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November 19, 2018

To: UCCI Membership

**Re: Emergency Services and Disaster Agencies**

**Issue:**

Is a municipality required to have a county's permission to establish an emergency services and disaster agency ("ESDA")?

**Analysis:**

The Emergency Management Agency Act<sup>1</sup> was enacted to ensure the state will be prepared to adequately deal with any disasters and to preserve the lives and property of the people of the State and for protecting the public peace, health, and safety in the event of a disaster.<sup>2</sup> The Act created Illinois Emergency Management Agency, a State agency which was formed, among other things, to coordinate the overall emergency management program of the State and to promulgate rules and requirements for the emergency operations plans of the State's political subdivisions.<sup>3</sup> Each political subdivision of the State is also under the jurisdiction of an ESDA, a local agency responsible for developing, planning and implementing programs for disaster preparedness, response and recovery.<sup>4</sup> The phrase "political subdivision" includes any county, city, village or incorporated town and any township located in a county having a population of more than 2,000,000.<sup>5</sup>

The Act provides that unless multiple county ESDA consolidation is authorized by the Illinois Emergency Management Agency with the consent of the respective counties, each county shall maintain an EMSDA that has jurisdiction over and serves the entire county.<sup>6</sup> Each municipality with a population of over 500,000 is required to maintain an ESDA which has jurisdiction over and serves the entire municipality. A municipality with a population less than 500,000 is permitted to establish, by ordinance, an agency or department responsible for emergency management within

<sup>1</sup> 20 ILCS 3305/1 *et seq.*

<sup>2</sup> 20 ILCS 3305/2.

<sup>3</sup> 20 ILCS 3305/5(f).

<sup>4</sup> 20 ILCS 3305/4, 3305/10.

<sup>5</sup> 20 ILCS 3305/4.

<sup>6</sup> 20 ILCS 3305/10(b).

the municipality's corporate limits.<sup>7</sup>In addition to those municipalities with a population of over 500,000 (which are required to have an ESDA) and those with populations under 500,000 who have established an ESDA by ordinance, the Governor is required to determine which municipal corporations need ESDAs of their own and require that they be established and maintained.<sup>8</sup> However, there does not appear to be any provision in the Act or related administrative regulations that requires municipalities to have the county's permission to establish an ESDA.


Section 10(b) of the Act does state, in part, that each county shall maintain an ESDA that has jurisdiction over and serves the entire county, except as otherwise provided under this Act.<sup>9</sup> Notably, Section 10(d) of the Act provides that the ESDA of a county shall not have a jurisdiction within a political subdivision having its own ESDA, but shall cooperate with the ESDA of a city, village or incorporated town within their borders.<sup>10</sup>

**Conclusion:**

It is our opinion that there is no requirement that a municipality desiring to have an ESDA obtain permission from a county. In fact, municipalities that have a population in excess of 500,000 people or that are ordered by the Governor to establish and maintain an ESDA are required to have an ESDA regardless of a county's position on the matter. Additionally, municipalities of less than 500,000 may establish an ESDA by their own ordinances without county involvement. Moreover, the Act explicitly states that the ESDA of a county shall not have a jurisdiction within a political subdivision having its own ESDA but is required by the Act to cooperate with the ESDA of a municipality within the county's borders.

At the request and direction of UCCI this opinion was prepared by  
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<sup>7</sup> 20 ILCS 3305/10(c).

<sup>8</sup> 20 ILCS 3305/10(d) (The Illinois Emergency Management Agency is responsible for publishing and furnishing a current list to the municipalities required to have an ESDA).

<sup>9</sup> 20 ILCS 3305/10(b).

<sup>10</sup> 20 ILCS 3305/10(d) (emphasis added).

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**Disclaimer:** This opinion was prepared by Giffin, Winning, Cohen and Bodewes, P.C., at the request of UCCI and is to be used solely by UCCI and its members. The State's Attorney is the attorney for the County. Legal advice, if requested, should be sought from the State's Attorney.