



**OFFICE OF THE ATTORNEY GENERAL**  
STATE OF ILLINOIS

March 3, 1999

**Jim Ryan**  
ATTORNEY GENERAL

FILE NO. 99-003

INTERGOVERNMENTAL COOPERATION:  
Interstate Drug Enforcement

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The Honorable Brett Irving  
State's Attorney, Pike County  
Pike County Courthouse  
Pittsfield, Illinois 62363

Dear Mr. Irving:

I have your letter wherein you pose several questions regarding the propriety of a proposed intergovernmental agreement between Pike County, Illinois, and Marion County, Missouri, counties which are located across the Mississippi River from one another. The agreement would authorize law enforcement officers from one county to enter into the other for the purpose of assisting in the investigation of interstate drug offenses and the apprehension of offenders. Specifically, you have asked: (1) does Pike County have the authority to enter into such an agreement; (2) will Pike County incur any liability for tortious acts committed by Marion County law enforcement officers while

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acting pursuant to the terms of the agreement; (3) will Pike County incur any liability for injuries suffered by Marion County law enforcement officers while acting pursuant to the terms of the agreement; and (4) what is the proper venue for prosecution of persons apprehended by law enforcement officers pursuant to the agreement? For the reasons hereinafter stated, it is my opinion that: (1) Pike County has the authority to enter into such an agreement; (2) Pike County would be potentially liable for the acts of officers from another jurisdiction only to the extent that such officers might be acting pursuant to an official policy or custom of Pike County; (3) any potential liability which Pike County might have to officers of another jurisdiction harmed while in Pike County may be limited by the terms of the agreement; and (4) persons arrested for offenses are subject to prosecution in the jurisdiction in which the offense occurred.

With respect to your first question, units of local government in Illinois have authority to enter into intergovernmental agreements with one another and with public agencies in other States pursuant to article VII, section 10 of the 1970 Illinois Constitution, which provides, in pertinent part:

"(a) Units of local government and school districts may contract or otherwise associate among themselves, with the State, with other states and their units of local government and school districts, and with the

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United States to obtain or share services and to exercise, combine, or transfer any power or function, in any manner not prohibited by law or by ordinance. \* \* \*

\* \* \*

(Ill. Const. 1970, art. VII, sec. 10(a).)

Further, section 3 of the Intergovernmental Cooperation Act (5 ILCS 220/3 (West 1996)) provides, in part:

"Intergovernmental agreements. Any power or powers, privileges or authority exercised or which may be exercised by a public agency of this State may be exercised and enjoyed jointly with any other public agency of this State and jointly with any public agency of any other state or of the United States to the extent that laws of such other state or of the United States do not prohibit joint exercise or enjoyment. \* \* \*"

Initially, I note that a county is considered a "public agency", for purposes of the Intergovernmental Cooperation Act, but a sheriff is not. (5 ILCS 220/2 (West 1996).) A sheriff, therefore, has no power independently to enter into agreements with other units of government. (See 1977 Ill. Att'y Gen. Op. No. 178.) Consequently, any agreement of this sort must, for purposes of the Illinois law, be approved by the county board of the appropriate county.

You have attached to your letter correspondence from the Attorney General of Missouri, along with a copy of Section 195.507, RSMo., setting forth the authority of counties in

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Missouri to enter into an agreement such as that which has been proposed. Based upon the provisions of the Constitution and the Intergovernmental Cooperation Act, it is my opinion that Pike County is authorized by law to enter into an interagency agreement with a neighboring Missouri County for purposes of coordinating interstate law enforcement efforts.

Secondly, you have inquired regarding the potential liability of Pike County for tortious acts committed in Pike County by law enforcement officers from Marion County, Missouri, acting pursuant to the agreement. With respect to Illinois law, Pike County is protected by the provisions of the Local Governmental and Governmental Employees Tort Immunity Act (745 ILCS 10/1-101 et seq. (West 1996).) The county's immunity, with respect to the provision of police services, is not waived by contract (745 ILCS 10/4-102 (West 1996)).

Of greater concern is potential liability for violation of constitutional rights pursuant to 42 U.S.C. § 1983. Under section 1983, a municipal entity, such as a county, can only be liable if it has an official policy or custom that causes an injury to be inflicted on a plaintiff. (Monell v. Department of Social Services (1978), 436 U.S. 658, 694, 98 S. Ct. 2018, 2037-38, 56 L. Ed. 2d 611.) An illustration of this principle is found in Ross v. United States (7th Cir. 1990), 910 F.2d 1422,

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wherein both the city of Waukegan and Lake County were sued regarding the failure to prevent a drowning death in Lake Michigan. The city and county had entered into an intergovernmental agreement whereby the county undertook sole responsibility to patrol the lake shoreline. The acts and omissions complained of were those of a county deputy sheriff acting pursuant to a county policy. The city was held not liable, the court stating, in part:

" \* \* \*

At most, the city of Waukegan had concurrent jurisdiction with Lake County over shoreline patrols of Lake Michigan. The Illinois Constitution not only permits but encourages the use of intergovernmental agreements to coordinate the efforts of local governmental units. See ILL. CONST. art. VII, § 10. Following the directives of their own state constitution, the city and county properly agreed to eliminate costly overlapping efforts, leaving the county with the city's patrol boat and sole responsibility for Lake Michigan emergency services. It is clear that this arrangement was not merely a method for the city to escape legal liability. Under the agreement, the city had no authority to influence the county's procedures, and imposing liability on the city for the county's policies would effectively be the respondeat superior liability that the Supreme Court has soundly condemned. See, e.g., City of Canton v. Harris, 489 U.S. 378, 109 S.Ct. 1197, 1203, 103 L.Ed.2d 412 (1989); Pembaur v. City of Cincinnati, 475 U.S. 469 478-79, 106 S.Ct. 1292, 1297-98, 89 L.Ed.2d 452 (1986); Monell, 436 U.S. at 694-95, 98 S.Ct. at 2037-38. We agree with the city

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that a contrary result would read potential section 1983 liability into every intergovernmental agreement in the state of Illinois.

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(Emphasis added.) Ross v. United States (7th Cir. 1990), 910 F.2d 1422, 1428-29.

Similarly, an intergovernmental agreement between Pike County and a neighboring Missouri County which permits Missouri police officers to enter and exercise specified authority in Pike County would result in potential liability for Pike County only to the extent that the officers act pursuant to an official policy or custom of Pike County. Where such officers act only pursuant to the policies and directives of their employing county, Pike County cannot be held responsible for their actions.

A related concern may be the responsibility for indemnifying officers held to be individually responsible for acts or omissions which cause injury to third parties. Pike County is responsible for indemnifying its sheriff and his or her deputies pursuant to section 5-1002 of the Counties Code (55 ILCS 5/5-1002 (West 1996)). Pursuant to the proposed agreement, officers of participating agencies remain employees of their respective departments, which continue to be responsible for their equipment and compensation. Responsibility for indemnification of officers should, therefore, remain with the employer. Because indemnification is generally controlled by statute and contract, however,

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it would be appropriate to insert a provision in the agreement to clarify this responsibility.

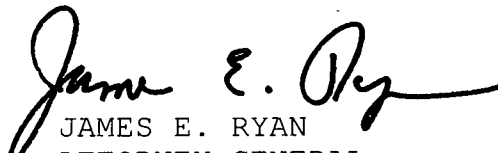
Your third question concerns whether Pike County may be potentially liable to officers of the other county for any injury they may suffer while in Pike County. Because Missouri officers will remain at all times employees of the Missouri County, it is that county which will remain liable for compensating any employment-related injury. Only if some official policy or custom of Pike County causes the harm to the officer might Pike County incur liability to him or her. Because liability will be based upon or arise as a result of either an employment relationship or the intergovernmental agreement, however, it would be appropriate to add a provision to the agreement to clarify this issue.

Lastly, you have inquired regarding the proper jurisdiction or venue for prosecution. Presumably, you refer to the prosecution of offenders apprehended as a result of the cooperative efforts of the officers of the two counties. To satisfy due process requirements, offenses must be prosecuted in the jurisdiction in which they occur. For example, in the event that an offender commits an offense in Missouri, but is apprehended in Illinois by Missouri deputies acting under the authority of the Pike County Sheriff pursuant to an intergovernmental agreement,

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the offender must be held in Pike County for extradition to Missouri, unless he or she waives extradition. The contemplated intergovernmental agreement cannot abrogate the constitutional rights of the offender or the laws of the States which require the extradition procedure. (See 725 ILCS 225/1 et seq. (West 1996).) In the event that the offender stands accused of crimes in both States, an agreement must be reached among the appropriate executive officers regarding which will be first to prosecute.

Sincerely,

  
JAMES E. RYAN  
ATTORNEY GENERAL