Arizona’s Intergovernmental Agreement Law

Tom Pickrell
General Counsel
Mesa Public Schools

August 2013
Arizona’s IGA Law

- Arizona has authorized public agencies to enter into intergovernmental agreements for many, many decades.

- But the IGA law – ARS §11-952 – has changed, and is subject to interpretation by the Courts and Attorney General.
Arizona’s IGA Law

- What is the difference between an IGA and a contract?
  - IGA is a contract
  - IGA requires public agencies exercising common powers
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- Purpose of the IGAs

“The purpose of this [law] is to permit public agencies, if authorized by their legislative or governing body, to enter into agreements for the joint exercise of any power common to the contracting parties as to government functions necessary to the public health, safety and welfare, and the proprietary functions of such public agencies.”
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What is a “public agency”? 

“Public agency" includes the federal government or any federal department or agency, Indian tribes, this state, any other state, all departments, agencies, boards and commissions of this state or any other state, counties, school districts, fire districts, cities, towns, all municipal corporations, and any other political subdivisions of this state or any other state.
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Key Question:

Does each public agency have authority to do the thing that they are proposing to do jointly?

- AGO 182-28 – IGA for UofA to provide psychiatric services to TUSD students.  **Answer:** No, TUSD has no authority to provide such services.

- AGO 183-57 IGA for UofA to provide speech and hearing services to TUSD.  **Answer:** Yes, TUSD must provide such services, and UofA teaches its students to provide such services.
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Why is this important?

“A contract under which one agency merely procures a needed service from the other does not qualify as an IGA unless the parties are acting jointly to exercise powers common to the parties.”

AGO 183-57
Arizona’s IGA Law

“If two agencies are charged with performing the same duty, it obviously is economically efficient to avoid duplication of services and allocate responsibilities between the parties. Undoubtedly, that is why agencies, when entering into IGAs, are excused from compliance with competitive bidding provisions. Although this exception is appropriate when agencies statutorily share powers, there is no valid policy reason to avoid competitive bidding when agencies merely are contracting with each other for services. “

AGO 183-57
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- A Word of Caution:

A procurement is not necessarily exempt from competitive bidding just because the procurement is done by an IGA.

- IGA must be valid – i.e., joint exercise of common powers.
- A statutory or regulatory exemption from competitive bidding must exist for IGAs.
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Mandatory Provisions of an IGA

- Purpose of IGA.
- Duration of IGA.
- Manner of financing; establishing & maintaining a budget.
- Methods of partial or complete termination of IGA.
- Disposition of property upon termination.
- If separate entity formed, the precise organization, title, composition and nature of the entity.
- Any other necessary or proper matters.
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- What contractual provisions should be in an IGA in addition to the mandatory provisions?
  - Specification of each parties’ duties
  - Funding obligations
  - Default and remedies
  - Insurance indemnification
  - Method for withdrawal of one but not all parties
  - Audit; record maintenance
  - Notices
  - Arizona state agency provisions
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“No agreement made pursuant to this article shall relieve any public agency of any obligation or responsibility imposed on it by law.” ARS 11-952(C)

What this means:

- IGAs cannot be used to “acquire” powers that the public agency does not have.
- IGA cannot be used to alter the public agency’s statutory or regulatory duties.
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- Authorization of an IGA
  - IGAs must be approved by the Governing Body of the Public Agency. If no Governing Body, then the Chief Executive Officer.
  - IGA not effective until appropriate action by the Governing Body.
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- Mandatory Legal Counsel Approval
  - Scope of lawyer’s opinion:
    “the agreement is in proper form and is within the powers and authority granted under the laws of this state to such public agency.”
  - Federal and non-AZ agencies exempt.
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- Must the IGA be filed?
  - Filing requirements have been repealed from ARS 11-952.
  - But, there could be laws specific to your IGA that require filing or maintenance of an IGA register.
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- Consequences for acting on an IGA that has not taken effect
  - Payment for services shall not be made unless pursuant to a fully approved written contract.
  - A person who authorizes payment of any monies in violation of [11-952] is liable for the monies paid plus twenty per cent of such amount and legal interest from the date of payment.