

Chapter 2: The Board of County Commissioners

The Office of County Commissioner.....	1
Organization and Operations of the Board Chair and Temporary Chair.....	4
The Open Meetings Law and Open Records Act.....	5
Statutory Duties of the Board.....	7
County Court Facilities, Jails and District Attorney Costs.....	11
General County Powers and Authority.....	13
County Employment Issues.....	28
County Purchasing Requirements.....	31
Standards of Conduct: Elected Officials, State and Local Government Employees, Colorado Constitution Article 29 and The Colorado Code of Ethics in 2012 ¹ by Thomas J. Lyons, Esq.	33

CHAPTER 2:

The Board of County Commissioners

The Board of County Commissioners (“BOCC”) is the main policy-making body in the county. The BOCC also serves in an administrative, budgetary, and at times a quasi-judicial capacity. In this chapter, we look at the office of county commissioner in the context of both the statutory duties and general authority of each board. A brief discussion is included of county jail and criminal justice issues, personnel policy and county purchasing requirements.

THE OFFICE OF COUNTY COMMISSIONER

Election and Term of Office

Candidates for the office of county commissioner must be 18 years of age and have resided in the county for one year prior to the date of election. The term of office for county commissioners is four years. Commissioners are limited to serving two consecutive four-year terms unless local voters remove term limits for the office. Counties with a population of less than 70,000 may only have three county commissioners, unless they adopt a home rule charter expanding the commission to five members. Counties with a population of more than 70,000 may, with voter approval, expand the board to five commissioners.

County commissioner elections are held every two years, in even numbered years. Two county commissioners are elected in the presidential election year and one is elected at the intervening general election. Counties with five commissioners elect three in the presidential election year and two at the intervening general election. Newly elected commissioners take office on the **second Tuesday in January**. C.R.S. §1-1-201.

Districts

Each county must be divided into three (or five) compact districts by the BOCC. Each district must be as nearly equal in population as possible based on US census bureau numbers less the number of inmates residing in the county. Districts must be numbered consecutively and not be subject to alteration more often than once every two years. The voters of the entire county elect one commissioner from each of the districts, unless a vote of the citizens specifies otherwise. C.R.S. §30-10-306(1).

Each county having a population of 70,000 or more that chooses to increase the members of the BOCC from three to five shall be divided into three or five districts by the BOCC in accordance with the option chosen from the statutes. C.R.S. §§30-10-306(2), 30-10-306.

The board must take action to correct misapportionment of commissioner districts. Corrections or any changes to district boundaries can only be made in odd-numbered years and must be completed by July of such year. Boundary corrections are mandatory following each federal census and must be made by Sept. 30 of such year. C.R.S. §30-10-306(3) and (4). Board of County Commissioners of Saguache County v. Edwards, et al., 468 P.2d 857 (1970).

Oath and Bond

Commissioners must take an oath to support both the Colorado and U.S. Constitutions, and to perform their duties as required by law. C.R.S. §30-10-301. The oath may be administered by any individual (such as a judge or notary) who is qualified under statute to administer oaths. C.R.S. §24-12-103.

Each county commissioner is required to execute a bond, payable to the people of the state of Colorado, conditioned on the following:

- ◆ The commissioner will faithfully and honestly discharge the duties of office so long as the commissioner continues in office;
- ◆ The commissioner will not, either directly or indirectly, misappropriate or permit to be misappropriated any of the funds or property of the county during his or her continuance in office;
- ◆ The commissioner will not, during his or her continuance in office, be interested or concerned in any manner, directly or indirectly, in any sale, purchase, bargain or contract whereby any sum of money or thing in action becomes due to such commissioner from such county or from any person from such county; and
- ◆ Transact the business of such county at all times economically, and to the best of his or her ability, for the best interest of such county.

Bonds must be approved by a district judge having jurisdiction in the county and be filed with the county clerk before commissioners may assume their duties. Failure to post bond before assuming duties is punishable as a misdemeanor, with a fine of not less than \$500 nor more than \$5,000 and by imprisonment in the county jail for not less than 30 days nor more than six months. Bonds of \$10,000 are required for each commissioner in counties of 10,000 or more persons and \$5,000 in counties of less than 10,000 persons. C.R.S. §30-10-311 through 315.

In lieu of a bond, a county may purchase crime insurance coverage on behalf of the county commissioner. C.R.S. §30-10-311(2). Purchasing crime insurance in lieu of a bond on behalf of the other county elected officials is also available. C.R.S. §38-37-102(4).

Salary

County elected official salaries are set in statute by the General Assembly. Authority for the General Assembly to fix the compensation of county commissioners, sheriffs, treasurers, assessors and clerk and recorders and surveyors is in section 15 of article XIV of the Colorado Constitution. Salary levels for county commissioners, sheriffs, treasurers, assessors, clerk and recorders and coroners and surveyors are set in statute C.R.S. § 30-2-102. The salary schedule does not affect home rule counties, which set their own compensation rate.

County Categorization

All counties in Colorado are assigned a category (I – VI) and a subcategory (A – D) in statute for purposes of setting salaries. The category assignments are based on factors including population, the number of persons residing in the unincorporated areas of the county, assessed valuation,

motor vehicle registration, building permits, and other factors reflecting the workloads and responsibilities of county officers. If a county wants to change its category or subcategory, it takes legislation to accomplish that.

Category I

Adams, Arapahoe, Boulder, Douglas, El Paso, Jefferson, Larimer, Mesa, Pueblo and Weld*.

Category II

Eagle, Fremont, Garfield, La Plata, Pitkin*, Routt, and Summit.

Category III

Alamosa, Archuleta, Chaffee, Clear Creek, Delta, Gilpin, Grand, Gunnison, Las Animas, Logan, Moffat, Montezuma, Montrose, Morgan, Otero, Park, Rio Blanco, San Miguel, and Teller.

Category IV

Custer, Elbert, Huerfano, Kit Carson, Lake, Ouray, Prowers, Rio Grande, Washington, and Yuma.

Category V

Baca, Bent, Cheyenne, Conejos, Costilla, Crowley, Dolores, Hinsdale, Lincoln, Mineral, Phillips, Saguache, and San Juan.

Category VI

Jackson, Kiowa, and Sedgwick.

*Weld and Pitkin are home rule counties and as such the elected officials' salaries do not necessarily track with state statute.

NOTE: Broomfield and Denver, owing to their special status as cities and counties, are not included in this categorization.

County Official's Salaries

County officials' salaries are set in statute. Counties are separated into six categories and four subcategories for purposes of setting salaries. C.R.S. §30-2-102. Changing a county's category for purposes of raising or lowering salary levels requires legislation. Beginning in 2018, adjustments will be made every two years to elected official's salaries according to the consumer price index (CPI) for Denver-Aurora-Lakewood. However, the state constitution prohibits county elected officials' salaries from being increased or decreased during their term of office, so elected officials must wait until reelection to receive these cost-of-living increases. Colorado Constitution, Article XII, Section 11. Updated county elected officials' salaries are posted on the Colorado General Assembly's website at <https://leg.colorado.gov/agencies/legislative-council-staff/salaries-legislators-statewide-elected-officials-and-county>.

A county elected official in a Category III, IV, V or VI county can elect to reduce their own salary by fifty percent. The elected official can decide to reinstate their full salary but cannot make more than one change to their salary in a calendar year. C.R.S. 30-2-102(3)(f).

County Commissioner Expenses

County commissioners are allowed actual and necessary maintenance expenses together with mileage expenses as determined through resolution by the board. The mileage compensation rate must be in an amount not less than 20 cents per mile nor more than a rate per mile equal to the standard mileage rate allowed pursuant to 26 U.S.C. 162, for each mile traveled for county business. Mileage expenses are not allowed for commissioners traveling in an automobile provided by the county. C.R.S. §§30-2-103 and 30-11-107(1)(t).

Vacancies and Removal

The Colorado Constitution provides that a vacancy in the office of the commissioner may be filled within 10 days by the vacancy committee of the same political party as the vacating commissioner or by gubernatorial appointment in the absence of vacancy committee action within 15 days after the occurrence of the vacancy. Appointees to vacant positions must have the requisite qualifications to hold the office to which they are appointed. Appointees serve until a successor is elected at the next general election. The appointee may run for the four-year term and thus succeed him or herself. Colorado Constitution, Article XIV, Section 9.

A vacancy exists for any elected county office when any one of the following events occurs before expiration of the term of office:

- ◆ Death of the incumbent;
- ◆ Resignation of the incumbent;
- ◆ Removal of the incumbent;
- ◆ Termination of residency in the county or, in the case of a commissioner, in the district within the county from which the incumbent was elected or appointed;
- ◆ Refusal or neglect to take the oath of office, to give or renew the official bond, or to file the required oath or bond within the time prescribed by law;
- ◆ Judicial decision declaring the incumbent's election or appointment to be void; or
- ◆ Final conviction for any felony or infamous crime. Until final, the board must suspend the elected official without pay. C.R.S. §30-10-105.

If the incumbent is absent from the office for at least six months, action may be taken to have the incumbent declared incapacitated as provided by C.R.S. §30-10-105(4).

ORGANIZATION AND OPERATIONS OF THE BOARD CHAIR AND TEMPORARY CHAIR

At its first meeting following a general election, the new board shall choose a chair who shall preside at that and all subsequent meetings of the board. In his or her absence, the board shall choose a temporary chair who shall preside. C.R.S. §30-10-307.

Commissioner Meetings/Quorum

Each board of county commissioners shall meet at the county seat of its county at least one business day of each month and at such other times and locations within the county as in the opinion of the board the public interest may require. Such meetings shall be held on a regular and published schedule, as determined by resolution of the board. C.R.S. §30-10-303 (1).

As a matter of course, most counties meet more frequently. Regular commission meetings can include a multitude of topics, including: consideration of the monthly treasurer's report, liquor license renewals, reports from various department heads, discussion and action on development proposals, public testimony on various issues, consideration of resolutions and ordinances, approval of county expenditures, and general county business. It is up to the BOCC to designate their regular meeting day(s).

The board may also hold special or emergency meetings and adopt a publication procedure as, in the opinion of the board, is required to inform the public. C.R.S. §30-10-303 (2).

In counties with a population over 100,000, each board of county commissioners shall hold at least two meetings in each week of the year with the exception of July and August. During these two months the board is only required to meet twice a month. There are a number of circumstances under which large counties may hold fewer than two meetings a week (outside of July and August), including illnesses that prevent a quorum, scheduling conflicts and natural disasters or emergencies. §30-10-304.

A quorum is necessary for the board to take official action during a meeting. For three-person boards, a quorum consists of two; for five-person boards, it is three. In home rule counties, the charter states the number required for a quorum.

Designation of Business/Office Hours

The board may designate the hours during which county offices shall be open for transaction of business. C.R.S. §30-10-109.

THE OPEN MEETINGS LAW AND OPEN RECORDS ACT

Like many states, Colorado has adopted a number of “sunshine laws” ensuring citizen access to government. Under the Open Meetings Law and Colorado Open Records Act, citizens are guaranteed access to all public meetings and government information with some exceptions. Local elected officials and staff can inadvertently run afoul of open meetings and public records requirements, and it is vital that every county be familiar with the provisions of these laws.

Open Meetings Law

In the legislative declaration of the Open Meetings Law (C.R.S. §24-6-401, et seq.), the Colorado General Assembly sets forth that “the formation of public policy is public business and may not be conducted in secret.” This law applies to both state and local governments in Colorado. Under the law, all meetings at which public business is discussed and at which a quorum of any local public body are in attendance, must be open to the public. The law also stipulates that full and timely notice must be given to the public for all meetings at which an action may be taken on a policy, position, resolution, rule or regulation, or at which a quorum or a majority of a public body is in attendance. C.R.S. 24-6-402(2)(c). A BOCC is required to give public notice (on the county website, if practicable) of any meeting attended or expected to be attended by a quorum of the public body when the meeting is part of the policy-making process. C.R.S. 24-6-402. The Open Meetings Law requires minutes be taken and promptly recorded for any meeting of a local public body at which the adoption of any proposed policy, position, resolution, rule, regulation, or formal action occurs or could occur. C.R.S. §24-6-402(2)(d)(II). Finally, the law covers

meetings held by any elected or appointed public official, or public employee acting in an official or personal capacity. Also, if the public body electronically recorded the minutes of its open meetings on or after August 8, 2001, they must continue to electronically record such minutes. The provisions in the Open Meetings Law do not apply to “chance meetings or social gatherings at which discussion of public business is not the central purpose.” C.R.S. §24-6-402(2)(e). However, some commissioners find it helpful to post their individual business itineraries at the county. Additionally, under certain circumstances a public body may conduct confidential meetings (called “executive sessions”) during regular or special meetings upon the affirmative vote of two-thirds of the public body. C.R.S. §24-6-402 (4) Except for privileged attorney-client communication (described below), discussions that occur in an executive session must be electronically recorded. The minutes of a meeting during which an executive session authorized under section 24-6-402 (4) is held ,shall reflect both the specific paragraph authorizing the executive session and the particular matter that is the topic of the discussion at the executive session.

If, in the opinion of the attorney who is representing the board and is in attendance at the executive session, all or a portion of the discussion during the executive session constitutes a privileged attorney-client communication, no record is required to be kept of the part of the discussion that constitutes a privileged attorney-client communication. C.R.S. §24-6-402(2) (d.5) (II) (B). Any written minutes must contain a signed statement from the attorney representing the board and the chair of the executive session attesting that the portion of the executive session that was not recorded constituted a privileged attorney-client communication. The recording of an executive session must be retained for at least ninety days after the date of the session.

Permissible executive session topics include:

- ◆ Purchase, acquisition, lease, transfer or sale of any real property, or other property interest;
- ◆ Conferences with an attorney for the public body for the purposes of receiving legal advice on specific legal questions;
- ◆ Matters to be kept confidential by federal or state law or rules and regulations (the specific citation of the statute or rule must be announced prior to the executive session);
- ◆ Specialized duties of security arrangements or investigations;
- ◆ Determining positions that may be subject to negotiations;
- ◆ Certain personnel matters as described by the statutes (This provision does not apply to discussions concerning any member of the local public body, any elected official, or the appointment of a person to one such offices, nor does it apply to discussions of personnel policies generally; and consideration of documents protected from disclosure by the mandatory nondisclosure provisions of the open records act.)

Advances in electronic communication add an interesting twist to both the open meetings and public records debate. Legislation enacted in 1996 amends the Open Meetings Law, stating the provisions of the law also apply to meetings convened through e-mail communication among elected officials discussing public business. C.R.S. §24-6-402(d) (III).

Colorado Open Records Act (CORA)

Under the Colorado Open Records Act (C.R.S. 24-72-101, et seq.), citizens are guaranteed access to all manner of government records. The official records custodian may adopt public inspection

policies to ensure the protection of county records and to prevent interference with staff duties. In 1996, amendments were made to the Open Records Act to include forms of electronic communication (such as e-mail) under the act's requirements. C.R.S. §24-72-202. In complying with a CORA request, counties may require payment in advance. C.R.S. §24-72-205(1)(b). Counties are prohibited from charging more than \$30/hour for research and retrieval and must provide the first hour of research and retrieval for free. C.R.S. §24-72-205(6). Record requests under CORA can be for documents in a searchable or sortable format, and counties will comply with such requests, unless 1) it is not technologically or practicably feasible to do so; 2) it would violate the terms of a copyright or licensing agreement; 3) it is not possible to remove protected personal information from the document; or 4) the county would have to purchase additional software to comply. C.R.S. § 24-72-203(3.5)(a) et seq.

There are several important exceptions to the Open Records Act, including but not limited to:

- ◆ “Work product” and other documents which are of a deliberative nature;
- ◆ Confidential communications from constituents;
- ◆ Criminal justice records;
- ◆ Health records (mental and medical);
- ◆ Scholastic achievement data;
- ◆ Personnel files; and
- ◆ Addresses and telephone numbers of public school students.

NOTE: A comprehensive list of these exceptions can be found in C.R.S. §§24-72-202(6)(a)(II) and 24-72-202(6)(b).

The Colorado Supreme Court found the deliberative process privilege is part of the common law of the state of Colorado and the open records laws exempt materials come within the scope of the privilege from public inspection. The Court held this privilege exists to protect the government's decision-making process, its consultative functions, and the quality of its decisions. City of Colorado Springs and Carla Hartsell v. David White, 967 P.2d 1042 (Colo. 1998).

BOCCs and staff are urged to work with their county attorney to develop and adopt written policies and procedures that ensure compliance with open meetings and open records laws. Counties are required to publish (or post on their website) any written policies concerning research and retrieval of public records under CORA. C.R.S. §24-72-205(6).

Records Retention and Consumer Data Privacy

Counties are required to have a records retention policy that includes electronic documents. C.R.S. § 6-1-713(1). Counties are required to have reasonable security procedures in place to protect personal identifying information. C.R.S. §6-1-713.5.

STATUTORY DUTIES OF THE BOARD

As administrative arms of state government, the BOCC has a wide number of required duties that must be performed. The majority of these duties (e.g., adoption of subdivision regulations, establishment of voting precincts, delivery of welfare programs) are outlined in subsequent

chapters of this handbook. The following is a short-listing of statutorily required duties not appearing elsewhere.

General Duties

- ◆ Audit and allow, or disallow, all claims against the county. C.R.S. §30-25-110.
- ◆ Posting of fire notices throughout the county. C.R.S. §30-15-201.
- ◆ Real and personal property above a certain cost amount threshold must be inventoried. The local governing body is authorized to set the threshold, as long as it does not exceed the amount set forth by the state controller. C.R.S. §29-1-506.

Monthly Duties

- ◆ Publish accounts for the preceding month. C.R.S. §30-25-111.
- ◆ Receive the report of the road supervisor of estimated repair and construction costs and recommendations, together with expenditures actually made for the preceding month, on the first day of each month. C.R.S. §43-2-111.
- ◆ Receive, by the tenth day of each month, the report of collections from the treasurer for each of the levies made by the county for each of the governmental entities therein during the preceding month. C.R.S. §39-10-107.

Calendar of Board Duties

January

- ◆ Publish the semi-annual treasurer's financial statement and proceedings within 60 days following December 31. C.R.S. §30-25-111(2).
- ◆ Inventory all county property valued above specified monetary threshold set by each county or as required by the State Auditor. C.R.S. §29-1-506.
- ◆ Settle county treasurer's accounts at a regular or special meeting or as otherwise directed by the board. C.R.S. §30-10-709.
- ◆ Compare orders returned by the county treasurer with the clerk's record and enter dates of cancellation of each. C.R.S. §30-25-108.
- ◆ File a copy of the current year's budget with the Division of Local Government within 30 days following the beginning of the fiscal year for which the budget is adopted. C.R.S. §29-1-113.
- ◆ Each commissioner must report gifts, honoraria, or other benefits specified in statute during the preceding quarter C.R.S. §24-6-203.

February

- ◆ No later than February 1, annually file a list of intergovernmental contracts with the Division of Local Government. C.R.S. §29-1-205.

March

- ◆ No later than March 1, file the annual report of road and bridge expenditures with the Colorado Transportation Department. This shall include mileage changes for the county road system with any changes in the surface classification. C.R.S. §43-2-120(5).

April

- ◆ Prior to May 1, receive notice from governing boards of special districts of their existence and plan to impose taxes during the ensuing calendar year. C.R.S. §39-1-110.
- ◆ Prior to May 1, decide whether or not to use an alternative protest and appeal procedure for valuations of real and personal property. C.R.S. §39-5-122.7(1). (If an alternative protest and appeal procedure is used, individual petitions must reach the county board of equalization on or before September 15 for both real and personal property. C.R.S. § 39-8-106(1)(a)).
- ◆ Each commissioner must report gifts, honoraria, or other benefits specified in statute during the preceding quarter C.R.S. §24-6-203.

NOTE: Board may not levy a tax for a special district unless the board and the assessor have received notice of organization from the district prior to May 1, and the board has received notice from the Division of Local Government by Oct. 15 of receipt of a legal description and map of the special district. C.R.S. §39-1-110.

June

- ◆ On or before June 30, file the annual report of road and bridge expenditures with the Highway Operations and Maintenance Division of the Colorado Department of Transportation. This shall include a detailed statement of all expenditures during the calendar year. C.R.S. §43-2-120.
- ◆ On or before a date to be determined by the governing body, a budget officer should be appointed. The budget officer must develop guidelines for the ensuing year's budget and distribute the guidelines to all spending agencies, along with worksheets. The budget officer must submit the budget prior to October 15 of each year C.R.S. §29-1-105.
- ◆ Publish the semi-annual treasurer's financial statement and proceedings within 60 days following June 30. C.R.S. §30-25-111(2).
- ◆ Within six months after the close of the county fiscal year (June 30), receive the report of the county auditor for the financial statements of the county for the previous fiscal year. C.R.S. §29-1-606.
- ◆ File petitions or complaints, not later than July 15, about any erroneous assessment, apportionment, illegality, lack of uniformity, or other error, on utility assessments with the property tax administration. C.R.S. §39-4-108.

July

- ◆ No later than July 1, in the case of personal property, give notice that the board, sitting as the Board of Equalization, shall hear appeals from assessments. C.R.S. §39-8-104.
- ◆ Publish the semi-annual treasurer's financial statement and proceedings. C.R.S. §30-25-111.
- ◆ Settle county treasurer's accounts at a regular or special meeting or as otherwise directed by the board. C.R.S. §30-10-709.
- ◆ Compare orders returned by the treasurer with the clerk's record and enter dates of cancellation for each. C.R.S. §30-25-108.
- ◆ The assessor must submit his or her assessment roll for real property to the board by the second Monday of July and the assessment roll for personal property by July 15. C.R.S. §39-8-105

- ◆ The board of county commissioners shall act as the county Board of Equalization beginning July 1 and ending by the close of business on the last business day of August 5. The board shall hear appeals from actions of the assessor, correct any errors and otherwise act to adjust assessments to achieve equalization in assessment of all property within its jurisdiction. C.R.S. §39-8-104.
- ◆ No later than July 30, the audit reports must be filed with the State Auditor's office. C.R.S. §29-1-603.
- ◆ The budget officer, as a practical matter, should prepare a budget calendar for circulation to each office, agency, and spending entity of the county. The budget officer must thoroughly review with each department head the first six months experience with the current budget and must review with each department head estimated requirements for the ensuing year. C.R.S. §29-1-105.
- ◆ Each commissioner must report gifts, honoraria, or other benefits specified in statute during the preceding quarter C.R.S. §24-6-203.

August

- ◆ Although not required by law, good budgetary practice suggests August 1, as a good date for distributing county budget forms to departments and officials affected thereby. Budget forms may be obtained from the Division of Local Government.
- ◆ Complete, as the Board of Equalization, all equalization hearings, and render decisions on assessments no later than August 5. C.R.S. §39-8-107(2).
- ◆ Publication notice of Board of Equalization hearings on Senior Property tax exemption protests must be published by September 1. Hearings held September 1 – October 1. C.R.S. §39-8-104(2)(b) and 39-3-201.
- ◆ The county assessor certifies assessed valuations no later than August 25. C.R.S. §39-5-128.

October

- ◆ On a date to be determined by the board, all budget statements must be in the hands of the county budget officer designated by the board. C.R.S. §29-1-105.
- ◆ No later than October 15, the budget officer presents his or her budget recommendations to the board. C.R.S. §29-1-105. Upon receipt, the board gives public notice of its availability for inspection, naming the date on which it will be considered for adoption. For counties with proposed budgets in excess of \$50,000, notice must be published one time in a newspaper having general circulation in the county. In counties with proposed budgets of \$50,000 or less, notice must be posted in three public places within the county. C.R.S. §29-1-106.
- ◆ Prior to the adoption of the budget an elector may file or register his or her protest. C.R.S. §29-1-107.
- ◆ The board shall review, revise, alter, increase, or decrease items in the budget, as it deems necessary. If the board increases total expenditures, it shall also provide for increased income. C.R.S. §§29-1-108 & 109.
- ◆ During the quarter beginning October 1, the board must pass the annual appropriations resolution, at the same time as annual property tax levies are made. The resolution is not passed until the board adopts the budget. C.R.S. §§29-1-108, 30-25-101, et seq.
- ◆ The Division of Property Taxation notifies the board as to revenue limitations.

- ◆ Each commissioner must report gifts, honoraria, or other benefits specified in statute during the preceding quarter C.R.S. §24-6-203.

December

- ◆ No later than December 15 all local governmental taxing entities must certify their property tax levies to the board. C.R.S. §39-5-128.
- ◆ No later than December 22, the board must certify the county levy and levy all taxes. C.R.S. §39-1-111(1).
- ◆ School boards must certify their levies no later than December 15. C.R.S. §39-5-128.
- ◆ Jurisdictions having levy elections must certify levies not later than December 15. C.R.S. §39-5-128.

COUNTY COURT FACILITIES, JAILS AND DISTRICT ATTORNEY COSTS

Counties have a number of statutorily required duties with regards to law enforcement, including maintaining adequate courtrooms, a county jail and funding a portion of the DA's salary and operating expenses. These local law enforcement issues present serious challenges for the BOCC.

County Court Facilities

The BOCC is responsible for providing and maintaining adequate courtrooms and other court facilities. Annually, the Office of the State Court Administrator prepares a capital construction budget specifying additional court facilities required for each court, the estimated cost of such structures and an assessment of present court facilities and the reasons for their inadequacy. C.R.S. §13-3-108. There are two grants available to counties to help meet this obligation (see Chapter 5).

County Jails

Each county in the state with a population over 2,000 must operate and fund a county jail. C.R.S. §§17-26-101 and 30-11-104. When there is no sufficient jail in a county, inmates may be housed in other counties at the expense of the county from which the inmate was sent. C.R.S. 17-26-119. The authority also exists for counties to enter into agreements to create multi-jurisdictional (regional) jails. C.R.S. §17-26.5-101 and 102.

In recent years, an increasing number of inmate lawsuits forced county commissioners and sheriffs to reevaluate the manner in which jails are operated and maintained. Overcrowding and deteriorating conditions in county jails, coupled with the difficulty of securing voter approval for new jail construction (to comply with TABOR), forced many counties to explore other means for housing prisoners. Some counties have remodeled auxiliary buildings (including garages) in order to hold prisoners, while others have secured private financing to build a new jail and justice center.

In 2001, the law was changed to disallow inmate lawsuits based on jail conditions where the lawsuit fails to allege exhaustion of administrative remedies. The law now also disallows proceeding with suits as an indigent where three or more previous suits were dismissed as frivolous. Service of process fees are included in the fees repaid from an inmate's trust account. C.R.S. §13-17.5-102.3 (1) 13-17.5-102.7 13-17.5-103.

The county sheriff has the duty to operate the jail and is responsible for the supervision of all prisoners in his care. C.R.S. §30-10-511. The BOCC is required to inspect the jail at least once annually and to correct any irregularities found. C.R.S. §17-26-126.

The Department of Corrections (DOC) reimburses counties for a portion of the expenses and costs incurred by the county for housing DOC inmates. Reimbursement begins 72 hours after a sentence is imposed and ends when the inmate is transferred to a DOC facility. The reimbursement rate is set in the annual general appropriation bill (Long Bill) of the General Assembly. The Department may also contract with counties for the provision of housing state inmates. C.R.S. §17-1-112.

A county jail may be used for the detention of any fugitive from justice from another state at a rate prescribed by the BOCC. The jail is required to accept federal and foreign prisoners and all expenses are reimbursed at a rate established by the BOCC. C.R.S. §17-26-123 & 124. The BOCC may impose conditions for and must give its consent to the use of the county jail for confinement of prisoners. C.R.S. §30-15-401(1)(f).

Jails may not be used to confine a juvenile except in very limited circumstances as delineated in C.R.S. 19-2-517 and 19-2-518(1). C.R.S. 17-26-121. Any juvenile in a jail must be placed in a setting that is nonsecure and physically segregated by sight and sound from adult offenders.

Jails shall not be used for housing mentally ill individuals who appear to be an imminent danger to others or to themselves and need a 72 hour hold for treatment and evaluation. If there is no other suitable place of confinement readily available, the individual may be housed in the jail for up to 24 hours in a place separate from charged or sentenced inmates. C.R.S. 27-65-105.

Inmate Labor

Able-bodied inmates upon conviction are required to work in the jail eight hours of every working day, subject to rules and regulations as may be prescribed by the BOCC or the sheriff. When no other work is available, the sheriff is required to compel inmates to work upon public roads, highways, or streets with any additional guarding requirements at the county's expense. Work done within the limits of a municipality cannot be performed without the consent of the municipality, but when work is performed in the municipality, any tools and materials and additional guarding requirements are paid for by such municipality. Inmates may not be used for the purpose of building any bridge or structure that requires the employment of skilled labor. C.R.S. §17-26-107 et seq.

When an able-bodied inmate has been convicted of nonsupport of his or her spouse or minor children, the county shall pay between 50 cents and one dollar per working day toward the support of such spouse or minor child, if such spouse or minor child would otherwise be a public charge. C.R.S. §17-26-108.

Health Standards

County jails in operation before August 30, 1999 are subject to state Department of Public Health and Environment (CDPHE) health standards. County jails beginning operation after August 30, 1999 must comply with new standards developed by CDPHE, unless the county developed and adopted their own health standards. C.R.S. §§25-1-107 and 30-11-104.

Community Corrections Programs

The BOCC may establish a Community Corrections Board and may delegate to the Board the authority to approve or disapprove the establishment and operation of community corrections programs within the jurisdiction. The Board has the authority to enter into contracts with governmental or private entities for community corrections programs. The Board also has the authority to establish a community corrections program that is operated by a local government and receive partial reimbursement from the General Assembly at a rate set by the Joint Budget Committee. The Board has the authority to accept or reject any offender referred for placement in community corrections and may establish conditions and guidelines for the conduct of offenders in the program.

C.R.S. §17-27-103.

District Attorney Costs

District Attorneys

The General Assembly sets the minimum salary of the district attorney (DA) and allows the BOCCs to pay additional compensation. Beginning January 1, 2012, the minimum salary for DAs is \$130,000 per year. Any amount in excess of that minimum shall be set by the BOCC. The state pays 80 percent of the DA salary and the county pays the balance. C.R.S. §§20-1-301 and 306.

District Attorney Offices

Each county must fund the expenses of the DA's office in proportion to the population that county bears to the entire judicial district in which the county is located. Upon agreement of all the boards within a judicial district, the funding allocation may be modified. Any funds expended for programs, projects, personnel, or salaries that are in addition to the funds provided for reasonable and necessary expenses of the DA are allowed with the agreement of the relevant boards. C.R.S. §20-1-302.

District Attorney Employees

In consultation with the DA, the BOCCs in the district set the salaries of deputy and assistant DAs, which shall be paid proportionately by each county of the judicial district according to the population of each county within the judicial district. C.R.S. §20-1-203.

GENERAL COUNTY POWERS AND AUTHORITY

As mentioned in chapter one, counties possess only those powers, duties and authorities explicitly conferred upon them by the state constitution or in state statute. All powers of the BOCC must be exercised by the board, not by individual county commissioners - unless the BOCC delegates authority to individual commissioners to act in specific instances. Colorado Constitution, Article X, Section 15 and Article XIV, Section 6; C.R.S. §30-11-103.

County "Standing"

There has been a great deal of discussion in recent years regarding the counties' ability (or "standing") to sue the state. In 1998, the Colorado Supreme Court ruled that counties do not have standing to challenge the actions of a "superior state agency." Romer v. Board of County Commissioners, Pueblo County, 98 WL 157024 (Colo. 1998).

The powers cited in this section are not meant to represent an all-inclusive listing of powers delegated to a BOCC, but instead highlight powers most commonly used or relied upon by commissioners. For convenience, they are grouped by subject area. It is important to note that the BOCC can apply many of the below-mentioned authorities to specific areas of the unincorporated territory as opposed to having them apply throughout the entire county. C.R.S. §30-15-401(2)(a)(II).

Agriculture

The board is empowered to promote county agricultural research work by purchasing or renting lands, laboratory facilities, supplies and equipment, and employing management and labor necessary for such research work. C.R.S. §30-24-102.

The board may establish an agricultural research advisory committee representing each of the different agricultural groups within the county. It may develop cooperative agreements with the BOCC of other counties and the state Board of Agriculture for assistance from Colorado State University in developing and financing county agricultural research programs.

CSU Cooperative Extension Program

Through Colorado State University (CSU), counties may enter into agreements with appropriate federal agencies to expend from the General Fund of the county such funds as are necessary to establish and maintain county agricultural research stations. Monies advanced from the General Fund are repayable from the proceeds of a levy for agricultural research also allowed by law. The BOCC may also enter into agreements through CSU to negotiate with boards of other counties and with the state Board of Agriculture and CSU, for agricultural extension services to be furnished to such counties, financed on a pro rata share by the counties. C.R.S. §30-11-107(1)(m).

Right-to-Farm Ordinances

The board may also adopt ordinances or pass resolutions providing additional protection for agricultural operations from nuisance lawsuits, consistent with the interests of the affected agricultural community. These “right-to-farm” laws shall not prevent an owner from selling his or her land or prevent or hinder the owner from seeking approval to put the land into alternative use. C.R.S. §35-3.5-102(5). For more information on “right-to-farm” laws, see chapter three.

Blowing Soils, Weed and Brush Removal - Corrective Action

The board, upon complaint about blowing soil, may ascertain its cause. If determined it is a danger to other lands and after consulting with the local soil conservation district or state soil conservation board, the board may deliver written notice to the owner ordering him or her to treat their land. Notice by registered mail of required treatment must be served on the landowners involved and must be posted in the county courthouse. Should the owners fail to accomplish work necessary under the order or fail to commence or complete the work by the specified dates, the board may order the treatment to be performed. Should the board so order, it may bill the owner \$15 per acre or the actual cost of treatment, whichever is less, for work done; the assessment becomes collectable as all other taxes.

County governments are authorized to provide for and compel weed and brush removal on residential lots and tracts of land within the county, except for agricultural land currently in use as defined in statute. C.R.S. §30-15-401 (1.5) (A).

Irrigation Districts

Upon petition and upon receipt of a service plan for a district and after hearings for landowners within a district proposed, the BOCC may create an irrigation district and levy the taxes required for its operation and maintenance. C.R.S. §37-41-101, et seq.

Predator Control Programs

The county may, on the recommendation of a sheep growers or cattle growers association, conduct a predatory animal control program for the protection of cattle and sheep in the county. The board may require the licensing of sheep at 60 cents per head and cattle at 30 cents per head to provide funds for control of predators. Such fees are to be collected by the assessor and shall be adjusted to reflect the portion of a full year during which such animals shall have been in the county. C.R.S. §35-40-201, et seq.

The board may also require sheep owners who received federal sheep producer payments the previous year to pay a license fee of 60 cents per head. The Colorado Sheep and Wool Board must provide the assessor, by Oct. 1, a list of those who received federal payments. The assessor transmits the list to the board by Nov. 1 of each year. All owners of sheep herded or grazed in the county may be required to pay a license fee of 60 cents per head. The board must adjust this fee based upon the number of months the sheep were herded or grazed in the county during the previous year.

The passage of Amendment 14 in 1996 prohibits the use of leg hold and instant-kill, body-gripping design traps, snares, or poisons for predator control on public and private lands. Private landowners are permitted to use traps, snares, and poisons for one 30-day period per year, but only if they can demonstrate that predators are damaging crops or livestock and no other method will control the predators. County, municipal, and state health departments may also utilize snares, traps, or poison in order to protect human health and safety. Colorado Constitution, Article XVIII, Section 13.

Pest Control

◆ General

The board has concurrent authority with the Department of Agriculture to enforce and administer pest control through a county pest inspector. Procedures are established for examination and licensing of inspectors, inspection procedures, notice to property owners where pests are located, entry procedure, hearing procedure and collection of costs and fines. If a landowner fails to destroy pests, and the state or county inspector acts to alleviate the problem, the landowner shall be responsible for the costs, not to exceed \$5,000 annually. Failure of the owner to pay the amount due will result in the amount being treated as a delinquent tax. However, liens filed on property for failure to address pest problems will be subordinate to any priority liens. C.R.S. §35-4-101, et seq.

◆ Pest Control Districts

The BOCC may also create pest control districts for the purpose of eradicating pests and noxious weeds. These districts are administered by the BOCC with the assistance of a board-appointed advisory committee. Costs thereof are assessed to the landowner. C.R.S. §35-5-101, et seq. The BOCC may also consolidate pest control districts

without a vote of the electorate and contract with other pest control districts to share costs and employees.

◆ **Prairie Dogs**

Under legislation passed in 1999, parties wishing to transfer or relocate prairie dogs across county lines must first gain permission from the BOCC of the “receiving” county. C.R.S. §35-5-101, et seq.

◆ **Rodent Control**

The BOCC may enter into cooperative agreements with the state Department of Agriculture for eradication of destructive rodents (including prairie dogs) and related pests preying upon agricultural lands and produce. In any area in which a pest control district is created, the BOCC shall appropriate necessary monies for such operations from the county General Fund. C.R.S. §§35-7-111, 35-7-201, 202.

Weeds

The board of each county in the state shall adopt a noxious weed management plan for all of the unincorporated lands within the county. Through rule, the Commissioner of Agriculture must classify noxious weeds into one of three categories and adopt eradication, containment, or suppression standards for each weed. The BOCC may declare additional noxious weeds within its jurisdiction but must include management objectives for all affected landowners. A board may place a question before the voters asking for a special assessment to fund noxious weed control in an amount up to 5.0 mills. The State Weed Coordinator provides guidance and coordination for local government weed managers. C.R.S. 35-5.5-101, et seq.

Airports

The board may contract for and maintain airports and landing strips, and lease or determine rentals for the facilities. The board may provide facilities by condemnation. The board is empowered, either for its own county exclusively or in company with any other city or county in Colorado, to acquire, construct, reconstruct, operate, and maintain a county airport. Counties are permitted to allow jurisdictions across state lines to be part of an airport authority in Colorado. C.R.S. §41-3-106 and C.R.S §41-4-103.

Appropriations for this purpose are made from the county General Fund and deposited to the credit of a county airport fund with registration fees and other monies from state, federal and local sources. Bonds for acquisition, construction or reconstruction of airports may be issued in the same manner as other county bonds. The board may also submit the question of indebtedness for that purpose to the voters at a special election. C.R.S. §§30-11-107(1)(j) and 41-4-101, et seq.

Ambulance Service

The BOCC may provide an ambulance service. In many rural areas, ambulance service is accomplished through the formation of a special district. C.R.S. §30-11-107(1)(q). The BOCC must license and inspect public and private ambulance service providers operating in their jurisdiction. C.R.S. § 25-3.5-301, et seq.

Cemeteries

Upon petition of a majority of the resident taxpaying electors of an area of a county, the board shall create a cemetery district, which will be administered by its own district officers. Upon certification by the district, the board shall levy a property tax on property within the district for acquisition of land and for operations not to exceed 4.0 mills, subject to TABOR limits. C.R.S. §30-20-801, et seq.

The district does not have the specifically-delegated power to condemn; however, condemnation is available to the BOCC in their capacity as the Board of Health, to condemn for relocation of an existing cemetery under certain circumstances. C.R.S. §25-1-659.

Condemnation (Eminent Domain)

The BOCC has a number of specific, statutorily granted condemnation powers, including:

- ◆ Construction and maintenance of roads and bridges. C.R.S. §43-2-112;
- ◆ Establishment of park and recreational facilities but not paid for by lottery monies received from the conservation trust fund. C.R.S. §29-7-104;
- ◆ Relocation of cemeteries. C.R.S. §25-1-659;
- ◆ Drainage structures. C.R.S. §30-11-107(1)(w);
- ◆ Sewer and water systems. C.R.S. §30-20-402;
- ◆ Establishment of airports. C.R.S. §41-4-104;
- ◆ Public improvements by district. C.R.S. §30-20-512(1)(i); and
- ◆ Land, buildings, or both in order to provide for county court facilities, jails or other related judicial or jail facilities. C.R.S. §30-11-104.

Any power to condemn must be specifically granted by statute. Board of County Commissioners, Arapahoe County, v. Intermountain R.E.A., 655 P.2d 831 (1982). For additional information on county condemnation powers, please see chapter eight.

A complete list of statutes authorizing county use of eminent domain power is contained in section 38-1-202(1)(d).

County Property

General

The board may make such orders concerning county property as it deems proper. Smoking is prohibited in Colorado in all public buildings and local governments may adopt more restrictive regulations than are found in the state. C.R.S. §25-14-105, 30-11-107(1)(a), 25-14-201 et seq.

Acquisition/Disposal

The board may acquire by purchase or lease any real or personal property when in the best interests of county residents. In the case of buildings and equipment, the board may also lease-purchase, but not for longer than the useful life of the property to a maximum of 30 years. C.R.S. §§30-11-101, 30-11-104.1.

Joint Use with Municipalities

The board may enter into contracts with municipalities for joint use and occupancy of public buildings. C.R.S. §30-11-107(1)(l).

Debt for Construction/Maintenance

The board may levy and apportion taxes or incur debt for construction or repair of public buildings, roads and bridges when authorized by electoral vote. C.R.S. §30-11-107(1) (d).

Drainage Structures/Facilities

The board may expend monies for the maintenance of drainage structures and facilities and accept dedicated or deeded drainage easements or drainage way tracts. It may expend money for construction, reconstruction, improvement, or extension of drainage facilities in incorporated or unincorporated areas and may acquire by gift, purchase, lease or eminent domain, necessary land easements or rights in land for drainage facilities. The board shall not provide drainage facilities within a drainage district without approval of the district. C.R.S. §30-11-107(1) (u) and (1) (w).

Also, counties may become part of any combination of municipalities, special districts, or other subdivisions of the state authorized to own and operate water systems or drainage facilities that by contract with each other, form a separate governmental entity known as a water or drainage authority. C.R.S. §29-1-204.2.

While the Colorado Department of Public Health and Environment regulates the control of storm water to reduce the amount of pollutants flowing into streams, lakes and rivers as a result of residential, commercial and industrial runoff, counties can develop programs to require the abatement of conditions that would cause a violation of a stormwater permit. The BOCC can adopt an ordinance allowing the county to perform an abatement when the property owner fails to do so and assess an abatement cost on the property owner. C.R.S. 30-15-401(11).

Emergency Telephone Service (“911”)

The BOCC may install and operate an emergency telephone service (“911” system). It is authorized to impose a service charge, the proceeds of which are to be utilized to pay for the emergency telephone services equipment and emergency notification service including costs for programming, radios and emergency training programs, some personnel expenses and other costs directly related to the continued operation of emergency telephone and notification service. Monies available after the costs of emergency telephone and notification service are paid, may be used for emergency medical services provided by telephone or equipment needed to redirect calls for non-emergency telephone services. C.R.S. §29-11-104(2).

Fire Safety

The BOCC may adopt fire safety standards by ordinance. C.R.S. §30-15-401.5. Commissioners may also ban open fires in unincorporated areas where the fire danger is found to be high based on competent evidence. C.R.S. §30-15-401 (1) (n.5). The sale, use, and possession of fireworks may also be prohibited or restricted within all or any part of the unincorporated area. Such ordinances may not be in effect between May 31st and July 5th unless there is an express finding of high fire danger based on competent evidence and noted in the ordinance itself. C.R.S. §30-15-401 (1) (n.7).

Beginning in 2011, all counties with fire hazard areas in the unincorporated area, must have a community wildfire protection plan (CWPP) or an equivalent plan. Counties must consider the state forester's CWPP guidelines and criteria when developing their plans. C.R.S. § 30-15-401.7 (3).

Firearms Regulation

After public hearings, the BOCC may designate unincorporated areas of at least 100 persons per square mile occupancy in which discharge of firearms shall be unlawful. C.R.S. §30-15-301, et seq.

Hazardous Waste Incinerator Siting Approval

County commissioners are authorized to require an owner or an operator of a proposed hazardous waste incinerator to obtain a certificate of designation before construction and operation of the incinerator. The application is to be accompanied by a fee to be established by the board and based on the anticipated cost that may be incurred by the county in the application and review process, with a \$50,000 limit on such fees. Notification of the application is to be given to any county board or municipal council within 20 miles of the incinerator site. Approval or disapproval is to be given within 180 days of application. A number of factors must be considered during the review process and findings made thereon. Notification to the state Department of Public Health and Environment of approval or disapproval is required. C.R.S. §25-15-201, 202, 203, 205.

Hemp Regulation

Counties may charge license fees and adopt ordinances or resolutions regulating the storage, extraction, processing or manufacturing of industrial hemp or industrial hemp products. County regulations may not go beyond state statute. C.R.S. 30-15-401.

Housing Authorities

The BOCC may contract with any governmental subdivision of the state for planning, financing, construction, maintenance, and operation of a multi-jurisdictional housing authority. The authority's boundary may be less than the entire county. The authority can participate in ongoing programs and purchase assistance. Financing options include a sales and use tax of up to 1 percent, a property tax of up to five mills, or on certain conditions an impact fee of up to \$2 per square foot. C.R.S. §29-1-204.5.

In order to maintain the housing needs of low and moderate-income people, local governments may establish affordable housing dwelling unit advisory boards. Local governments through an ordinance or resolution establish these authority boards. The local government establishes the number of members of a board and their terms. C.R.S. §29.26.101. Et seq.

Improvement Districts: "LIDs, PIDs, SIDs and MIDs"

Improvement districts are "temporary" districts created for the purpose of making some improvement usually by building a road or other facility. There are several different types, including local improvement districts (LIDs), public improvement districts (PIDs), special improvement districts (SIDs) and municipal improvement districts (MIDs). Counties have the ability to form only LIDs and PIDs. SIDs and MIDs are exclusive to municipalities. Unlike special districts (which are described in chapter one), improvement districts remain under the direct management authority of the city or county creating them. Improvement districts have no

independent existence separate from the purpose for which they were established. They have some bonding abilities predicated upon their ability to raise funds.

Local Improvement Districts (LIDs)

By its own action or upon petition, the BOCC may form districts for the purpose of creating or funding the below-listed improvements. The BOCC may assess the cost of such improvements to the properties benefited (those within the district) in accordance with the benefit to each, in whole or in part. Improvements permitted are:

- ◆ Street construction, grading, paving;
- ◆ Curbs and gutters;
- ◆ Street lights;
- ◆ Drainage facilities;
- ◆ Sidewalks adjacent to streets;
- ◆ Energy efficiency and renewable energy production projects for residential and commercial use; and/or
- ◆ Service improvements such as cable, gas, electricity, and other utility services.
- ◆ Broadband infrastructure

General obligation bonds can be issued to finance the improvements upon successful election. Special assessment bonds may be issued (retired by assessments against the benefited properties) and may be guaranteed by the county as to the last 25 percent of principal (in order to obtain a lower interest rate). C.R.S. §30-20-601, et seq.

Public Improvement Districts (PIDs)

Upon petition the BOCC may create a public improvement district for purposes of constructing, installing, acquiring, operating, or maintaining any public improvements or providing any service the county is authorized to perform, including the following:

- ◆ Grading or paving of streets;
- ◆ Curbs or gutters;
- ◆ Street lights;
- ◆ Fire protection;
- ◆ Parking facilities;
- ◆ Storm and sewage drainage systems;
- ◆ Heating and cooling works;
- ◆ Wastewater treatment; and
- ◆ Distribution systems based on geothermal resources, solar or wind energy, hydroelectric or renewable biomass resources, including waste and co-generated heat.

The commissioners serve ex-officio as the governing body of the district and are empowered to issue bonds, levy taxes, and do all things necessary for its operation and function, once created, subject to TABOR limits. These districts may be dissolved after appropriate notice and hearing. Legislation enacted in 1999 expanded the authority for PID creation and allows the borders of the district to cross jurisdictional boundaries, provided the adjoining city or county gives its approval. The district has the power to condemn property if necessary. C.R.S. §30-20-501, et seq.

Even though general-purpose governments create PIDs, the PID's bonds are the sole responsibility of the geographic area within the district.

Special Improvement Districts (SIDs) and Municipal Improvement Districts (MIDs)

Municipal governments are authorized to create special improvement districts (SIDs) and municipal improvement districts (MIDs) to address a wide range of municipal service needs. Counties do not have the ability to create SIDs or MIDs. C.R.S. §§31-2-501 et seq. and 31-2-601 et seq.

Incorporation – Continuation of Services

When an unincorporated area incorporates, its governing body may request the BOCC to continue to provide governmental services to the newly incorporated area for one year but not after the first collection of taxes by the new municipality. C.R.S. § 31-2-108.

Industrial Development

For purposes of easing unemployment, stabilizing the local economy, and furthering the use of agricultural products and natural resources of the area, boards may acquire and dispose of properties for industrial use. The board may issue industrial development bonds pledging the rental receipts from such properties for their retirement and may secure mortgages from users in whom title to such property shall remain during their use. The bonds shall not constitute a debt of the county. C.R.S. §29-3-101, et seq.

Properties acquired by the county in this manner are exempted from taxation. However, the county shall make payments-in-lieu-of-taxes to each city, town, school district or special district, equal in amount, annually, to the property taxes said properties would have produced had they not been exempt. The allocation formulas in effect can be found in C.R.S. 24-32-1701. The federal allocation has decreased over time and the state's share split approximately in half between state agencies and local governments. Due to the volatile nature of this topic, it is advisable to confer with legal counsel or the state prior to initiating such an action. There have been numerous federal actions concerning the use of industrial development bonds.

Law Enforcement

The BOCC may create a law enforcement authority that shall be a political subdivision of the state. Prior to that action, however, notice of the proposed creation, giving the time, place, and date of a hearing on the matter, shall be given. Following that and after an election approving creation but not less than 30 days after the votes have been canvassed, the board may create the authority. The board shall serve as the governing body for the authority. The authority may consist of less than the entire unincorporated area of the county. C.R.S. §30-11-404. See also County Jails and DA Funding Issues above.

Libraries

County Library

The board may establish a county library on its own initiative by resolution or ordinance or upon receipt of a petition, followed by a vote of the electorate. The board may waive the bonding requirements for a proposed library district brought by petition, and the county is required to pay only half of the costs of the election provided the proponents have gathered signatures of five percent of the voters. Management of the library shall be through five to seven trustees

appointed by the board. The board shall provide financial support by a mill levy of not more than 1.5 mills that, after a successful election, can be increased up to a maximum of 4.0 mills. Any funding through any tax levy not previously established must be approved by the electors of the library district or governmental unit.

The governing body of any unit of government maintaining its own library shall be excluded from a county library district upon request but may cooperate with same by contract.

Two or more governmental units maintaining libraries may, by contract, form a joint library. Two or more governmental units may form a library district upon petition or on their own motion, followed by successful vote of the electorate. Five to seven appointed trustees shall manage such districts. C.R.S. §24-90-101, et seq.

Metropolitan Library Districts

Formation is limited to two or more counties, or a city and county and one or more counties within a standard metropolitan statistical area. Formation is by joint resolution of the governments involved (with no election), or by petition (with election). If a tax levy is not previously established by formation, electors must approve levy. C.R.S. §24-90-110.5

Licensing/Regulation

◆ Cigarettes, Nicotine and Tobacco Products

The board may regulate the purchase of cigarettes, nicotine, and tobacco products through licensing. C.R.S. § 30-15-401

◆ Dance Halls

The board may license any person or business to operate a dance hall on payment of a \$25 fee and may cancel such license in deference to public health, morals, or safety. C.R.S. §12-18-101, et seq.

◆ Dogs and Pet Animals

The board may adopt a resolution for the control of dogs and pet animals and the licensing of dogs. Dogs must be vaccinated against rabies to be licensed. C.R.S. §30-15-101, et seq.

◆ Escort Services

The board may license escort services in unincorporated areas of the county. C.R.S. §12-25.5-101, et seq.

◆ Flea Markets

The board may license and regulate flea markets (secondhand dealers). C.R.S. §18-13-118.

◆ Liquor

The board issues liquor licenses to bars, restaurants, and retail stores in the unincorporated areas of the county. C.R.S. §12-47-312(5).

◆ Medical Marijuana (see below)

The board may license and regulate medical marijuana businesses. C.R.S. §12-43.3-106 and 301 et seq.

◆ Nudity in Entertainment Establishments

The board may regulate establishments at which nude entertainment is provided. C.R.S. §30-15-401(1)(l).

◆ **Pawn Brokers**

The board may license and regulate pawnbrokers. C.R.S. §§12-56-102 and 30-15-401(1)(k).

◆ **Recreational Marijuana (see below)**

The board may license and regulate recreational marijuana businesses. C.R.S. §12-43.4-301, 501

◆ **Short-Term Rentals**

The board may license and regulate short-term rentals in the unincorporated area of the county, and may establish fees, terms and the manner in which licenses are issued and revoked. C.R.S. 30-15-401(1)(s)(I)

◆ **Trash Haulers**

The board may license and regulate trash haulers. C.R.S. §30-15-401(1)(a).

Mass Transit

The board may establish and maintain mass transit systems, either singularly or in concert with other political subdivisions of the state. Upon approval of the voters, the board may earmark up to one-half percent of a countywide sales tax for purposes of funding a mass transit system. The tax applies to both incorporated and unincorporated areas.

C.R.S. §30-11-101, et seq.

Marijuana (Medical)

County commissioners are authorized to license or prohibit medical marijuana dispensaries, grow operations, infused product manufacturing centers and testing facilities in the unincorporated areas of the county. A prohibition on these businesses can be accomplished through BOCC action or a referred ballot measure approved by the voters. (It is important to note, however, that counties are not authorized to prohibit legitimate caregiver and patient grow operations protected under Amendment 20 of the Colorado Constitution). Counties may create a local licensing authority to exercise oversight of these businesses and enact standards such as size restrictions and distance requirements from schools and alcohol and drug treatment centers. Medical marijuana businesses are regulated by the state if no local licensing program exists. C.R.S. §12-43.3-106, 301, 308.

Marijuana (Recreational)

County commissioners are authorized to allow or prohibit recreational marijuana dispensaries, grow operations, infused product manufacturing centers, testing labs, deliveries to the house and hospitality establishments in the unincorporated areas of the county. A prohibition on these businesses can be accomplished through BOCC action, a referred ballot measure approved by the voters or an initiated measure approved by the voters. (It is important to note, however, that counties are not authorized to prohibit the personal use and possession of recreational marijuana under Article XVIII of the Colorado Constitution). Counties may create a local licensing authority to exercise oversight of these businesses and enact standards regarding time, place, manner, and number of these businesses. Counties are also authorized to collect operating fees from recreational marijuana businesses to cover the costs of program administration, inspection, and enforcement. C.R.S. §12-43.4-301 & 501, 44-12-408, 44-11-301 and Article XVIII of the Colorado Constitution

Minimum Wage

County commissioners may set a local minimum wage within the unincorporated area that is higher than the state minimum wage. Regional minimum wages may be set through an intergovernmental agreement. There are statutory limits on how many local governments in the state can set a different minimum wage. C.R.S. 29-1-401.

Mobile Homes

The board may adopt, administer, and enforce ordinances and resolutions to provide for the safe and equitable operation of mobile home parks throughout the unincorporated areas of the county. This can include regulations to protect homeowner's equity, the imposition of penalties or the adoption of a local registration system. C.R.S. § 30-11-128 (1) Some counties have enacted resolutions requiring park owners to notify residents about how they will be charged for utilities like water, sewer, natural gas and electricity, ensuring residents maintain their privacy and protecting residents from retaliation when they complain about the conditions of a manufactured housing community to the county.

Oil and Mineral Rights

The board may lease or sell mineral rights to any land owned by the county or in which the county has an interest. Sales and leases of oil or gas production, development or exploration rights shall be preceded by legal notice to the surface owner and to the public at-large. Leases may not exceed 25 years for non-oil or gas rights and for as long thereafter as production continues. The board also is empowered to enter agreements restricting or limiting the use of lands, drilling and related matters. C.R.S. §30-11-303.

Parks and Recreation

The board may provide park and recreation facilities (including television relay/translator facilities) and expend monies in connection therewith. The board may also regulate and charge fees for the use of those facilities. C.R.S. §29-7-101, et seq. The board may contract with other governmental entities for mutual use of property. The board may condemn property for this purpose. C.R.S. §29-7-104.

Recreation Districts

The board may form a county recreation district for recreation purposes, administered by the board. If the district is less than countywide, the board may levy a special tax of up to 1.0 mill on property within the district for acquisition, operation, maintenance, etc., subject to TABOR limits. If the district is countywide, no special levy is authorized; acquisition, operation and maintenance shall be funded from the General Fund. C.R.S. §30-20-701, et seq. There is no specific grant of condemnation power for this type of district; however, the power to condemn granted in §29-7-104, may possibly apply.

Liquor Licensing and Enforcement

One of the more important licensing authorities granted to counties is the issuing of liquor licenses to bars, restaurants, and retail stores in the unincorporated areas of the county. Liquor licensing is different from other licensing activities in that the county *shares* licensing authority with the state liquor enforcement division, which is part of the state Department of Revenue. Local liquor licenses are subject to review and approval by the state. C.R.S. §12-47-312(5).

Liquor license application forms must be submitted to the county, and the completed application must be accompanied by complete plans and specifications for the interior of the building where liquor will be sold. C.R.S. §12-47-309. The board shall schedule a public hearing at least 30 days after the date of receipt of an application, and posts and publishes notice thereof, not less than 10 days prior to the hearing. Notice is satisfied by posting a sign in a conspicuous place on the premises for which licensing is sought and by publication in a newspaper of general circulation within the county. Notice must show the applicant's name and address and all partners/ officers if the applicant is a corporation. C.R.S. §12-47-311. At least five days before the hearing, the BOCC must notify interested parties including all neighbors of the location proposed for licensing of its “determination of the neighborhood” and of the results into its investigation of the application. C.R.S. §12-47-312(1).

Within 30 days following the hearing and consideration of the application, the BOCC must give its decision to the applicant, together with the reasons for approval or denial to the applicant. C.R.S. §12-47-312(3). When issuing licenses, counties collect both state and local fees as set forth in C.R.S. §12-47-501 and 505 and C.R.S. §12-46-107.

By resolution, the BOCC may adopt standards for the issuance of optional premise licenses to sporting events and recreational facilities adjacent to licensed hotels or restaurants. Licensees must notify state or local authorities 48 hours prior to serving alcohol on optional premises, C.R.S. §12-47-310. The board may also issue an annual 10-day permit to organizations for special events (e.g., October fests, civic celebrations, and county fairs). Special permits may also be issued to bona fide political candidates. The state licensing authority must be notified of approval of such applications. C.R.S. §12-48-101 through 108. The board may also adopt a resolution authorizing tastings in liquor stores. The resolution may provide for stricter limits than those outlined in statute C.R.S. § 12-47-301(10).

Compliance Checks ("Stings")

Under the licensing authority, counties are authorized to conduct compliance checks (also known as "stings") to determine if license holders are selling alcohol to minors. Stings are usually coordinated with the county sheriff and state liquor enforcement division, and entail hiring a minor to enter an establishment and attempt to purchase alcohol without identification. If an establishment commits a violation, the county has the ability to penalize the license holder. The liquor enforcement division has established guidelines the county may consider when imposing penalties for liquor code violations that result from "sting" operations. C.R.S. §12-47- 202(2)(E). "Sting" operations are very controversial within the restaurant and retail industry, and counties have repeatedly fought against legislation taking away the local licensing authority's ability to establish penalties for violations.

Police Powers - Regulation/Control

The BOCC may regulate and control the following:

- ◆ Bawdy houses and houses of prostitution;
- ◆ Disturbances and riots;
- ◆ Loiterers and prostitutes;

- ◆ Motor vehicles on public property (except as to speed limits on state highways);
- ◆ Unleashed or unclaimed animals; and
- ◆ Purchase and/or possession of tobacco products by minors;
C.R.S. §30-15-401.

Roads

The board may lay out, alter, or discontinue any road running to or through the county; and must perform such other duties as may be required by law relating to public roads. C.R.S. §30-11-107. See chapter eight for a discussion of county road and bridge issues.

Sewage Treatment

The board, on behalf of a single county or in company with an authorized special district, city or town, or any combination thereof, may contract with the State Water Pollution Control Commission for construction of sewage treatment works. The board must, however, assure payment of its share of costs and must diligently make application for any federal assistance that may be available for such purposes. State law provides for a state aid program to finance sewage treatment facilities and systems. State appropriations for this purpose are sent to the Division of Administration within the Department of Public Health and Environment. C.R.S. §§25-8-701, et seq. 30-20-401, et seq.

SEWER SYSTEMS

The board may provide public water and sewer services and facilities, issue revenue bonds for their acquisition and construction, and set rates to defray operating, maintenance and debt service costs. The board may also compel connection of private premises to such sewage systems. The board may also issue revenue refunding bonds for such purposes as necessitated by circumstances. C.R.S. §30-20-401, et seq. See also Garel v. Board of County Commissioners, Summit County, 447 P.2d 209 (1968).

Streetlights

The board may provide streetlights by adopting an ordinance in accordance with the provisions of C.R.S. §30-15-401, et seq. C.R.S. §30-11-101(1)(g).

Solid Waste

Solid Waste Disposal Districts

The board, in a county with a health department or within a health district, may create solid waste disposal districts and may expend monies to fund it. The board acts for the district(s). C.R.S. §30-20-201, et seq. Metropolitan districts may also form to provide solid waste disposal facilities or collection and transportation of solid waste. C.R.S. §32-1-100. Boards of sanitation districts or water and sanitation districts with populations less than 2,500 located in counties with populations of 25,000 or less may provide for the collection and transportation of solid waste or may provide solid waste facilities. C.R.S. §32-1-1006.

Solid Waste Siting

The certificate of designation process for solid waste siting involves both a land use review and a public hearing by a county and a technical review by the Colorado Department of Public Health

and Environment (CDPHE). County commissioners, or the local governing body, as applicable, may choose to deny a permit for a site that passes the technical review but cannot approve a site deemed inadequate by the state. A nonrefundable fee is assessed by the county in an amount determined to be reasonable based on the anticipated costs that may be incurred in the application review process. C.R.S. §30-20-101, et seq. All facilities shall have a waste characterization plan approved by CDPHE outlining screening methodologies and waste handling procedures. Persons caught disposing of materials at a non-approved site are subject to a fine that is retained by the city or county enforcing the action. §30-20-113(4).

The board may designate exclusive sites, contract out their operation and impose service charges on users of public sites.

Any person or entity, other than a governmental unit, may dispose of his or her own solid wastes on his or her own property, provided the disposal site and facility complies with the rules and regulations of CDPHE, and does not constitute a public nuisance. NOTE: For the purposes of Part 1 of Article 20 of Title 30, C.R.S., which sets forth the law governing solid waste disposal sites and facilities, the definition of “solid waste” does not include domestic sewage. The statutes further set forth application and approval process requirements for solid waste disposal sites and facilities.

The board may levy an ad valorem tax on all taxable property within the county to pay for the costs of acquisition, operation, and maintenance of solid waste sites in the county. Solid wastes treated and certified as meeting requirements of the Department of Agriculture and used as fertilizer, fuel, feed, or soil conditioner may be deposited in the county without a certificate of designation. An incinerating or recycling operation not conducted on the site of a landfill does not require a certificate.

Dumping Grounds

The board may provide for county dumping grounds and charge fees for their use. All such sites shall have a certificate of designation from the local governing body and a waste characterization plan approved by the Department of Public Health and Environment. C.R.S. §§30-11-107(1)(k), 30-20-110(1)(g) and 30-20-115.

Trash Removal

The BOCC may compel and/or provide for the removal of trash and garbage, including weeds, from lots or parcels within the county, except from industrial parcels of 10 or more acres or actively used agricultural parcels. C.R.S. §30-15-401(1). County attorneys may seek civil penalties under county zoning enforcement authority as well. C.R.S. §30-28-124.5.

Garbage

The board may require property owners to remove junk, brush and weeds from certain lots and tracts. The board may authorize removal of the trash at the property owner’s expense and may institute collection and foreclosure procedures in the event of nonpayment. The board also has the authority for issuance of administrative warrants for rubbish removal. C.R.S. §30-15-401. County attorneys may seek civil penalties under county zoning enforcement authority as well. C.R.S. §30-28-124.5. The board also has authority in regard to regulating and overseeing solid waste disposal sites and facilities under their jurisdiction. C.R.S. §30-20-1.

Underground Utilities

The BOCC may create districts for the underground conversion of utilities in unincorporated areas of the county. Districts may be created on the initiative of the BOCC or after a petition of a majority of the property owners within the proposed district area. The BOCC may require each public utility involved to study and report on the costs of converting its facilities as well as on other requirements for determination of costs, assessments, and hearings. C.R.S. §29-8-101, et seq.

Water

The BOCC may provide water and sewer services without an election and may issue revenue bonds in connection therewith. Services may be provided within and outside of the county (with permission of the affected entity). C.R.S. §30-20-401, et seq.

The BOCC may contract with the governing body of any other governmental jurisdiction in the state authorized to own and operate water systems for creation of any interjurisdictional water authority. The contract must define the authority's purpose and jurisdiction, its name, the manner of selecting as well as the number of members on its governing body. Once created, the authority becomes a governmental entity entirely independent of the jurisdictions which created it and is fully empowered to do all things necessary for its organization and operation, including revenue-bonding, ratemaking and the like. Counties and other jurisdictions creating such an authority are empowered to loan monies to the authority from any source available or to grant monies for any purposes of the Act, without provision for repayment by the authority. C.R.S. §29-1-204.

Wildfire Planning and Disaster Response

Counties are authorized to prepare and implement wildfire management plans, detailing local policies on prescribed burns, fuels management and natural ignition burns. Such plans must be coordinated with the state forester and the county sheriff. C.R.S. §30-11-124. The BOCC may cooperate with other counties and with the state forester in organizing and training rural fire fighting groups, paying for their operation and maintenance, and sharing the cost of firefighting. C.R.S. §30-11-107. Counties are authorized to enter into intergovernmental agreements (IGAs) with local governments in neighboring states for purposes of planning for and providing services during emergencies and natural disasters. C.R.S. §29-1-206.5.

COUNTY EMPLOYMENT ISSUES

Personnel Systems

Essentially, all employees of the county serve at the pleasure of the BOCC or other elected officials (sheriff, treasurer, etc.). With respect to employees of the autonomous county elected officials, although those employees serve at the pleasure of those officials, their salaries must be approved by the BOCC. The BOCC is authorized to adopt a "classification and compensation" plan for all county employees which:

- ◆ Determines pay and benefits;
- ◆ Classifies employees by job classification and pay grade;
- ◆ Establishes the length of the work week; and
- ◆ Makes provision for overtime pay, or compensatory time in its lieu.

It is important to note such plans are not binding upon other county elected officials and their staff unless the elected officials accept them. However, once an elected official accepts the plan, such plan shall become binding upon the employees of that office. Changes, benefits, pay grades, and job classifications of employees shall thereafter be made in accordance with such plans. C.R.S. §30-2-104.

While all county employees serve at the pleasure of their employer, there are various state and federal laws governing procedures for hiring, promoting, disciplining, and terminating such employees. All county employees are covered under the federal Fair Labor Standards Act, Equal Employment Opportunity Act and Civil Rights Act. County sheriffs must adopt personnel policies, including dismissal policies that notify a deputy of the reason for the proposed dismissal and an opportunity to be heard by the sheriff. The BOCC can be sued for damages under these federal laws *even if the employee bringing the lawsuit works for another elected official and is not directly employed by the BOCC.*

Salary Publication Requirements

Salary information for all county employees and officials must be published twice annually in at least one legal newspaper within the county. Publications must occur in August and February and include the employee's title and gross monthly salary. C.R.S. § 30-25-111.

Insurance

The county may use proceeds of tax levies or other public monies for group insurance covering life, accident, or health of its employees. Deduction may be made from the salaries of county employees to pay for a share of such costs. C.R.S. §30-2-104.

Workday/Overtime Pay

County employees come under the aegis of the federal Fair Labor Standards Act (FLSA) with regard to overtime compensation, which requires overtime work (work in excess of 40 hours per consecutive seven-day week) be compensated by the county in cash at one and one-half times the regular hourly rate, or by compensatory time-off at one and one-half times the number of excess hours. Also, under the federal act there are a number of special provisions for public safety purposes, employees and employers who are "on call." Each county should have a member of their staff become familiar with FLSA provisions. 29 U.S.C. §201, et seq.

Sick Leave

All private and public employers in Colorado are required to provide each employee with at least one hour of sick leave for every 30 hours worked. During a declared public health emergency, each employer shall provide two weeks of sick leave to all full-time employees. This sick leave can be used to care for family members and children. Employers are also required to retain employee sick leave records for at least two years. C.R.S. 8-13.3-403 et seq.

Colorado Labor Preferences

Any public works project financed wholly or partly from state, county, municipal or school district funds must employ Colorado labor in 80 percent of all positions in each class or type of labor employed on the project. C.R.S. §8-17-101. Public contracts for services with businesses who hire illegal aliens or knowingly contract with subcontractors who hire illegal aliens are prohibited. All contracts for services must include a provision prohibiting such action by a contractor and requiring the contractor to confirm employment eligibility via the federal

employment verification program (i.e. “Basic Pilot Program”) or indicate an attempt to participate in the program. C.R.S. §8-17.5-102.

If there has been a contract violation of this type, the local government is allowed to terminate the contract and must notify the Secretary of State in the event of such termination.

Military Leave

Any county officer or employee who is a member of the National Guard or Reserve Forces under state or federal law, shall be given up to 15 days annual military leave without loss of seniority, pay, status, efficiency rating, vacation, sick leave or other benefits for the time he or she is engaged in training or service ordered by the appropriate military authority. If the employee or officer is required to continue in military service beyond the time for which leave with pay is allowed, he or she shall be entitled to leave without pay until he or she shall be reinstated following active service in time of war or emergency. C.R.S. §28-3-601.

Emergency Military Leave/Reinstatement

Any officer or employee of the county for whom leave is not otherwise authorized by law shall be given emergency military leave, without pay, and shall be entitled to reinstatement upon completion of military service. Reinstatement shall be made under the following conditions:

- ◆ The position has not been abolished or the term expired;
- ◆ The officer or employee is not physically or mentally disabled and unable to perform former duties;
- ◆ The employee makes written application for reinstatement within 90 days after discharge from hospitalization or medical treatment which immediately follows the termination of, and results from, such military service; but such application shall be made within one year and 90 days after termination of such service; and
- ◆ The employee submits an honorable discharge or other form of release under honorable conditions.

All rights and privileges which would have accrued to the employee or officer had he or she not been in military service shall be the officer’s or employee’s as though he or she had been employed throughout the term of military service. C.R.S. §28-3-603 and 604.

Retirement Plans

The statutes provide the types of permitted public employee retirement systems for county elective and appointive officials and employees. Boards may choose, either for their own county or in conjunction with any other political subdivision of the state, to finance and operate a retirement system such as Colorado County Officials and Employees Retirement Association (CCOERA). They may also elect to join the Public Employees Retirement Association (PERA).

Options available are a self-financed, retirement trust system, or the purchase of annuities from commercial sources. The statutes provide for the levy of an ad valorem tax on all property within the county to finance the county share of such systems. Any plan or system so adopted shall require participants to contribute a percentage of their salaries toward the cost thereof. The rate of contribution for participants must not be less than that made by the county. Counties are required to contribute no less than three percent of an employee’s basic salary or wage. C.R.S.

§24-54-104. Any alternative plan, e.g., PERA, must be a qualifying plan as determined by federal law.

Any county not participating in the social security system may establish a program of similar benefits and may require additional contributions from the employee to be matched by the county, not to exceed the federal social security rate. Under certain circumstances, the county may elect to pay the employees' contributions. C.R.S. §24-51-309.

Veterans' Hiring Preferences and Veterans Service Officers

Veterans' Hiring Preference

Article XII, Section 15(1)(a) of the Colorado Constitution requires counties to incorporate a veterans' preference policy into their hiring practices. However, the language in the constitution refers to "point" bonuses and numerical merit-based hiring systems, something most counties do not utilize. Yuma County successfully incorporated veterans' preference language into their employment regulations:

Yuma County Section 5 D. Employment Practices

"Yuma County residents or those applicants who are willing to become Yuma County residents within a period of thirty days shall be given first consideration for position vacancies, provided they are otherwise equally qualified for that position. *Applications of Yuma County residents who are military veterans shall be given consideration over non-veterans, provided they are otherwise equally qualified for the position vacancy.* In recruiting persons for employment, the applicant most qualified to perform the duties of the classification should, without exception, receive the offer of employment." (emphasis added)

Veterans Service Officers

Additionally, all counties are required to appoint a veterans service officer every two years. The duties of these officers include assisting the veteran population of the county with questions on benefits, pensions, insurance, and other matters. The majority of these county officers serve in a part-time capacity, and the state and county share funding for the position. The state's share is set annually through the general appropriation bill. C.R.S. §28-5-707. Prior to appointing a veterans service officer, the BOCC shall consult with existing veterans' organizations of the county. C.R.S. §26-9-102.

COUNTY PURCHASING REQUIREMENTS

There are a number of restraints on county purchasing power with respect to the purchase of commodities for use by the county. The state has a strong ABC ("Always Buy Colorado") ethic, and there are a number of bid preference laws in the state to ensure local governments are using in-state products whenever possible. The state Division of Local Government operates a program that can help commissioners sort through the maze of purchasing requirements.

Purchasing Service – Division of Local Government

The Division of Local Government within the state Department of Local Affairs (DoLA) operates the Colorado State-Local Purchasing Program for, and on behalf of, all cities, towns,

counties, and special districts of the state. The program works with purchasing offices on the “basics” of purchasing: going out to bid; advertising; statutory requirements; opening the bid; and evaluating the process. The program also provides the following assistance:

- ◆ Improving current procurement procedures;
- ◆ Establishing or updating procurement codes;
- ◆ Developing cooperative bids for groups who want state awards for new commodities or on a one-time basis; and
- ◆ Writing specifications. C.R.S. §24-110 205(3).

The State-Local Purchasing Program enhances county buying power by allowing counties to take advantage of volume discounts secured by the program. Purchasing workshops are also offered periodically to assist county purchasing offices.

Preference to State Commodities and Services

When a construction contract for a public project is to be awarded to a bidder, a resident bidder shall be allowed a preference against a nonresident bidder from a state or foreign country equal to the preference given or required by the state or foreign country in which the nonresident bidder is a resident.

If it is determined by the officer responsible for awarding the bid that compliance with this section may cause denial of federal monies which would otherwise be available or would otherwise be inconsistent with requirements of federal law, this section shall be suspended, but only to the extent necessary to prevent denial of the monies or to eliminate the inconsistency with federal requirements.

For the purposes of determining bid preference and public projects, a public project means any highway or bridge construction, whether undertaken by the Department of Transportation or by any political subdivision (including counties) of this state, in which the expenditure of funds may be reasonably expected to exceed \$50,000. C.R.S. §8-19-101(1), (2).

State Suppliers Preference

It is unlawful for any BOCC of any county to accept any bid or make a purchase of any books, stationery, records, printing, lithographing, or other supplies for any manufactory or principal place of business outside the state of Colorado, when the same can be procured from some person, company, or corporation having its manufactory or principal place of business within this state and at a net cost which shall not exceed the amount for which such books, stationery, records, printing, lithographing, or other supplies can be procured and delivered to them by any person, company, or corporation having its manufactory or principal place of business outside the state. C.R.S. §30-11-110.

Integrated Project Delivery Methods for Public Project Contracts

County governments, along with other governmental entities in Colorado, are authorized to give public project contracts to those that use integrated project delivery methods (IPD). IPD contracts are agreements with a single bidder for services including design, construction, alteration, operation, repair, improvement, demolition, maintenance, and financing of a public project. Governments are also authorized to pre-qualify bidders for such contracts.

**STANDARDS OF CONDUCT:
ELECTED OFFICIALS, STATE AND LOCAL
GOVERNMENT EMPLOYEES, COLORADO CONSTITUTION ARTICLE 29,
AND THE COLORADO CODE OF ETHICS IN 2012¹**

Thomas J. Lyons, Esq.
Matthew J. Hegarty, Esq.
Hall & Evans, L.L.C.
1001 17th Street, Suite 300
Denver, CO 80202
303-628-3355

INTRODUCTION

Elected officials and public employees alike understand they are subject to significant public scrutiny, whatever their activities may involve. Such scrutiny may have intensified after Colorado voters decided in 2006 to add Article 29 to the Colorado Constitution.² This state constitutional amendment is now operational, as is the state’s *Independent Ethics Commission* (“Commission”), which is endeavoring to fulfill the role outlined for it by Article 29. When considered alongside existing Colorado law in the form of the Colorado Code of Ethics (COE),³ Article 29 creates specific obligations and changes that must now be recognized and observed by every level of Colorado government.⁴ These laws define improper behavior in a manner that might impact any Colorado elected official or public servant, requiring persistent vigilance to avoid the penalties that might arise from a violation. This overview may also aid elected officials and public employees in their quest to serve the public interest.⁵

¹ This document is an update to the 2012 version. Changes reflect developments since the 2012 version was published.

² Article XXIX of the Colorado Constitution (“Article 29”) was approved on November 7, 2006, and it took effect on the Governor’s proclamation of the election results. This Article preempts any conflicting state law and applies to *government employees*, as well as elected officials, by its terms. (Judges, however, are not subject to the restrictions of Article 29. Colo. Const. art. XXIX, sec. 2, subsec. 6.)

³ The COE is codified at C.R.S. § 24-18-101 *et seq.* The COE is applicable to “local government officials,” defined as any elected or appointed official of a local government, but not employees of a local government. C.R.S. § 24-18-102(6). “Local government” includes a county or a city and county. C.R.S. § 24-18-102(5).

⁴ The Article empowers counties and municipalities in Colorado to adopt ordinances or charter provisions more stringent than the provisions of the Article. The Article does not apply to home rule counties and municipalities with existing charters, ordinances, or resolutions that address the same issues.

⁵ This document provides a general overview of the subject matter, but it is no substitute for legal advice tailored to a specific situation. All public officials are urged to consult an attorney before taking any action that may present an ethical issue or pose a legal concern. In addition, some local jurisdictions generate ethical codes or other requirements that apply to their public officials and employees. Counsel knowledgeable about such local laws should be consulted to determine such obligations. Also, while every effort is made to reflect current circumstances here, future judicial or legislative activity may alter the responsibilities of public officials, employees, or entities in an unanticipated fashion. This is another reason to seek timely legal advice before undertaking a specific activity.

ARTICLE 29: OVERVIEW AND BASIC PROVISIONS

Article 29 created *new* requirements and standards for all Colorado elected officials and public officers, extending such standards and requirements to include *government employees* (“regulated person(s)”) who may be in a position to receive any money and “gifts.” The COE statute, in effect since at least 1988, does not address the receipt of gifts by public employees. Prior to the passage of Article 29, some local governments attempted to address this gap, adopting local restrictions on the receipt of gifts by public employees.⁶ Today, however, Article 29 directs the behavior of officials and employees at all levels of government, except in circumstances where either a local law is more stringent, or a home rule entity created a local provision on the subject before Article 29 was adopted.

In general terms, Article 29 forbids the acceptance of any money, forbearance, or forgiveness of indebtedness by any regulated person, unless that person provides equal consideration in return. This ban applies to the spouse or dependent child of a regulated person. One exception is a gift with a total value of less than \$53, received once over the course of a single calendar year.⁷ The receipt of multiple gifts with a cumulative value of less than the \$53 limit is allowed in the course of a single year. Other exceptions also apply, as further noted below. *If you are an elected official in Colorado or the employee of a public entity, these restrictions must be considered whenever any possibility exists that you or a member of your immediate family will receive anything of value from anyone else.* There is always some possibility that an exception to the restriction will permit some such arrangements. However, this rule is very broad, while the potential for variable interpretation is substantial, requiring that every such circumstance be scrutinized with care.

A group of citizens, lobbyists, government employees and legislators challenged the gift ban provisions of Article 29 just after it became effective. They claimed in their lawsuit that the bans were overbroad, vague, and a violation of their First Amendment rights. The Denver District Court preliminarily enjoined enforcement of the gift ban as unconstitutional. In 2008, however, the Colorado Supreme Court reversed that order and concluded the District Court lacked the jurisdiction to decide the First Amendment challenge because the Commission established by the new law did not yet exist and therefore was unable to implement Article 29.⁸ The Supreme Court’s approach to this dispute did not determine in any definitive manner whether Article 29 is constitutional.

As an elected official from, or the employee of, a home rule entity in Colorado, Article 29 may not apply to you, provided your employing entity’s charter, ordinances, or resolutions *address the same issues* as Article 29. Unfortunately, there is no further explanation of this exception available at present, creating uncertainty as to whether a home rule entity’s decision to increase the gift limit from \$53 to \$100, for example, will be seen to “address the same issues” as Article 29 if someone brings a legal challenge to such an increase. Any local government, even a

⁶ COE restrictions that may persist following implementation of Article 29 are further addressed below.

⁷ Originally, and in the current wording of Article 29, this limit was \$50. However, Article 29 empowers the Commission to adjust the amount of the exception based on fluctuations in the Consumer Price Index. Colo. Const. art. XXIX, sec. 3, subsec. 6. In April 2011, the Commission increased the limit to \$53, effective until the first quarter of 2015. See Colo. Indep. Ethics Comm’n Position Statement 11-01 (issued Apr. 8, 2011).

⁸ *Developmental Pathways v. Ritter*, 178 P.3d 524 (Colo. 2008).

non-home rule government, may implement a more stringent rule, though, in which case the more stringent rule should control the behavior of its officials with regard to accepting things of value. This should mean a local government could reduce the local gift limit to \$25, although the only way to be certain about this may be to secure a judicial decision.

Article 29 offers some limited examples of activities and behaviors deemed forbidden: “gifts, loans, rewards, promises or negotiations of future employment, favors or services, honoraria, travel, entertainment, or special discounts.” These examples may seem inadequate, however, given the myriad circumstances that may arise, such as when a person is in need of public assistance in the face of a disaster, or when a scholarship is awarded on the basis of need or merit. Future clarifying legislation may address some such matters. However, any legislative activity must not be expected to negate Article 29, as the Article forbids future legislation that undertakes to “limit or restrict the provisions of this article or the powers . . . granted.” In this sense, any legislative effort to address what may seem deficiencies or uncertainties in the text of the Article may only provoke a legal challenge claiming that any limit or restraint on the scope of the Article is improper.

Article 29 also contains exceptions to its gift ban that may be summarized to include: campaign contributions as regulated by law (including the state Fair Campaign Practice Act); an unsolicited item, token, award, or certification of trivial value (worth less than \$53); unsolicited information related to an official’s performance; a ticket or meal relating to a speaking appearance or question/answer program attended; the reasonable expense of attending a qualifying organization’s convention, mission, or trip, provided that the sponsoring and qualifying non-profit organization receive less than five percent funding from for-profit organizations; a gift given by a relative or friend on a special occasion; and compensation or incentives related to employment.

The Article also prohibits any regulated person or family member from receiving or being offered anything of value by a *professional lobbyist*,⁹ personally or through anyone else. This includes any gift or thing of value of any kind (*meaning no “\$53 exception” applies*). Likewise, no such person may pay for any meal, beverage, or other item to be consumed by the regulated person. An exception applies to the members of a lobbyist’s immediate family.

ARTICLE 29: POWERS AND DUTIES OF THE COMMISSION

The Commission enforces the provisions of Article 29, as stated in the Article. The Governor, each house of the General Assembly, and the Chief Justice of the state Supreme Court each selected a Commissioner, with those four in turn choosing a representative of local government as a fifth Commissioner. The unpaid Commissioners are to hear complaints, issue findings, and assess penalties (the penalty for violating Article 29 is an amount that is double the value of whatever might be in question). The Commission can also issue advisory opinions on various matters, including issues that arise under the Article. In 2008, all five Commissioners

⁹ Any person registered or required to register with the state as a lobbyist appears to fit this requirement. See C.R.S. § 24-6-301 *et seq.* Article 29, Sec. 2, subsec. 5, however, expressly excludes from this requirement “any volunteer lobbyist, any state official or employee acting in his or her official capacity, except those designated as lobbyists as provided by law, any elected public official acting in his or her official capacity, or any individual who appears as counsel or advisor in an adjudicatory proceeding.”

were appointed and took office. The Commission also adopted Rules of Procedure to govern its actions relating to advisory opinions, letter rulings, complaints, hearings, and sanctions.¹⁰

An inquiry into whether someone violated Article 29 or other applicable law can be submitted to the Commission, within twelve months of the alleged behavior and in accord with the Commission's Rules of Procedure. A legitimate complaint will prompt an investigation, a public hearing, and findings, all of which are based on the Commission's Rules. Findings will depend on the existence of a preponderance of the evidence. Any complaint provided to the Commission must be kept confidential until the Commission determines whether the complaint is frivolous. If the Commission determines that it lacks jurisdiction, that the complaint is frivolous or groundless, or that the alleged violation would not constitute an ethical violation that the Commission could govern, the Commission will dismiss the complaint. If a complaint is dismissed for reasons other than that it is frivolous, it may be subject to disclosure under the Colorado Open Records Act;¹¹ but any complaint dismissed for being frivolous will be kept confidential. If the Commission does not dismiss the complaint, however, it will hold a public hearing, and it can subpoena people and things to facilitate its inquiry.

To date, the Commission has issued numerous Letter Rulings, Advisory Opinions, and Position Statements.¹² Each of these may be summarized as follows:

Letter Rulings

A Letter Ruling is a written opinion addressing ethics issues in response to a written request by someone who is not a public officer, legislator, local government official, or government employee on a specific factual question. In general, such rulings are requested by organizations or individuals who lobby the legislature, conduct business with a government agency, or invite public officials to participate in a conference, tour, or meeting. A Letter Ruling is issued in advance of an event and offers "guidance" to a requestor about the specific situation.

Advisory Opinions

An Advisory Opinion is a written opinion addressing more specific ethics issues in response to a written request by someone who is a public officer, legislator, local government official, or government employee on a specific factual question. An Advisory Opinion provides guidance in advance of an event and does not usually set precedent; nevertheless, it may offer a requestor something of a "safe haven" should the underlying event be questioned after the fact.

¹⁰ The Rules of Procedure became effective on September 1, 2008 and can be reviewed on the Commission's website, available at: <http://www.colorado.gov/iec>. The Rules in effect as of April 14, 2011 are available at: <http://www.colorado.gov/pacific/iec/rules-procedure>. (Last accessed Oct. 25, 2014.)

¹¹ In May 2009, the City and County of Denver District Court ruled that, under the Colorado Open Records Act ("CORA"), the Commission could not prevent disclosure of requests for advisory opinions or letter rulings, of responses to and correspondence with third parties relative to such requests, or of complaints that were deemed to be non-frivolous yet dismissed. The Commission must disclose such requests, or such complaints deemed to be non-frivolous yet dismissed, regardless of whether the Commission issues an opinion on the request or investigates the complaint. *See In re Colo. Indep. Ethics Comm'n*, No. 2008CV7995 (City & Cnty. of Den. Dist. Court, May 14, 2009) (order requiring Commission to disclose certain documents pursuant to CORA).

¹² Copies of all Advisory Opinions, Letter Rulings, and Position Statements are available at <https://www.colorado.gov/pacific/iec/opinions>. (Last accessed Oct. 25, 2014).

Position Statements

A Position Statement is a written statement initiated by the Commission, issued either before or after an event, which addresses broad ethics issues and provides general guidance for public officers, legislators, local government officials, government employees, and the public. Specific facts, however, may change the outcome of any particular Position Statement.

An example will illustrate the Commission's power to give guidance. In its first Position Statement, the Commission attempted to clarify uncertainty surrounding the meaning of the phrase "things of value" used in Article 29 and determined that, "in most circumstances," the award of a scholarship is permissible under the terms of Article 29.¹³ The Commission reasoned that scholarships anticipate some future performance by the recipient and are usually freely revocable by the grantor, establishing the presence of sufficient consideration to satisfy the Article's ban on the receipt of gifts. In addition, the Commission defined an "honorarium" as "a token payment in exchange for speaking before a particular group or preparing a publication" and forbade an honorarium greater than \$50 (now \$53) if a public official or employee uses public resources, uses government time, or was already required to give the speech or write the publication as part of his or her duties. The Commission also concluded that any amount a public official or employee receives as an honorarium cannot be unreasonable as related to the speech or publication; and that neither the sponsor of the speech nor the source of the honorarium can have dealings with the public official in his or her official capacity.

Initially, it may seem helpful to provide a short list of relevant Letter Rulings, Advisory Opinions, and Position Statements for ease of reference. But such a list probably would prove unhelpful, for two reasons. First, while the Position Statements are not tied to the specific facts underlying a request for information, the Letter Rulings and Advisory Opinions are. This means that the vast majority of the decisions the Commission issues are persuasive authority only and in no way outcome-determinative, depending on the factual context in which an ethical question may arise. Second, there is a significant likelihood that any information provided would be incomplete, for the reason that the Commission may alter its interpretation of Article 29 in an unforeseen manner. A case in point is Position Statement 08-02, in which the Commission created a "gift to the State" exception to the gift ban for travel expenses, so long as five conditions were met. In Position Statement 12-01, however, the Commission repudiated this exception on the bases that the exception was overly broad and that it was inconsistently applied in the past. Because of the potential that an issue was earlier discussed by the Commission, as well as because of the potential for a circumstance to be altered, it is important for public officials and employees concerned about potential ethical questions to visit the Commission's website for themselves and read the Commission's Position Statements, Advisory Opinions, and Letter Rulings with the aid of a trusted attorney.

Finally, in the current version of the Commission's Rules of Procedure, a person who receives an Advisory Opinion or Letter Ruling from the Commission may rely on that opinion as a defense should a complaint be filed against that individual. (Rule 5-H.) Implementing legislation, found at C.R.S. § 24-18.5-101 *et seq.* addresses additional details, including the availability of an appeal of final action by the Commission to the Denver District Court.

¹³ Colo. Indep. Ethics Comm'n Position Statement 08-01, pp. 6-7 (Oct. 6, 2008).

ARTICLE 29 AND THE COE: A COMPARISON AND CONTRAST

Because the Colorado Constitution now includes Article 29's "gift" restrictions, other state law addressing ethical behavior by public officials must be evaluated in light of Article 29 to determine whether the Article negates anything expressed in such statutes. One obvious candidate for this comparative effort is the COE.

The COE acknowledges that all citizens are entitled to participate in all levels of state government but also recognizes that the public duty of an elected official might sometimes conflict with the private interests of that official. In creating conduct standards for local elected officials and others, the legislature appears to have sought to improve the government for all citizens by determining that some behavior will be in irreconcilable conflict with the public's interest, while other circumstances may be more equivocal. To some degree, the provisions of Article 29 complicate the COE's balancing effort.

If you hold a public office in Colorado, you are required to uphold the public's trust. This is a function of the responsibility undertaken when the voters expressed their confidence in you at the ballot box. Whether a member of the general assembly, a local government official, or a public employee, public servants must carry out their duties for the benefit of the people of the state.

Under the COE, all public officials are forbidden to disclose or use any confidential information acquired in the course of official duties to further any personal or private financial interest in a substantial manner. The COE also directs that all such officials must refuse any gift of substantial value or any equivalent to a gift of substantial value where accepting said gift or its equivalent would tend to influence a reasonable person in the same position to depart from the faithful and impartial discharge of their public duties.¹⁴ "Gifts" can include a loan at interest substantially below the current commercial rate or a payment for private services rendered in excess of the fair market value of the services, according to the statute.

Local elected officials are also prohibited from engaging in any substantial financial transaction with anyone who is inspected or supervised in the course of that official's duties. Likewise, a local official is forbidden to perform any official act to provide a direct and substantial economic benefit to any business or endeavor linked to that official, even if the official's relationship is as counsel, consultant, representative, or agent. If a member of a local governing board (such as a county commission or city council) possesses a personal or private interest in a matter proposed or pending before the governing body of the local government, such interest shall be disclosed and that member shall not participate in any voting on that matter. The member must also refrain from attempting to influence a decision on the matter by other members of the local governing board. Where the governing body is unable to attain a quorum or otherwise decide an issue, and after a qualifying disclosure, an otherwise "disqualified" member may participate in making a decision to enable the body to act. These and the other provisions of the COE limit the actions of local officials in a manner that is similar in nature to the restrictions found in Article 29, although the COE provisions are much broader in scope. At the same time, recall that the COE does not apply to *government employees*, especially now that Article 29 is in effect and does apply to such persons.

¹⁴ This provision appears to have been negated by the more specific requirements of Article 29.

Further, local officials are forbidden to be interested in any contract made either in their official capacity or by any person, agency, or board they serve. *See* C.R.S. § 24-18-201(1). This requirement does not prohibit holding a minority interest in a corporation. Awarding contracts to the lowest responsible bidder based on competitive bidding procedures may be permitted, and acquiring merchandise sold to the highest bidder at public auction may be as well. This sort of activity seems to comply with Article 29, in that any such purchase would be for fair market value. Whether this assessment proves valid remains to be seen, however, as no known circumstance involving an official's interests has been determined by the Commission to date.

An investment or deposit in a financial institution in the business of loaning or receiving moneys is also permitted by the COE.

Under the COE, a contract with an interested party is allowed if, because of geographic restrictions, a local government could not otherwise reasonably afford to pay for the subject of the contract. Wherever the government would otherwise face a cost increase of more than ten percent of the contract, the additional cost to the local government is presumed to permit an arrangement that may otherwise be forbidden with an interested party. The same is true if the contract is for services that must be performed within a limited time period and no other contractor can provide those services within that time period. A person who knowingly violates the COE's requirements for contracts commits a class 1 misdemeanor and is subject to a fine of no more than twice the amount of the benefit gained or sought. A public official faced with involvement in any such contract(s) must consider this provision of the COE in tandem with the provisions of Article 29, in terms of how participation might be construed. There is at least some risk that if involvement in such a contract could be deemed to be worth more than \$53, such involvement would be deemed acceptable under the COE but forbidden by Article 29.

If a local official discloses a personal interest and does not vote or votes only in conformity with the disclosure requirements of the COE, there will be no violation of the statute. However, any disclosure made must be made on a timely basis and provided both to the governing body and to the Secretary of State.

Any contract that violates any provisions of the COE is voidable (subject to cancellation) by any party to the contract except the official with an impermissible interest in the contract. A public official must not purchase, sell, or in any manner receive, for his or her own use or benefit or the use or benefit of any other person, any debt instrument or pledge against a Colorado public entity, except for services rendered by the officer or as evidence of the funded indebtedness of a public entity.

As with Article 29, the COE prohibition on receiving any gift of substantial value, or the equivalent, is subject to some exceptions. The ongoing validity of any such exceptions to the COE must be determined by comparing the individual exception with the terms of Article 29. Campaign contributions in cash or in kind are allowed within the confines of state campaign finance disclosure requirements. In addition, the COE allowed an occasional, non-cash gift of insubstantial value. ***This provision, at least, seems overridden by the \$53 limit in Article 29.*** A non-cash award publicly presented by a nonprofit organization in recognition of public service is allowed by the COE, as is a payment or reimbursement for the actual and necessary cost of attending a meeting where the local official is expected to participate. Again, the Article

29 limits on awards and on reimbursement for any attendance at a meeting, which prohibit the receipt of anything with a value exceeding the limits, seems to have overridden these COE provisions.

Under the COE, local officials were allowed to accept reimbursement for participating in a social function or meeting that was not extraordinary, given the position of that local official. Article 29 now limits any such reimbursements. Items of perishable or nonpermanent value such as meals, lodging, travel expenses, or tickets to sporting, recreational, educational, or cultural events were permissible under the COE, as were payments for speeches, appearances, or publications otherwise reported as elements of the campaign disclosure laws.¹⁵ Again, however, any such receipts are now subject to Article 29 limits on the receipt of any “gift” and to the Commission’s views on how those limits will apply in a specific factual context.

The COE also allows a local official to receive a salary from employment, including other government employment, in addition to earnings from public office. Article 29, conversely, does not appear to address such salary payments.

¹⁵ C.R.S. § 24-6-203 sets forth requirements for the reporting of gifts, honoraria, and other benefits by incumbents and candidates, and also establishes penalties for violations. While a discussion of section 24-6-203 is beyond the scope of this article, the statute sets out disclosure and reporting requirements involving gifts received by local officials. No doubt should exist, however, that Article 29 now controls such provisions, to the extent Article 29 is more stringent than such statutory limitations.