Intergovernmental Relations - Cooperation and Conflicts

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I. Introduction

A. (§12.1) Scope of Chapter

The law of intergovernmental relations is one of the most recent developments in local government jurisprudence. In the past, local government units were often located far apart and had little need to interact. As the population and boundaries of cities grew and as the challenges facing local governments grew in number and complexity, municipalities began to interact with each other. These interactions, of course, were ones of either cooperation or conflict.

As local governments began exploring alternatives for meeting the needs of their growing populations, many of their initial efforts involved economies of scale- attempting to marshal resources for the purpose of financing large-scale public improvements. When these efforts proved successful, other local governments and, eventually, states and the federal government began actively encouraging interlocal cooperation. The opportunities for such cooperation have continued to increase with the growth of cities and the proliferation of special districts and other municipal corporations.

Once local governments began expanding, they often met. Cities would expand through annexation, municipal corporations and special districts would be formed to meet the demands of the populace in unincorporated areas, and many local governments would begin acting outside of their traditional boundaries. Thus, growth of local government gave rise not only to opportunities for cooperation but also to opportunities for conflict.

The scope of this chapter is to analyze these intergovernmental relations involving local governments. Intergovernmental relations consist of cooperation and conflict between local governments "interlocal relations" and of cooperation and conflict between local governments and state or federal government. Because this book deals with local government, this chapter's emphasis is on intergovernmental relations between local governments, but the dynamics of local government relations with the state and the federal government are also addressed.

B. (§12.2) Types of Governmental Entities

An in-depth analysis of the types of governmental entities is beyond the scope of this chapter, but it is essential to recognize the different types of governmental entities in order to understand intergovernmental relations.

In the United States, government falls within one of three classifications: federal; state; and local. Because the United States is a federalist system, the federal and state governments are coordinate and independent within their respective spheres of authority. Although the federal government has supremacy in areas in which it has authority to act, the states are not creations of the federal government and are not dependent on federal delegations of power. Local governments, on the other hand, are creations of the state and, with few exceptions, are dependent on the state for authority to act.

1. (§12.3) Federal Government

The federal government consists of the legislative, judicial, and executive branches established by the United States Constitution as well as administrative agencies created to carry out federal governmental functions. Administrative agencies are the most significant part of the federal government in terms of federal-local governmental relations, even though such relations are limited when compared with local-state or local-local interaction. Until the Great Depression, the federal government had virtually no relations directly with local governments. In the 1930s, however, the federal government-largely through administrative agencies' increased its activities on a local level and, consequently, increased the scope of federal-local governmental relations. The importance of federal-local relations has increased over time as the challenges facing cities (urban renewal, for example) have increased in complexity and severity so as to require the expertise and the resources of the federal government. Still, federal-local relations remain relatively limited in scope and consist largely of the federal government mandating local action to qualify for federal funds.

2. (§12.4) State Government

Like the federal government, state government consists of a legislative, executive, and judicial branch and numerous administrative agencies. Unlike the federal government, however, the state is primarily responsible for local governments. Local governments are creations of the state and, with the exception of charter cities and counties created in accordance with constitutional authority, are subject to the plenary power of the state legislature. State relations with local government consist of either direct supervisory control (creating, eliminating, or modifying local governmental authority) or indirect relations (cooperation between local governments and state agencies or conflicts between local governmental actions and state law).

3. (§12.5) Local Government

Local government, in one sense, can simply be defined as governmental units that are not part of the federal or state governments. Historically, the two basic forms of local government were the town and the county. The town form was predominant in the New England region where the terrain and economy favored small, compact settlements. The county form predominated in the south where the large-scale agricultural developments favored geographically larger units of government. Through the political development of local governments, towns (and later cities) became more independent from the state and more responsible for overseeing the well-being of their constituents. Meanwhile, counties became subsumed in the structure of the state government itself, becoming local subdivisions of the state charged with carrying out state

policies on a local level.

In Missouri, counties are legal subdivisions of the state. Mo. Const. art. VI, § 1. There are currently 114 counties in the state, and the City of St. Louis, which is not within a county. Section 46.040, RSMo 2000. Counties in Missouri may be one of four classes based on their assessed valuation. Mo. Const. art. VI, § 8; § 48.020, RSMo 2000.

According to the Missouri Constitution, there are not more than four general classifications of cities and towns, and each classification has the same powers and restrictions. Mo. Const. art. VI, § 15. In practice, the legislature has created as many differences in power and limitations as there are cities to exercise them. Missouri cities may be generally classified as:

- constitutional charter cities (if over 5,000 inhabitants or any other incorporated city as may be provided by law) formed in accordance with Mo. Const. art. VI, § 19;
- third class cities (if 3,000 or more inhabitants) formed in accordance with § 72.030, RSMo 2000;
- fourth class cities (all cities containing at least 500 but less than 3,000 inhabitants and all incorporated villages electing to become fourth class cities) formed in accordance with § 72.040, RSMo 2000; and
- all unincorporated towns containing less than 500 inhabitants under § 72.050, RSMo 2000.

The special district is the fastest-growing type of governmental entity. A special district is a governmental unit formed to perform a single function, or limited range of functions, over a particular area. School districts are often cited as the most common type of special district. These limited-purpose districts often exist in one part of the state while the same service is provided by another type of governmental unit in another area. Although very few special districts existed before the 1930s, these types of local governmental entities have proliferated ever since. The 1987 census reported that approximately 29,000 of the 83,000 units of local government were special districts' which did not include the 15,174 independent school districts noted in its survey. Missouri recognizes at least 14 types of special districts including:

- ambulance;
- drainage;
- fire protection;
- road;
- water supply;
- sewer; and
- soil conservation.

These types of local governmental entities are typically classified as either municipal corporations or quasi-municipal corporations. Municipal corporations (otherwise known as public corporations) are legal entities with broad powers of local government that typically have definite geographic boundaries within which a rather distinct population lives. Cities and towns are the quintessential municipal corporations.

Quasi-municipal corporations (or public quasi-corporations) are typically defined as public entities created for a municipal purpose but lacking the broad powers and distinct geographic scope that characterize a local "governing entity." Quasi-municipal corporations are more akin to local administrative agencies than to a true local government. Examples of quasi-municipal corporations include counties, school districts, and other special districts. In truth, quasi-municipal corporations is simply a catch-all classification for local governments that are not cities or incorporated towns.

The distinction between municipal corporations and quasi-municipal corporations rests largely on the historical development of local government law. Municipal corporations were seen as existing to benefit the inhabitants of a particular locale and have been likened to independent units of government within their boundaries (though subject to state control); quasi-municipal corporations, on the other hand, were seen as mere administrative arms of the state that were not formed by, or for, any particular populace but were established by the state to serve its purposes.

Today, as the nature and function of quasi-municipal corporations have become more similar to those of cities and their number has grown, the distinction between municipal and quasi-municipal corporations has blurred. Further, this classification has little effect on the law of intergovernmental relations. For the purposes of intergovernmental cooperation, in fact, Missouri courts have characterized both municipal corporations and quasi-municipal corporations as simply "municipalities" and have held that each is subject to the same set of rules. St. Louis Hous. Auth. v. City of St. Louis, 239 S.W.2d 289, 294 (Mo. banc 1951).

II. Cooperation

A. (§12.6) Types of Intergovernmental Agreements

As local government leaders tackle the challenges of population growth, urban redevelopment, urban sprawl, budget constraints, economic competition, and increasing demand for municipal services, they have a broad range of options. Many options involve structural change such as the:

- establishment of new governments;
- merger of existing governmental units;
- expansion of existing municipalities; or
- transfer of functional responsibilities between existing governments.

Often, however, existing municipalities are now meeting challenges by cooperative efforts with other units of local, state, or federal government.

Intergovernmental cooperation allows economies of scale, the provision of specialized services that would not otherwise be available to small governments, maximum utilization of certain types of capital-intensive facilities, and specialization among governments. Such cooperative efforts also avoid unnecessary duplication of governmental services, inefficient distribution of resources or expertise, and the need to change basic governmental structure. Several governmental agencies and advisors have recommended cooperative agreements as the best way to address changing demand for governmental services. See Advisory Commission on Intergovernmental Relations, A Handbook for Interlocal Agreements and Contracts 1-3 (1967); Wendell E. Koerner, Jr., Comment, Interlocal Cooperation: The Missouri Approach, 33 Mo. L. Rev. 442, 444 (1968).

Some amount of informal cooperation between governments always has existed and always will exist. The focus of this chapter, however, is on more formal arrangements by which intergovernmental cooperation is achieved. There are basically two types of agreements: "joint agreements" and "contracts for services." The distinction between these types of agreements is not in legal effect but in practical operation. A joint agreement provides for a joint exercise of powers and is generally used when all cooperating units actively participate in carrying out the activity by membership on a commission, board, or other entity created to oversee the cooperative efforts.

A service contract authorizes the furnishing of a service by one governmental unit to another on a contractual basis. The most well-known and influential model for service contracts was developed in Los Angeles County, California. In the 1950s, Los Angeles County consisted of dozens of incorporated municipalities as well as hundreds of thousands of people living in unincorporated areas. As Los Angeles County became, in essence, one populace, local governments were faced with the problem of how to provide services to its constituents efficiently. When the city of Lakewood incorporated in 1954 (the first incorporation to occur in 15 years), the city entered into a contract with the county in which the county provided nearly all the services to the residents of Lakewood while city officials retained autonomy over municipal affairs. The plan developed to implement this cooperative effort, "the Lakewood Plan," has served as a blueprint for service contracts across the country.

B. (§12.7) Legal Authority for Intergovernmental Agreements

Regardless of the type of intergovernmental agreement contemplated, a local government must have legal authority to take cooperative action. Such authority may be general in nature, authorizing cooperative efforts generally as long as the governmental participants are authorized to pursue the purpose of the cooperative effort, or it may be more specific, authorizing local government to achieve a specific purpose through cooperative efforts.

1. (§12.8) Constitutional Provisions

The Missouri Constitution contains express authority for intergovernmental cooperation.

> Any municipality or political subdivision of the state may contract and cooperate with other municipalities or political subdivisions thereof, or with other states or their municipalities or political subdivisions, or with the United States, for the planning, development, construction, acquisition or operation of any public improvement or facility, or for a common service, in the manner provided by law.

Mo. Const. art. VI, § 16.
Missouri was one of the first states to include express authority in its constitution for intergovernmental agreements.

In addition to art. VI, § 16, the Missouri Constitution includes other provisions authorizing intergovernmental relations. Under Mo. Const. art. VI, § 17, the "government of any city, town or village" of a noncharter county can be consolidated with or separate from the government "of the county or other political subdivision in which such city, town or village is situated, as provided by law." With respect to constitutional charter counties, Mo. Const. art. VI, § 18(c), provides authority for the exercise by the county of all legislative power of any municipalities or political subdivisions in the county, except school districts, and it provides authority for the county to contract with any such municipality or political subdivision for the county to perform the municipality's, or its subdivision's, services.

The sections authorizing constitutional charter cities must also be noted as a source for authority for intergovernmental agreements. The Missouri Constitution gives cities formed under its authority, known as constitutional charter cities, all powers conferred by law and, in addition, all powers that the General Assembly of Missouri has authority to confer (as long as such powers are consistent with, and not limited by, the constitution, statutes, or charter). Mo. Const. art. VI, § 19(a). Thus, Mo. Const. art. VI, § 19(a), grants constitutional charter cities authority to enter intergovernmental agreements even outside the broad scope of Mo. Const. art. VI, § 16, unless some limitation on the proposed cooperative action exists. See Cape Motor Lodge, Inc. v. City of Cape Girardeau, 706 S.W.2d 208, 211 (Mo. banc 1986).

2. (§12.9) General Statutory Provisions

After the enactment of Mo. Const. art. VI, § 16, in the Missouri Constitution of 1945, enabling legislation was passed to implement the authority for intergovernmental cooperation, §§ 70.210 70.320, RSMo 2000. Section 70.220.1, RSMo 2000, provides:

> Any municipality or political subdivision of this state, as herein defined, may contract and cooperate with any other municipality or political subdivision, or with an elective or appointive official thereof, or with a duly authorized agency of the United States, or of this state, or with other states or their municipalities or political subdivisions, or with any private person, firm, association or corporation, for the planning, development, construction, acquisition or operation of any public improvement or facility, or for a common service; provided, that the subject and purposes of any such contract or cooperative action made and entered into by such municipality or political subdivision shall be within the scope of the powers of such municipality or political subdivision.

Section 70.240, RSMo 2000, provides that the parties to such a contract may acquire "by gift, purchase, or eminent domain" land necessary or useful for the purposes of such an intergovernmental agreement and may hold the land as tenants in common. Section 70.260, RSMo 2000, authorizes the formation of a joint board or commission to oversee the activities in accordance with such a contract with potentially perpetual duration and broad powers to act in furtherance of the agreement. Sections 70.250 and 70.260, RSMo 2000, provide authority for the participating municipalities to finance the joint undertaking.

3. (§12.10) Specific Statutory Provisions

Although §§ 70.210 70.325, RSMo 2000, constitute general authority for cooperation and are the focus of most of the chapter, there are numerous statutes that authorize specific cooperative efforts.

a. (§12.11) County-Official Cooperation

Section 50.332, RSMo 2000, authorizes county officials to contract with municipalities to perform their duties for the municipal government, and it provides that the compensation is to be retained by the official. Section 82.280, RSMo 2000, governing cooperation between Kansas City and Jackson County, authorizes the city to require county officers to perform functions for the city.

b. (§12.12) County Cooperation

Sections 70.010 70.090, RSMo 2000, allow two or more (not to exceed ten) contiguous counties to join in performing any common function or service. Examples of a joint undertaking are building and maintaining a hospital and purchasing heavy-road machinery. Additionally, employees, such as a coroner, may serve a common function and provide service for several participating counties.

c. (§12.13) Law Enforcement Cooperation

Section 57.101, RSMo 2000, provides that the "county sheriff and his deputies, when authorized by written agreement," may enforce ordinances of municipalities. Section 70.815, RSMo 2000, provides for cooperation by police agencies. It authorizes an agency or unit of the state empowered by law to maintain a law enforcement agency to contract with any other similar agency. Under the contract, officers would have the same power of arrest for either

governmental unit.

d. (§12.14) Firefighting Cooperation

Section 71.370, RSMo 2000, provides that any incorporated city with a fire department may contract with any other incorporated city to provide fire protection. Section 71.400, RSMo 2000, provides that two or more cities may contract to develop and operate a fire protection facility situated for the protection and benefit of the participating cities.

e. (§12.15) City-County Courthouses and Jails

Section 71.300, RSMo 2000, authorizes county seats or incorporated cities to erect and maintain courthouses and jails for the use and benefit of the communities in which they are located. Additionally, the revenue required may be jointly provided by the county seats and cities as long as they are authorized to issue interest-bearing bonds or as otherwise provided for by law.

f. (§12.16) City-County Libraries

Section 182.291, RSMo 2000, provides that, once a county library district has been properly established, a city library exists with a tax levy equal to that levied for the county library, and the population of the county library district is less than 250,000, the city library board may petition the county to establish a city-county library to provide services to residents in the city and the county (or the county library board may petition the county governing body to allow the establishment of a city-county library). Once established, the city-county library will be under the control of a board of trustees having members from the city and county.

g. (§12.17) Political Subdivisions Acquiring United States Property

Sections 70.10070.115, RSMo 2000, allow for political subdivisions to buy surplus property of the United States government. Additionally, cities and counties may contract with an agency of the United States government to construct facilities for recreational purposes along rivers and their tributaries.

h. (§12.18) Drainage Districts

Section 243.260, RSMo 2000, allows an organized or incorporated drainage district to contract with another district for providing an outlet. The moneys received by the district providing the outlet may be mutually agreed upon or set by the court and shall be applied to improving ditches and levees or reducing tax or indebtedness.

i. (§12.19) Electric Cooperation

Section 91.020, RSMo 2000, authorizes a city that owns and operates a power plant to supply electrical current to other municipalities as well as to persons and private corporations outside the corporate limits based on mutually agreeable terms.

j. (§12.20) Housing

Section 99.110, RSMo 2000, provides that a housing authority may cooperate with one or more similar authorities for the purpose of financing, planning, undertaking, constructing, or operating a housing project or other federally subsidized housing program. Fees may be charged for technical assistance as long as those profits go to improving or maintaining low-income housing. If property is acquired through eminent domain proceedings and individuals or businesses are

displaced, there shall be written policies and procedures for compensation and relocation of those displaced.

k. (§12.21) Sewage

Section 250.220, RSMo 2000, allows for two or more municipalities to enter an agreement whereby the municipalities may jointly participate in the planning, construction, financing, or leasing of a sewage facility that benefits the participating cities.

l. (§12.22) Waterworks

Section 91.050, RSMo 2000, authorizes a city that owns and operates its own waterworks system to supply water through its system to other municipalities as well as to persons and private corporations outside the corporate limits based on mutually agreeable terms. Similarly, § 91.060, RSMo 2000, allows municipalities to procure water from any other city with a system of waterworks and to enter into contracts for that purpose.

m. (§12.23) Liability Insurance

Section 537.620, RSMo 2000, provides that, notwithstanding any direct or implied prohibition in Chapters 375, 377, or 379, RSMo, any three or more political subdivisions may form a business entity for the purpose of providing liability insurance.

n. (§12.24) Flood Protection

The Kansas-Missouri Flood Prevention and Control Compact, having members from both states, is set out in § 70.327, RSMo 2000. This commission is a study and planning agency, as well as a liaison, to effectively manage and coordinate plans to benefit both member states. Section 70.330, RSMo 2000, allows cities with populations over 100,000 to cooperate within its boundaries or with neighboring districts to manage flood water. Further, when the safety and health of Missourians is at stake and a portion of the affected property is outside the boundaries of Missouri, § 70.340, RSMo 2000, allows construction of sewers, levees, and alterations to natural waterways of the area with permission of the neighboring state but not necessarily construction assistance of the neighboring state.

o. (§12.25) Kansas-Missouri Cultural Compact

Sections 70.500 70.510, RSMo 2000, establish a joint project between Missouri and Kansas to promote and develop the metropolitan cultural district. A commission having members from both states is empowered to pursue the funding and development of culturally beneficial opportunities.

p. (§12.26) Bi-State Metropolitan Compact (Missouri and Illinois)

Sections 70.370 70.441, RSMo 2000, establish a joint commitment between Illinois and Missouri to cooperate in the future planning and development of the bi-state metropolitan district. A commission having members from both states is authorized and directed to develop the district in the most beneficial manner possible.

q. (§12.27) Employee Retirement

Section 70.605, RSMo 2000, establishes the Missouri Local Government Employees' Retirement System, which political subdivisions can join to provide employee retirement benefits. The statute

details the procedures by which a board of trustees is to administer the retirement system.

r. (§12.28) Convention and Sports Facilities

Sections 70.840 70.858, RSMo 2000, establish the State and Local Government Convention, Sports Facility, Meeting and Tourism Act of 1989. This Act provides the mechanism for municipalities to cooperate in the establishment of:

- convention centers;
- sports stadiums;
- exhibition or trade show facilities;
- transportation facilities;
- cultural facilities;
- field houses;
- indoor or outdoor meeting and recreational facilities;
- playing fields;
- parking lots; or
- other similar facilities.

C. (§12.29) Limitations on Intergovernmental Agreements

Despite the broad range of authority for intergovernmental agreements, many limitations on the validity of these agreements exist. Some are constitutional limitations, some are imposed by statute, and still others represent common-law principles that courts have applied in analyzing local governmental contracts. Obviously, knowledge of the scope and effect of these limitations is essential when contemplating the possibility of entering an intergovernmental agreement or when analyzing an agreement already in existence.

1. (§12.30) Constitutionality of Intergovernmental Cooperation

In some states, challenges have been raised asserting that local governments lack authority to enter binding agreements with other governmental entities. These challenges often have been premised on the lack of statutory authority for cooperative efforts or, if statutory authority does exist, the claim that such statutes are unconstitutional. Because §§ 70.210 70.320, RSMo 2000, were enacted in accordance with Missouri's express constitutional authority for intergovernmental agreements, constitutional challenges to such local action have been unsuccessful. St. Louis Hous. Auth. v. City of St. Louis, 239 S.W.2d 289 (Mo. banc 1951). Despite the constitutional authority for intergovernmental agreements in Mo. Const. art. VI, § 16, claims can be raised that a particular agreement contains terms that are violative of some other provision of the Missouri Constitution. See Kansas City v. City of Raytown, 421 S.W.2d 504 (Mo. banc 1967). It is evident that, even where an intergovernmental agreement is authorized, it may not include provisions that violate other substantive restraints on governmental activity.

2. (§12.31) Powers of Governmental Participant

One of the most significant limitations on intergovernmental cooperation is the requirement that "the subject and purposes of any such contract or cooperative action made and entered into by such municipality or political subdivision shall be within the scope of the powers of such municipality or political subdivision." Section 70.220, RSMo 2000. This enabling statute makes clear the implicit requirement in the Missouri Constitution that local governments can utilize cooperative agreements only for the pursuit of a legitimate end.

While this limitation is easy to recite, its application has proven difficult. Courts and

commentators originally opined that this limitation requires each participant in a cooperative agreement to have the authority to perform each and every provision within the agreement. Wendell E. Koerner, Jr., Comment, Interlocal Cooperation: The Missouri Approach, 33 Mo. L. Rev. 442, 444 (1968); see Sch. Dist. of Kansas City v. Kansas City, 382 S.W.2d 688 (Mo. banc 1964); St. Louis Hous. Auth. v. City of St. Louis, 239 S.W.2d 289 (Mo. banc 1951). While requiring that intergovernmental agreements contain only provisions that every participant could independently perform might provide some certainty in the effect of this limitation, it would severely limit many of the potential benefits available to municipalities that cooperation, by its very nature, affords. See Comment, Interlocal Cooperation: The Missouri Approach, 33 Mo. L. Rev. at 444.

More recent Missouri cases have rejected a strict interpretation of the "equal powers" requirement. In Roberts v. City of Maryville, 750 S.W.2d 69 (Mo. banc 1988), the Supreme Court addressed the validity of a cooperative plan between the City of Maryville, the State Department of Natural Resources, and the U.S. Soil Conservation Service to provide for municipal water supply, recreation, and flood control. Although the City of Maryville, a third class city, had no authority to provide recreation and flood control beyond its boundaries, as this agreement provided, the Court rejected the claim that the contract was invalid. The Court noted that the City's funds would be employed only for the costs of the dam and reservoir and would be "substantially equal" to the costs of the water supply aspect, hence, the other contracting entities would be contributing the funds to accomplish the flood-control and recreational aspects of the plan. The Court refused to interpret § 70.220 to require that all participating entities have the power to pursue each and every purpose accomplished by the cooperative effort. The Court stated that the statutes authorizing cooperative agreements should not be construed so as to require, in this instance, three discrete projects pursued by three separate entities when one project could accomplish all objectives at a lower cost.

In Fischer v. City of Washington, 55 S.W.3d 372 (Mo. App. E.D. 2001), the court upheld a cooperative agreement between the City of Washington and Franklin County that provided for the planning, construction, and operation of a public road that would be located, in part, on county land outside the city. The terms of this agreement required the city to oversee and finance the construction of the road in its entirety and obligated the county to proceed with condemnation as requested by the city to acquire the necessary rights of way. The court found that statutory authority existed for the purpose of funding a road outside the city's boundaries to ease its traffic burden. The city did not, however, have authority to condemn land in the county for this purpose, but the court of appeals held (citing Roberts, 750 S.W.2d 69) that each participant did not need authority to exercise every power provided in the agreement and that the cooperative agreement was valid because the county had authority to institute condemnation proceedings.

Roberts, 750 S.W.2d 69, and Fischer, 55 S.W.3d 372, establish that intergovernmental agreements will be upheld even if some of the participants in the agreement would not have authority to accomplish all of an agreement's purposes or exercise all of its powers by themselves. With respect to the purpose of an intergovernmental agreement, Roberts indicates that such an agreement will be upheld if each municipality's participation is substantially related to a purpose of the agreement that the municipality could pursue, even if the agreement also accomplishes other purposes. Furthermore, Fischer seems to indicate that any power exercisable under the agreement is acceptable as long as it is exercised by at least one participant with independent authority to use the power.

Even if each participating governmental entity does not need to have independent authority for each of the purposes and powers of an intergovernmental agreement, any analysis of the validity of such an agreement requires an understanding of the scope of the authority of the local governments involved. A city's authority to act is derived only from a delegation by the state.

Miller v. City of Town & Country, 62 S.W.3d 431 (Mo. App. E.D. 2001). "A municipality derives its governmental powers from the state and exercises generally only such governmental functions as are expressly or impliedly granted it by the state." Century 21-Mabel O. Pettus, Inc. v. City of Jennings, 700 S.W.2d 809, 811 (Mo. banc 1985). Missouri cities and counties may exercise only powers granted to them in express words, those necessarily and fairly implied in or incident to those powers, or those essential or indispensable to the declared objectives and purposes of the municipality. Borron v. Farrenkopf, 5 S.W.3d 618, 620 (Mo. App. W.D. 1999); City of Kirkwood v. City of Sunset Hills, 589 S.W.2d 31, 35,36 (Mo. App. E.D. 1979). Historically, courts have narrowly construed powers granted to municipalities and have resolved any doubt in favor of finding no authority to act. Thomas N. Sterchi, Comment, State-Local Conflicts Under the New Missouri Home Rule Amendment, 37 Mo. L. Rev. 677 (1972).

Based in part on this restrictive view of municipal authority, constitutional charter cities were authorized by the state. Id. These entities possess all authority to act that could be granted by the legislature except for powers limited by constitution, statute, or charter. Cape Motor Lodge, Inc. v. City of Cape Girardeau, 706 S.W.2d 208, 211 (Mo. banc 1986). Thus, for constitutional charter cities, one looks not for a grant of authority, but for a restriction of authority; if no limitation is found, the city is authorized to act. Id. A limitation on the authority of a municipality is found only when a statute or constitutional provision expressly (or by necessary implication) prohibits the exercise of some power. Id. The mere fact that an enabling statute is not as broad as the powers sought by the constitutional charter city does not mean that the city is prohibited from acting because its powers are not dependent on the enabling statute. Id. As a result, constitutional charter municipalities have much greater flexibility in entering intergovernmental agreements.

3. (§12.32) Delegation of Governmental Power

Another potential limitation on the efficacy of intergovernmental agreements is the common-law doctrine that a local government may not delegate, or contractually relinquish, its governmental authority. "The law is well settled that a municipal corporation can not surrender or contract away its governmental functions and powers." Stewart v. City of Springfield, 165 S.W.2d 626, 629 (Mo. banc 1942). "A city has no power to hamper the free exercise of its legislative discretion.
" Joseph v. Marriott Int'l, Inc., 967 S.W.2d 624, 628 (Mo. App. W.D. 1988). This rule has been applied:

- to hold that a settlement agreement could not permanently prevent a city from using a creek for sewer purposes, Stewart, 165 S.W.2d at 629;
- to strike down an ordinance prohibiting building permits dependent on private contractual restrictions and covenants, State ex rel. Sims v. Eckhardt, 322 S.W.2d 903 (Mo. 1959); and
- to hold that a city cannot delegate control over its sewer facilities so as to make the landowner responsible for accidents at the facility, Joseph, 967 S.W.2d at 626.

Based on the court's interpretation of the delegation doctrine, the Attorney General ruled that a county hospital could not contract over its entire operation to a management agency. Op. Att'y Gen. 16 (1984).

Although it is clear from Attorney General opinion letters and judicial holdings in other contexts that a municipality cannot delegate its entire governmental functions, the limitations imposed by this doctrine on intergovernmental contracts are less severe than these examples would indicate. Intergovernmental cooperative agreements, by their very nature, involve a division or sharing of responsibility or power. Sch. Dist. of Kansas City v. Kansas City, 382 S.W.2d 688, 696 (Mo. banc

1964). Consequently, while not rejecting the application of the delegation doctrine entirely, courts have repeatedly refused to invalidate agreements on that basis. In State ex rel. Kansas City Ins. Agent's Ass'n v. Kansas City, 4 S.W.2d 427 (Mo. banc 1928), the Court enforced a contract in which the city hired a private company to operate a fire patrol service, holding that the contract was the fulfillment, not delegation, of its governmental responsibilities. In Schmoll v. Housing Authority of St. Louis County, 321 S.W.2d 494 (Mo. 1959), the Court upheld a cooperative agreement between a housing authority and St. Louis County that required the county to make changes in zoning, furnish public services to the housing project, and accept dedication of public facilities from the project. The Court rejected the argument that the county had bartered away its governmental responsibilities in these areas because the agreement required the county to undertake these actions only so far as it "may lawfully do so." Therefore, the parties were deemed to have limited the county's obligations to those it could undertake consistent with "other constitutional and statutory provisions [which as] far as they are pertinent are likewise a part of and may modify this contract." Id. at 496. Based on these implicit terms in the agreement, the Court found that the county had retained its governmental prerogatives.

Similarly, in Fischer v. City of Washington, 55 S.W.3d 372 (Mo. App. E.D. 2001), the court rejected the claim that Franklin County delegated its power of condemnation to the city under a provision obligating the county to "proceed with condemnation procedures" if requested by the city. Id. at 380. The plaintiffs argued that this provision delegated to the city the county's statutory obligation to determine public necessity before condemning property. The court, however, interpreted the contract to mean only that the county must start the statutory process for condemnation, which, of course, includes a determination of public necessity. Having interpreted the contractual provisions in this manner, the court held that the contract did not waive the county's power to determine public necessity.

In School District of Kansas City v. Kansas City, 382 S.W.2d 688 (Mo. banc 1964), the Supreme Court upheld an agreement for the erection of a library building on a public parkway owned by the city and under the control of its park commission. The city contended that the agreement was an unlawful delegation of the legislative powers of the park commission because the city's charter required the park commissioners to "superintend, control and manage any and all . . . public grounds," but the contract gave sole control over the library to the school district. Id. at 696 97. The Court held that this charter provision was limited by other sections in the charter authorizing cooperative agreements and stated that, regardless, Mo. Const. art. VI, § 16, superseded these limitations in the city charter because it expressly authorized cooperative agreements, which necessarily include delegation of authority. The court went so far as to suggest that the delegation doctrine did not apply to intergovernmental agreements because of the express authority for such cooperative efforts in Mo. Const. art. VI, § 16. Sch. Dist. of Kansas City, 382 S.W.2d 688. Although the delegation doctrine has not been that easily vanquished from the law of intergovernmental relations, it is clear that claims that interlocal agreements are invalid because of delegation of powers are an uphill battle.

4. (§12.33) Appropriation of Funds

Another, but possibly related, limitation on intergovernmental agreements is the proposition that a municipality may not simply appropriate funds for a project. Based on the rationale that the mere appropriation of funds is not authorized by the Missouri Constitution, the Attorney General has ruled that a county may not contribute funds to build a shelter in a city park, Op. Att'y Gen. 21 (1954), or contribute funds to build a room in a city hospital, Op. Att'y Gen. 63 (1957). In both cases, the Attorney General has stated that an intergovernmental cooperation agreement, however, could have been used. These rulings have been criticized as too narrowly construing the power sought to be exercised as the mere appropriation of funds rather than the accomplishment of the underlying purpose of expenditure. Wendell E. Koerner, Jr. Comment,

Interlocal Cooperation: The Missouri Approach, 33 Mo. L. Rev. 442, 444 (1968). Another view, however, is that this limitation means only that the mere contribution of funds to a project of another municipality is a complete relinquishment of governing authority with respect to those funds in that no true cooperative agreement exists to ensure how the underlying project is to be operated. In either case, the limitation on appropriation of funds is easily overcome by a properly drawn agreement detailing the reciprocal duties of all participating entities.

5. (§12.34) Limitations in Charter or Local Law

In some cases, a municipality's charter or governing local law may contain a limitation on intergovernmental agreements that is not contained in state law. The question then arises whether the state enabling legislation supersedes the local law limitation or whether the local law prohibits the municipality from acting. If the "limitation" is, in fact, merely a specification of how the authority granted to the municipality may be exercised, the local government must follow its mandated procedure. For example, in Schmoll v. Housing Authority of St. Louis County, 321 S.W.2d 494 (Mo. 1959), approval of an agreement by resolution was determined not to be valid when the county charter required approval by ordinance. See also Sessinghaus v. Cent. Paving & Constr. Co., 296 S.W. 1034 (Mo. App. E.D. 1927). On the other hand, if the local law merely prohibits the municipality from acting in a way that state law authorizes, a conflict exists between state and local law, and the state law governs. Sch. Dist. of Kansas City v. Kansas City, 382 S.W.2d 688 (Mo. banc 1964). It appears that, while local law must be followed to the extent it mandates a procedure for exercising power or otherwise supplements state law, any outright limitation on inter- governmental agreements that state law authorizes will be of no effect.

6. (§12.35) Duration

Although the statutes do not expressly indicate the permissible term of intergovernmental agreements, several factors indicate that such contracts will not be struck down because of their duration. Section 70.260, RSMo 2000, provides that, if a joint entity is created to oversee the cooperative effort, the entity may be perpetual. In State ex rel. Mitchell v. City of Sikeston, 555 S.W.2d 281 (Mo. banc 1977), the Supreme Court upheld 20-year power purchase agreements entered into by cities. The courts have also indicated that a valid contract will be enforced even though one of the parties desires to terminate the valid contract. Kansas City v. City of Raytown, 421 S.W.2d 504 (Mo. banc 1967). Furthermore, Missouri courts have acknowledged in this context that governing bodies of municipalities and political subdivisions are considered continuing bodies without regard to changes in personnel; therefore, claims that such agreements in property bind successors have failed. Sessinghaus v. Cent. Paving & Constr. Co., 296 S.W. 1034 (Mo. App. E.D. 1927).

D. (§12.36) Procedure for Entering Intergovernmental Agreements

A municipality contemplating an intergovernmental agreement must comply with all the procedural requirements imposed by statute and local law for exercising such a power. A failure to comply with procedural requirements will be fatal to the validity of a cooperation agreement. Schmoll v. Hous. Auth. of St. Louis County, 321 S.W.2d 494 (Mo. 1959) (agreement held invalid when approved by resolution instead of ordinance as required by charter).

1. (§12.37) Procedure Set Forth in Enabling Statutes

The majority of procedural requirements for intergovernmental agreements are set forth in the enabling statute, §§ 70.21070.320, RSMo 2000. Section 70.230, RSMo 2000, provides that:

> Any municipality may exercise the power referred to [herein] by ordinance duly enacted, or, if

a county, then by order of the county commission duly made and entered, or if other political subdivision, then by resolution of its governing body or officers made and entered in its journal or minutes of proceedings, which shall provide the terms agreed upon by the contracting parties to such contract or cooperative action.

Section 70.300, RSMo 2000, requires that, whenever a political subdivision of Missouri is a contracting party, the contract must be:

- authorized by a majority vote of the members of the governing body;
- in writing;
- recorded in the recorder of deeds office in the county in which each contracting municipality is located; and
- filed with the Secretary of State.

2. (§12.38) Statute of Frauds

Intergovernmental contracts are also subject to the statute of frauds contained in § 432.070, RSMo 2000. This section mandates that municipal corporations may not enter binding agreements unless the contract is in writing, with consideration recited therein, and the consideration is "wholly to be performed or executed subsequent to the making of the contract." All parties are charged with notice of this provision, and contracts executed in violation of its terms are void. Duckett Creek Sewer Dist. of St. Charles County v. Golden Triangle Dev. Corp., 32 S.W.3d 178 (Mo. App. E.D. 2000). Section 432.070 does not prohibit a city from providing services to another entity under an oral agreement, but it does prevent another party from enforcing an agreement to do so if the requirements of this provision have not been satisfied. Miller v. City of St. Joseph, 485 S.W.2d 688 (Mo. App. W.D. 1972). The existence of an ordinance authorizing a city to pay for services or detailing the procedure for entering a written contract for services does not satisfy the requirement of the statutes of frauds, and parties performing services in accordance with an oral understanding without the requisite written contract have no right to recover money from the city for benefits they have provided-even when the city has voluntarily paid other parties for similar services. Duckett, 32 S.W.3d at 183. The requirement of a written contract before performance of consideration is for the benefit of municipalities, and courts have routinely rejected estoppel, ratification, and implied contract theories proffered by parties attempting to collect from local governments. See, e.g., id.; Allen v. City of Fredericktown, 591 S.W.2d 723 (Mo. App. E.D. 1979).

Nevertheless, courts have upheld some contracts entered into in substantial compliance with § 432.070. In State ex rel. Kansas City Ins. Agent's Ass'n v. Kansas City, 4 S.W.2d 427 (Mo. banc 1928), the Court held that the requirement of a written contract was met when a city council enacted an ordinance and the other party accepted the ordinance in writing. Id. at 430. In Farm & Home Inv. Co. v. Gannon, 622 S.W.2d 305 (Mo. App. E.D. 1981), the court rejected a challenge to an agreement between the City of DeSoto and developers for the construction and maintenance of a water line. Even though it appeared that a substantial portion of the consideration had been performed before the execution of a written contract, the court upheld the agreement stating, summarily and without citation to authority, "b]ut the consideration to be received by [the developers], such as DeSoto' maintenance of the line, was to occur after the contract' execution; hence, there was no violation of § 432.070." Id. at 307. In Public Water Supply District No. 16 v. City of Buckner, 44 S.W.3d 860 (Mo. App. W.D. 2001), the court, providing a possible explanation for rulings like that in Farm & Home Investment Co., noted that the statute of frauds is designed "to protect the governmental entity" and "not for the protection of the person seeking to impose the contractual agreement" on the municipality. Id. at 864. Although the court stated that the requirements of the statute are mandatory, it held that "substantial compliance may, in some circumstances, be sufficient." Id. Regardless of the

flexibility apparent in the application of the statute of frauds to municipality contracts, it suffices to say that a properly drawn written agreement, reciting the consideration to be performed, should be executed in advance of any cooperative effort.

3. (§12.39) Joint Entity

Intergovernmental cooperative efforts may be accomplished by "joint agreements" in addition to "service contracts." Missouri law specifically allows the formation of a joint entity to oversee a cooperative effort. Section 70.260, RSMo 2000, provides that the agreement may provide for a joint board, commission, or officers to supervise the cooperative effort. Section 70.260 provides broad powers to the joint entity to:

- sue;
- hold property;
- lease or transfer property;
- enter contracts; and
- issue bonds in its own name on behalf of the participating municipalities.

Section 70.260.2(6) requires, however, that voter approval must be obtained by the participating municipalities as required by law. The joint entity may be perpetual or it may be terminated as provided in the agreement, but termination does not relieve any participant of any contractual indebtedness already incurred and, if the joint entity holds any property, it must revert to the participants upon its dissolution. Section 70.260. All officers acting under the authority of the municipalities in accordance with such an agreement are deemed to be acting for a governmental purpose and are subject to the same liabilities as they would be within their own territorial limits. Section 70.290, RSMo 2000. The Supreme Court of Missouri has held that such joint entities are cloaked with sovereign immunity even when funding is not derived from taxation. State ex rel. Reg'l Justice Info. Serv. Comm¿n v. Saitz, 798 S.W.2d 705, 708 (Mo. banc 1990).

4. (§12.40) Compliance With Charter or Local Law

In most cases, the applicable procedural steps for the execution of intergovernmental contracts will be set forth in state, rather than local, law. Nevertheless, a municipality's charter or other governing document should be examined for additional procedural requirements before entering such an agreement. The failure to follow local law procedures may jeopardize an otherwise valid agreement. Schmoll v. Hous. Auth. of St. Louis County, 321 S.W.2d 494 (Mo. 1959).

E. (§12.41) Construction and Enforcement of Intergovernmental Agreements

Intergovernmental contracts are interpreted and enforced under general contract-law doctrine. "[A] city can sue and be sued, and contracts made by the city, if authorized, are just like other contracts. They are measured by the same tests and subject to the same rights and liabilities." State ex rel. Kansas City Ins. Agent's Ass'n, 4 S.W.2d 427, 431 (Mo. banc 1928). Once an enforceable interlocal contract is entered, the courts will construe and enforce the contract according to the standard rules of construction. See City of Harrisonville v. Pub. Water Supply Dist. No. 9 of Cass County, 49 S.W.3d 225 (Mo. App. W.D. 2001) (construing contract against city based on intent evident in written contract).

III. (§12.42) Conflict

When intergovernmental relations do not consist of cooperation, they consist of conflict. Conflict can occur between different levels of government (e.g., state and local) or between different entities on the same level (e.g., two cities). Although an in-depth discussion of state, and

especially federal, relations with local governments is beyond the scope of this chapter, §§12.43 12.55 below will outline the general rules governing local-federal and local-state conflict as well as concentrate on the rules governing interlocal conflicts.

A. (§12.43) Federal-Local Conflict

Municipalities are largely under the control of the state, and the federal government typically is not involved in what are quintessentially local concerns. Nevertheless, the federal government has increasingly exerted influence on local governments-particularly cities. It should come as no surprise that, when municipalities and the federal government find conflict, local governments find themselves with the short end of the stick.

1. (§12.44) Conflict

If a municipal ordinance conflicts with a federal law, the municipal ordinance is void. City of Sunset Hills v. Southwestern Bell Mobile Sys., Inc., 14 S.W.3d 54, 58 (Mo. App. E.D. 1999). A conflict exists when the local law stands "as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." Id. at 57. Direct conflict between local and federal law is not as common as other forms of local-federal conflict.

2. (§12.45) Preemption

More often, municipalities will be unable to enact any valid ordinances within a certain field because that field will have been "preempted" by federal law. Preemption occurs when:

- the federal legislature has made an express indication of intent to preempt legislation in a certain field;
- a federal regulatory scheme is so pervasive it leads to the reasonable inference that Congress left no room for additional regulation; or
- Congress acted in a field in which the federal interest is so dominant that local laws are precluded.

Federal preemption of local law will also preempt state law on the given topic.

3. (§12.46) Condemnation

The federal government has the power to condemn local property, even when that property is already being put to public use. The local government cannot, however, condemn federal land without the federal government's permission.

B. (§12.47) State-Local Conflict

The very nature of local government in the United States political system illustrates the control the states have over municipalities. With the exception of municipalities created under a "home rule" provision in a state constitution, local governments are dependent on the state and subject to the state's control. Because local governments have been created by the state, the state has the power to eliminate a municipality, transfer its functions or property, or modify its structure-subject only to limitations imposed by state constitutions. Even municipal corporations, which have traditionally been thought of as more independent than quasi-municipal corporations and not merely an administrative unit of state government, are largely subject to the state's plenary control.

1. (§12.48) Local-State Law Conflicts

Local laws are invalid if they are in direct conflict with state law or if they have been preempted by state action. Borron v. Farrenkopf, 5 S.W.3d 618, 622 (Mo. App. W.D. 1999). A direct conflict exists if the express or implied provisions of the local and state law are inconsistent or irreconcilable. Combined Communications Corp. v. City of Bridgeton, 939 S.W.2d 460, 463 (Mo. App. E.D. 1996). To determine whether a conflict exists, the courts examine whether the ordinance prohibits that which the statute permits or permits that which the statute prohibits. Id. If an irreconcilable conflict does exist, the statute annuls the ordinance. Miller v. City of Manchester, 834 S.W.2d 904, 907 (Mo. App. E.D. 1992). Local ordinances in conflict with state law are invalid whether state law is in the constitution, statutes, or properly promulgated agency rules. Miller v. City of Town & Country, 62 S.W.3d 431 (Mo. App. E.D. 2001).

Because most challenges to local ordinances involve challenges to restrictive local regulations, courts have frequently wrestled with the question of how restrictive an ordinance can be regarding activities permitted under state law. It is frequently stated that an ordinance is not in conflict with state law if it only "supplement[s] or enlarge[s] upon the provision of a state statute by requiring more than what is required in the statute." Combined Communications Corp., 939 S.W.2d at 463. In other words, additional regulatory requirements imposed by local law do not constitute a conflict with more permissive state law. Borron, 5 S.W.3d at 623. Municipal ordinances may not, however, go so far as to prohibit what the state permits. Id. Thus, a local ordinance that is prohibitory, rather than merely regulatory, will be in conflict with a permissive state law. Id.

The line where additional regulations become prohibitory is not always easy to discern. In Shepard Well Drilling Co. v. St. Louis County, 912 S.W.2d 606 (Mo. App. E.D. 1995), the court examined whether a county ordinance requiring well drillers to obtain a local plumbing license was in conflict with rules promulgated under The Water Well Drillers' Act, §§ 256.600 256.640, now RSMo 2000, that prohibited persons from engaging in well installation unless they held a permit from the Missouri Department of Natural Resources (MoDNR). Shepard, 912 S.W.2d at 609 10. The county argued that it was merely supplementing state law by requiring an additional permit to install wells and pointed out that well installers could hold both a permit from MoDNR and a plumbing license from the county, but the court rejected this argument, holding that a conflict existed because the ordinance prohibited what the state law allowed (well installers with only a permit from MoDNR). Id. In contrast, the court in Borron, 5 S.W.3d 618, upheld a county ordinance regulating concentrated animal feeding operations even though it contained requirements for a county permit, fees, and a bond for clean up that were not contained in the state statutes regulating these businesses.

2. (§12.49) Preemption

Local regulations not in direct conflict with state law may still be invalid if state law is held to have preempted local regulation. Miller v. City of Town & Country, 62 S.W.3d 431, 438 (Mo. App. E.D. 2001). Missouri courts follow the rule that "a locality may not legislate in areas that are ¿occupied¿ (thoroughly regulated) by state law." Borron v. Farrenkopf, 5 S.W.3d 618, 622 (Mo. App. W.D. 1999). State law occupies an area when "it has created a comprehensive scheme on a particular area of the law, leaving no room for local control." Id. at 624. If preemption exists, any local ordinance in the preempted area is void. Id.

The Missouri legislature has expressly preempted local law in a number of areas. Section 21.750, RSMo 2000, prohibits any local regulation of firearms and ammunition except for ordinances conforming to §§ 571.010 571.070, RSMo 2000. Section 67.317, RSMo 2000, prohibits municipalities from banning "for sale" signs from being placed on property. Section 226.540, RSMo 2000, provides that municipalities can regulate billboards only if their ordinances comply

with the three-part test set forth in that statute. Section 700.111, RSMo 2000, prohibits any political subdivision from treating a manufactured house that meets the requirements of that section as anything other than real property. Section 700.035, RSMo 2000, provides that a manufactured house, recreational vehicle, or modular house that can comply with that section does not need to comply with other building, plumbing, heating, or electrical codes other than the one established by §§ 700.010 700.115, RSMo 2000.

3. (§12.50) Conflicts With Charter Governments

In 1875, Missouri became the first state to authorize home rule in its Constitution. Missouri's current Constitution, adopted in 1945, retains authority for charter cities. Initially, courts held that actions of constitutional charter cities were subordinate to the acts of the Missouri legislature, but eventually courts created exceptions to this rule in an effort to give charter cities more meaningful powers. State statutes were held to prevail over inconsistent local ordinances on "governmental" or "statewide" matters but not on "proprietary" or "local" concerns.

The confusion caused by these judicial categories of local law led to the enactment of a constitutional amendment in 1971, Mo. Const. art. VI, § 19(a), which provides:

> Any city which adopts or has adopted a charter for its own government, shall have all powers which the general assembly of the state of Missouri has authority to confer upon any city, provided such powers are consistent with the constitution of this state and are not limited or denied either by the charter so adopted or by statute.

Thus, the constitutional amendment provides broad powers to constitutional charter cities, but it also mandates that all local laws will be subordinate to state constitutional and statutory provisions. Any conflict between the ordinance of a constitutional charter city and state law is now resolved in the same manner as other state-local conflicts.

C. (§12.51) Interlocal Conflict

Conflicts between municipalities arise most often with the exercise of extraterritorial power by one local government. When a municipal corporation provides services, locates facilities, or acquires property outside its boundaries (or within the boundaries of another municipality), conflicts soon ensue.

1. (§12.52) Zoning

Zoning conflicts typically arise when one municipality attempts to locate a facility within the boundaries of a city or county in violation of the latter's zoning ordinance. The starting point for resolving an intergovernmental zoning dispute is to determine whether the municipality has the authority to pass a zoning ordinance on the type of activity in question, regardless of its public or private nature. City of Vinita Park v. Girls Sheltercare, Inc., 664 S.W.2d 256 (Mo. App. E.D. 1984). Municipalities have only those powers that are expressly or implicitly granted by the legislature. City of Kirkwood v. City of Sunset Hills, 589 S.W.2d 31, 35 36 (Mo. App. E.D. 1979). The sole source of zoning authority for cities is the zoning enabling law, §§ 89.010 89.140, RSMo 2000, and the source of zoning authority for counties is found in Chapter 64, RSMo.

If authority exists to enact zoning regulations with respect to a particular activity, the issue becomes whether this particular use is exempt from the zoning regulation because of the fact that it is operated by another municipality. Based on language in the zoning statutes that municipalities may regulate use of land "for trade, industry, residence or other purposes" the Supreme Court of Missouri initially held that the statute meant local government could regulate

only private uses and not public uses such as sewage disposal. State ex rel. Askew v. Kopp, 330 S.W.2d 882 (Mo. 1960). As more intergovernmental zoning disputes arose, however, the courts more carefully considered the authority of a municipality to prohibit certain public uses through their zoning powers. See St. Louis County v. City of Manchester, 360 S.W.2d 638 (Mo. banc 1962). These courts employed several different "tests" to determine the immunity of a particular governmental use to municipal zoning, but the primary analysis usually centered on the source of the competing municipalities' powers; if one of the municipalities was exercising a power (to acquire property by eminent domain, to locate or operate a facility, to enact zoning ordinances) from the constitution and the other municipality's power derived solely from statute, the municipality with the constitutional source of power prevailed. City of Kirkwood, 589 S.W.2d 31. Because municipalities, other than constitutional charter cities or counties, derive their zoning authority from statute, this analysis has had the effect of permitting most municipal uses of property regardless of zoning laws. City of Washington v. Warren County, 899 S.W.2d 863 (Mo. banc 1995); City of Kirkwood.

In City of Kirkwood, 589 S.W.2d 31, the Eastern District suggested that a better test would be to conduct a "balancing of interests" between the competing land use and zoning regulations. The court then employed this analysis, or a version of it, in subsequent cases. See City of Bridgeton v. City of St. Louis, 18 S.W.3d 107 (Mo. App. E.D. 2000); City of St. Louis v. City of Bridgeton, 705 S.W.2d 524 (Mo. App. E.D. 1985). The "balancing of interests" test balances the competing public interests by examining the:

- nature and power of the competing localities;
- source of their powers;
- kind and function of the land use involved;
- extent of the public interests served by the use;
- degree to which the zoning regulation would impair that use;
- extent and nature of the local interests protected by the zoning regulation; and
- extent to which the land use would impair the local interests.

City of St. Louis, 705 S.W.2d 524. The result of these tests has been more Lambert Airport and less City of Bridgeton.

In City of Washington, 899 S.W.2d at 866, the Supreme Court indicated that the correct analysis was to employ both the "eminent domain" test and the "balancing of interests" test. If a power has its source in the constitution, even if delegated by statute, it prevails over and cannot be limited by another governmental entity's power, such as zoning, that is delegated by statute and without any specific constitutional authority. Id. Only when the zoning authority is likewise authorized, directly or indirectly, by the constitution does the court proceed to balance the interests of the competing municipalities. Id. Although providing additional clarity on this issue, this test creates a risk of overemphasizing the nature of the competing municipalities rather than the competing public benefit and harm from the activity itself.

The Missouri legislature may simply dictate the extent to which local governments are subject to zoning regulations. Public utilities are explicitly exempted from the zoning regulations in county zoning authorizations. Sections 64.620 and 64.890, RSMo 2000. Public housing authorities, on the other hand, must comply with the planning, zoning, sanitary, and building laws and regulations of the locality. Section 99.130, RSMo 2000. Section 89.020, RSMo 2000, provides that group homes for eight or fewer mentally retarded or physically handicapped persons must be permitted in single-family zones. Although not applicable to the expansion of existing airports, Missouri statutes provide that the establishment of a new airport is subject to any applicable zoning regulations. Section 305.200, RSMo 2000. If explicit legislative guidance is provided as to the priority of public use or zoning regulations, the statutory law will prevail, and at least one

court has indicated that an attempt to discern legislative intent as to competing uses should be the pole star of the analysis in zoning conflict cases. City of St. Louis, 705 S.W.2d 524.

2. (§12.53) Police Power Regulations

Municipalities may apply police power regulations to other units of government in some cases even though their zoning power may not be applied. Cmty. Fire Prot. Dist. of St. Louis County v. Bd. of Educ. of Pattonville Consol. Sch. Dist. R-3, 315 S.W.2d 873 (Mo. App. E.D. 1958). Specific statutory authority, however, will exempt a municipality from such regulations. In Board of Education of City of St. Louis v. City of St. Louis, 184 S.W. 975 (Mo. 1916), the St. Louis School District was allowed to construct a school building with a ventilating system that did not comply with the city's building code because the district had specific statutory authority to design and maintain school buildings and their ventilating and sanitation. By contrast, in Smith v. Board of Education of City of St. Louis, 221 S.W.2d 203 (Mo. banc 1949), restaurants in the schools, though specifically authorized by statute, were subject to city health inspection because the legislation revealed no intent to displace city inspections. See also Kansas City v. Sch. Dist. of Kansas City, 201 S.W.2d 930 (Mo. 1947).

When competing regulations exist, courts examine legislative intent to determine which municipality's regulations have priority. Wellston Fire Protection District of St. Louis County v. State Bank & Trust Co. of Wellston, 282 S.W.2d 171 (Mo. App. E.D. 1955), involved a dispute between the fire protection district and the city of Wellston, which was included in the district, as to which municipality had the authority to regulate the construction of buildings in the city with respect to fire prevention. The court recognized that permitting both to exercise equal authority could result in intolerable confusion. The court concluded, based on an analysis of Chapter 321, RSMo, that the General Assembly, having authorized the fire district to include within its boundaries an entire city, intended to withdraw the power to regulate for fire prevention from the city. Id. at 174 75. As with zoning, local governmental conflicts in the exercise of police power regulations may be resolved by the legislature.

3. (§12.54) Condemnation

Like the power to zone, the power of eminent domain is vested in the state and can be exercised by municipalities only upon proper legislative authority. State ex rel. Mo. Cities Water Co. v. Hodge, 878 S.W.2d 819 (Mo. banc 1994). With respect to public property held by a political subdivision, the general rule is that another municipality cannot acquire the property by condemnation if the condemnation will destroy or materially impair or interfere with the existing public use. Kansas City v. Ashley, 406 S.W.2d 584 (Mo. 1966); City of Blue Springs v. Cent. Dev. Ass¿n, 684 S.W.2d 44 (Mo. App. W.D. 1984). If the existing public use will not be harmed by a new and different public use, condemnation may proceed under a general condemnation authority. State ex rel. Mo. Cities Water Co., 878 S.W.2d 819. Furthermore, if specific, express statutory authority exists allowing the condemnation by one municipality of public property owned by another, condemnation may proceed regardless of its effect on the existing public use. State ex rel. State Highway Comm¿n v. Hoester, 362 S.W.2d 519 (Mo. banc 1962). This limitation on condemnation of public property is based on the difficulties involved in choosing between competing public uses: "If the condemnation is for a different use, what of the necessity of the original public use? If the condemnation is for the same use, why is it necessary at all?" State ex rel. Mo. Cities Water Co., 878 S.W.2d 819. The requirement of express statutory authority for condemnation of public property is to ensure that the state legislature, not the condemning authority, makes the determination between the mutually conflicting uses of public property. Id.

4. (§12.55) Services

Some states have recognized a public policy against the duplication of public-service functions by two or more political subdivisions exercising the same function in the same territory at the same time, but Missouri courts have not recognized such a principle. In Jackson County Public Water Supply District No. 1 v. Ong Aircraft Corp., 409 S.W.2d 226 (Mo. App. W.D. 1966), Kansas City, acting by express statutory grant of power to supply water service beyond its city limits, was held not to be subject to an implied limitation against providing such service within the boundaries of a water supply district when the district was not currently servicing customers in the area the city sought to serve. In Mathison v. Public Water Supply District No. 2 of Jackson County, 401 S.W.2d 424 (Mo. 1966), the Supreme Court analyzed Chapter 247, RSMo, applicable to water supply districts, and found a legislative determination that cities could supplant the districts as providers of water.