

**MINUTES**  
**LINCOLN-LANCASTER COUNTY CONSOLIDATION TASK FORCE**  
**COUNTY-CITY BUILDING**  
**555 SOUTH 10<sup>TH</sup> STREET, ROOM 303**  
**FRIDAY, SEPTEMBER 27, 2013**  
**8:30 A.M.**

Committee Members Present: Ann Post, Chair; Russ Bayer; Dick Campbell; Mike DeKalb; Jan Gauger; Dale Gruntorad; James Jeffers; Larry Lewis; Jean Lovell; Larry Melichar; Darl Naumann; W. Don Nelson; Kerry Eagan (Ex-Officio); and Trish Owen (Ex-Officio)

Committee Members Absent: Amanda McGill

Others Present: Karen Amen, Facilitator; Laurie Holman, Legal Counsel for the Legislature's Urban Affairs Committee representing Senator Amanda McGill; Don Thomas, County Engineer; Doug Pillard, Design Division Head, County Engineering; Roger Figard, City Engineer; and Ann Taylor, Lancaster County Clerk's Office

The Chair called the meeting to order at 8:29 a.m.

**NOTE:** The following information was provided to the Task Force prior to the meeting (see Exhibits A-C): 1) Draft Model for a Consolidation Public Safety Organization (as developed at the September 13, 2013 Consolidation Task Force Meeting); 2) Key Summary Points for Public Works and County Engineer; and 3) Lincoln City Attorney's Legal Opinion Regarding Nebraska Law on Home Rule Charters and Dillon's Rule.

An overview of meeting outcomes as of September 27, 2013 was disseminated (Exhibit D).

Karen Amen, Facilitator, suggested refinement of the agenda (see Exhibit E).

**AGENDA ITEMS**

**1 APPROVAL OF MINUTES OF SEPTEMBER 13, 2013 MEETING**

**MOTION:** Campbell moved and Naumann seconded approval of the minutes. Bayer, Campbell, DeKalb, Gauger, Gruntorad, Jeffers, Lewis, Lovell, Melichar, Naumann, Nelson and Post voted aye. McGill was absent from voting. Motion carried 12-0.

## **ADDITIONS TO THE AGENDA**

- A. Presentation by County Engineer and Public Works/Utilities

**MOTION:** Bayer moved and Lewis seconded approval of the addition to the agenda. Bayer, Campbell, DeKalb, Gauger, Gruntorad, Jeffers, Lewis, Lovell, Melichar, Naumann, Nelson and Post voted aye. McGill was absent from voting. Motion carried 12-0.

## **2 REVIEW OF PUBLIC SAFETY DECISIONS**

Post indicated one member of the Task Force has requested discussion of public safety decisions from the September 27<sup>th</sup> meeting, in light of the City Attorney's legal opinion (see Exhibit C).

## **3 REVIEW OF PUBLIC WORKS AND COUNTY ENGINEER INFORMATION RECEIVED**

See next item.

## **ADDITIONS TO THE AGENDA**

- A. Presentation by County Engineer and Public Works/Utilities

Written responses from the City Engineer and County Engineer to questions raised by the Task Force and considerations for a Public Works/County Engineer merger were disseminated (Exhibit F).

Task Force members relayed additional questions or concerns they have related to the County Engineer and/or Public Works/Utilities. Bayer requested further discussion of whether vehicle/equipment maintenance could be shared. Naumann asked how the County Engineer and Public Works/Utilities feel about consolidation and whether they would oppose consolidation efforts. Melichar asked whether the departments have identified additional consolidation opportunities. Post said she would like additional information about equipment being located in various locations throughout the County and a general discussion about the proportion of work between the City and County related to road construction and maintenance. Gruntorad inquired about cost sharing agreements. DeKalb asked how projects that have split jurisdiction are handled and whether there are opportunities to mutually design projects. Campbell indicated he would like the departments to expand on how they serve their constituencies differently. Lewis asked the departments whether the fact that they report to different entities and serve different clienteles would greatly impact any consideration of consolidation. Jeffers said he would like to see organizational charts.

Roger Figard, City Engineer, requested clarification as to whether the Task Force is talking about consolidation of County Engineering and Public Works/Utilities or County Engineering and City Engineering services, which includes street maintenance. Amen suggested discussion of the pros and cons. Campbell said many in the community feel Public Works/Utilities is too big and said he is not opposed to looking at pulling all of the engineering functions together and separating out some of the other elements.

In response to a question from Gruntorad, Figard said the City Engineer's Office provides design, inspection and oversight for the City's public infrastructure through a revolving fund.

Campbell asked if they review new developments. Figard said platting and subdivision review is a Planning function and his department gets involved when it is ready for water, sewer and street design. He said Engineering works with the Planning Department to estimate the cost of the projects in the Long-range Transportation Plan. They budget for the projects in the Capital Improvement Program (CIP), including the delivery costs (planning, design, inspection and testing).

Don Thomas, County Engineer, said his department "farms out" most of the bridge and roadway design work to outside consultants.

In response to a question from Campbell, Doug Pillard, Design Division Head, County Engineering, said County Engineering reviews the road plans for rural acreage developments but not any of the utility proposals.

Gruntorad asked how the departments have worked together as the City of Lincoln expands. Figard said the City has some authority over design standards for roads within its three-mile zoning jurisdiction. He said the most significant measure was the Rural to Urban Transportation System (RUTS) Program, which lays out the roads to be built in that area so they don't automatically have to be removed as the City annexes forward. Build through standards for rural subdivisions that have larger lots is another measure that has been utilized (the homes are laid out in a manner to allow for further subdivision when they are annexed without incurring enormous utility and road costs). Figard said there is a long history of coordination and cooperation between the two departments and said they get together regularly to discuss funding, right-of-way, utility placement and long-term planning.

In response to Naumann's question about whether they would oppose consolidation, Figard said he is not elected to office and his role would be to implement the program and make it work regardless of who is technically in charge. He noted that Thomas' position is elected and said that creates a different set of issues.

DeKalb asked Figard and Thomas whether they feel there is enough protection in place to preserve the working relationship between City and County Engineering. Thomas

said he believes there is and indicated the County Board, City Council and Mayor can all pressure elected officials if there is a lack of cooperation. Figard said there are always challenges in setting priorities but said he doesn't have any reason to believe cooperative efforts won't continue.

Post noted Figard had asked whether the Task Force is looking to consolidate all of Public Works/Utilities and County Engineering or just the engineering services division. She felt the latter would make more sense and asked how that would affect their decision-making matrix. Figard said the City's street maintenance and County's road maintenance functions have some commonality. He said City Engineering serves a number of other entities (water, wastewater, storm water) and there would be some challenges in budgeting and structuring to make sure funds were spent on the appropriate projects if City Engineering and County Engineering were combined. Figard said City Engineering involves a revolving fund and consolidation would be mixing water, wastewater revenue, street dollars, wheel tax, general funds and property tax from the County. DeKalb also pointed out that the County Engineer's dollars cannot be spent inside the City.

Figard said he agrees with Campbell's statement that Public Works/Utilities is a huge department but by being one it can make sure "glitches", such as constructing a new street and having to tear it up for a new water main, are avoided. He said it also provides asset management in the future, preserving the life of water, sewer and streets and replacing them together at the appropriate time, adding he would hate to lose that connectivity and efficiency.

Nelson gave an example in which technology should be used to create efficiencies, such as one utility (water, natural gas and electricity) collecting usage data for all three utilities and selling it to the other entities, and said he questioned whether there are other areas of possible efficiencies that have been missed in the discussion.

Figard said a question had been raised about whether the departments could share vehicle maintenance. He explained the City has two types of vehicle maintenance: 1) Cars and trucks which are maintained by the Police Garage; and 2) Heavy equipment which is maintained by Fleet Services at Public Works. Thomas said his department handles maintenance for county vehicles and privatizes the work it cannot handle. Bayer felt there could be savings by consolidating the vehicle maintenance functions. Figard said he believes it could result in a reduction of service. He pointed out that work areas need to be laid out for efficiency, noting the County Engineer has equipment (maintenance) shops scattered around the County. Figard said consolidation of vehicle maintenance would affect other departments and the Mayor and those department heads would need to be part of the discussion. Campbell suggested it may be more efficient for Public Works to use some of the County's maintenance shops rather than trying to drive heavy equipment across town for maintenance.

Figard referenced DeKalb's question regarding split jurisdiction and asked whether it was in reference to large projects that include the state and federal government. DeKalb said he was interested in management and funding splits. Figard said small projects that involve both the City and County are addressed in interlocal agreements. He said the City and County treat themselves as one to protect both entities and maximize road, bridge and flood control dollars in larger projects that involve federal funding or other agencies, citing the South Beltway Project as an example.

Figard said in terms of design, the County's design projects are different than the City's. He said both staffs are busy and said he doesn't really see any inefficiencies.

Figard noted there was also a question about serving constituents differently. Thomas said they have different levels of service and operate under different conditions. Figard noted that 90% of the population resides in the City and expressed concern that services (snow removal, grading, road maintenance) in the rural areas could suffer if the departments were consolidated.

Campbell asked whether subdivision roads are considered private or public. Thomas said there are both types. Eagan explained it depends on occupancy of lots, i.e., after a certain number of lots are sold and occupied the subdivision might petition for county maintenance.

Discussion then focused on the decision-making matrix. Figard said the two departments feel they work well together and have maximized efficiencies. Bayer asked if their recommendation would be to not consolidate the departments. Figard and Thomas indicated yes.

Gruntorad asked whether they have changed the cycling of the purchase of new equipment and outsourced more seasonal work. Figard and Thomas both indicated that they have.

DeKalb noted that the County has a large piece of the Geographic Information System (GIS) and the City also has several pieces and felt there may be further opportunities in that area.

Campbell asked what structure they would put in place if they could start from scratch.

Amen suggested that the group vision the best structure for City and County 15 to 20 years from now, instead of focusing on the present structure and roles/responsibilities. Jeffers disagreed, stating he believes the focus should be on what can be changed within the present system rather than trying to project out 15 to 20 year increments. Campbell felt the group should look at what is a better long-term structure for meeting the needs of all the citizens, urban and rural. Gauger said she would take the vision one step further, noting some envision a municipal county in 20 years and there will

have to be a new structure if that occurs. Bayer said he believes the group should focus on moving in that direction, observing consolidation will take care of itself if that occurs.

There was consensus to request organizational charts, total number of vehicles and a list of maintenance facilities.

It was also proposed that the two departments begin to plan for an eventual consolidation (municipal county) (Exhibit G).

#### **4 CONSIDERATION OF PROCESS FOR NEXT GROUPING OF DECISIONS AND RECOMMENDATIONS - OVERVIEW OF REMAINING MEETINGS**

Discussion took place regarding the City Attorney's legal opinion regarding Nebraska law on home rule charters and Dillon's Rule (see Exhibit C). Campbell said it appears from reading the opinion that the City of Lincoln has broader powers than what the Task Force had thought. DeKalb added it appears there are no provisions for the County to create a municipal county. Nelson remarked that the Task Force's job is to decide where it wants to go, not the current state of law. DeKalb wondered whether the County Attorney would concur with the opinion. Campbell asked whether it is possible to seek a legal opinion from the State Attorney General. Post said the request would probably have to come from a State Senator. Nelson felt the more important question is whether the Nebraska Department of Justice would oppose a recommendation the Task Force is making. Post said if Lincoln were able to form a municipal county it would negate the question of whether to seek a home rule charter county. Campbell felt the Task Force's report should note that its recommendations are based upon the assumption that we would be able to move forward with a municipal county or as a city-county. Post pointed out that if Task Force members view home rule charter as a way to restructure things and eliminate elected officials, her interpretation is that it would be difficult to do so. Eagan said you create whatever elected positions you want with a vote under provisions in the Municipal County Act. Gauger felt there should be a community-wide funded study, similar to the Arthur D. Little Study. She said she would also like Senator McGill's thoughts on the opinion and the possibilities. Post summarized that the Task Force felt the opinion was good information to have and will plan what it would like to see without determining the exact legal structure.

Campbell suggested that the Task Force members try to come up with ideas and define other "low hanging fruit" before the next meeting in an effort to shorten the discussion. It was noted further discussion of the City Clerk and County Clerk Offices will also be scheduled on the October 11<sup>th</sup> agenda.

The meeting schedule was defined as follows: October 11, October 25, November 8, November 22 and December 13th.

**MOTION:** Campbell moved and Bayer seconded to form a sub-committee, comprised of Lovell, Post and Eagan, to make a recommendation on whether to combine the criminal prosecution functions of the City Attorney and County Attorney. Bayer, Campbell, DeKalb, Gauger, Gruntorad, Jeffers, Lewis, Lovell, Melichar, Naumann, Nelson and Post voted aye. McGill was absent from voting. Motion carried 12-0.

## **5 DEVELOP DRAFT RECOMMENDATIONS FOR PUBLIC WORKS AND COUNTY ENGINEER**

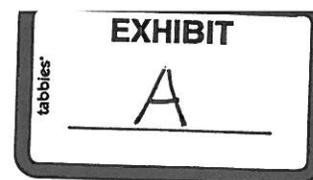
There were no further recommendations for Public Works/Utilities and the County Engineer at this time.

## **6 ADJOURNMENT**

**MOTION:** Campbell moved and DeKalb seconded to adjourn the meeting at 10:31 a.m. Bayer, Campbell, DeKalb, Gauger, Gruntorad, Jeffers, Lewis, Lovell, Melichar, Naumann, Nelson and Post voted aye. McGill was absent from voting. Motion carried 12-0.

Submitted by Ann Taylor, Lancaster County Clerk's Office.

**Lincoln/Lancaster County Consolidation Task Force  
Draft Model for a Consolidated Public Safety Organization**  
As developed at the September 13, 2013 meeting



**Reasons/Rationale for Consolidation** (Indications of support: 8 green, 3 yellow)

- Cost savings over the long term
- More flexibility
- Better service
- More accountability
- Eliminate duplicate staff and functions
- Appropriate cross-training allows maximum deployment
- Enhanced administration

**Proposed Structure** (Indications of support: 8 green, 3 yellow [one changed to green])

- Include everything: Police, Sheriff, Fire, Ems, Rural Fire, Emergency Services, Emergency Management, Emergency Communications, Airport and UNL police
  - Add Corrections? (1 yellow, 10 green)
- Understand it may take numerous steps
- Limited cross training:
  - Train police/fire etc to support each other
  - But not full integration with everyone a cross-trained public safety officer
- Choose one of these alternate routes to implementation
  - Interlocal, JPA, Municipal County
  - Home Rule Charter legislation
- All these are appropriate areas for the detailed study

**Short Term Steps: Operational Area to Merge Now**

- Firing range
- Vehicle maintenance
- Training
- Service Desk
- Recommend legislative Change

**Recommend a More Detailed Study** (Support: 10 green, 1 yellow)

- Elected officials form Task Force to develop modeling and cost savings
- Our recommendation: Do further study on specific issues, components
- Broad funding support outside of govt for expertise and resources to aid study
- Develop model and time frame, including additional costs or savings for county-wide public safety division
- Define which entities constitute "Public Safety"
- Get Legislature to better define "home rule" and give Linc/Lanc County the right to have this; but – is home rule the only solution

## Key Summary Points for Public Works and County Engineer

### **Public Works**

Public works has three main departments

- **Administration**
  - Director
  - Assistant Director
  - City Engineer
  - Transit Manager
  - Business Office Manager
- **Transportation**
  - Engineering Services
    - Design & Construction
    - Development Services
    - Traffic Control
    - Street & Fleet Maintenance
  - StarTran Public Transit System
- **Utilities**
  - Water
  - Wastewater
  - Solid Waste Operations
  - Watershed Management

The Transportation Department of Public Works most closely aligns with the duties and responsibilities of the county Engineer

### Transportation Department

**Design & Construction:** Provide, maintain and support safe convenient durable and efficient transportation infrastructure. Includes roads, bridges, sidewalks and curbs.

**Development Services:** Reviews all plans related to proposed development in the community.

**Traffic Control:** regulates traffic safety, signs and signals.

**Street Maintenance:** Repair and maintain all of Lincoln's public right of way. Includes street sweeping, snow removal and pothole repair.

**StarTran:** provides public Transportation throughout the city as well as providing special transit services for the elderly, disabled and disadvantaged.

## County Engineer

### Personnel & Qualifications:

- About 111 employees
- County Surveyor – Required by statute, appointed by County Engineer, must be a licensed land surveyor
- County Engineer is an elected office and must be a registered Professional Engineer

### Duties:

- Provide routine **road maintenance and snow removal** on the county road system
  - Includes mowing, tree and brush clearing, paint striping, pavement crack sealing, erecting and removing snow fence, sign installation or replacement
- **Road and Bridge construction**
  - regrading roads
  - inspecting bridges (300 bridges which must be inspected every 2 years)
- Taking **traffic counts** to determine priority for road paving/construction/maintenance
- **Vehicle maintenance:** The county engineer manages vehicle maintenance for the entire county including the sheriff's office.
- **GIS development and maintenance:** the preservation, maintenance, and resurrection of section corners and quarter quarters for accurate surveying purposes

### Budgets & Funding

The county Engineer's department is funded from four funds:

- **General Fund** – property tax
- **GIS Land Base Fund** – property tax
- **Bridge Fund** – property tax
- **Highway Fund** – Motor vehicle fees, registrations, and the gas tax

In FY2012 about \$10 million of the county engineer's budget came from property taxes while about \$6 million came from the gas tax

## Interlocal Agreements

- **RUTS Agreement:** Roads likely to be annexed by the city will be constructed with a four lane road so that when it is eventually paved traffic need not be stopped. Cost is shared between city and county
- **Specific Projects:** The City and County work together on various specific roads projects
  - Alvo road between N 1<sup>st</sup> St and N 14<sup>th</sup> St
  - SW 40<sup>th</sup> ST south of "O" St between "O" and "A" streets to construct a viaduct and pave 40<sup>th</sup> St.
  - East Beltway design and right of way acquisition
- **Routine Road Maintenance:** the city and county trade off maintenance of about 17 miles on the perimeter of the city. The county will maintain gravel roads within the city in exchange for city maintenance of certain paved roads in the county



**LAW DEPARTMENT**  
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 402-441-7281 lincoln.ne.gov  
 Rodney M. Confer, City Attorney Ernest R. (Rick) Pao II, Chief Assistant  
 John C. McQuinn II, Chief Prosecutor Tonya L. Peters, Police Legal Advisor



**CIVIL DIVISION**  
 Don W. Taate  
 Steven J. Huggenberger  
 Margaret M. Blatchford  
 Marcee A. Brownlee  
 Jocelyn W. Golden  
 Christopher J. Connolly  
 Timothy S. Sieh  
 Jeffery R. Kirkpatrick

**PROSECUTION DIVISION**  
 Patrick A. Campbell  
 Christine A. Loseke  
 Connor L. Reuter  
 Rob E. Caples  
 Jessica A. Kerkhofs

May 21, 2013

**RECEIVED**

MAY 22 2013

**LANCASTER COUNTY BOARD**

Ann Post  
 Chairperson  
 Lincoln-Lancaster County Consolidation Task Force

Re: Nebraska law on home rule charters and Dillon’s Rule

Dear Chairperson Post and Consolidation Task Force Members:

In the May 10, 2013, minutes of the Consolidation Task Force at pages 4-5, I ran across your discussion of Dillon’s Rule and its application to local governments. Those minutes also referred to your prior discussion of Dillon’s Rule at the Task Force’s March 8, 2013, meeting, on page 5 of those minutes. I am writing in an attempt to clarify some concepts underlying home rule charters and Dillon’s Rule as those principles may apply to your study of consolidation in Lincoln and Lancaster County.

- **Dillon’s Rule does not apply to Lincoln.**

Dillon’s Rule provides that a local government may only exercise powers that are 1) expressly granted by the state legislature, 2) necessarily implied from those express grants of powers, and 3) indispensable and essential to municipal purposes, or inherent. *Consumers Coal Co. v. City of Lincoln*, 109 Neb. 51, 69-70, 189 N.W. 643, 650 (1922).

The Nebraska Supreme Court has twice held that Lincoln’s powers are not subject to Dillon’s Rule, because since 1992 Lincoln has a “limitations of power” charter.<sup>1</sup> *Home Builders Ass’n. v. City of Lincoln*, 271 Neb. 353, 359, 711 N.W.2d 871, 877 (2006); *In re LES*, 265 Neb. 70, 83, 655 N.W.2d 363, 374 (2003); *see also, Mollner v. City of Omaha*, 169 Neb. 44, 98 N.W.2d 33 (1959).

<sup>1</sup> As discussed at greater length below, municipal charters are of two general types: “limitations of power” and “grants of power.” A “limitations of power” charter gives the city all possible municipal powers except those prohibited by limitations expressed in the charter. A “grants of power” charter means that the municipality will have only the powers that are expressly granted in the charter (i.e., it is subject to Dillon’s Rule). Therefore, contrary to what their names may suggest on first hearing, a “limitations of power” charter will likely impose fewer limitations on a city’s powers and a “grants of power” charter will probably grant it lesser powers.

- **Lincoln's limitations of power charter provides the greatest degree of "home rule" that can be exercised by a local government in Nebraska.**

Lincoln is not limited to its inherent powers or to powers enumerated in its charter or granted by state statute. As a home rule city with a limitations of power charter, Lincoln is entitled to rule its own affairs by enacting legislation in matters of strictly local concern regardless of state statutes, as long as City enactments are not contrary to the state constitution or prohibited by the Lincoln Charter. In matters of statewide concern it may also pass any legislation that is not contrary to the Nebraska Constitution or its charter, but such ordinances may not conflict with state statutes on the same subject. *Id.* at 360, 711 N.W.2d at 877-78. In matters of statewide importance on which the state has not yet acted, however, the City is empowered to enact its own ordinances on the subject without waiting for a delegation of power from the state legislature. *Id.* at 360-61, 711 N.W.2d at 878.

A local government with a limitations of power charter in Nebraska, such as Lincoln, has the maximum possible ability to govern its own affairs without interference from the state, and I suspect that may be what members of your task force are thinking about when they talk about the desirability of "home rule."<sup>2</sup>

- **Nebraska counties are created by state statute and have only the powers given by statute.**

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<sup>2</sup> "Home rule" technically refers to any charter adopted by a vote of the electors pursuant to a state constitutional provision, but home rule charters are not all the same. A grant of powers charter may either be authorized by the state legislature or adopted pursuant to state constitutional authorization. Until 1992 Lincoln had a grant of powers charter that its voters had adopted pursuant to the constitution. A city with a grant of powers charter adopted under a constitutional provision is still referred to as having home rule, even though its powers are subject to the strict construction of Dillon's Rule:

It is important to note there is a distinction between a home-rule charter that operates as a grant of powers, which expresses the specifically enumerated functions of the municipality and is strictly construed, and a limitation of powers charter, which empowers a municipality to exercise every power connected with the proper and efficient government of the municipality which might be lawfully delegated to it by the legislature, without waiting for such delegation.

**MCQUILLIN, THE LAW OF MUNICIPAL CORPORATIONS, § 9.8 (2012)** (citing *Home Builders Ass'n. v. City of Lincoln, supra*). Because a grant of powers home rule charter subjects city powers to the operation of Dillon's Rule, there is no real distinction between the effect of that type of home rule charter and a "non-home rule" charter adopted pursuant to state legislative authorization. *Consumers Coal Co. v. City of Lincoln*, 109 Neb. 51, 69-70, 189 N.W. 643, 650 (1922) (stating, "We conclude that the charter of the city of Lincoln falls within that class of 'Constitutions' which are to be construed as grants rather than limitations of power; that the principles of construction applicable thereto are the same as to a grant by the Legislature . . ."); *accord, In re LES, supra*, at 81, 655 N.W.2d at 373.

County powers, on the other hand, are strictly limited to those expressly given by state statute or necessarily implied from such legislative grants. *Wetovick v. County of Nance*, 279 Neb. 773, 782 N.W.2d 298 (2010); *County of Sarpy v. City of Gretna*, 267 Neb. 943, 678 N.W.2d 740 (2004), *appeal after remand*, 273 Neb. 92, 727 N.W.2d 690 (2007), *appeal after remand*, 276 Neb. 520, 755 N.W.2d 376 (2008). Even cities or towns that are subject to the strict construction of Dillon's Rule possess inherent powers that may not be enumerated, but unlike a municipality, a county possesses no "inherent" authority. *Compare, Wetovick, supra*, at 787, 782 N.W.2d at 311 (stating, "A county in this state is a creature of statute and has no inherent authority."), *with Consumers Coal, supra*, at 69-70, 189 N.W. at 650 (stating that under the "usual formula" of Dillon's Rule a municipal corporation has not only the powers expressly granted and the powers necessarily implied from its granted powers, but also "those essential to the declared objects and purposes of the municipality, not merely convenient, but indispensable.")

- **The state constitution limits home rule authority to cities.**

The Nebraska Constitution does not provide any avenue for a county to apply for home rule status, as a city can, and any authority the legislature could give a county would be limited to the express terms of the statutory grant or necessarily implied from that express grant. *In re LES, supra*, at 81, 655 N.W.2d at 373; *see also, Wetovick, supra; County of Sarpy, supra*.

- **Expansive home rule authority can't be given by the legislature, but must come from the state constitution.**

It appears your task force discussions concerning Dillon's Rule and home rule charter authority have also asked whether state legislation could provide home rule authority to a consolidated county-city government, unrestricted by Dillon's Rule, or whether the authority would have to be provided in the Nebraska Constitution.

Using the term "home rule" to refer to the ability to engage in the broadest possible exercise of powers of self-rule that is available to a local government—i.e., that which is available under a limitations of power charter—the Nebraska Supreme Court has answered the question of how that authority would need to be granted by the state. In Nebraska the legislature could only authorize a grant of powers charter, subject to the strictures of Dillon's Rule; for a consolidated city-county governmental entity to have broader home rule authority under a limitations of power charter like Lincoln's, the authorization must be given in the Nebraska Constitution.

While a legislative charter emanates from the sovereign legislature, a home rule charter has as its basis a constitutional provision enacted by the sovereign people authorizing the electorate to empower municipalities with the authority to govern their own affairs. While legislative charters are always grants of power that are strictly construed, home rule or constitutional charters may be either grants of power or limitations of power.

*In re LES, supra*, at 81, 655 N.W.2d at 373 (citations omitted).

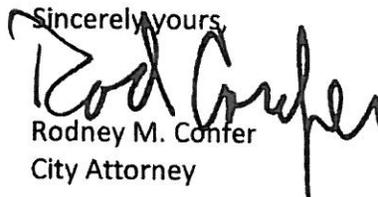
Therefore, if the legislature provided authority for a consolidated government to adopt a charter, that entity's power would necessarily be limited by Dillon's Rule— it would only have the powers granted specifically or by necessary implication in the legislation, and certain inherent powers essential to its purposes. In order for a combination city-county to have the greatest ability to rule its own affairs instead of being ruled by the state—i.e., to have a limitation of powers charter—that authority would have to come from the Nebraska Constitution. *In re LES, supra*, at 81, 655 N.W.2d at 373.

Home rule authority in Nebraska is granted by Nebraska Constitution, art. XI, §§ 2-5, and those provisions allow cities to adopt limitations of power charters that are not subject to the strict construction of Dillon's Rule. To adopt a constitutional charter a majority of municipal electors must vote in favor of the proposed charter. *Id.* These constitutional authorizations for home rule are available only to cities.

- **The legislature may be able to define a consolidated city-county government as a "city," to allow it to adopt a home rule charter.**

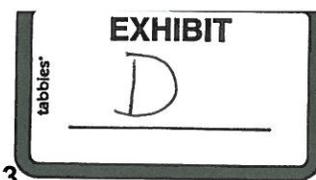
It may be, however, that a municipal county created pursuant to Neb. Rev. Stat. §§ 13-2801, *et seq.* would be able to adopt a home rule charter pursuant to the existing provisions of Nebraska Constitution art. XI, §§ 2-5. That possibility arises under § 13-2804, which provides: "Any reference in law to cities, villages, or municipalities shall be deemed to apply also to a municipal county." Assuming this section is constitutional, a municipal county might be considered a "city" that is able to adopt a home rule charter under the existing provisions of the constitution. Under the same assumption of constitutional validity it might also be possible for the legislature to define other types of city and county consolidations as "cities" in order to allow them to fall within the existing home rule provisions for cities in the Constitution. Otherwise it would be necessary for the Constitution to be amended by a state-wide vote of the people before a consolidated city-county government could adopt a limitations of power charter that would allow it to engage in true "home rule."

In conclusion, I appreciate the Task Force's consideration of my thoughts and hope they may be helpful as you conduct your deliberations. Please don't hesitate to contact this office if we may be of further service.

Sincerely yours,  
  
Rodney M. Confer  
City Attorney

Cc: Trish Owen, Deputy Chief of Staff to the Mayor, City of Lincoln  
✓Kerry P. Eagan, Chief Administrative Officer, Lancaster County  
Laurie Holman, Legal Counsel, Legislature Urban Affairs Committee

Lincoln-Lancaster County Consolidation Task Force  
Quick Overview of Meeting Outcomes as of September 27, 2013



**March 8:**

Organizing, Charge, Review of Statutes

**March 22**

Presentations: Public Works and County Engineer

**April 12**

Presentation: Lincoln Police Department, Lancaster Co Sheriff's Office

**April 26:**

Presentation: Clerks' Offices; City and County Attorneys' offices

**May 10:**

Public Works presentations, cont; Facilitation methods and group process

**May 24:**

Address and complete one grouping at a time; Key issues; Structural options

**June 14:**

Further public safety discussions and info: Financial data, Dashboard indicators, Co-location plans, Existing interlocals; First test of levels of support for structural options.

**June 28:**

Two motions, unanimous 1) Formalize agreements between LPD and LSO; 2) Ask public safety leaders to present models for how umbrella organization might work.

**July 12:**

Presentations: Consolidation and cooperation opportunities between County and City Attorneys' offices for Juvenile Division and Adult Criminal Division.

**July 26:**

Presentation: Juvenile Court judges' perspective on consolidation of Juvenile Court attorneys; **Decision: Merge City and County Juvenile Court functions into the County Attorney's office through interlocal agreement with the City and County splitting actual cost of the merger.** For adult cases – have a subgroup draft recommendation.

**Aug 16:**

Presentations from public safety officials, including decision matrix for several different models and options for further cooperation and collaboration. Concerns acknowledged.

**Aug 23:**

**Decision: Long-term goal (10 to 15 years out) is to have a merged public safety organization; specific steps to get there will be addressed at next meeting.**

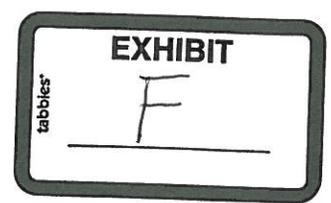
**Sept 13:**

Details for Public Safety Umbrella rationale, structure, and requested study/white paper

# AGENDA

- REVIEW LAST MTG  
~ REOCITY ATTY
- ENGINEERING
  - PRESENTATIONS
  - DIALOGUE
- NEXT STEPS  
& PROCESS

# Memorandum



**To:** City-County Consolidation Task Force

**From:** Roger Figard, City Engineer  
Don Thomas, County Engineer

**Subject:** Responses to Questions Raised by the Consolidation Taskforce

**Date:** September 24, 2013

**cc:** Miki Esposito, Public Works Director  
Trish Owen  
Doug Pillard

Q1. Please describe any cooperative agreements or relationships which now exist between the City and County Engineering Offices.

Because the City and County boundaries/jurisdictions are clearly established, duplication of effort is quite rare. With that said, however, if and where there has been overlap, the City and County have found ways to share services and work together. Below are examples from a long history of coordination and collaboration to find efficient and effective use of funds and resources.

- City and county Engineer have coordinated grading and paving projects near the edge of the City, such as: Pine Lake Road 14<sup>th</sup> – 56<sup>th</sup>, SW 40<sup>th</sup> Street, NW 12<sup>th</sup> and Alvo Road, South and East Beltway, 98<sup>th</sup> Street from O – A, Fletcher 1<sup>st</sup> – 14<sup>th</sup> St.
- City and County engineer coordinate annual road maintenance.
- Public Street Right-of-Way and Construction Standards to be applied to the repair, maintenance and construction of street located within city limits (e.g. RTUS Agreement).
- RTSD Coordination for 20+ years.
- GIS and Landbase Coordination (e.g. cost-share for digital map products and aerial photography). Effective working relationships have been established with respect to this record-keeping function in the City and County Engineering Offices.
- Combined Weed Control Program (this is a County Board program and does not originate out of the County Engineer's Office. However, the City of Lincoln has an interlocal agreement with the County to provide this service within City limits.)

Q2. In your opinion, what are the challenges of consolidation?

A. Overcoming Statutory Constraints:

- Different and Distinct governing authority and governing bodies (Mayor/City Council v. County Board)
- Such constraints will continue to exist irrespective of organizational consolidation where interlocal agreements will still be required to define relationship.

B. Different Regulatory Standards for Operations:

- Each agency serves its constituency differently and is highly specialized operations for their area of service. Won't be able to just trade one operation for the other, but rather would still have to serve both areas similarly.
- Some examples of regulatory standards in which the City and County differ include but are not limited to: ASHTO, MUTCD signing, 100-year drainage, street and snow operations. Both statutory and regulatory governing authorities will need legal review and extensive revision. (NOTE: RUTS is an example of a coordinated standard that was created by the City and County Engineering Departments to reconcile these different standards where there is a transition between City and County boundaries.

C. Level of Service Considerations

- With political pressures higher in the City, County entities (such as Hickman, Roca, Waverly) may receive lower levels of service than City of Lincoln residents.
- Statutory law restricts the County from expending snow blading and removal funds within an incorporated city.

Q3. Please describe any future opportunities for additional cooperation between Public Works and the County Engineer.

- Sign and Signal Shop (with the caveat that current FTEs work on more than just signs and signals).
- Legal Land Surveying, possibly.

**Considerations for Public Works and County Engineer Merger**

1. **Responsiveness:** Would the organizational arrangement be responsive to the public and to local elected officials?
2. **Political Practicality:** Would the organizational arrangement be easily adopted?
3. **Efficient Operations:** Would the organizational arrangement improve operational efficiency?
4. **Cost Savings:** To what extent would the organizational arrangement reduce operations costs?
5. **Funding Sources:** Would the organizational arrangement provide alternative funding sources or options?
6. **Adaptability:** Would the organizational arrangement be adaptable to changing conditions in the future, such as growth?

| Criterion              | Status Quo | PW Merged Into CE | CE Merged Into PW | Notes  |
|------------------------|------------|-------------------|-------------------|--|
| Responsiveness         | +          | -                 | -                 | Representation of voters by elected officials would be eliminated. The lead agency would feel obligated to their constituents first.   |
| Political Practicality | +          | -                 | -                 | Merger would require statutory and ordinance changes, some could be controversial. Several unions are impacted. Elected officials ability to control resources would be negatively affected. |
| Efficient Operations   | +          | O                 | O                 | Each department has very different operations and equipment. Very little overlap that could be eliminated. Sign & Signal shop a minor possibility.   |
| Cost Savings           | O          | O                 | O                 | No cost savings anticipated due to no reduction in work force.   |
| Funding Sources        | O          | -                 | -                 | Under current requirements CE and PW are funded with specific sources and those funds are not interchangeable.   |
| Adaptability           | O          | -                 | -                 | It would be difficult for CE staff to perform PW duties (and vice versa) due to significantly different activities.  |

+ = Positive Change    O = No Change    - = Negative Change

PROPOSED FOR  
ENGINEERING:

- For near-term,  
don't merge,  
BUT, we will  
revisit this  
@ next meeting  
for details.

PROPOSED FOR  
ENGINEERING

• Start planning

now for  
eventual

Consolidation:

MUNICIPAL

COUNTY