

Opinion No. 2009-051

April 10, 2009

Deborah Beard, Account Planner
Communications Group
400 West Capitol, Suite 1391
Little Rock, Arkansas 72201

Dear Ms. Beard:

You have requested approval, pursuant to the Interlocal Cooperation Act (A.C.A. § 25-20-101 *et seq.*), of a proposed interlocal agreement between the Arkansas Department of Human Services -- Division of Medical Services (referenced as “the State” in the proposed agreement) and the Memphis and Shelby County Health Department.

You have submitted a copy of the agreement, under the terms of which the parties agree generally to cooperate in the continued operation of an outreach program to encourage early and continuous prenatal care (denominated in the proposed agreement “Campaign for Healthier Babies/Healthy Baby”), specifically by gaining access to the electronic media and other material production efficiencies that are made possible through a cooperative project.

The Interlocal Cooperation Act requires that interlocal agreements for joint or cooperative action specify the following items:

- (1) The duration of the agreement;
- (2) The purposes of the agreement;
- (3) The manner of financing the joint or cooperative undertaking and of establishing and maintaining a budget for it;

(4) The methods of accomplishing termination of the agreement and for the disposal of property (if any) upon termination;

(5) Any other necessary and proper matters.

A.C.A. § 25-20-104(c).

In addition, if the interlocal agreement does not establish a separate legal entity to conduct the joint or cooperative undertaking, it must specify the following items:

(1) The provision for an administrator or a joint board that will be responsible for administering the joint or cooperative undertaking;

(2) The manner of acquiring, holding, and disposing of real and personal property (if any) used in the joint or cooperative undertaking.

A.C.A. § 25-20-104(d).

I am required by law to review the agreement for the purpose of determining whether it is in proper form, as described above, and is otherwise compatible with the laws of the state.

Having analyzed the agreement you have submitted, I find that it is in proper form and otherwise meets the requirement of law. Accordingly, it is hereby approved as submitted.

However, as I was compelled to do previously in Op. Att'y Gen. No. 2006-064, I will note one recurring issue. The Interlocal Cooperation Act contemplates that agreements will be submitted for review by this office prior to the agreement going into effect. A.C.A. § 25-20-104(f)(2). The agreement submitted here was signed by the parties in February and March 2009 and received by this office for review on March 20, 2009. (I will note further that the agreement has not yet been approved by the Contract Administrator/Assistant County Attorney.) Yet by its terms, the submitted agreement purports to have been in effect beginning July 1, 2008 – well before it was submitted and reviewed. In order to avoid potential

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problems, we request that any future such interlocal agreement be submitted prior to its effective date or as close to the effective date as possible. It appears that this is feasible given that the content of the agreement has changed very little from year to year. We will do our best to expedite consideration of such timely submissions.

Assistant Attorney General Jack Druff prepared the foregoing opinion, which I hereby approve.

Sincerely,

DUSTIN McDANIEL
Attorney General

DM:JHD/cyh