Surprise! It’s a Joint AdVenture!

New Orleans, Louisiana
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Rita: Do you remember Mark Brown and Fred Sanchez asking the NCSSSA conference attendees the question, “Is there joint custody in your joint venture?”

Patti: Yes I do. We all walked away a little glazed over, but with a glimmer of understanding of the complexities involved in these joint venture situations.

Rita: If you haven’t yet encountered one, your newest adventure may be just around the corner. I’m seeing quite a few of these joint operations - primarily for fire suppression and emergency medical services. And they are proving to be quite the adventure!
Rita: Last year, we learned that a joint operation might – but does not always - result in a separate political subdivision. The statute might authorize the creation of the entity and recognize it as being separate from all of the other public entities that created it.

Patti: The enabling legislation usually tells the story, but even that can be somewhat nebulous, requiring our attorneys to evaluate it. I recently ran across an entity created by legislation that calls it a public corporation, says that it oversees and controls its operations and funds, but requires the entity to give 30-days notice of any proposed sale or encumbrance of any real property transferred to it by the town, city, or county that created it. Sounds like there might be some ownership by the creating entity. OGC said that they would really need to look at the particulars to determine if we have a separate political subdivision or not. We'll see it that entity can request voluntary FICA coverage for its positions under a retirement system, based on being an independent political subdivision, or whether its positions must remain non-covered because the entity that created it is not covered under Section 218. This is the same issue we face with a joint venture.
**Patti**: Mark and Fred told us last year that if the joint operation does not result in a separate political subdivision, we need to determine how it relates to the entities that joined together to create it. Sometimes, the documentation shows that the positions in the new organization are all part of one of the entities that joined together to create it. If that is the case, that single entity is the sole employer with the power to hire, fire, and control the performance of their services.

**Rita**: This makes it clear how to proceed with your coverage determination. In this example, the town of Prairie Ridge is the one employing entity for Chicago Metropolitan Regional Library and its coverage will prevail for the positions under the joint operating agreement.
**Patti:** Do you remember when Mark and Fred dropped this bombshell on us? That in some situations, you might determine that no single entity is the sole employer, rather all of the entities might be the employer? And each entity’s coverage situation affects their share of the employee’s wages?

**Rita:** I do remember that but, at the time, I was unaware of any joint venture in our state. This example looks like a dream now, with all entities being the employer for one-fifth of the employee’s time. No amount of training could fully prepare us for what we discovered in Idaho.
Rita: I don’t think either of us will ever forget what we discovered within Rexburg Madison County Emergency Services. We will remember this when we retire to our rockers!
Rita: I want to give you a quick background for this issue. The Rexburg Madison County Emergency Services employs 3 firefighters and about 20 EMTs/Paramedics who believed they were firefighters and should have been eligible to vote. They were not identified as firefighters in the PERSI records and their position descriptions did not conclusively support a firefighter position. During the EMT/Paramedics challenge to their position status, a 1992 joint operations agreement was discovered. The original parties to the agreement include the City of Rexburg and Madison County Fire Protection District. In 1998, the agreement was amended to include Madison County Ambulance District.

In 2012 we held deemed referenda for 26 firefighter employers who had positions that were covered by the Firemen’s Retirement Fund from the mid 1940s until the system closed in 1980. At that time, an EE hired into one of these old FRF positions became a member of PERSI, our state RS, but the position remained an FRF position. While this is unrelated to the joint venture issue, it further complicated it, because the ERs paid over 17% additional contributions to maintain the revenue for the 500 remaining FRF beneficiaries, and wanted to end that requirement any way they could. The City of Rexburg was an FRF employer until the early 1990s. Those positions were transferred to a newly created Madison County Fire Protection District, an independent political subdivision. PERSI did not establish a new membership but rather did a name change and continued collecting contributions under the new – and incorrect – name, Rexburg-Madison Fire. You can see that things are getting really murky now.

Back to the July 2012 referendum. The three FF positions (along with all other positions) were later transferred to MCFPD and voted not elect SS coverage. Because the positions had been paying FICA taxes, the individuals were due a refund for five tax years because Protective Claims for Refund had been filed.

This started our long joint (ad)venture that we are still on.
Patti: At that point, Rita asked “Who is the employer?” It appeared to be a joint venture between City of Rexburg, Madison County Ambulance District, which is not an independent legal entity, and Madison County Fire Protection District, all of which had different FICA coverage obligations. And based on the joint venture documents and ID statute, we determined that Madison County Emergency Medical Services was not a separate legal entity. Therefore, it is not the employer. We had to gather all of the pieces of this puzzle—which meant getting every document we could get our hands on.

The City of Rexburg has absolute coverage excluding firefighters. Remember, it was the original employer for the FF positions and the FRF retirement system existed prior to the absolute coverage modification. Madison County Fire Protection District, to which the FF positions were later transferred, has no 218 modification and the firefighters voting under that entity did not elect voluntary FICA coverage. Madison County has absolute coverage for all positions. The Ambulance District is an integral part of the county, per ID statute, so all positions are covered.

Rita: Initially, the more we looked the more confused we became. That was partly due to the information that the Rexburg Madison County Emergency Services management was telling us – no one employer existed. The EEs are shared at various percentages among the parties to the agreement. If the agreement terminated, it would be impossible to determine for whom the EEs worked. All EEs would terminate and have to reapply for their former position. So we needed to stop and take it one step at a time.
The Statute

(d) In the event that the agreement does not establish a separate legal entity to conduct the joint or cooperative undertaking, the agreement shall, in addition to items (1), (3), (4), (5), and (6) of subsection (c) of this section, contain the following:

(1) Provision for an administrator or a joint board responsible for administering the joint or cooperative undertaking. In the case of a joint board, public agencies party to the agreement shall be represented.

**Patti:** This was our first stop. 67-2328 of the Idaho statutes stated that in the event that the agreement does not establish a separate legal entity to conduct the joint or cooperative undertaking, the agreement shall, in addition to items (1), (3), (4), (5), and (6) of subsection (c) of this section, contain the following:

(1) Provision for an administrator or a joint board responsible for administering the joint or cooperative undertaking. In the case of a joint board, public agencies party to the agreement shall be represented.

**Rita:** Our structure had both a joint board and an administrator – and, again, shared all positions.
**Patti**: Here is an excerpt from the original joint operating agreement (Read slide) So we had our first piece of the puzzle right there. As Rita said, a third entity joined the operation, the Madison County Ambulance District, (which Idaho statute 31-3908 told us was an integral part of the county that created it, and that the county commission was the governing board), and the Madison County commissioners signed the agreement on behalf of their ambulance district.

**Rita**: Because the ambulance district is not a separate political subdivision from the county that creates it, this really meant that Madison County joined the joint operations. We had three separate legal entities jointly governing about two dozen positions under this operating agreement - with varying FICA coverage obligations.
Rita: We soon discovered additional peculiarities that made it more challenging to evaluate who the ER is. First, the joint venture, which they call Rexburg Madison County Emergency Services has no EIN.

Patti: The agreement stated that the City of Rexburg would manage the payroll for all employees. However, they did so using their own EIN for all positions.

Rita: When we asked the management group which positions belonged to which of the three participating legal entities, they said they didn’t have a clue.

Patti: So we finally had to face the ugly truth. These folks couldn’t help us clarify anything. So what was the correct FICA coverage for all of these positions?
Rita: As a side note, we wanted to share with you the various names of entities, or non-entities, we had to sort through during this process:
• Rexburg Madison County Emergency Services—this is what they call themselves, but it is not stated on the joint use agreement. Really a DBA.
• City of Rexburg—Yes, it exists and is a party to the joint use agreement.

Patti:
• Madison County—Yes, it exists, and it is a signing party to the joint use agreement, but never mentioned as a party.
• Madison County Ambulance District—Yes it exists, but only as an integral part of Madison County. It is, however, a party to the joint use agreement in name.

Rita
• Madison County Fire Protection District—Yes it exists and is a party to the joint use agreement.
• Rexburg Madison Fire—Never existed, although it does with the PERSI retirement system. It was a DBA used after the first joint use agreement.

Now let’s get back to our coverage question.
**Patti:** After much research and consultation with Mark Brown and Diana Andsager from the Seattle OGC, we recognized that the coverage question was complicated. The joint operating agreement had language that stated the three legal entities to the joint operation had a certain percentage of “ownership” in the operation. The City of Rexburg had a 31% interest in everything within the joint venture, so their share of the payroll was also 31%. Most of their positions were covered under a Section 218 modification…except their firefighters.

**Rita:** The joint venture states that Madison County has a 50% ownership interest in the operation. Madison County positions were all covered under absolute coverage in the 1950s. At the time of their modification, they didn’t have firefighter positions and there was no law stating that if they had had firefighter positions that they would be covered under a mandatory retirement system. So, for Madison County’s share of the coverage, all positions, including firefighters, were covered positions.

**Patti:** Lastly, Madison County Fire Protection District was assigned a 19% ownership interest in the joint venture. Idaho statute 31-1416 indicates that fire districts are a body politic. This one, however, had never obtained an EIN or a Section 218 agreement. None of its positions were covered. To complicate the issue, PERSI’s records listed the ER as Rexburg-Madison Fire which MCFPD has stated never existed. That was really nothing more than a DBA.

**Rita:** And remember that other little complication that ID still needs to figure out – the firefighter positions in the City were FRF positions; however, all FFs are now covered under PERSI. But for our joint venture, FICA coverage for firefighter positions is 50% covered wages and non-firefighter positions are 81% covered, according to the percentages in the amended joint operations agreement.
Today, we wish we could say that all is well and we lived happily ever after, but we aren’t there yet.

Despite the table of FICA obligation that we provided to them, they told us that they were either withholding for FICA at 100% or 50%, depending on the position.

Recently, they submitted a new joint operating agreement that clearly states that the City of Rexburg is the sole employer for all of the positions, but…

But it also states that all three entities to the agreement share responsibility for hiring, firing, and paying overtime to staff who work overtime in their jurisdiction! Doesn’t sound like a single employer to me. In fact, it sounds like everything is the same as before. It definitely is a prime example of form over substance. That’s an important consideration when reviewing every entity.

And you all wanted a happy ending! Well, as I said, we aren’t there yet with RMCES. But let’s talk about something happier.
Patti: While working on what we lovingly refer to as Rexburg-Madison, Rita and I cringed when another joint venture was discovered—Kootenai County Emergency Services System. The purpose is similar to the R-M agreement, to provide emergency services over a wide area. There are a lot more players in this joint venture, however. Once we read the document, however, it was apparent that this organizational structure is clearly defined, as are the employer employee relationships. The comparison to R-M is like night and day.
Rita: In this JV, there are seven parties with varying types of social security coverage. All positions are PERSI members. A governing entity was created for administrative purposes. It is governed by a joint powers board which includes one elected board member from 5 of the 6 entities. It also employs a chief officer and a chief medical adviser.
Patti: Kootenai County chose to make their administrative oversight group a separate political subdivision that contracts for emergency services with the other separate political subdivisions who are a party to the agreement. The county code clearly lays out the entity’s right to sue or be sued, purchase and sell property, make and execute contracts. The new entity, referred to as the System, governs in conjunction with an advisory board made up of five members from contracting entities. When KCEMSS business is conducted, the board members are paid for their time by KCMSS.

Rita: As you can see, both of the joint ventures we have discussed today were created under the same ID statute. Rexburg Madison chose a different path under the statute, and they didn’t understand the ramifications of their actions.
Rita: The Master Joint Powers Agreement for this joint venture clearly identifies each participating entity as the employer for its positions:

Said personnel shall remain the employees of the District at all times, and the District shall be responsible for payment of wages, benefits, and payroll associated taxes.

Patti: Again, they took great care in defining the relationships of employees, or positions, to each participating entity involved in this joint venture.
Rita: So, where in the world are we going with all of this new-found information?

Patti: Only time will tell with Rexburg Madison, but at least we know what kind of organization we have and what their tax obligations are.

Rita: We still need FICA tax and wage reporting compliance for tax year 2014. We may see a significant change in the joint operating agreement, but that won’t be retrospective. That change, if it comes, will be effective the date they sign a new joint operating agreement. Perhaps our good friend at IRS can again explain the tax compliance part to the parties involved, and make it happen!

Patti: One thing we certainly agree upon—it’s been a wild ride!