

Arizona Fire Districts Guide for Implementing a Joint Powers Authority

Introduction

Arizona Revised Statutes (ARS) 11-952 allows public entities to enter into an agreement or form a separate legal entity (SLE), including a non-profit organization, to perform powers that are held by all the contracting parties. Since the fire districts and fire departments are authorized to provide fire protection, EMS and other lifesaving services a Fire Authority, which is a SLE, may be formed to provide these services for the fire agencies that want to contract with each other. Since police agencies and fire agencies are authorized to provide 911 answering points and dispatching services they may form a SLE that provides dispatching for the agencies in the agreement. Some public entities have formed insurance pools for providing insurance to the entities at a better rate while others have formed a purchasing consortium to improve their purchasing power and save money for the entities. In other words if two or more public agencies provide the same service they may form a SLE that will provide the service that they want to share.

A joint powers authority (JPA) is an example of a SLE and the JPA will be referred to as a SLE in this document for consistency with ARS.

The following information is a general guideline for forming a SLE between an Arizona Fire District and another public entity or entities, including other Fire Districts. This information is not a complete document for developing a SLE, but a guideline for developing, funding and governing a SLE in Arizona.

Since different governmental agencies are governed by different laws, and different positions held in each SLE may be governed by different laws, a knowledgeable attorney should be involved in the developing any SLE and an attorney must approve each SLE.

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Examples of Public Agencies sharing joint powers

Any fire district can enter into an Intergovernmental Agreement (IGA) with another public agency even if they are not a fire district. Fire districts across Arizona have used IGAs to work together in different ways to operate more efficiently. This document focuses on forming SLEs as a way to work together. Ideas can be gained from how other agencies are now working together. The following examples can be used as ideas to consider when thinking of ways to work together with other agencies.

Mutual Aid and Automatic Aid Agreements are some of the most common types of IGAs between fire service agencies. Most municipal fire departments and fire districts in Yavapai County are part of the Yavapai County Mutual Aid Agreement. In this IGA the agencies agree to provide emergencies for participating agencies when requested by another contracting agency. The document spells out operational and administrative parts of the agreement. Items like what happens when one agency requests help from another and the other agency is not available, what happens when there is reimbursement for a call from another party etc.. The fire districts and fire departments in the Verde Valley have entered into an Automatic Aid Agreement to automatically dispatch one agency into another agencies area on different types calls for service.

The Verde Valley Fire Chiefs Association is an agency that consists of 5 fire districts and 2 municipal fire departments. It is a non-profit organization SLE that was originally formed to build a regional fire training facility. It has since added funding and provided guidance for regional Haz Mat response, regional public education program, fire investigation team and works together to address other issues that affect fire and EMS response in the Verde Valley. This SLE has also entered into an agreement with Yavapai College to fund, build and manage a classroom/meeting room and offices on the regional training center. This organization is funded by the 7 fire agencies that pay dues to the association annually for operating funds. It also receives funds from donations from local companies and charges for the use of the training center by outside agencies.

The Greater Yavapai County Purchasing Consortium is an IGA that was started by Yavapai County school districts and fire districts. This consortium is governed by a board that consists of a representative from each of the contracting agencies. The intent was to increase their buying power and ultimately save the districts and taxpayers money. This is an example of non-fire governmental agencies joining with fire districts to provide a service that benefit both types of agencies. This organization has expanded beyond Yavapai County and now includes Arizona governmental agencies outside of Yavapai County. Fire districts should not limit their vision of IGAs or SLEs to just fire or emergency service agencies but consider other public agencies as well.

Summit Fire District (SFD) contracted with Fort Valley Fire District (FVFD) and Eldon Lookout Road Fire District (ELRFD) to provide all of the fire services for FVFD and ELFD. FVFD and ELFD did not have any structures, fire equipment or employees and SFD provided all the equipment, structures and manpower to provide fire and EMS services to their community. This IGA was used until the three districts merged under SFD.

Other public entities have formed insurance pools for providing insurance to the entities at a better rate and other emergency service agencies in Arizona are working on a regional dispatch center.

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Laws relating to Arizona fire districts forming a Separate Legal Entity

The legal framework for merger, consolidation and joint power authorities for public agencies in Arizona is found in the Arizona Revised Statutes (ARS). The statutes authorize or prohibit or are silent concerning public agency's power to undertake certain activities. Arizona Fire Districts Association sponsored legislation regarding ARS 48-805.01 to give direction for fire districts that are working to form a SLE.

Title 48 relates to Special Districts and uses Title 11 as the foundation basis for developing a SLE. ARS 11-952 specifies the general form, framework, components of the contract for an IGA to form and operate a SLE. ARS 48-805.01 gives more specific guidelines for Arizona fire districts to form and operate a SLE. Other Statutes that are referred to in these statutes are title 38 relating to Public Officers and Employees which govern a SLE, title 36 relating to providing ambulance transport services, and statutes 35-431 and 48-806 which relate to general obligation bonds.

What Separate Legal Entities can and cannot do.

As stated previously Arizona law authorizes, prohibits or is silent concerning Public Agency's power to undertake certain activities. This includes fire districts entering into SLEs. The following is a simple list of some of the things ARS 11-592 and ARS 48-805.01 allows SLEs to do and as well as what they cannot do.

- When 2 or more Public Agencies form a SLE, the entity can only have powers common to all the contracting parties.
 - If the SLE is formed to provide fire protection it can include fire districts and municipal fire departments but not a county sheriff's department as the sheriff's department does not have the power to provide fire protection.
 - If the SLE is formed as a regional dispatch center it may include all 3 different entities as the power to receive and dispatch emergency calls for service are common to all of the agencies.
- Common powers that contracting parties can authorize a SLE to provide include fire protection, the preservation of life, providing emergency medical service and carrying out its other powers and duties according to ARS 48-805.01.
- Another common power contracting parties can authorize a SLE to provide is ambulance transportation services but only when issued a Certificate of Necessity by the Arizona Department of Health Services.
- The SLE may be a non-profit organization.
- The agreement must explain what joint common powers of the contracting parties the SLE will exercise.
- An officer or elected member of the governing body of a party to the agreement may also act in the capacity of a member of the governing body of the SLE as long as they still meet the requirements of title 38.

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- ARS 48-805.01 allows cities, towns, counties and fire districts to create a SLE, but one of the entities must be a fire district.
- The SLE can enter into contract, including contracts, leases or other transactions with one or more of the parties to the agreement forming the SLE.
- The SLE can employ agents and employees
- The SLE can acquire, construct, manage, maintain and operate buildings, works, infrastructure, apparatus, equipment and improvements.
- The SLE can incur debts, liabilities and obligations.
- The SLE can sue and be sued.
- The SLE has the rights and immunities of the parties that are granted by the constitution and statutes of Arizona including immunity of its property to be taxed.
- The SLE does not have taxing or bonding authority.
- The contracting agencies of the SLE may issue general obligation bonds for the purpose of funding the costs of and expenses of acquiring or constructing any structures, facilities or equipment necessary to effectuate the purposes of the agreement.
 - Each of the participating party's general obligation bonding authority is limited to that of each party's enabling legislation.
- The SLE cannot relieve any public agency that is party to the SLE of any obligation or responsibility imposed on it by law. Fire districts are formed to provide fire protection and other life safety services. They may use the SLE to provide the services but they are still responsible to see that the services are provided.

Writing the contract for a Separate Legal Entity

The SLE can exercise part of the powers the agencies exercise like dispatching or the majority of the powers like a fire authority that provides fire protection, EMS and fire prevention. The contract will be the guideline for what powers the SLE will be exercising, how it will be funded, why it was formed, how it will be governed and how it will be divided up if one or more of the agencies separate from the SLE. A SLE formed under ARS 48-805.01 must have one fire district but the other public agencies can be cities, public school districts or other public agencies. Each of the non-fire district agencies are governed by different statutes and it is important that the SLE meets their requirements of each of the contracting parties as well. Therefore the contract will have to be reviewed and approved by the attorney from each agency to determine if the agreement is in proper form and is within the powers and authority granted under the laws of Arizona for each public agency. Two exceptions to this requirement is if one the entities is a federal department or from

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another state. Unless required by federal law or the law of the other state those contracting agencies do not have to have their attorney approve the agreement.

Some of the things that are required to be in the contract are the precise organization, composition, title and nature of the SLE. It must also include the duration, purpose, manner of financing, establishing and maintaining a budget, and what will happen if all or part of the organization is terminated. It must also include any other necessary and proper matters. No agreement shall relieve any public agency of any obligation or responsibility imposed on it by law.

It may be helpful to hire an attorney that is knowledgeable in the Arizona revised statutes that govern the different agencies to help write the contract.

Governing a Separate Legal Entity

The governing body of a SLE formed in pursuant of ARS 48-805.01 shall be composed of officials elected to one or more of the governing bodies of the political subdivisions that are parties to the agreement or their designees. How the governing body is set up will be described in the contract.

An officer or elected member of the governing body of a party to the agreement may also be a member of the of the governing body of the separate legal entity as long as it meets the requirements of ARS title 38 which governs public officers and employees. Therefore an elected board member of a fire district that is party to a SLE may serve on the governing board of the SLE. In the same manner a Fire Chief or other officer may serve on the governing board of the SLE if appointed as the representative by the elected officials and they meet the requirements of ARS title 38.

The governing bodies of the seven fire agencies in the Verde Valley formed a SLE as a non-profit organization called the Verde Valley Fire Chiefs Association. An example of governing body of an existing SLE is the Verde Valley Fire Chiefs Association. Their governing body consists of a Fire Chief from each one of the contracting agencies. Another SLE may have an elected official from each of the agencies that are party to the SLE on the governing board. The governing board of an SLE may be made up of other designees from the agencies that are party to an SLE as stated in the agreement.

Funding a Separate Legal Entity

All SLEs formed under ARS 11-952 must include in the contract the manner of financing the SLE and how it will establish and maintain a budget. There are several ways to fund a SLE.

The SLE is not authorized to collect taxes but can be funded by the parties that are contracted to the SLE which are authorized to collect taxes. The mechanism for determining how much funding each agency should provide should be written in the contract. If the SLE is a Fire Authority that provides all fire protection, technical rescue, EMS services, fire prevention and public education for the contracted parties, and purchases and maintains all equipment and facilities, and hires all operational and administrative personnel the contracting agencies will collect taxes and pay for the portion of the budget that they are responsible for. The agencies that are fire districts will accomplish all or part of this payment through property tax. Each district will set their own mil rate based on their assessed valuation and the combination of funds they will

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need to pay to the SLE and any other expenses. Different fire districts will be able to have different mil rates. Each district will collect their own Fire Districts Assistance Tax, donations or other income that they normally get.

ARS 11-952 allows for the SLE to be a non-profit organization. Non-profit organizations are eligible for certain grants and donors may receive tax credits for donations given to non-profit SLEs.

SLE may also bill and/or contract for services. If services are provided for property that is outside of the area of the contracted agencies or to people who are not taxpayers of the contracted agencies, the SLE may bill for those services. If property owners that are not contiguous with any of the contracted agencies request the services of the SLE, and the SLE wishes to provide those services to the requesting property owner, they may contract for services.

If a SLE applies for a CON to provide ambulance transport services and the CON is granted, the SLE may bill for the services at the rates approved by ADHS.

If a SLE contracts with the State to send personnel and apparatus on wild land fires, it may receive funds the same as a fire district or fire department does.

These are some of the ways a SLE may be funded.

Conclusion

Carefully considered and thoughtfully planned, an Arizona Joint Powers Authority or SLE can be an effective and efficient service delivery methodology benefitting the public and fire service providers. AFDA has resources and/or can recommend assistance for any Arizona fire district that is considering forming Joint Powers Authorities or entering into an IGA with other fire districts or other public agencies.

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