Chapter 27

JOINT POWERS AGREEMENTS

A Joint Powers Agreement is a written agreement between public entities that involves the joint exercise of a common power. For example: the joint exercise of a common power may include a situation where two public entities come together to jointly build, own, and operate a utility, as long as they both separately have the power to build, own, and operate the utility.

POLICY: All Joint Powers Agreements (JPA) as defined by Section 11-1-12(B) NMSA 1978 are required to be approved by the Department of Finance and Administration Cabinet Secretary (DFA) pursuant to the Joint Powers Agreement Act Section 11-1-13 NMSA 1978. The following procedures shall be adhered to by all public agencies, as defined by section 11-1-2(A) NMSA 1978 in order to receive approval by DFA of every JPA and amendment to an existing JPA.

PROCEDURES:
1) Submittal of the JPA to the Department of Finance and Administration, Office of the Secretary
   A) A completed JPA cover brief- form is available at http://nmdfa.state.nm.us/uploads/FileLinks/783f77df3c9842f09c6d98426f59b8b/Joint%20Powers%20Agreement%20Brief%20Form.pdf
   B) An original plus two copies of the original JPA and one copy of any prior amendments.
2) All JPAS expire on June 30 (end of the fiscal year) or September (end of Federal fiscal year) the new agreement must be submitted by May 30 or August 31 in order to have them approved by June 30 or September 30.

STATUE REQUIREMENTS (§§11-1-1 through 11-1-7):
A JPA is required to be entered into when two public agencies desire to “jointly exercise any power common to the contracting parties” Therefore all JPAS shall clearly enunciate the joint exercise of any power common to the contracting agencies. Additional, certain statues specifically require two or more parties to enter into a JPA in order to fulfill the statue’s purpose. Remember the JPA Act allows agencies with certain powers in common to exercise them in tandem. Express the individual and common powers even if it appears obvious.
   A) All JPAS shall contain at least one RECITAL of the statue or statues or other authority (such as ordinance or executive order) that enable or authorizes each public agency to perform the stated work and purpose of the JPA.
   B) All JPAS shall contain additional RECITAL expressly explaining how the two agencies are “jointly exercising any power common to the contracting parties”. See Section 11-1-3 NMSA 1978
   C) Pursuant to Sections 11-1-2 and 11-1-3 NMSA 1978 only “public agencies” may enter into JPAs. It is the duty of the parties to expressly state how each fits within the definition of public agency. Public corporations must present proof of their status.
   D) Pursuant to Section 11-1-4 NMSA 1978 all JPAs shall:
      1) “Clearly specify the purpose of the agreement or for any power which is to be exercised…..”
2) “…provide for the method by which the purpose will be accomplished and the manner in which any power will be exercised under such agreement…”

3) “…provide for the strict accountability of all receipts and disbursements….” (if no money is involved, then expressly state the fact and that this prevision is therefore inapplicable);

4) “…provide for the disposition, division, or distribution of any property acquired as a result of the joint exercise of powers….: (if there is no property involved, then expressly state this fact and that this provision is therefore inapplicable); and

5) “…provide that after the completion of the agreement’s purpose any surplus money on hand shall be returned in proportion to the contributions made….” (if there is no surplus money, then expressly state this fact and explain why)

**CONSTITUTIONAL REQUIREMENTS of JPAs**

A) The New Mexico Constitution prohibits certain delegations of statutory authority. In order to assure that no unconstitutional delegation of authority exists, the JPA may designate one agency as the lead agency and expressly include a section that requires the secondary agency to report back to the lead agency. The lead agency must:

1) Monitor the actions of the secondary agency; and

2) Possess the ability to take corrective action; including terminating the JPA, if it believes the secondary agency is not performing its duties.

Also each agency should ensure an accurate record of all transactions, inventory, and surplus.

Once DFA has approved the JPA the municipality may sign the joint powers agreement with the federal government, state or any other political subdivision (county, school district, municipality, special district, Council of Governments, public corporation or adjoining state) for the municipality to obtain or furnish any service that the municipality is authorized to perform under general statute, special statute, implied powers or municipal charter (§§ 11-1-1 through 11-1-7).

The agreement must be in written contract form, approved by the Governing Bodies of the entities involved, signed by the authorized representatives of the entities involved, and must be approved by the Secretary of Finance and Administration prior to taking effect (§§ 11-1-2 and 3). Necessary terms and conditions of such agreements are outlined in § 11-1-4. Any joint powers agreement (like any other contract) should be reviewed by the municipal attorney prior to approval by the governing body. DFA procedures and a form that must accompany joint powers agreements submitted for approval follow this page and are available online at www.sec.nmdfa.state.nm.us.

Examples of services for which joint powers agreements may be used include, but are not limited to: police service by county sheriff; animal control; regional solid waste disposal; regional planning; regional or county detention center; self-insurance; regional tourism advertising and promotion.