.09, Stats., specifies that local health departments jointly may provide health services as agreed upon under s. 66.0301, Stats., unless, notwithstanding s. 66.0301, Stats., the agreement conflicts with a provision of ch. 251, Stats.
33. Under s. 281.58 (8) (d), Stats., an unsewered municipality that is not constructing a treatment work and will be disposing of wastewater in the treatment work of another municipality is not eligible for financial assistance under the clean water fund program until it executes an agreement under s. 66.0301, Stats., with another municipality to receive, treat, and dispose of the wastewater of the unsewered municipality.
34. Section 287.09 (1) (d), Stats., specifies that a “responsible unit” of government for purposes of recycling programs under ch. 287, Stats., may by contract under s. 66.0301, Stats., designate another unit of government, including an Indian tribe or band in this state, or a solid waste management system created under s. 59.70 (2), Stats., to be the responsible unit in lieu of the previously designated responsible unit.
35. Section 323.14 (2), Stats., specifies that local units of government may cooperate under s. 66.0301, Stats., to furnish services, combine offices, and finance emergency management programs.

36. Under s. 755.01 (4), Stats., two or more cities, villages, or towns of this state may enter into an agreement under s. 66.0301, Stats., for the joint establishment of a municipal court, except that for purposes of this subsection, any agreement under s. 66.0301, Stats., shall be effected by the enactment of identical ordinances by each affected city, village, or town.

OTHER STATUTES AUTHORIZING INTERGOVERNMENTAL COOPERATION

Examples of statutes granting authority for intergovernmental cooperation that do not cross-reference the authority under s. 66.0301, Stats., are identified below.

1. Section 43.53, Stats., authorizes joint libraries to be created by any two or more municipalities or by a county and one or more municipalities located in whole or in part in the county.
2. Section 46.20, Stats., authorizes two or more counties to jointly provide for a county home, hospital, infirmary, or similar institution, or juvenile detention home.
3. Section 46.22, Stats., authorizes county boards of counties with populations of less than 500,000 to establish county departments of social services on a multicounty basis.
4. Section 46.23 (3), Stats., authorizes county boards of counties with a population of less than 500,000 to establish county departments of human services on a multicounty basis.
5. Section 46.82, Stats., authorizes county boards of two or more contiguous counties to administer certain programs for older individuals.
6. Section 49.72, Stats., authorizes two or more counties to jointly establish a county infirmary for the treatment, maintenance, and care of the aged infirm.
7. Section 51.42 (3), Stats., authorizes counties to join with other counties to establish a county department to administer a community mental health, developmental disabilities, alcoholism, and drug abuse program.
8. Section 51.437 (4g), Stats., authorizes county boards to establish multicounty departments of developmental disabilities services.
9. Section 59.42, Stats., authorizes two or more counties to jointly designate a corporation counsel.
10. Section 59.52 (15), Stats., authorizes counties to provide for the printing on assessment rolls and tax rolls and on data cards for local municipal officials descriptions of properties and the names of the owners of the properties.
11. Section 59.54 (4) and (4m), Stats., authorizes counties to establish a rural naming or numbering system in towns for the purpose of aiding in fire protection, emergency services, and civil defense. Establishment of the rural naming or numbering system may be carried out in cooperation with any town or towns in the county.
12. Section 59.70 (2), Stats., authorizes county boards to establish and operate a solid waste management system or participate in such a system jointly with other counties, cities, villages, or towns.
13. Section 59.70 (12), Stats., authorizes any county or two or more contiguous counties to establish a district to control mosquitoes.

14. Section 60.23 (5), Stats., authorizes town boards to cooperate with counties in rural planning activities under ss. 27.019, 59.54 (4) and (4m), and 59.69, Stats.
15. Section 60.55, Stats., authorizes a town to join with a city, a village, or another town to establish a joint fire department.
16. Section 60.56, Stats., authorizes a town to join with a city, a village, or another town to create a joint police department.
17. Section 60.82, Stats., authorizes town boards to act jointly with other municipalities to establish and maintain regional planning programs to protect the health, safety, and general welfare of the town as part of the region. The town board may make payments out of the general fund for the town's share of the cost of the program.
18. Section 61.34 (2), Stats., authorizes a village board to join with other villages or cities in a cooperative arrangement for executing any power or duty in order to attain greater economy or efficiency, including joint employment of appointive officers and employees.
19. Section 61.65 (1), Stats., authorizes a village to contract with a county, a city, another village, or a town to provide police protective services; to create a joint police department with a city, another village, or a town; or to abolish its police department and enter into a contract with a county for the county sheriff to provide law enforcement services in the village.
20. Section 61.65 (2), Stats., authorizes a village to contract with a city, another village, or a town for fire protection services or to create a joint fire department with a city, another village, or a town.
21. Section 62.13 (2g), Stats., authorizes a city to enter into a contract with a county, another city, a village, or a town for police protective services.
22. Section 62.13 (2m), Stats., authorizes a city to create a joint fire department or a joint police department, or both, with another city.
23. Section 62.13 (2s), Stats., authorizes a city to abolish its police department if it enters into a contract with a county for the county sheriff to provide law enforcement services in the city.
24. Section 66.0123, Stats., authorizes two or more town boards or school boards to jointly establish a department of public recreation.
25. Section 66.0131 (2), Stats., authorizes any political subdivision of the state, special purpose district in the state, or an agency or corporation of such a political subdivision or special purpose district to make purchases from another unit of government, including the state or federal government, without requiring bids.
26. Section 66.0305, Stats., authorizes two or more counties, cities, villages, or towns to enter into an agreement to share all or part of revenues derived from taxes and special charges. One or more counties, cities, villages, or towns may enter into such agreements with Indian tribes or bands.
27. Section 66.0307, Stats., authorizes municipalities to enter into a cooperative plan determining the boundary lines between the municipalities, subject to Department of Administration approval. The plan must include specified planning and services requirements.
28. Section 66.0813, Stats., authorizes a municipality that operates a utility that provides water service to enter into an agreement with a city or village to provide water service to that city or village.

29. Section 83.14, Stats., authorizes towns or villages to raise money to improve portions of county highways.
30. Chapter 116, Stats., authorizes the creation of cooperative educational service agencies.
31. Section 252.10, Stats., authorizes two or more local health departments to jointly establish, operate, and maintain public health dispensaries.
32. Section 281.43, Stats., authorizes two or more governmental units, including cities, villages, town sanitary districts, and town utility districts, to jointly construct, operate, and maintain a joint sewerage system.
33. Section 287.13, Stats., authorizes two or more municipalities to enter into an agreement regarding the establishment of a facility for the recycling of solid waste or for the recovery of resources from solid waste and regarding the required use of that facility.
34. Section 303.09, Stats., authorizes county boards of two or more counties to jointly establish, maintain, and relocate an unlocked facility for use exclusively by persons granted leave privileges under the “Huber Law” and certain other confined persons.
35. Section 303.10, Stats., authorizes two or more counties to jointly provide one work camp for the reformation and employment of persons sentenced to the county jail.
36. Section 303.16, Stats., authorizes two or more counties with populations of less than 500,000 to jointly provide for one county house of correction.
37. Section 767.405, Stats., authorizes two or more contiguous counties to enter into a cooperative agreement to establish one family court services office to provide mediation in those counties.
38. Section 938.22, Stats., authorizes county boards of two or more counties to jointly establish a juvenile detention facility. Section 938.22, Stats., also authorizes county boards of two or more counties to jointly establish a shelter care facility.