

Local Government Insurance Trust

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IS YOUR MUTUAL AID AGREEMENT A “PAPER TIGER” OR DOES IT HAVE THE FORCE OF LAW?

Introduction

Maryland law authorizes counties and municipalities to enter into mutual aid agreements with other political subdivisions to provide personnel, including police officers, for mutual assistance. *See* Section 2-105 (Mutual aid agreements) of the Criminal Procedure Article of the Annotated Code of Maryland (2008 Replacement volume)(hereinafter CP § 2-105). In many instances, this powerful tool enables police officers to exercise traditional police powers beyond the boundaries of their sworn jurisdictions. Because of the power and effect of mutual aid agreements, the General Assembly has imposed a requirement before such agreements can be given the force of law. This requirement is the primary focus of this Bulletin.

The Law

CP § 2-105(b) states:

Authority beyond boundaries of county or municipal corporation. –
By action as in the regular routine for legislative enactment, the governing body of a county or municipal corporation may determine the circumstances under which the police officers and other officers, agents, and employees of the county or municipal corporation, together with all necessary equipment, may lawfully go or be sent beyond the boundaries of the county or municipal corporation to any place within or outside the State.

(Bolding added). The statute defines “governing body” as: (1) the county executive and county council of a charter county with a county executive; (2) the county council of a charter county with no county executive; (3) the board of county commissioners of a county; or (4) the mayor and council, by whatever name known, of a municipal corporation. CP § 2-105(a)(1)-(4).

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Analysis of the Issue

With “governing body” defined, the meaning of the phrase “by action as in the regular course for legislative enactment” becomes paramount. In other words, how is a mutual aid agreement to be given the force of law? Is the “action” to be taken by the governing body limited to a particular device, such as an ordinance or a resolution? If so, which is preferable? The statute does not further define the phrase, but to “enact” generally means “to make into law by authoritative act.” *Black’s Law Dictionary* (7th ed.). “Enactment” refers to “the action or process of making into law.” *Id.* Based upon the clear and commanding language of the statute, it appears that enacting an ordinance is certainly the preferable, if not the only, way a mutual aid agreement can be given legal effect.

An ordinance “is distinctly a legislative act; it prescribes some permanent rule of conduct or government, to continue in force until the ordinance is repealed.” *Inlet Associates v. Assateague House Condominium Assoc.*, 313 Md. 413, 428 (1988)(quoting 5 *McQuillin, Municipal Corporations*, § 15:3 (3d ed.)) On the other hand, a resolution “ordinarily denotes something less solemn or formal than, or not rising to the dignity of, an ordinance.” *Id.* at 427. The important public and governmental purposes embodied in mutual aid agreements seemingly call for action by ordinance, not resolution. In this regard, it has been observed that a mutual aid agreement may be adopted as a blanket ordinance to cover a broad range of future issues that may arise or it can be drafted to address more immediate issues on a case-by-case basis. This is a determination each local government will have to make for itself. Regardless of how general or narrow the ordinance enacting a mutual aid agreement is written, the requirement of legislative enactment must be met. If it is not, your agreement will likely be of no legal effect. The consequences of such a determination would be significant from both a liability and political perspective.

Conclusion

Because needs are great and resources often scarce, local governments must frequently turn to one another for assistance. Mutual aid agreements are designed for this purpose. The important public and governmental purposes implicated by these agreements require careful consideration by all participants; consideration not only of content, but also of the means of adoption and enactment. This Bulletin serves as a reminder to review all of your mutual aid agreements to ensure that they have the force of law. If you have questions or concerns, they should be immediately addressed to your county attorney or municipal counsel.

If you have questions concerning this issue, please contact John Breads, Director of Legal Services at jbreads@lgit.org or telephone 1-800-673-8231.

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