

FILE

Subject

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*Cities-Interlocal
Coop. Agreements*



STATE OF KANSAS

Office of the Attorney General

State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

VERN MILLER
Attorney General

March 8, 1974

Opinion No. 74- 80

Bernis G. Terry
Attorney at Law
P.O. Box 745
Olathe, Kansas 66061

Dear Mr. Terry:

You submit the proposed draft of an ordinance providing for the cooperative establishment of an animal control commission by cities in Johnson County, Kansas. The proposed commission would be empowered to "organize and supervise animal control operations in said cities necessary to effect the animal control requirements of the member cities."

The term "animal control" is defined to mean

"the enforcement of the ordinances of the member cities regarding pick-up, the housing of unwanted or running-at-large domestic animals, and the removal from said cities of dead animals."

"Enforcement" is defined to mean

"enforcement of the requirements of the member cities regarding pick-up and care of domestic or running-at-large animals, but shall not include enforcement of the ordinance of the member cities regarding any penalty provisions, such being the duty of the member cities through their respective municipal courts, or the kennel costs for housing or kenneling such animals, such cost being the separate expense of the member city."

Interlocal cooperation agreements are authorized by K.S.A. 12-2901 et seq., which was initially enacted in 1957. That act authorizes any "public agency," which is defined therein to include municipal corporations, to enter into agreements. K.S.A. 1973 Supp. 12-2904(a) states thus in pertinent part:

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"Any power or powers, privileges or authority exercised or capable of exercise by a public agency of this state relating to public improvements, public utilities, police protection, libraries, data processing services, building and related inspection services, flood control and storm water drainage, sewage disposal, refuse disposal, park and recreational programs and facilities, ambulance service, or fire protection, may be exercised and enjoyed jointly with any other public agency of this state"

"Animal control" and "enforcement" does not easily fall into any of the enumerated categories. The question remains, then, whether a city is prohibited from entering into an agreement with another city providing for joint or cooperative action regarding a subject matter which is not enumerated in K.S.A. 12-2904.

Prior to 1961 and the adoption of the home rule amendment, the answer to this question would very likely have been that the power of cities to enter into interlocal agreements concerning subjects other than those enumerated in the authorizing statute. Cities now, of course, enjoy constitutional home rule powers, and need not look for specific statutory authorization for each municipal undertaking.

We have no hesitation in concluding that an agreement between two or more Kansas cities providing for joint animal control operations falls within the scope of authority conferred upon Kansas cities by Article 12, § 5 of the state constitution. K.S.A. 12-2901 et seq., is on its face an act granting authority to public agencies within its scope. The legislature may not, by a general grant of authority to political subdivisions in this state, such as to all public agencies defined in K.S.A. 12-2903(a), be deemed to limit municipal authority to only that expressly granted to other political subdivisions or "public agencies." Stated otherwise, it is our view that under its home rule powers, a Kansas city is empowered to enter into interlocal agreements with other Kansas cities concerning joint undertakings other than those enumerated in K.S.A. 12-2904 unless and until the authority to enter into agreements with other cities as to such undertakings other than those enumerated is expressly withdrawn by an act applicable uniformly to all cities.

Accordingly, it is our opinion that the proposed agreement is in proper form and compatible with the laws of the State of Kansas.

Yours very truly,



VERN MILLER

Attorney General