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# **CHAPTER 1: COUNTY GOVERNMENT IN COLORADO**

## **INTRODUCTION**

Counties in Colorado are a constitutional subdivision of state government. Their boundaries, which are set forth in statute, were drawn by the General Assembly. Counties exercise only those powers specifically expressed in statute or in the constitution.

Counties are responsible for law enforcement, which includes supporting the court system and the district attorney function as well as providing jail facilities through the sheriff. Counties are responsible for providing the state's social services, including administering and carrying out virtually all programs overseen by the Colorado Department of Human Services. Counties may provide health services, although their ability to do so depends on resources available. Counties are responsible for road and bridge construction, maintenance and repair. Finally, they control land use in the unincorporated areas.

Counties have a number of other responsibilities and powers, ranging from weed control to restaurant inspection, virtually all of which are traced to state legislation. In certain instances, such as liquor licensing, siting and operation of landfills, and pest control, counties and state government both have authority. Additional responsibilities are delegated to other county elected officials, such as the treasurer, assessor, coroner, clerk and recorder, surveyor, and sheriff.

Counties have the power to incur debt, enter into contracts, and receive grants and gifts. Counties can incur either revenue debt (based solely upon a specified revenue stream) or general obligation (G.O.) debt, which constitutes a general obligation of the local government to repay the debt. Counties may also enter into lease-purchase arrangements (as an alternative to debt financing) to build major facilities such as justice centers.

## **HOME RULE AUTHORITY**

In November 1970, the Colorado electorate approved local government reform amendments to the Colorado Constitution. One of the reform provisions was an amendment to Article XIV, Section 16 of the Colorado Constitution, which enables the voters of any county to adopt a home rule charter providing for the organization and structure of their county. A county having a charter is free to establish, either at the outset or by subsequent amendment, its own structure of county government. This includes the number, terms, qualification, duties, compensation and method of selection of county officials and employees. County home rule adopted pursuant to statutory procedures does not include the kind of "functional" home rule powers found in municipal charters. Thus,

state statute still determines the functions, services and facilities provided by home rule counties. Currently, there are two home rule counties in Colorado: Weld and Pitkin. Denver and Broomfield are also "home rule," but have unique dual city/county status and specific constitutional provisions grant them more expansive municipal style home rule power.

## **COUNTY ORGANIZATION AND STRUCTURE**

County boundaries, although statutorily defined, can be altered through a vote of the citizenry of the affected counties. Most counties have three commissioners elected from districts by the voters of the whole county. However, any county with a population over 70,000 may expand their board from three to five commissioners through a citizen vote. There are two non-home rule counties, El Paso and Arapahoe that each have a five-member board.

## **COUNTY ELECTED OFFICIALS**

Commissioners are the main policy-making body in the county. They are also responsible for the county's administrative and budgetary functions. The other constitutional officers in each county who are also elected to four-year terms are the county clerk and recorder, county assessor, county treasurer, county sheriff, county coroner and the county surveyor. Constitutionally and statutorily, they are independent from each other and from the county commissioners. Their powers and duties are prescribed by law. The constitution also provides for a county attorney who, by statute, is appointed by and reports to the county commissioners. County commissioners have no direct authority over the other elected officials in the county except that commissioners do approve budgets for all the other elected officials' departments.

### *County Clerk and Recorder*

By state constitution, the clerk and recorder is the recorder of deeds and the clerk to the board of county commissioners. By tradition, the clerk and recorder is the primary administrative officer of many counties. The clerk and recorder is responsible for carrying out certain state functions. The clerk is the agent of the state Department of Revenue and is charged with the responsibility of administering certain state laws relating to motor vehicles, certification of automobile titles, and motor vehicle registration. The clerk is responsible for administering all county-wide primary, general and special elections held in the county, and for registration of voters, publication of notice of elections, appointment of election judges, and printing and distribution of ballots. The clerk and recorder also issues marriage licenses, maintains records and books for the board of commissioners, collects a multitude of license fees and charges required by the state, maintains property ownership records, and furnishes deed abstracts upon request.

### *County Assessor*

The county assessor is responsible for valuing real and personal property, including mobile homes, residential and commercial properties and agricultural land for property tax purposes. The assessor determines the equitable value of property to ensure that each taxpayer pays only his or her fair share of the taxes. The assessor is required to send out a notice of valuation each year to property owners. This notice will reflect a value on property for ad valorem taxes payable to the county.

### *County Treasurer*

The treasurer of each county is responsible for the receipt, custody and disbursement of county funds. The treasurer serves as the public trustee, except in Class I and Class II counties where the public trustee is appointed by the Governor. (Denver is the only Class I County while Adams, Arapahoe, Boulder, Douglas, El Paso, Jefferson, Larimer, Mesa, Pueblo and Weld Counties are considered Class II Counties.) The treasurer collects some state taxes and all property taxes, including those for other units of local government. The treasurer collects and disburses school funds belonging to school districts located within the county. The treasurer sends notices of and collects all property taxes for all local governments and disburses receipts for each, less a statutory collection fee. The treasurer also conducts sales of property for delinquent taxes.

### *County Sheriff*

The county sheriff is the chief law enforcement officer of the county, responsible for maintaining the peace and enforcing state criminal laws. The sheriff must attend court and is required to serve and execute processes, subpoenas, writs and orders as directed by the court. The sheriff operates the county jail, and must maintain and feed prisoners. The sheriff is also fire warden for prairie or forest fires in the county. Finally, the sheriff performs certain functions in connection with sales of real and personal property to satisfy debt or tax liens.

### *County Coroner*

Candidates for the position of coroner are encouraged to possess knowledge and experience in the medical-legal investigation of death. The coroner is responsible for investigating the cause and manner of deaths in specified circumstances, generically referred to as "unattended deaths", for issuing death certificates and for requesting autopsies when needed. A constitutional amendment, passed in 2002, authorizes the General Assembly to require that coroners receive minimum training upon their election to office. The coroner is the only county official empowered to arrest the county sheriff.

### *County Surveyor*

The surveyor's duties relate to settling boundary disputes when directed by a court or when requested by interested parties. They create survey markers and monuments and conduct surveys relating to toll roads and reservoirs.

### *District Attorney*

District Attorneys (DAs) are elected to judicial districts, which include one or more counties, so they are not technically county officials. The DA appears on behalf of the state for all indictments, actions or proceedings pending in the district court in any county within his/her district. The DA is responsible for reviewing criminal actions or indictments including the enforcement of child support laws. They are responsible for appearing and advising in grand jury sessions convened in their district. The DA's office may render legal advice to peace officers and prepare and review affidavits, warrants, arrests and searches.

## **COUNTY OFFICIAL SALARIES**

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 is in section 15 of article XIV of the Colorado Constitution. Salary levels for county commissioners, sheriffs, treasurers, assessors, clerk and recorders and coroners 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 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. These categories are subject to change, based on issues like population growth.

As of January 1, 2007, the county categories for elected official salary purposes are as follows:

#### Category I

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

## Category II

Eagle, Fremont, Garfield, La Plata, Mesa, Pitkin and Summit.

## Category III

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

## Category IV

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

## Category V

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

## Category VI

Dolores, Jackson, Kiowa, Mineral, and Sedgwick.

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

## **MUNICIPALITIES CONTRASTED TO COUNTIES**

Cities are general-purpose governments in that they have broad, general powers and responsibilities. However, unlike counties, they are not a construct of the state constitution; they are voluntary creatures of the citizens desiring municipal incorporation. This means municipalities do not rely exclusively on statutes for their powers. They have implied powers in addition to those specifically described in statute.

In addition, Article XX of the Colorado Constitution authorizes municipal home rule authority in all cities and towns if adopted through a home rule charter process established in statute. Municipal home rule charters can convey broader functions and powers than those found in the statutes. In fact, home rule cities use their constitutional powers to go beyond statutes in many instances.

Oftentimes, legislation is said to refer to “matters of a statewide interest.” Only matters of purely statewide interest can be forced on home rule cities, and often municipalities seek a judicial opinion as to whether a matter is one of statewide interest or not. Inclusion of this language in legislation is often construed as an attempt to limit municipal home rule power for the purpose of that specific bill.

Similar to counties, cities and towns have the power to incur debt and enter into contracts. They also have the same bonding powers and usually have greater indebtedness than counties, because they tend to have greater capital facility needs than counties. Although municipalities have both property tax and sales tax powers, generally speaking, sales tax revenues make up a smaller portion of the revenue “pie” for counties than for most cities and towns. Cities typically levy more sales taxes because the bulk of commercial activity and retail sales occur within municipal boundaries.

Municipalities, cities and towns have land use powers which are very important and relate to how growth is managed. They also have the power to annex property in the unincorporated areas adjacent to the city limits. Finally, they have police and ordinance powers.

## **SPECIAL DISTRICTS**

Special districts exist in virtually every county, and sometimes they number in excess of 100 in the larger metropolitan counties. Special districts are established to serve some specific service, including fire protection, schools, cemetery, health care, hospital, forest improvement, library, water, sewer, ambulance, and weed and pest control, and cannot venture beyond their service area or perform activities not described in their service plan. For example, a water district cannot provide street lighting. Special districts can be independent governmental entities with their own boards. Special districts usually have property tax and fee powers and the ability to incur debt. They do not generally have sales tax authority nor do they have police powers.

# CHAPTER 2: COUNTY POWERS AND RESPONSIBILITIES

## 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. The powers cited in this section are not meant to represent an all-inclusive listing of powers delegated to a Board of County Commissioners (BOCC), but instead highlight powers most commonly used or relied upon by commissioners. For convenience, they are grouped and alphabetized by subject area.

### 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.

#### *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).

#### *Irrigation Districts*

Upon petition and 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.

#### *Pest Control*

The board has concurrent authority with the Department of Agriculture to enforce and administer pest control through a county pest inspector. C.R.S. §35-4-101, et seq. 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. 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. C.R.S. §35-5-101, et seq.

## *Weeds*

The board of each county must 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. 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.

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)(g). The BOCC is required to 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. C.R.S. §30-20-801, et seq.

## **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).

## **COUNTY PROPERTY**

### *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. 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.

## **ELECTIONS**

Counties are responsible for conducting both general (occurring on even-numbered years) and coordinated (occurring in odd numbered years) elections. The BOCC has a duty to supervise the conduct of general and special elections. The BOCC is also expected to consult and coordinate with the clerk and recorder on rendering decisions and interpreting the election code. C.R.S. §1-1-111.

The BOCC must establish and alter precinct boundaries and establish voting places in each precinct. The BOCC must divide the county into as many precincts as it deems expedient and shall designate voting places within each precinct. C.R.S. §1-6-101, 30-11-107(f), and 30-11-107(g). Upon BOCC approval, polling places or precincts can be combined to form one or more vote centers. C.R.S. §1-5-102.7.

## **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. C.R.S. §29-11-104(2).

## **FIRE CODES**

The BOCC may adopt fire safety standards by ordinance. C.R.S. §30-15-401.5.

## **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. C.R.S. §25-15-201, 202, 203, 205.

## **MEDICAL MARIJUANA REGULATION**

County commissioners are authorized to license or prohibit medical marijuana dispensaries, grow operations and infused product manufacturing centers 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.

## **HEALTH AND HUMAN SERVICES: MAJOR PROGRAMS**

Due to the complex relationship between the state and county departments of Human/Social Services, each service depends on the county and/or state in different ways. Some programs are at the county's option using county funding, others are mandated by the state but day-to-day responsibility lies with the county, and still others are administered by the county but funded by the state or federal government. The following table is a representative sample of some of the traditional county social services programs.

<b>Program</b>	<b>Mandated</b>	<b>County Option</b>	<b>Funding</b>	<b>Remarks</b>
<b>GENERAL SOCIAL SERVICES- GENERAL ASSISTANCE</b>		X	100% county	Permits each county to provide temporary assistance of a general nature to the poor who reside in the county or to transients. C.R.S. §30-17-101 through 108.

<b>Program</b>	<b>Mandated</b>	<b>County Option</b>	<b>Funding</b>	<b>Remarks</b>
<b>GENERAL SOCIAL SERVICES-FOOD ASSISTANCE BENEFITS</b>	X		100% federal	An individual entitlement program providing recipients with coupons for the purchase of food. Counties determine client eligibility, issue benefits and administer client employment and training programs.
<b>GENERAL SOCIAL SERVICES–SERVICES TO THE AGED</b>		X	County, state and federal	Includes social, recreational, medical transportation and homemaker services.
<b>ADULT AND FAMILY SERVICES – ADULT SELF SUFFICIENCY</b>	X		Federal and state	Services to maintain adults in the community rather than being placed in nursing homes.
<b>CHILD WELFARE PROGRAMS – FOSTER CARE PLACEMENTS</b>	X		80% federal and state, 20% county, included in Child Welfare Capped allocation TANF funds, if available	These benefits are issued to providers. Includes kinship care, subsidized adoption and independent living placements as well as foster care placements.
<b>COLORADO WORKS PROGRAM</b>	X		Block Grant, County Maintenance of Effort (MOE) and Temporary Assistance to Needy Families (TANF) reserve funds	Counties determine program design and administration.

Program	Mandated	County Option	Funding	Remarks
<b>COLORADO WORKS PROGRAM-CHILD CARE PROGRAMS</b>	X		80% federal and state, 20% county up to Child Care admin allocation, TANF reserve.	Counties determine program design and administration. Counties set eligibility levels, payment rates and policies for child care providers.

## **COUNTY/DISTRICT PUBLIC HEALTH AGENCIES**

County government in Colorado is statutorily mandated to provide a number of health services to its citizens. Each county, by resolution of its BOCC, must establish and maintain a County or District Public Health Agency. Each Public Health Agency is charged with completing a community health assessment and creating a county or district public health plan at least once every five years. Plans are to be submitted to the county or district board of health and the State Board of Health for review. Plans identify how the public health agency intends to carry out its duties and should prioritize needs and services in the event that a public health agency does not have sufficient resources to address everything in its plan. C.R.S § 25-1-506.

### *County/District Public Health Agency Powers and Duties*

County public health agency programs and responsibilities vary from county to county. Essential public health services include the following. C.R.S. §25-1-506:

- ◆ Preventing epidemics and the spread of disease
- ◆ Protecting against environmental hazards
- ◆ Providing assessment and evaluation of community health status
- ◆ Preventing illness and injury
- ◆ Promoting healthy behavior
- ◆ Responding to disasters
- ◆ Assuring the quality and accessibility of health services
- ◆ Food Safety Programs (see Regulation/Licensing)

## **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.

## **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 most 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.

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.

PIDs may raise revenue by charging fees for services or facilities or by levying property taxes. C.R.S. §30-20-501, et seq.

### *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 from project revenues 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.

## **JAILS**

Each county in the state must operate and fund a county jail. C.R.S. §§17-26-101 and 30-11-104. The authority does exist, however, for counties to enter into agreements to create multi-jurisdictional (regional) jails, whereby county inmates are housed in another city or county. C.R.S. §17-26.5-101.

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 must reimburse a county for actual expenses,

which may include extraordinary expenses, for housing state inmates. 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.

## LAND USE

### *Comprehensive Plans*

A comprehensive plan (sometimes referred to as a “master plan,” or “comp plan,” for short) is a planning document intended to guide the growth and long-term development of a community. It is an advisory document only; it is not the equivalent of zoning and is not binding upon the BOCC. However, a BOCC is authorized to make its comprehensive plan, or any part of the plan, binding through zoning, regulations or land use codes. Counties required to adopt master plans include those with populations of: 1) 100,000 or more or 2) 10,000 and a 10% growth rate between 1994 and 1999 or any 5-year period ending in 2000 or any subsequent year. C.R.S. §30-28-106. The advisory nature of the comprehensive plan does not prohibit a county from denying a specific development application based on noncompliance with the comprehensive plan, provided the plan is adopted legislatively by the BOCC and the plan is sufficiently specific to ensure consistent application. (BOCC of Larimer County v. Conder & Sommervold, 927 P.2d 1339 (Colo. 1996)) A zoning ordinance provides the detailed means of giving effect to the principles in a comprehensive plan. (Theobald v. Board of County Commissioners, Summit County, 644 P.2d 942, (1982))

### *Zoning*

Zoning is the process of dividing and classifying land according to its intended use (e.g., residential, commercial or agricultural). The BOCC may provide zoning for all or part of the unincorporated area of the county. C.R.S. §30-28-102. This is accomplished by having the planning commission prepare a zoning plan for consideration of the BOCC. C.R.S. §§30-28-111 and 112. Once approved, the BOCC may, by a majority vote, amend any provision of the county zoning regulations. However, it shall first submit changes to the planning commission for review and suggestions. C.R.S. §30-28-125.

### *“1041 Powers”*

In 1974, the legislature passed HB 74-1041, granting county government the authority to affect issues outside the normal scope of local land use authority. These so-called “1041 powers” allow the board to designate certain areas and activities as being of “state interest” and apply additional regulations to the uses of these lands. The areas subject to such designation and regulation fall into

the following broad categories:

- ◆ Mineral resources areas;
- ◆ Natural hazard areas;
- ◆ Areas relating to historical, natural or archaeological resources; and
- ◆ Areas around “key facilities” (i.e. airports, mass transit terminals, highway interchanges, public utilities, etc.).

Local governments also may designate certain activities of state interest in order to realize increased regulatory authority over: water and sewage treatment systems, airports, solid and hazardous wastes disposal sites, mass transit systems, highways, and public utility facilities. Upon designation, the board may establish rules and regulations related to development in these areas, provided that those rules and regulations meet certain statutory minimum criteria. C.R.S. §24-65.1-101, et seq.

## **LAW ENFORCEMENT**

The BOCC may create a law enforcement authority that shall be a political subdivision of the state. The board shall serve as the governing body for the authority. C.R.S. §30-11-401, et seq.

## **LIBRARIES**

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.

## **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.

## **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.

## **REGULATION/CONTROL - POLICE POWERS**

Pursuant to C.R.S. §30-15-401, 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

## **REGULATION/LICENSING**

The BOCC has regulatory/licensing authority in the following areas:

- ◆ Dance halls C.R.S. §12-18-101, et seq.
- ◆ Dogs and Pet Animals C.R.S. §30-15-101, et seq.
- ◆ Escort Services C.R.S. §12-25.5-101, et seq.

- ◆ Flea Markets C.R.S. §18-13-118.
- ◆ Liquor C.R.S. §12-47-312(5).
- ◆ Massage Parlors C.R.S. §12-48.5-101.
- ◆ Mercantile Establishments C.R.S. §12-51-101, et seq.
- ◆ Nudity in Entertainment Establishments C.R.S. §30-15-401(1)(l).
- ◆ Pawn Brokers C.R.S. §§12-56-102 and 30-15-401(1)(k).
- ◆ Trash Haulers C.R.S. §30-15-401(1)(a).
- ◆ Restaurant Inspection, New/Expansion Plan Review C.R.S. §25-4-1601 thru 1611.
- ◆ Medical Marijuana C.R.S. §12-43.3-106 and 301 et seq.

## **ROAD AND BRIDGES**

The board of county commissioners has the power to lay out, alter or discontinue any road running into or through the county and to perform such other duties regarding roads as are required by law. The BOCC may levy taxes and contract loans for the purpose of making or repairing county roads or bridges. However, loans for this purpose must be authorized by a vote of the electorate of the county. Under the BOCC's general power to make orders concerning county property, the BOCC may purchase and maintain county road equipment. C.R.S. §30-11-107.

In regards to traffic regulation, the BOCC may, by resolution, regulate parking, prohibit processions or assemblages on the highways, create one-way streets and roads, designate "through" roads, install stop signs, designate truck routes, establish or alter speed limits within limits set by state statutes and take other actions purely local in nature so long as the essential uniformity of traffic law and enforcement throughout the state is maintained.

## **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. C.R.S. §§25-8-702, 30-20-401, et seq.

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).

## **SOLID WASTE**

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.

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.

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).

## **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.

## **VETERANS SERVICE OFFICERS**

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. C.R.S. §26-10-108.

## **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. 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, rate-making and the like. C.R.S. §29-1-204.2.

## **WILDFIRE PLANNING AND 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 fire fighting. C.R.S. §30-11-107.

# CHAPTER 3: COUNTY REVENUE SOURCES

## LOCAL REVENUE SOURCES

### *Property Tax*

Property taxes are the primary source of revenue for county government in Colorado. Property taxes are determined in each county based on the mill levies set forth by various taxing entities (the county, school districts, special districts, etc.). County property tax levies are restricted by several limitations, each independent of the others. These include:

- ◆ TABOR Mill Levy Rate Limit
- ◆ TABOR Property Tax Revenue Limit
- ◆ 5.5 Percent Limit – Limits the annual growth of revenue from the mill levy to a 5.5 percent increase over the previous year. (C.R.S. §29-1-301 & 302).

### *Sales Tax*

Sales taxes are levied in most counties but are not their primary revenue source. The tax is collected at no charge by the Colorado Department of Revenue and remitted monthly to the county. Personal property registered outside of the county in which a sale occurs, owned by a non-resident of the county, is exempt from a county sales tax. C.R.S. §29-2-105(1)(e), 29-2-106(3).

### *Use Tax*

Counties may also collect a use tax. In Colorado, a counties' authority to collect a use tax is limited to construction and building materials and motor vehicles. The purpose of a use tax is to equalize competition between in-county and out-of-county vendors making wholesale purchases. If a county has a use tax on construction and building materials, for example, a vendor is required to pay use tax on the building materials purchased outside of the county and used within the county. When this circumstance occurs, the county sales tax is not collected. C.R.S §29-2-109.

### *Lodging Tax*

Counties are also able to collect a tax on lodging services including hotels, motels, condominiums and camping spaces. The use of the revenues generated by a lodging tax is limited to tourism marketing activities. C.R.S. §30-11-1075.

### *Anticipation Warrants*

The board may acquire, construct or reconstruct any public project, through the use of proceeds from anticipation warrants. The warrants may be issued following and in accordance with the terms of a resolution identifying the

project, its costs, the amount of warrants to be issued and their maximum interest rate. C.R.S. §30-20-303 and 305.

### *Fees/Interest*

There are a variety of fees that can be assessed pursuant to statute for activities of agencies of the county government. Fees may include those for: 1) adoption reports; 2) the sheriff's service of process; 3) the treasurer's collection of property tax receipts for other taxing entities than the county; 4) the clerk and recorder for a variety of activities; 5) real estate transactions supervised by the public trustee; and 6) the board, itself, for its licensing and regulatory activities.

Fees collected are generally set by statute, or are set by the board within statutorily prescribed limits, and are usually (although not always) credited to the general fund.

### *General Obligation Bonds*

The board may issue general obligation bonds to pay for acquisition, construction, reconstruction or major repair of airports, buildings, mass transit systems or roads or bridges. Indebtedness may not exceed three percent of actual value. Such bonds require approval of the electorate at a general or special election and may not run for more than 20 years. C.R.S. §30-26-301, et seq.

### *Revenue Bonds*

The BOCC is permitted to issue revenue bonds (repayment of which is guaranteed from specified revenue sources other than the general property tax) by specific statutory enactment. Examples (not all-inclusive) of specifically permitted revenue bonds are:

- ◆ Airport revenue bonds C.R.S. §41-5-101, et seq.;
- ◆ Capital improvement trust fund bonds C.R.S. §30-26-501, et seq.;
- ◆ Local improvement district bonds C.R.S. §30-20-601, et seq.;
- ◆ Public project warrants (bonds) C.R.S. §30-20-301, et seq.;
- ◆ Sewer and water district bonds C.R.S. §30-20-401, et seq.; and
- ◆ Sales tax revenue bonds C.R.S. §29-2-112.

### *Refunding Bonds*

The board may issue refunding bonds without an election when there are not funds available for payment of outstanding bonds. The term of refunding bonds may run for 25 years, and the first maturity shall not occur later than five years from the date of issue. C.R.S. §30-26-401, et seq.

### *Lease-Purchase Authority*

The board is authorized to enter into lease-purchase agreements to provide

financing for a courthouse, jail or other county building and equipment used, or to be used, for governmental purposes. The agreement may include an option to purchase, transfer or acquire title to such property, but may not exceed 30 years. C.R.S. §30-11-104.1 and 104.2.

## **STATE REVENUE SOURCES**

### *Cigarette Tax*

Twenty-seven percent of cigarette tax revenue is rebated to local governments. A percentage of this amount is rebated to each county, based upon the state sales tax revenues collected in the unincorporated area of the county compared to state sales tax revenues in the state as a whole. Municipalities also share state cigarette tax revenue on the same basis. C.R.S. §39-22-623.

In 2004, voters agreed to increase the sales tax on cigarettes from 20 cents to 84 cents and to double the tax on all other tobacco products from 20% to 40% of the price. In response to concerns that these higher prices would result in reduced cigarette consumption and therefore reduced tax receipts for state and local governments, 3% of the projected revenue from the tax increase was set aside for state and local governments for any health-related purpose. Colorado Constitution, Article X, Section 21.

### *Gaming Monies – Local Government Limited Gaming Impact Fund*

In November of 1990, Colorado voters approved a constitutional amendment to allow limited-stakes gaming in the mountain communities of Cripple Creek, Black Hawk and Central City. In passing the Limited Gaming Act of 1991, the General Assembly created the Contiguous County Limited Gaming Impact fund to address off-site impacts of gaming in counties bordering Teller and Gilpin Counties. This fund was later expanded to include those counties bordering Indian lands on which gaming is being conducted. This fund sunsetted in 1998 and was replaced with the Local Government Limited Gaming Impact Fund. Monies from the fund are available to the following counties: Boulder, Clear Creek, Grand, Jefferson, El Paso, Fremont, Park, Douglas, Gilpin, Teller, La Plata, Montezuma and Archuleta. C.R.S. §12-47.1-1601.

### *Great Outdoors Colorado (GOCO) Trust Fund*

The state board of the Great Outdoors Colorado Trust Fund awards a portion of Colorado lottery proceeds to park, open space, wildlife and outdoor recreation projects through a competitive grant application process. Municipalities and counties are eligible to apply for funds in five different grant program areas:

- ◆ Local government parks, outdoor recreation and environmental education facilities;
- ◆ Open space;

- ◆ Planning and capacity building;
- ◆ Trails; and
- ◆ Legacy projects, which combine several of the project types.

In addition to these grant programs, the state board awards outdoor recreation grants through the Colorado Division of Parks and Outdoor Recreation and species and habitat protection grants through the Colorado Division of Wildlife. Colorado Constitution, Article XXVII; C.R.S. 33-60-101, et seq.

### *Highway Users Tax (Trust) Fund (HUTF)*

Counties receive monies from the state Highway Users Tax Fund, into which all motor fuel excise taxes, other motor vehicle-related taxes collected by the state and certain other state revenues are deposited. Counties receive a share determined by the statutory guidelines in C.R.S. §43-4-205 and 207. County shares must be used for highway-related purposes and are deposited in the County Road and Bridge Fund. C.R.S. §43-4-201 & 202 et seq.

### *Impact Assistance Grants and State PILT*

In any county in which the Division of Wildlife or Division of Parks and Outdoor Recreation owns property, the BOCC may certify once a year, to the wildlife commissioner or to the Board of Parks and Outdoor Recreation, the current dollar amount representing the negative financial impact which such ownership has on the county's expenditures. State statutes refer to these payments as "payments-in-lieu-of-taxes" or PILT. If the property was acquired by the state agency with GOCO funds, GOCO is responsible for a portion of the payment. C.R.S. §30-25-301 and 302 and 33-60-104.5.

### *Law Enforcement Activities*

#### ◆ **Drunk Driving Fines**

Fifty percent of all drunk driving fines from incidents occurring in the unincorporated area of a county must be transmitted by the imposing court to the county treasurer (presumably for deposit in the general fund). C.R.S. §42-1-217 (1)(d).

#### ◆ **Drunk Driving Convictions**

A \$15 fine must be paid by all persons convicted of (or given deferred sentence to) alcohol-related driving offenses and shall be deposited to the treasury of the county (presumably the general fund) in which the conviction (or deferred sentence) took place. C.R.S. §43-4-402.

#### ◆ **Law Enforcement Assistance Fund**

Thirty percent to fifty percent of the monies in this fund are to be allocated by the Office of Transportation Safety to counties that have established a qualified drunken driving prevention and law enforcement program, and the balance to municipalities (including Denver) that have

established such programs, for funding improved enforcement of drunken driving laws. C.R.S. §43-4-404.

### *Specific Ownership Tax*

Each county and political subdivision within the county levying a property tax receives a statutorily-prescribed portion of the specific ownership tax collected upon registration or re-registration of a motor vehicle within that county, after a statutory collection fee is deducted. Revenues are deposited into the general fund or the road and bridge fund. C.R.S. §42-3-107.

## **JOINT – FEDERAL AND STATE – REVENUE SOURCES**

### *Mineral Revenues to Local Governments*

In 1977, the Colorado General Assembly enacted two separate acts that govern the distribution of 1) royalties from mineral leasing on federal lands and 2) the state severance tax on mineral production throughout the state.

While these distribution formulas have evolved over the years, local governments, including counties, are a primary beneficiary. Localities receive money from these two revenue streams as direct payments under the formulas described below, and through grants and loans from the Department of Local Affairs (DoLA) accounts created under the Local Government Energy and Mineral Impact Program.

### *Federal Mineral Leasing Funds*

Revenues collected by the federal government from leases of oil, gas, coal and other minerals are returned to the State Treasurer to be distributed under a formula set in state statute (C.R.S. 34-63-102). The statute requires the funding to be used by state agencies, public schools, political subdivisions of the state and higher education.

Prior to SFY 2009, the state relied on a complex “cascade formula” to distribute federal mineral lease revenues to eligible beneficiaries. The old “cascade formula” grouped FML rents, royalties, earnings and bonus payments together and then distributed the total through a series of tiers. The current formula distributes FML rents, royalties and earnings differently than it does bonus payments.

### *State Severance Tax*

The state imposes a tax on oil, gas, coal and some metal production within Colorado. Half of these funds go to support the operating budgets of the State Department of Natural Resources. The other half is deposited in the Local

Government Severance Tax Fund and is distributed annually by the Executive Director of the Department of Local Affairs via grants and direct distribution payments.

According to statute, 30% of the severance tax revenue credited to the Local Fund is required to be distributed directly to counties and municipalities. Direct distributions to localities are determined using a statewide distribution formula followed by a sub-county distribution formula.

The remaining 70% of the funds in the Local Government Severance Tax Fund are distributed as project grants and loans "to those political subdivisions socially or economically impacted by the development, processing, or energy conversion of minerals and mineral fuels" subject to severance taxation. This funding must be "used for the planning, construction, and maintenance of public facilities and for the provision of public services." Provision is also made in statute for loans for sewer and water projects. C.R.S 39-29-110.