

Expand Service Sharing Powers

Local governments in New York enjoy broad authority to enter into cooperative, inter-governmental agreements. Basically stated, governments may perform any function or service jointly which they both may perform individually. This gives government officials wide latitude to develop joint activities and to enter into contractual agreements. However, while the authority to enter into intermunicipal agreements is broad, it is not boundless. Past commissions studying local government reform have recommended constitutional or statutory changes that would expand the authority of local governments to enter intermunicipal service sharing agreements so long as at least one of the participants in such an agreement has the power to perform the activity individually.¹

The source of this authority is the NYS Constitution and Article 5-G of the General Municipal Law, which provides that “municipal corporations and districts shall have power to enter into, amend, cancel and terminate agreements for the performance among themselves or one for the other of their respective functions, powers, and duties on a cooperative or contract basis or for the provision of a joint service or a joint water, sewage or drainage project.”

In 1959, the voters approved an amendment to Article VIII, § 1 of the NYS Constitution which provided that projects or activities jointly undertaken by multiple local governments are a proper use of public funds. A few years later, this authority to jointly contract for services among local governments was added to Article IX of the Constitution in the “bill of rights for local governments.” Article 5-G was enacted by the Legislature during this time as well. Other legislation has been adopted over the years permitting cooperation in specific areas. Many of these specific area laws may still be useful in certain circumstances, but they have been supplanted to a great extent by the much broader grant of authority contained in Article 5-G.

Since local governments (defined as counties outside of NYC, cities, towns, villages, school districts, fire districts, and BOCES, as well as, any improvement district for which the county or town pledges its full faith and credit) are empowered to undertake together any activity that each may undertake alone, the opportunity to use an intermunicipal or inter-governmental agreement to provide services or undertake projects is only limited by the powers of each participant. This has resulted in local government shared services and projects in many areas including enforcement of building codes, local records management, local waterfront revitalization, water supply and sewage disposal projects, regional planning boards, and solid waste management.

¹ The Governor’s Blue Ribbon Commission on Consolidation of Local Governments, appointed by Governor Cuomo, in its 1993 report recommended expanding the power of local governments in this way. The Pataki administration had a similar recommendation, but it was to do so only statutorily. The staff believes that the expansion of local government power would require a constitutional amendment as well as statutory change.



As noted above, the authority for inter-governmental service sharing is limited to services, powers, or functions that each participating local government may perform individually. The authority to use intermunicipal agreements could be expanded by amending the Constitution and statute so as to accord local governments that participate in an intermunicipal agreement the power to undertake the service, function, activity, or project addressed in the agreement so long as at least one local government had such power.

This expansion of local government authority would increase opportunities for regionalization of functions and services. It would enable local governments in New York to enter into intermunicipal agreements with counties for service in a manner similar to California's "Lakewood Plan." Under that plan, municipalities can contract with the county to provide certain services within the municipality and the county and municipality can consolidate departments that provide such services.

Some other smaller scale examples of service sharing that would be enabled are crossing guards and tax collection at the county level. Providing crossing guards is a function of municipal government – not school districts – since they deal with traffic regulation. School districts have no authority to employ crossing guards, nor do they have authority even to reimburse the municipality for the costs of employing crossing guards.

An alternative option would be to grant additional powers necessary to share services to particular classes of local governments by legislative action. By addressing desired powers and functions piecemeal and by statute, and leaving in place the language in the Constitution and Article 5-G requiring both local governments to have the power to do individually what they agree to do jointly, the problems and limitations can be addressed without the risk of unforeseen situations. However, the chances of bizarre service sharing agreements occurring should the Constitutional limitations be lifted are extremely remote. It is highly unlikely that a school district is going to enter into an agreement with a county to get into the Medicare field, or a municipality wanting to start educating children. The potential for helpful agreements and beneficial sharing of services and costs would seem to outweigh these unfounded fears of expansion of powers.