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April 23, 2018

**To:** UCCI Membership

**Re:** *Authority of a County to Collect a Fee on Behalf of a Municipality*

**Issue:**

Whether a county that contracts with a municipality for animal control services may recover the boarding fee due from the municipality directly from a dog owner, who already pays a separate fee to the county to recover the animal.

**Analysis:**

In general, home rule units may exercise powers and perform functions pertaining to its government and affairs without regard to specific statutory authority.<sup>1</sup> However, non-home-rule units possess only those powers which are specifically conveyed by the Illinois Constitution or by statute.<sup>2</sup> Thus, the ability of a non-home-rule county to enter into an agreement with a municipality to collect such a boarding fee on behalf of a municipality depends upon statutory authority.

Units of local government<sup>3</sup>, including counties, may enter into agreements with other units of government, including municipalities, to achieve any number of lawful purposes. Authority to contract and otherwise associate with other units of local government can be found in both the Illinois Constitution<sup>4</sup> as well as the Intergovernmental Cooperation Act.<sup>5</sup>

The Illinois Courts and the Illinois Attorney General have conflicting interpretations of the Intergovernmental Cooperation Act. Courts have held that the Intergovernmental Cooperation Act “permits two or more public agencies to act jointly in the exercise of any power possessed by one of

<sup>1</sup> Ill. Const. 1970, art. VII, § 6; *T & S Signs, Inc. v. Village of Wadsworth*, 261 Ill. App. 3d 1080, 1090 (1994).

<sup>2</sup> *Commonwealth Edison Co. v. City of Warrenville*, 288 Ill. App. 3d 373, 380 (1997).

<sup>3</sup> Counties, municipalities, townships, special districts, and units, designated as units of local government by law, which exercise limited governmental powers or powers in respect to limited governmental subjects, but does not include school districts.

<sup>4</sup> Ill. Const. 1970, § 10.

<sup>5</sup> 5 ILCS 220/1 *et seq.*

those agencies.”<sup>6</sup> The Attorney General has generally taken the position that each party to the agreement must possess the power being exercised pursuant to that agreement. Therefore, the public bodies that are parties to an intergovernmental agreement must analyze which public body is undertaking which actions in an agreement and pursuant to what authority. “An activity which is not specifically prohibited by law or ordinance involving a function or power which the ‘supplying’ unit has the general power to exercise may be the subject of an intergovernmental agreement or contract.”<sup>7</sup>

The Intergovernmental Cooperation Act specifically provides for agreements between counties and municipalities.<sup>8</sup> The Animal Control Act (Act) authorizes a county to collect a fee for boarding an impounded dog.<sup>9</sup> Specifically, the Act provides that when an owner, agent, or caretaker of any impounded dog desires to make redemption of that animal, he may do so by, among other things, paying into an Animal Control Fund<sup>10</sup> an additional impoundment fee as prescribed by the Board as a penalty for the first offense and for each subsequent offense.<sup>11</sup> Section 11-20-9 of the Municipal Code permits a municipality to regulate the running at large of dogs.<sup>12</sup> Such regulation necessarily contemplates the imposition of fees.<sup>13</sup> Because both a municipality and a county may collect such fees under the Act, the Intergovernmental Cooperation Act as well as the Illinois Constitution, authorizes a county and a municipality to undertake these actions jointly by way of an intergovernmental agreement.

The terms and scope of such an intergovernmental agreement, however, should be memorialized in writing to reflect that the county intends to collect boarding fees on behalf of the municipality, *i.e.*, the municipality assigns to the county the collection of such boarding fees due from an owner to the municipality, which the municipality would otherwise pay over to the county as payment for providing the service. The county should also keep and maintain records in compliance with the municipality’s ordinances, if any, relating to the fee assignment and the laws of Illinois, including but not limited to complete financial records relating to the collection of such fees. The County also should prepare and provide to the municipality an annual report as well as an accounting regarding the collection of the fees.

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<sup>6</sup> *Oak Lawn v. Commonwealth Edison Co.*, 163 Ill. App. 3d 457, 460 (1987) (holding a village, which entered into an agreement with a sanitary district, could require a public utility to pay for relocation of transmission lines and noting that the village was only requiring payment for those lines within the village and would not lose the right to require such action just because it was acting in concert with a sanitary district).

<sup>7</sup> 1980 Op. Atty Gen. Ill. 60.

<sup>8</sup> 5 ILCS 220/9.

<sup>9</sup> 510 ILCS 5/10(c).

<sup>10</sup> 510 ILCS 5/7.

<sup>11</sup> *Id.*

<sup>12</sup> 65 ILCS 5/11-20-9.


<sup>13</sup> See 65 ILCS 5/1-2-1 (“The corporate authorities of each municipality may pass all ordinances and make all rules and regulations proper or necessary, to carry into effect the powers granted to municipalities, with such fines or penalties as may be deemed proper.”).

**Conclusion:**

In sum, it is the opinion of this office that, in accordance with the applicable statutory authority, a county may enter into an intergovernmental agreement with a municipality to collect dog boarding fees on behalf of that municipality. However, we recommend the specific terms of the assignment be detailed in that agreement and standard reporting and accounting practices be followed for transparency purposes.

At the request and direction of UCCI this opinion was prepared by  
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