

COUNTIES: Counties may cooperate with each other
COOPERATIVE AGREEMENTS: and expend county funds under the provisions of Section 70.210, RSMo 1969 et seq., within appropriate limitations, by becoming members of an association of counties for the purposes of research in the field of local government, providing training for county officials, providing information for the efficient operation of county government and supporting or opposing legislation affecting such counties.

OPINION NO. 146

May 19, 1972



Honorable Harold F. Reisch
State Representative, District 119
1013 Falcon Drive
Columbia, Missouri 65201

Dear Representative Reisch:

This opinion is in answer to your request in which you ask:

- "1. Is there legal authority permitting counties in Missouri to join and contribute to an organization known as the Missouri Association of Counties?
2. Can such an organization use taxpayer funds for the salary of an Executive Director?
3. Can such an organization take part in legislative action on specific legislative proposals?"

You also state that:

- "1. The Association of County Judges of Missouri wishes to re-organize itself and adopt by-laws as the Missouri Association of Counties for the following purposes: To strive to represent the best interest of the taxpayers of the counties of Missouri at all times through a) research in the field of local government; b) providing training to county officials; c) providing information and materials to permit the more efficient operation of county government; and d) to represent the taxpayers in the General Assembly by working on legislation beneficial to the counties.

Honorable Harold F. Reisch

2. A number of set [sic] counties either have been or are current members of the National Association of Counties and pay a membership fee from General Revenue to that organization.

3. At least one county currently is a member of the Missouri Municipal League which would appear to be a counter-part for the cities in this area of concern."

You have also submitted to us a copy of the Constitution and bylaws of the Missouri Association of Counties, adopted February 10, 1972. We will not undertake to pass upon all the provisions contained therein and will confine our attention to the specific questions you have asked.

The applicable Missouri constitutional provisions are Section 14 of Article VI and Section 16 of Article VI.

Section 14 provides:

"By vote of a majority of the qualified electors voting thereon in each county affected, any contiguous counties, not exceeding ten, may join in performing any common function or service, including the purchase, construction and maintenance of hospitals, almshouses, road machinery and any other county property, and by separate vote may join in the common employment of any county officer or employee common to each of the counties. The county courts shall administer the delegated powers and allocate the costs among the counties. Any county may withdraw from such joint participation by vote of a majority of its qualified electors voting thereon."

Section 16 provides:

"Any municipality or political subdivision of this 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."

Honorable Harold F. Reisch

Further, Sections 70.010, RSMo 1969 et seq., implement Section 14, and Sections 70.210, RSMo 1969 et seq., implement Section 16 above.

Although it appears at first glance that there is a conflict between Sections 14 and 16 of Article VI of the Missouri Constitution and the statutory provisions which implement such sections, it is our view that no such conflict exists. That is, Sections 70.010 to 70.090, which were enacted contemporaneously with Section 14, provide a procedure for petition (Section 70.020) and election (Sections 70.030 to 70.050) to adopt a proposition for the joint performance of common services by contiguous counties not exceeding ten in number. On the other hand, Sections 70.210 to 70.325, enacted in implementation of Section 16, include "counties" within the definition of "political subdivisions" (Section 70.210) and authorize the governing body of such counties, without limitation as to the number or location of such counties, to cooperate under contract in performing common services provided such cooperative action is within the scope of such counties' powers. (Section 70.220).

Keeping in mind that the Constitution is only a limitation on the power of the state legislature and not a grant of power, Hickey v. Board of Education of City of St. Louis, 256 S.W.2d 775 (Mo. 1953), it is our view that Section 16 and Sections 70.210 et seq., are applicable in the premises and that two or more counties whether contiguous or not and without regard to the number of such counties involved may enter into cooperative agreements.

We are enclosing a copy of our Opinion No. 167, dated July 10, 1969 to Branom, with respect to the power of a school district to contribute funds to a voluntary association, to compensate a person as acting director of such association out of district funds and to take part in support of or in opposition to legislation.

It is well recognized and a part of our fundamental law that the powers of the county courts are strictly limited to those powers expressly granted or fairly implied. Walker v. Linn County, 72 Mo. 650 (1880). In this instance the objectives that you have set out above are, generally speaking, proper county objectives. However as we noted, we do not attempt to pass upon all the questions that may be raised with respect to such agreements or upon the limits that may exist respecting the exercise of such powers.

In addition, Section 70.250 with respect to the method of financing provides:

"Any such municipality or political subdivision may provide for the financing of its share or

Honorable Harold F. Reisch

portion of the cost or expenses of such contract or cooperative action in a manner and by the same procedure for the financing by such municipality or political subdivision of the subject and purposes of said contract or cooperative action if acting alone and on its own behalf."

And, Section 70.260 respecting provisions which may be included in the joint contract states:

"The joint contract may also provide for the establishment and selection of a joint board, commission, officer or officers to supervise, manage and have charge of such joint planning, development, construction, acquisition, operation or service and provide for the powers and duties, terms of office, compensation, if any, and other provisions relating to the members of such joint board, commission, officers or officer. Such contract may include and specify terms and provisions relative to the termination or cancellation by ordinance, order or resolution, as the case may be, of such contract or cooperative action and the notice, if any, to be given of such cancellation, provided that such cancellation termination shall not relieve any party participating in such contract or cooperative action from any obligation or liability for its share of the cost or expense incurred prior to the effective date of any such cancellation."

Thus, counties may share in the financing of the expenses of such agreements and may also provide for the selection of officers to supervise and have charge of such joint planning, operation or service and to compensate such officers.

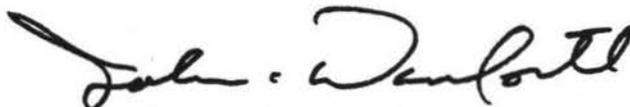
CONCLUSION

It is the opinion of this office that counties may cooperate with each other and expend county funds under the provisions of Section 70.210, RSMo 1969 et seq., within appropriate limitations, by becoming members of an association of counties for the purposes of research in the field of local government, providing training for county officials, providing information for the efficient operation of county government and supporting or opposing legislation affecting such counties.

Honorable Harold F. Reisch

The foregoing opinion, which I hereby approve, was prepared by my assistant, John C. Klaffenbach.

Very truly yours,

A handwritten signature in cursive script, reading "John C. Danforth".

JOHN C. DANFORTH
Attorney General

Enclosure: Op. No. 167
7/10/69, Branom