

Subject

Copy to

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

November 13, 1974

Opinion No. 74-361

Mr. James R. Cobler, Director
Division of Accounts & Reports
Department of Administration
Second Floor, Statehouse
Topeka, Kansas 66612

Dear Mr. Cobler:

You request our opinion upon a question arising pursuant to our Opinion no. 74-80, dated March 8, 1974, addressed to Mr. Bernis G. Terry, Attorney at Law, Olathe, Kansas. In that opinion, we concluded that an agreement between two or more cities providing jointly for an animal control commission serving all cities who joined in the agreement was authorized by the cities' home rule powers under Article 12, § 5 of the Kansas Constitution.

You enclose a copy of Ordinance No. 589 of the City of Merriam, whereby that city, jointly with several other cities, established a Johnson County Animal Control Commission. You inquire, specifically, whether the entity created by this joint agreement constitutes a "political subdivision" for purposes of social security withholding, as that term is defined at K.S.A. 40-2302(f), which states thus:

"[T]he term 'political subdivision' includes every taxing district in this state and also includes an instrumentality of the state, of one or more of its political subdivisions, or of the state and one or more of its political subdivisions, but only if such instrumentality is a juristic entity which is legally separate and distinct from the state of subdivision and only if its employees are not by virtue of their relation to such juristic entity employees of the state or subdivision...."

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Under K.S.A. 12-2904, an interlocal agreement based thereon must specify

"[t]he precise organization, composition and nature of any separate legal or administrative entity created thereby together with the powers delegated thereto, provided such agreement may be legally created."

The agreement in question was based not upon the express statutory authority of K.S.A. 12-2904, but upon an exercise of constitutional home rule authority. Nonetheless, the agreement contains all those provisions required by the statute. Thereunder, there is created an Animal Control Commission, comprising members appointed by the mayor of each participating city, with the consent of the governing body.

The purposes and objectives are declared in Article III in part, thus:

"It is hereby declared that the cost and operation of animal control can best be effected in the several member cities by cooperative management and financing of personnel and equipment needed to enforce and provide services necessary to pick-up, care for and dispose of, where necessary, domestic, unwanted or at-large animals or dead or dangerous animals within the member cities."

To this end, the commission is given rather broad powers in Article IV. It must prepare "an annual budget for the operation of the animal control facilities and for the expansion and improvement thereof." It is empowered

"[t]o receive gifts and donations, lease or purchase real and personal property and equipment, hire such employees as are needed and retain professional services necessary to the operation of the animal control program, and effect such contracts or agreements necessary with other persons to carry out the animal control program."

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The Commission is constituted and established when ordinances are adopted by the required number of participating cities, and it exists for a period of four years, unless extended for additional periods of four years by further ordinances of the adopting cities, or unless terminated as provided in the organic ordinance. Upon termination, Article VIII provides in pertinent part thus:


"The Commission shall advertise for and receive bids for the sale of all personal or real property in its control or ownership. The proceeds from said sale and all funds remaining in the Commission's possession shall be returned to the member cities of the Commission during the last year immediately preceding termination in the same ratio that contributions were made to said Commission during the last year preceding termination."

As we view the Commission thus created and empowered, it is a legal entity separate and apart from each of the participating cities. It prepares and adopts its own budget, which is presented to and approved or adjusted and approved by each of the participating cities, to which they must then contribute proportionately, as provided in the ordinance. Once the budget is thus approved, control of the funds thus contributed to the Commission is vested solely and exclusively in that body. The Commission itself is empowered to lease and purchase real and personal property, and to hire such employees as it deems necessary, in its own behalf. Employees of the Commission are not by virtue of that relation employees of any or all of the participating cities, for the Commission itself is the employing entities, paying its employees from its own funds, and not from the funds of any of the participating cities. In hiring its own employees, it is not subject to the control, approval or disapproval of any of the participating cities. No city, for example, acting independently, could terminate the employment of any person employed by the Commission, for the Commission's employees are its own, and not those of any participating municipality. Employees of the Commission are not by virtue of that relation, employees of any or all of the participating cities.

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It is our opinion that the Commission, as described above, constitutes a "political subdivision" as defined at K.S.A. 40-2302(f).

Yours very truly,


VERN MILLER
Attorney General

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