

***Using Intergovernmental Agreements
to Effectuate Border Stability
and Regional Cooperation***

***Rock County Planning, Economic and
Community Development***

March 24, 2011

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INTRODUCTION

Annexation often brings out hard feelings between towns and neighboring villages and cities. The lengthy litigations that we have seen in the past will be reduced by the recent prohibition on towns contesting annexation by unanimous approval (Wis. Stat. § 66.0217(11)(c)), (except where the annexation is separate from the village/city). However, the historic tensions over boundary-setting are not likely to subside. To reduce these tensions, neighboring municipalities can work together to address boundary issues *before* a specific annexation proposal is on the table and the battle lines drawn.

The Wisconsin Legislature has provided municipalities with tools that can be effectively used to make boundary peace. Municipalities have used their statutory authority to reach intergovernmental agreements to come together to cooperatively provide services in the areas of, for example, fire protection, police services, libraries, and wastewater. This same authority can be used by municipalities to reach intergovernmental agreements by which they define municipal boundaries. History shows us that these agreements usually arise out of:

1. A precipitating event – such as a major employer relocating to an area, a compliance order, a large annexation battle; or
2. Visionary local leaders.

The following statutory tools are available to municipalities to adjust and/or fix municipal boundaries: Intergovernmental Agreements; Revenue sharing agreements; and boundary changes pursuant to an approved Cooperative Plan. In these times of

decreasing revenues, these legislative tools can be used not only to resolve or avoid intergovernmental conflicts over boundaries, but also to provide cost-effective and efficient municipal services.

A. INTERGOVERNMENTAL AGREEMENTS

Intergovernmental Agreements under § 66.0301 are “garden variety” municipal agreements. While the tool has been around for many years, its usefulness for setting municipal boundaries should not be overlooked. Under the specific authority of § 66.0301(6), two municipal entities can enter into “a written agreement determining all or a portion of the common boundary line” between them. The contract can either establish that the current boundary will be maintained, or it can include provisions for a different, future boundary and allow the city or village to grow out to the ultimate boundary established by contract. The contract can also include provisions related to shared municipal services and/or revenue sharing (addressed more fully below).

The usefulness of an intergovernmental cooperative agreement to set boundaries is strengthened by the fact that the terms of the agreement can be tailor-made to meet the needs of the contracting municipalities and to address their unique issues. From a procedural standpoint, the agreement is effective once adopted by the governing body of each municipality, following a public hearing, provided that the agreement is subject to a referendum if a petition signed by 20% of the electors is timely filed.

One disadvantage of the intergovernmental agreement as boundary-setting tool is that the maximum term of such an agreement is ten years. Thus, the tool can be very effective for short- and medium-term planning, but is not necessarily reliable as a long-term solution. Municipalities should consider a cooperative plan, discussed in Section

C, below, for a longer-term solution.

B. REVENUE SHARING AGREEMENTS

The ability of adjacent municipalities to effectuate inter-municipal cooperation was greatly enhanced in 1995 by the enactment of Wis. Stat. § 66.0305 (formerly Wis. Stat. § 66.028). This statute describes a simple scheme where two or more adjacent political subdivisions (now including counties) can share revenues or fees after conducting a public hearing held upon publication of a Class 3 notice. Entering into such revenue-sharing agreements can mitigate the ill will that has historically been part of annexation disputes.

The background of the legislation was a joint proposal from the Wisconsin Alliance of Cities and the Wisconsin Towns Association. In legislative hearings on the mark-up of SB 491 by the Special Committee on Shared Governmental Services, it was stated that revenue sharing agreements would:

1. bring rationality to boundary disputes between municipalities and towns;
2. provide a sanctioned statutory scheme for charging municipalities for the provision of some services and for the development of infrastructure;
3. eliminate animosity between municipalities and encourage development; and
4. leave as much discretion to local governments as possible.

To that end, revenue sharing agreements may be adopted bilaterally between adjoining political subdivisions and are not subject to approval by the State Department of Administration, nor are they subject to a binding referendum election by citizens affected by the provisions of the agreement.

Of significance is subsection 66.0305(4)(b), which states:

An agreement entered into under sub. (2) may address any other appropriate matters, including any agreements with respect to services **or agreements with respect to municipal boundaries under s. 66.0225, 66.0301 or 66.0307.** (Emphasis added)

Section 66.0301 addresses intergovernmental agreements, discussed above. Section 66.0225 contains the authority of adjoining municipalities to alter their boundaries by judicial stipulation embodied in a judgment in settlement of litigation over annexation, incorporation, consolidation, or detachment of properties between a town and an incorporated municipality. Section 66.0307 refers to boundary changes pursuant to cooperative plans approved by the State Department of Administration. A tension arises by this cross-reference to these other statutory schemes. It was the intent of the Legislature, through revenue sharing agreements, to provide broad local autonomy to accomplish the four purposes outlined above. Yet the cross-references to these other statutory provisions could mean avoiding both a circuit court, which must otherwise accept a stipulation resolving boundary disputes, as well as the State Department of Administration which must approve cooperative plans.

There are no reported decisions on revenue sharing agreements and there is precious little guidance as to how this tension between statutory schemes can be resolved. There is no central place for collecting revenue sharing agreements to see how municipalities have interpreted these provisions. Consequently, one can embrace the broadest possible interpretation concerning the ability of adjoining municipalities who otherwise engage in revenue sharing to also determine their common boundaries.

One of the most comprehensive and far-reaching uses of the revenue sharing statutes was the creation of the "Racine Area Intergovernmental Sanitary Sewer Service, Revenue-sharing, Cooperation and Settlement Agreement" entered into in April, 2002 ("Racine Agreement"). The Racine Agreement utilized a host of municipal powers granted to municipalities to accomplish many of the same goals proposed by the Legislature to use revenue-sharing to promote regional cooperation. The statutory authority included revenue sharing under Wis. Stat. § 66.0305 and inter-municipal agreements, under Wis. Stat. § 66.0301.

By way of background, the Racine Wastewater Utility (the City of Racine's provider of municipal sewer and water utility services) determined in the early 1970's to provide utility services to towns and villages outside the borders of the City of Racine without requiring annexation. The result of that decision was to allow the development of the two most populous and wealthy townships in the State of Wisconsin, i.e., the Town of Mt. Pleasant and the Town of Caledonia. What those two townships gained, the City of Racine lost in terms of economic development, new construction and population base. In order to correct this imbalance, the City of Racine and its Wastewater Utility initiated a moratorium on future sewer service expansions and began negotiations with the surrounding municipalities which lead to the Racine Agreement.

The Racine Agreement provides the following:

1. Sewer service would only be provided if the participating municipalities purchased sewer service capacity using state sponsored, low-interest Clean Water Fund loans. The effect was to back out the capital costs of all future plant improvements from the sewer rate base and to have those capital costs shouldered by the participating municipalities.
2. In consideration for new development, the outlying municipalities contributed revenue sharing back to the City of Racine so that the City benefited from the new growth. The estimated revenue sharing benefits to the City of Racine over a

30-year period of time was approximately \$80 million. Expenditures were to be in Joint Impact Zone.

3. Because incorporated municipalities have greater ability to utilize economic development tools, the Racine Agreement provided that the City of Racine would give proactive support for the incorporation of the Town of Mt. Pleasant and the Town of Caledonia. The Town of Mt. Pleasant became the Village of Mount Pleasant in 2003. The Town of Caledonia received a Determination from the State Department of Administration in April, 2005 allowing only a part-township incorporation. The Town of Caledonia has since received approval for incorporation.
4. The Racine Agreement specifically capped revenue-sharing payments for certain services which benefit the outlying municipalities on an on-going basis, i.e., library services sponsored by the Racine Municipal Library, payments for the Racine Zoological Gardens, and payments for the Racine Charles A. Wustum Museum of Fine Arts. The Racine Agreement also limited cash payments to the City of Racine from its Wastewater Facility.
5. In order to facilitate regional cooperation, the outlying municipalities agreed to adopt a host of ordinances promulgated by the City of Racine to facilitate the provision of sewer services.
6. Racine not only promoted the incorporation of surrounding townships, but also waived its rights to extraterritorial zoning and plat review jurisdiction.
7. An elaborate mediation/arbitration provision was created to amend the Agreement for changes in circumstances, invalid provisions, and new items not contemplated by the parties in the Racine Agreement. The Agreement will last for 50 years.
8. The statutes were amended to exclude revenue sharing payments from the computation under the Expenditure Restraint Program which promotes budgetary restraints by municipal governments, see Wis. Stat. § 79.05(2)(c).

Given the simplicity of the revenue sharing statute, it should be anticipated that it can be utilized well into the future as a comprehensive approach not only to sharing of revenues and utility services, but also for setting boundaries which are part and parcel of such regional cooperation. It is currently being revised to reflect the circumstances of the first ten years of operation.

C. COOPERATIVE PLANS

Section 66.0307 authorizes municipalities to determine the boundary line between them under a Cooperative Plan that is negotiated between the municipalities and approved by the Wisconsin Department of Administration. The statute identifies the purpose of the cooperative plan as guiding and accomplishing a coordinated, adjusted and harmonious development of the territory covered by the cooperative plan during a planning period of 10 years (or longer, if a longer period is approved by the Department of Administration). A benefit of such a plan is that it can provide a sense of certainty to local residents, business leaders and local officials by setting the boundaries of the communities and establishing provisions for services.

A relatively new feature of the cooperative plan statute is that it allows a single municipality to petition for mediation of a cooperative plan with an adjacent municipality. If the other municipality refuses to then participate in the mediation process, that municipality will face the following during the subsequent 270 days:

- A town may not contest any annexation of its territory to the petitioning municipality;

- A city or village will have an annexation of territory from the petitioning town reviewed by the Department of Administration under the heightened review standards applicable to populous counties. Furthermore, the petitioning town will be permitted to contest the annexation on procedural grounds (notwithstanding the general prohibition against such contests).

According to the State of Wisconsin Department of Administration, at least 24 different Cooperative Plans have been approved since first authorized in 1991. The Department of Administration approved the first such Cooperative Boundary Agreement

in 1996 between the Town of Plover and the City of Stevens Point. In October, 2000, the Department of Administration approved the Cooperative Plan between the City of Kenosha and Town of Bristol. That Plan, according to the Department of Administration, “consolidates a variety of prior sanitary sewer and water agreements, and enables sewer and water service to the Town. It also involves revenue sharing, limits on the city’s exercise of land use controls within town territory, and required the city to support a possible future town incorporation attempt.”

The Cooperative Plan between the City of Kenosha and the Town of Bristol came out of an earlier Intergovernmental Agreement which: (1) fixed a City growth area over a 30-year period; (2) defined a no annexation area and provided for the orderly transition of territory from the Town of Bristol to the City of Kenosha North of Highway 50 and East of County Truck Highway MB; and (3) provided for sewer service to parts of the Town. The Intergovernmental Agreement required the parties to negotiate the Cooperative Plan which was finished in October, 2000.

Detailed Procedures Must Be Followed to Adopt a Plan.

Wis. Stat. §66.0307 sets forth detailed procedural steps to be undertaken by each participating municipality to a cooperative plan. In order to begin the process, each municipality is required to adopt a resolution authorizing participation in the preparation of the plan. (§66.0307(4)(a)). The statutory scheme requires that the authorizing resolution must be sent to a list of interested receiving agencies including, for example, the “clerks of any municipality, school district, technical college district, sewerage district or sanitary district which has any part of its territory within 5 miles of a participating municipality.” (§66.0307(4)(a)(2)).

After the plan is hammered out and prepared by the municipalities, and at least 60 days after the adoption of the authorizing resolution, and at least 60 days before submitting the plan to the department of administration – a joint hearing must be held on the proposed plan. (§66.0307(4)(b)).

The statutory provisions also allow for public comments and review and comment by such agencies as the county planning agency or regional planning commission (§66.0307(c)).

The statutory scheme specifically provides for an *advisory* referendum if the required number of signatures are obtained. (§66.0307(4)(e)).

Cooperative Plans Examples

Agreements have been successfully used to:

- resolve irregular boundaries
- transfer peninsulas and town islands
- settle long-standing litigation
- resolve incorporation disputes
- facilitate highway improvements
- address sewer service area issues
- protect a planned industrial park
- provide municipal sewer and water
- coordinate municipal services
- enable the construction of affordable housing