WEST VIRGINIA CODE CHAPTER 8 ARTICLE 23

WV Legislature

PART I. PURPOSE; DEFINITIONS.

§8-23-1. Statement of purpose.

It is the purpose of this article to permit local governmental units to make the most efficient use of their power and authority by enabling them to cooperate with each other on a basis of mutual advantage and to consolidate functions and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization which will result in economies in the operation of local government and which will accord best with the geographic, economic, population and other factors influencing the needs and development of local governmental services and facilities, and thus promote the public health, safety and welfare.

WV Legislature

§8-23-2. Definitions.

For the purposes of this article:

(1) The term "public agency" shall mean any municipality, county or other political subdivision of this state, or any county board of education of this state; and

(2) The term "public works" shall mean any improvement or project involving an outlay of a capital nature which may be required by or convenient for the purposes of any public agency, including, without limiting the generality of the foregoing, the construction, reconstruction, establishment, acquisition, improvement, renovation, extension, enlargement, increase, equipment, maintenance, repair (including replacements) and operation of jails, jail facilities, municipal buildings, police stations, fire stations, libraries, museums, other public buildings, incinerator plants, land fill or other garbage disposal systems, hospitals, piers, docks, terminals, airports, drainage systems, flood control systems, floodwalls, sewers, culverts, bridges (including approaches, causeways, viaducts, underpasses and connecting roadways), public markets, cemeteries, motor vehicle parking facilities (including parking lots, buildings, ramps, curb-line parking, meters and other facilities deemed necessary, appropriate, useful, convenient or incidental to the regulation, control and parking of motor vehicles), stadiums, gymnasiums, sports arenas, Auditoriums, public recreation centers, public recreation parks, swimming pools, roller skating rinks, ice skating rinks, tennis courts, golf courses, polo grounds, or other public improvements, or the grading, regrading, paving, repaving, surfacing, resurfacing, curbing, recurbing, widening or otherwise improving of any street, avenue, road, alley or way.

WV Legislature

PART II. INTERGOVERNMENTAL AGREEMENTS AND CONTRACTS.

§8-23-3. Intergovernmental agreements generally.

Any power or powers, privilege or privileges, authority or undertaking, exercised or capable of exercise, or which may be engaged in, and any public works which may be undertaken, by a public agency acting alone may be exercised, enjoyed, engaged in or undertaken jointly with any other public agency which could likewise act alone.

Any two or more public agencies may enter into a written agreement with one another for joint or cooperative action pursuant to the provisions of this section. Appropriate action by ordinance, resolution or otherwise pursuant to law of the governing bodies of the participating public agencies shall be necessary before any such agreement shall become effective. Any separate legal or administrative entity established hereunder is a public corporation and may exist for the length of time set forth in the intergovernmental agreement.

Any such agreement shall specify the following:

(1) Its duration;

(2) The precise organization, composition and nature of any separate legal or administrative entity created thereby, together with the powers delegated thereto, provided such entity may be legally created;

(3) Its purpose or purposes;

(4) The manner of financing the joint or cooperative undertaking and of establishing and maintaining a budget therefor;

(5) The permissible method or methods to be employed in accomplishing the partial or complete termination of the agreement and for disposing of property upon such partial or complete termination; and

(6) Any other necessary and proper matters.

In the event that the agreement does not establish a separate legal or administrative entity to conduct the joint or cooperative undertaking, the agreement shall, in addition to the items enumerated above, contain the following:

(1) Provision for an administrator or a joint board responsible for administering the joint or cooperative undertaking and in the event a joint board is provided for, there shall be a representative on the board from each of the public agencies which are party to the agreement; and

(2) The manner of acquiring, holding and disposing of real and personal property used in the

WV Legislature

joint or cooperative undertaking.

No agreement made pursuant to the provisions of this section shall relieve any public agency of any obligation or responsibility imposed upon it by law, except that to the extent of actual and timely performance thereof by a joint board or other legal or administrative entity created by an agreement made hereunder, said performance may be offered in satisfaction of the obligation or responsibility.

Every agreement made pursuant to the provisions of this section shall, prior to and as a condition precedent to its becoming effective, be submitted to the Attorney General who shall determine whether the agreement is in proper form and is compatible with the laws of this state. The Attorney General shall approve any such agreement submitted to the Attorney General unless the Attorney General shall find that it does not meet the conditions set forth herein, in which event shall detail in writing to the governing bodies of the public agencies concerned the specific respects in which the proposed agreement fails to meet the requirements of law. Failure to disapprove any such agreement so submitted within thirty days of its submission shall constitute approval thereof.

The financing of joint projects by agreement shall be as provided by law.

WV Legislature

§8-23-3a. Joint and cooperative undertakings by certain hospitals.

Any county or municipal hospital or hospital created by special act of the Legislature may enter into a joint or cooperative undertaking pursuant to this article and may further enter into joint or cooperative undertakings with private agencies or corporations in accordance with this section. The expenditure of public funds, allocation of personnel and provision of services for joint and cooperative undertakings are authorized. The undertaking may include the creation of a separate entity to carry out the purpose of the undertaking and, if appropriate in connection with the undertaking, may include provision for the ownership or control of all or a portion of the separate entity by the hospital. The contribution of funds derived from the operation of a hospital, and real or personal property acquired in connection with the operation of the hospital, may be contributed to the joint undertaking or separate entity, if the hospital owns or controls all or a portion of the separate entity or joint undertaking. All joint and cooperative undertakings are subject to the following limitations:

(1) All joint and cooperative undertakings entered into by a hospital are subject to the provisions of article two-d, chapter sixteen of this code;

(2) For any joint and cooperative undertaking entered into by a hospital, which undertaking involves the expenditure of public funds and includes the creation of a separate entity to carry out the purpose of the undertaking, the separate entity created is subject to the provisions of article nine-a, chapter six and articles five-b and five-g, chapter sixteen of this code;

(3) For any joint and cooperative undertaking entered into by a hospital, which undertaking involves the expenditure of public funds and includes the creation of a separate entity to carry out the purpose of the undertaking, the separate entity created is subject to the same charity care obligation as the hospital;

(4) The board of the hospital must find by resolution that the purposes of the joint and cooperative undertaking further the same public purpose and are in keeping with the mission and vision for which the hospital was created;

(5) Appropriate action by resolution of the governing board of the hospital is necessary before any agreement for a joint or cooperative undertaking may take effect. For any joint and cooperative undertaking which involves the contribution of real property acquired in connection with the operation of the hospital, appropriate action by ordinance, resolution or otherwise pursuant to the law of the governing body of the municipality, in the case of a municipal hospital; by ordinance, resolution or otherwise pursuant to the law of the county commission in the case of a county hospital; or appropriate action by ordinance, resolution or otherwise pursuant to the law of both the municipality where the hospital is located and the county commission of the county where the hospital is located, in the case of a hospital created by special act of the Legislature and involving the contribution of public funds of both counties and municipalities, shall be necessary before any agreement for a joint or cooperative undertaking may take effect. An agreement entered into by a hospital pursuant

WV Legislature

to this section shall contain substantially the same provisions as set forth in section three of this article. No agreement made pursuant to the provisions of this section shall relieve any hospital of any obligation or responsibility imposed upon it by law, except to the extent that actual and timely performance thereof by a joint board or other legal or administrative entity created by an agreement made hereunder may be offered in satisfaction of the obligation or responsibility; and

(6) No agreement for a joint and cooperative undertaking entered into pursuant to this article may contain any provision intended to or having the effect of reducing reimbursements to local or community-based emergency services or ambulance providers, or reducing the extent to which services are provided by local or community-based emergency services or ambulance providers in the geographic area served by a provider.

WV Legislature

§8-23-4. Filing of intergovernmental agreements.

Before an agreement made pursuant to the provisions of section three of this article may become effective, a copy of the same must be filed with the recorder of any municipality party thereto and with the clerk of the county court of any county party thereto, and, as to any other public agency party thereto, with the officer in charge of the records thereof. When a municipality is a party, a copy of the agreement must also be filed with the State Tax Commissioner before such agreement becomes effective.

WV Legislature

§8-23-5. Additional approval of intergovernmental agreements required in certain cases.

In the event that an agreement entered into pursuant to the provisions of section three of this article shall deal in whole or in part with the providing of services or facilities with respect to which an officer or agency of this state has Constitutional or statutory powers of control, the agreement shall, as a condition precedent to its becoming effective, be submitted to the state officer or agency having such power of control and shall be approved or disapproved by him or it as to all matters within his or its jurisdiction in the same manner and subject to the same requirements and provisions governing the action of the Attorney General under said section three of this article. This requirement of the submission and approval shall be in addition to and not in substitution for the requirement of submission to and approval by the Attorney General.

WV Legislature

§8-23-6. Appropriations; furnishing of property, personnel and services.

Any public agency entering into an agreement pursuant to the provisions of section three of this article is hereby empowered and authorized to appropriate funds to, and to sell, lease, transfer or otherwise supply real or personal property to, and to furnish personnel and services to, the administrative joint board or other legal or administrative entity created to operate the joint or cooperative undertaking if the public agency provides the funds and property in compliance with the provisions of this code or other applicable law. The board or entity is hereby empowered and authorized to receive, expend and utilize the same.

WV Legislature

§8-23-7. Contract between public agencies for one public agency to perform a service, etc., for another public agency.

Any one or more public agencies are hereby empowered and authorized to contract with any one or more other public agencies for the performance of any governmental service, activity or undertaking which each public agency entering into the contract is authorized by law to perform, provided that such contract shall be authorized by the governing body of each party to the contract. Such contract shall set forth fully the purposes, power, authority, rights, objectives and responsibilities of the contracting parties. Any contracting party may make such payments for the performance of such service, activity or undertaking and as reimbursement for expenses incurred with respect thereto, as may be specified in the contract, and the public agency to which such payments are to be made is hereby empowered and authorized to receive the same.

WV Legislature

§8-23-8. Duration of intergovernmental agreements and contracts.

(a) If an intergovernmental agreement, entered into in accordance with the provisions of section three of this article, and if a contract for the performance of a service, activity or undertaking entered into in accordance with the provisions of section seven of this article does not create a financial obligation for a public agency except as provided by statute or other applicable law, the agreement or contract is of a duration as is specified in the agreement or contract.

(b) If an intergovernmental agreement entered into in accordance with the provisions of section three of this article, and if any contract for the performance of a service, activity or undertaking entered into in accordance with the provisions of section seven of this article, creates a financial obligation for a public agency, the agreement or contract is one fiscal year, but the same may be annually renewed each fiscal year: Provided, That any such agreement or contract may be for such period in excess of one fiscal year as is specified in the agreement or contract, if such agreement or contract is ratified by a majority of the legal votes cast by the qualified voters of the several jurisdictions represented by the contracting parties voting separately at a regular or special election.

WV Legislature

PART III. CONSTRUCTION.

§8-23-9. Construction.

The provisions of this article are in addition to and not in derogation of any power and authority vested in any public agency under any Constitutional, statutory or charter provisions which may now or hereafter be in effect, and under no circumstances whatever shall the provisions of this article be construed as in any way limiting the power and authority to take joint or cooperative action or enter into agreements or contracts granted in other articles of this chapter.

WV Legislature