



AUTHORITIES FOR CROSS-JURISDICTIONAL SHARING IN KANSAS



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Introduction

Cross-jurisdictional sharing (CJS) is a tool that can be utilized by local governments to improve effectiveness and efficiency in the delivery of public health services. There are legal frameworks which guide the development of formal agreements for sharing. This document offers a brief overview of the constitutional and statutory frameworks which impact CJS in Kansas.¹

What is CJS?

CJS for public health services is defined as: *“the deliberate exercise of public authority to enable collaboration across jurisdictional boundaries to deliver public health services and solve problems that cannot be easily solved by single organizations or jurisdictions.”*²

While not limited to public health, CJS has emerged as a strategy to ensure that the services provided by local public health departments are efficient and effective at keeping the public safe and healthy.

The Center for Sharing Public Health Services (<http://phsharing.org>) has developed and published a variety of resources and guides that assist in the process of CJS development and implementation. One of these resources is the *Spectrum of Cross-Jurisdictional Sharing Arrangements*, which outlines four main types of sharing (*Figure 1*, page 2).

Figure 1. Spectrum of CJS Arrangements

Spectrum of Cross-Jurisdictional Sharing Arrangements			
As-Needed Assistance	Service-Related Arrangements	Shared Programs or Functions	Regionalization/Consolidation
<ul style="list-style-type: none"> ● Information sharing ● Equipment sharing ● Expertise sharing ● Assistance for surge capacity 	<ul style="list-style-type: none"> ● Service provision agreements (e.g., contract to provide immunization services) ● Purchase of staff time (e.g., environmental health specialist) 	<ul style="list-style-type: none"> ● Joint programs and services (e.g., shared HIV program) ● Joint shared capacity (e.g., epidemiology, communications) 	<ul style="list-style-type: none"> ● New entity formed by merging existing local public health agencies ● Consolidation of one or more local public health agencies into an existing local public health agency
Looser Integration		Tighter Integration	

Source: Center for Sharing Public Health Services, 2017.

A key part of the definition of CJS is the reference to public authority. How can this authority be exercised? This publication describes the authorities by which CJS can be enabled and implemented for public health services in Kansas.

Kansas Home Rule

One key consideration when examining the authorities for CJS is the extent to which local governments have the ability to self-govern and set policies. In Kansas, local governments operate under home rule, which allows them to make policy decisions at the local level.

The term “*home rule*” emerged in the late 1800s and refers to states where broad decision-making authority has been granted to local governments, such as cities, counties, school districts and others.³ The term is defined as “*the ability of a local government to act and make policy in all areas that have not been designated to be of statewide interest through general law, state constitutional provisions, or initiatives and referenda.*”⁴

Kansas has a strong tradition of home rule, which is outlined for cities in the Kansas Constitution, Article 12, Section 5. Counties were given home rule authority via statute (KSA 19-101 et seq.). Both the Constitution and the statutes include language that reinforces the importance of home rule.

For cities, a constitutional amendment was passed in 1961, which states: “*Powers and authority granted cities pursuant to this section shall be liberally construed for the purpose of giving to cities the largest measure of self-government.*” (Article 12, Section 5, *Kansas Constitution*)⁵

For counties, home rule is set forth in statute: “*The powers granted counties pursuant to this act shall be referred to as county home rule powers and they shall be liberally construed for the purpose of giving to counties the largest measure of self-government.*” (KSA 19-101c)⁶

One of the contributors to the rise of home rule was inefficient decision-making that resulted from local governments needing to ask state permission for any local policy changes. An increase in autonomy allowed those decisions to be made more quickly and without the effort of securing approval from state legislatures.⁷

However, home rule relates to more than simply the degree of autonomy given to local jurisdictions. It also pertains to the ability of local governments to perform effectively. Further, the effectiveness of local governments in delivering key services impacts quality of life for residents. These services may include police and fire protection, streets, parks, water and sewer services, solid waste collection and disposal, land use, transportation and public health.⁸

The balance between effectiveness, efficiency and authority are at the heart of the trade-offs made when entering into a CJS arrangement. Sharing public health and other functions may increase the effectiveness of the local jurisdiction by allowing it to provide services that improve the quality of life of its residents; however, it may reduce the level of autonomy of that individual unit of government because it is sharing the responsibility and oversight with another jurisdiction. Therefore, the goal of a CJS arrangement is to maintain the highest level of

autonomy, in accordance with home rule tradition, while also providing services in the most efficient and effective manner possible.

Statutory Means of Sharing

Interlocal Agreements

In keeping with the tradition of home rule in Kansas, local governmental units are given the option through Kansas statutes to enter into agreements with other governmental jurisdictions, Native American Tribes or private entities in order to meet local needs. The language of statute KSA 12-2901 states that the purpose of the act enabling interlocal agreements is to: “*permit local governmental units to make the most efficient use of their powers by enabling them to cooperate*” in a manner “*that will accord best with geographic, economic, population and other factors influencing the needs and development of local communities.*” An interlocal agreement may be used to support CJS arrangements that are shared programs or functions and regionalization/consolidation (see *Figure 1*, page 2). KSA 12-2904 outlines the structure and function of interlocal agreements. An interlocal agreement is required to include the following:

- The purpose of the agreement;
- The duration of the agreement;
- The organization, composition and nature of any separate entity created and the powers that are delegated to it;
- The budget and manner of financing the items in the agreement;
- The methods for termination and procedures for disposing of property upon termination; and
- Any other necessary and proper matters.

An interlocal agreement may either require an appointment of a lead administrator or agency to govern the agreement, or form a separate quasi-governmental entity. The newly formed entity has the legal powers of local units of government, including the power to sue and be sued, to take and hold property, to sell, lease or transfer property, to make contracts and to have and use a corporate seal (KSA 12-2904a). For example, when the South Central Kansas Coalition for

Public Health was formed, seven counties entered into an agreement which created a new quasi-governmental entity with responsibility for certain public health services in the region.⁹

In the case where an interlocal agreement does not create such an entity, the agreement also is required to include:

- The provision for an administrator, joint board or one of the participating agencies to be responsible for administering the undertaking; and
- The manner of acquiring, holding and disposing of property.

Any interlocal agreement must be submitted to the local governing bodies and the Kansas attorney general for approval (KSA 12-2905).

Another example of the use of interlocal agreements is for public health emergency preparedness. In 2001, in response to terrorist attacks and the possible threat of biological and other forms of terrorism, the federal government developed public health emergency preparedness grants to increase state and local capacity to respond to a variety of public health threats. In Kansas, portions of these funds were distributed to 15 self-organized regions, each consisting of between three and fifteen counties. Interlocal agreements were used to create these regions. The interlocal agreements did not create separate legal entities, so each names a fiscal agent that fulfills the duties of administering the effort.

Contracts

Municipalities, including cities, counties or townships, also may enter into contracts with other municipalities to perform allowable governmental services, activities or undertakings. Contracts are often utilized in service-related arrangements and shared programs or functions, which are shown in the second and third columns of the *Spectrum (Figure 1)*. Any contract must also be approved by the governing body and is not regarded as an interlocal agreement (KSA 12-2908).

The Center for Sharing Public Health Services has developed a legal checklist (<http://phsharing.org/LegalChecklist>) that may assist when developing interlocal agreements or contracts.

Boards of Health

The makeup and duties of county boards of health are outlined in KSA 65-201 et seq. In most cases in Kansas, the county commissioners make up the board of health and are in charge of appointing a health officer. This appointee's role is to protect public health by conducting disease investigations, inspections and other activities to protect the public's health. The local board of health is responsible for overseeing these activities.

Joint Boards of Health

Joint boards of health may be formed when it is determined that public health is best promoted by a joint board of health. They are used primarily when two or more jurisdictions (i.e., counties) decide to create one public health agency. KSA 65-205 states that a joint board of health shall have the same powers, duties and limitations as county boards of health. In Kansas, joint boards of health typically include an equal number of representatives from each involved jurisdiction, and do not necessarily consist exclusively of county commissioners. For example, membership from each county might consist of one county commissioner, a medical doctor or someone with health expertise, and a member of the community. The joint board of health is responsible for providing an annual report of activities, revenues and expenditures to each contracting jurisdiction. The budget and manner of financing the activities of a joint board of health is determined by the participating jurisdictions and is included in any interlocal agreement developed between them.

Conclusion

Before entering into a cross-jurisdictional sharing agreement for public health, it is important for health officials and policymakers to be aware of the frameworks that exist to enable the sharing of authorities through CJS.

It is essential to be familiar with the purpose and importance of home rule in Kansas, including the balance of effectiveness, efficiency and local authority, prior to engaging in a CJS arrangement. Additionally, an effective CJS arrangement depends, in part, on matching the type of arrangement to the purpose and scope of sharing. Knowing when to form an interlocal agreement versus using a contract for goods or services, as well as knowing what types of information to include in each agreement, will allow health officials and policymakers to make

sound decisions. Finally, implementing the governance of a multi-county arrangement via a joint board of health requires knowledge of what responsibilities and powers such a joint board will have, according to Kansas statutes.

The Center for Sharing Public Health Services has developed a number of tools, including the legal checklist (<http://phsharing.org/LegalChecklist>) and the *Spectrum* (<http://phsharing.org/Spectrum>), that may assist when developing CJS arrangements.

Endnotes

1. This document provides key information and references to some of these frameworks, but does not constitute legal advice. Any jurisdictions wishing to enter into a CJS agreement should consult their jurisdiction's legal counsel.
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The Kansas Health Institute delivers credible information and research enabling policy leaders to make informed health policy decisions that enhance their effectiveness as champions for a healthier Kansas. The Kansas Health Institute is a nonprofit, nonpartisan health policy and research organization based in Topeka that was established in 1995 with a multiyear grant from the Kansas Health Foundation.



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