

Intergovernmental Cooperation Act, 5 ILCS 220

Memo prepared by ECWd on August 8, 2018

This Act contains some provisions of board member appointments and who may or may not be appointed. It is also silent in other provisions.

For instance:



DOES NOT APPLY TO KRMA

Section 3.1. Municipal Joint Action Water Agency.

(b) The governing body of any Municipal Joint Action Water Agency established pursuant to this Section 3.1 shall be a Board of Directors. There shall be one Director from each member municipality, public water district, township, State university, and county of the Municipal Joint Action Water Agency appointed by ordinance of the corporate authorities of the municipality, public water district, township, or county. Each Director shall have one vote. Each Director shall be the Mayor or President of the member municipality, or the chairman of the board of trustees of the member public water district, the supervisor of the member township, the appointee of the State university, or the chairman of the county board or chief executive officer of the member county or a county board member appointed by the chairman of the county board of the member county, appointing the Director; an elected member of the corporate authorities of that municipality, public water district, township, or county; or other elected official of the appointing municipality, public water district, township, or county. Any agreement establishing a Municipal Joint Action Water Agency shall specify the period during which a Director shall hold office and may provide for the appointment of Alternate Directors from member municipalities, public water districts, townships, or counties. The Board of Directors shall elect one Director to serve as Chairman, and shall elect persons, who need not be Directors, to such other offices as shall be designated in the agreement.

Clearly the legislature intended and directed that the Directors for a MJAWA be the elected officials of participating local governments. This is a typical example of what the term “authorized by law” means.



DOES NOT APPLY TO KRMA

Section 3.2.

This section talks about Municipal Joint Action Agencies.

(b) The governing body of any Municipal Joint Action Agency established pursuant to this Section 3.2 shall be a Board of Directors. The number,

terms of office and qualifications of the Board of Directors shall be provided for in the intergovernmental agreement. **Directors shall be selected by vote of the members which are eligible to vote under the terms of the intergovernmental agreement.** The method of voting by members for directors shall be provided for in the intergovernmental agreement which may authorize the corporate authorities of a member to designate an individual to cast its vote or votes at any such election. The Board of Directors shall determine the general policy of the Agency, shall approve the annual budget, shall make all appropriations, shall adopt all resolutions providing for the issuance of bonds or notes by the Agency, shall adopt its bylaws, rules and regulations, and shall have such other powers and duties as may be prescribed in the agreement.

This section clearly mandates a different approach to Directors of the Agency. There are no provisions for appointments by the mayors or county board chairmen. All of the member units of local governments must vote to place individuals as Directors. In our opinion, appointments for Directors of this type of Agency must also be in compliance with the [Public Officer Prohibited Activities Act](#) as far as prohibitions of certain elected officials serving in another capacity.



DOES NOT APPLY TO KRMA

Section 3.3.

This Section talks about Local Economic Development Commissions.

(2) The membership of a Commission formed by a municipality or municipalities and a county or counties shall be as follows:

(a) **2 public members appointed by the mayor or president of each municipality with the advice and consent of the municipal governing body; and**

(b) 2 public members appointed by the chairman of the county board or chief executive officer of each county with the advice and consent of the county governing body; and

(c) 2 public members appointed by the chief executive officer of the community college district with the advice and consent of the community college district board.

The mayor or president of each municipality, the chairman of the county board or chief executive officer of each county, and the chief executive officer of the community college district shall serve as ex officio members of the Commission.

(3) The membership of a Commission formed by a municipality or municipalities shall be as follows:

(a) 3 public members appointed by the mayor or president of each municipality with the advice and consent of the municipal governing body; and

(b) 3 public members appointed by the chief executive officer of the community college district with the advice and consent of the community college district board.

The mayor or president of each municipality and the chief executive officer of the community college district shall serve as ex officio members of the Commission.

(4) The membership of a Commission formed by a county or counties shall be as follows:

(a) 3 public members appointed by the chairman of the county board or chief executive officer of each county with the advice and consent of the county governing body; and

(b) 3 public members appointed by the chief executive officer of the community college district with the advice and consent of the community college district board.

The chairman of the county board or chief executive officer of each county and the chief executive officer of the community college district shall serve as ex officio members of the Commission.

(5) Of the public members appointed to a Commission, the respective appointing authorities shall ensure that the business community and organized labor are equally represented.

Again, clearly the legislature mandated appointments to this Commission. It mandated certain numbers of “public members” and also that Mayors, Chairmen, village Presidents are ex officio members of the Commission. In our opinion, this section must comply with the Public Officer Prohibited Activities Act’s prohibitions of aldermen or trustees being appointed.



Section 3.4.

****** APPLIES TO KRMA ******

This Section talks about am Municipal Joint Sewage Treatment Agency, which is how the KRMA is formed.

(b) The governing body of any Municipal Joint Sewage Treatment Agency shall be a Board of Directors. **The composition and manner of appointment of the Board of Directors shall be determined pursuant to the intergovernmental agreement.** The Board of Directors shall determine the general policy of the Agency, shall approve the annual budget, shall make all appropriations, shall approve all contracts, shall adopt all resolutions providing for the issuance of bonds or notes by the Agency, shall adopt its bylaws, rules and regulations, and shall have such other powers and duties as may be prescribed in the intergovernmental agreement.

It is clear in this Section 3.4 that the legislature wanted, and granted permission, for the appointment of Directors to be determined by the participating units of local governments, pursuant to their Intergovernmental Agreements (“IGA”). It is our opinion that any valid local government IGAs, contracts, resolutions, or ordinances must comply with all state and federal laws. In this case are the Municipal Code and the Public Officer Prohibited Activities Act.

Finally, in interpreting statutes, when a statute provides for appointments and terms of officers in one instance, but is silent in another, the silence is to be interpreted as a prohibition. Our Illinois Supreme Court has stated as such: *"They come within the principle of law that *Page 302 where the legislature has withheld a power it is the same as though the exercise of the power was prohibited by law. (Ashton v County of Cook)*. An Illinois Appellate Court also weighed in on the issue and it is more on point with Intergovernmental Cooperation, by stating in [*Board of Education v Cahokia District Council No. 58*](#), that there are limits under Art. VII, Sec. 10 of the Constitution by defining the term *"prohibited by law"* – which it defined as, in this case, *"a school district is given certain express and implied powers under the school code – any attempt to alienate those powers by contracting them away would dilute the effect of the Code and would be "prohibited by law."*

Within the Intergovernmental Cooperation Act, the legislature provides several examples of mandates for members or directors of the various agencies and commissions and is silent in others. That silence is a de facto prohibition.