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CHAPTER 1: COUNTY GOVERNMENT IN COLORADO

The system of local government in Colorado is expansive and complex. There are over 2,100 units of local government in Colorado, and the interrelationship of these local governments is crucial to efficient governance and the provision of services to the citizens of the state. This chapter provides an overview of county government, including a brief discussion of the other elected officials and county staff and their duties. A brief overview of municipalities and special districts is presented, along with an examination of the unique city and county designation that Denver and Broomfield feature.

HISTORY AND HERITAGE OF COUNTY GOVERNMENT

County government in the United States predates both the Articles of Confederation and the U.S. Constitution. American county history has been part of the history of the American people for over 350 years. The word “county” comes from the English practice of placing each court under the tutelage of a count. Until the Norman Conquest of England in 1066, the principal unit of government was the “shire,” which served most judicial functions. The governing officer of the shire was the “reeve,” often referred to as the “shire-reeve” (from which we derive the title “sheriff”). The territorial name of the local English government was later formally changed to “county” and the shire-reeve served as the chief agent.

This local governing entity was then transplanted to American soil and first appeared in Virginia in 1634 to serve administrative, military, electoral and judicial functions. While the role of county government varied from colony to colony and later from state to state, three dominant patterns emerged:

- ◆ In New England, the county was superseded by the township as the most significant cluster of political and governmental activity and social organization. The New England “town meeting” combined the functions of the English town, parish, and manor, and it largely controlled the town’s affairs.
- ◆ In the Southern Colonies, county government became the most significant political and governmental activity. This was primarily because of the rural nature of the colonies and the large tracts of land encompassing each plantation.
- ◆ The Middle Colonies represented a compromise between the New England and Southern patterns. This pattern produced a division of authority between the county and its subdivision, the township.

The form of county government in Colorado can be traced mainly to the tradition established in the Middle Colonies.

Interestingly, the U. S. Constitution does not mention local government at all. County government has been interpreted as emanating from the several implied powers reserved to the states under the 10th Amendment. Early state constitutions defined counties as administrative arms of the state, and that definition endures in many states (including Colorado) to this day.

COUNTY GOVERNMENT IN COLORADO

Counties in Colorado are a constitutional subdivision of state government. Their boundaries, which are set forth in statute, were drawn by the General Assembly. Initially, counties were created to carry out the programs and policies of the state. These functions have grown over the years to encompass many policy and operational areas not contemplated 100 years ago. The role of county commissioners will continue to evolve as the state's population grows and the nature of the office becomes increasingly complex. Counties can exercise only those powers specifically expressed in statute or in the constitution.

Some authorities and students of local governments contend counties should act more autonomously and, if necessary, extend their powers beyond what is explicitly and specifically expressed in statute. Counties are, after all, "general purpose" units of government and, as such, commissioners have a responsibility to govern as they see fit. Some local government officials also argue that counties should exercise more flexibility in their implementation of state policy. In many instances, the debate over whether counties should have functional powers and greater ordinance-making ability (like home rule municipalities) is in response to accelerated growth in the unincorporated areas. As the unincorporated population grows, citizens' demands on and expectations of county commissioners become more pronounced.

Despite such discussions of the functions and roles counties should perform, counties are still responsible under state statute for law enforcement, which includes supporting the courts 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 also responsible for road and bridge construction, maintenance, and repair. Finally, they control land use in the unincorporated areas. Each of these aforementioned duties is covered later in this handbook.

Counties have a vast number of other responsibilities 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 have co-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. Some counties also enter into lease-purchase arrangements (as an alternative to debt financing) to build major facilities such as justice centers.

In 1991, the General Assembly passed HB 91-1262, which modified the state spending limitation and prohibited the state from requiring any local government to provide new programs or services unless state funding is provided. The limit is intended to be a local government protection from unfunded state mandates. C.R.S. §29-1-304.5.

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 with such 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. Currently, there are only two home rule counties in Colorado: Weld and Pitkin. Denver and Broomfield are also “home rule,” but they have unique dual city/county status and specific constitutional provisions grant them more expansive municipal-style home rule power.

The process for drafting a charter is started by action of the county commissioners or upon the initiative of the electorate, and the charter takes effect only upon approval of the electorate. 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. Some of the so-called broad powers granted to statutory home rule counties may be limited by mandatory provisions relating to all counties. For example, broad purchasing powers are granted a home rule county, but the county is still subject to the mandatory “Buy Colorado” provisions applying to non-home rule or “statutory” counties. In addition, home rule counties are required to include initiative rights at the county level in their charters.

COUNTY ORGANIZATION AND STRUCTURE

As governmental subdivisions, counties are constitutionally created and cannot be created or abolished except through statewide action. 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. However, any county with a population over 70,000 may expand its board from three to five commissioners through a citizen vote. Adams, Arapahoe, and El Paso counties each have a five-member board. Statutory structural home rule is available to other counties as a means of enabling them to expand the size of the board to five members. Both Pitkin and Weld counties have five commissioners as a result of home rule authority.

County Elected Officials

Commissioners are responsible for running the administrative, budgetary, and policy-making functions of the county as a whole. The other constitutional officers in each county elected to four-year terms are the county clerk and recorder, county assessor, county treasurer, county sheriff, county coroner and the county surveyor. Their powers and duties are prescribed by state statute. Constitutionally and statutorily, they are independent from each other and from 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. A high level of coordination among commissioners and these other elected officials is necessary both legally and practically for a county to operate effectively. All elected county officers must exercise judgment in the performance of their duties and functions, and the level of sophistication, background, and training necessary to function effectively increases with each passing year.

County Clerk and Recorder

By state constitution, the clerk and recorder is required to be the recorder of deeds and the clerk to the Board of County Commissioners (BOCC). By tradition, the clerk and recorder is usually the primary administrative officer of most counties. By law, the clerk and recorder is responsible for carrying out various state functions. The clerk is the agent of the state Department of Revenue and is charged with 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 BOCC, collects a multitude of license fees and charges required by the state, maintains property ownership records, and furnishes deed abstracts upon request. County clerk and recorders have their own statewide association, the Colorado County Clerks Association (CCCA).

County Assessor

The county assessor is responsible for valuating 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. The Colorado Assessors Association (CAA) is their statewide association.

County Treasurer

The treasurer of each county is responsible for the receipt, custody, and disbursement of county funds. For all counties, the treasurer also serves as the public trustee, a role that performs duties around deeds of trust and escrowing funds in certain real estate transactions. The treasurer collects some state taxes and all property taxes, including those for other units of local government, and 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 after charging a statutory collection fee. The treasurer conducts sales of property for delinquent taxes. The Colorado County Treasurers' and Public Trustees' Association (CCTPTA) is their statewide association.

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. The County Sheriffs of Colorado (CSOC) is their statewide association.

County Coroner

Candidates for the position of coroner are encouraged to possess knowledge and experience in the medical-legal investigation of death. The coroner may declare an individual dead if he finds the individual has sustained irreversible cessation of circulatory and respiratory function. A constitutional amendment, passed in 2002, requires that coroners receive minimum training upon their election to office. The Colorado Coroners Association (CCA) is their statewide association.

County Surveyor

The surveyor's duties are relatively few and 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 also responsible for appearing and advising in grand jury sessions convened in their district. The DA's office may render quasi-judicial legal advice to peace officers and may prepare and review affidavits and warrants, arrests, and searches including non-testimonial identifications. The Colorado District Attorneys Council (CDAC) is their statewide association.

County Staff

The staffing needs of various county departments beyond the elected officials will vary widely based on the size and population of the county. The following is a list of various county personnel and a general description of the duties assigned to the positions.

County Attorney

The county attorney is a constitutionally prescribed county office. By statute, the county attorney position is filled by appointment of the BOCC. The county attorney advises the BOCC and other county officials and staff on legal matters. They are required to represent the state in certain types of juvenile and mental health proceedings. In larger counties, the county attorney has a staff made up of assistant county attorneys and legal assistants. The Colorado County Attorney Association (CCAA) is their statewide association.

County Manager/Administrator

Owing to the large number of time-consuming issues facing county commissioners, many counties assign the day-to-day operation of the county to a professional county manager or administrator. County managers/administrators are typically responsible for preparing and recommending the annual budget, appointing and supervising department heads, handling personnel issues, administering county programs, training staff, preparing board meeting agendas, working with constituents, troubleshooting, and ensuring mandatory statutory obligations are being fulfilled. The Association of Colorado County Administrators (ACCA) is their statewide association.

County Finance/Budget Director

The county finance/budget director oversees all accounting, reporting, purchasing, and auditing functions for the county. Finance/budget directors also help the BOCC and county manager/administrators prepare the annual budget. Larger counties typically have both a finance director and a budget director. In contrast, smaller counties usually have one person who does both, and in some instances the finance and budgeting is handled by the county manager/administrator. Often, finance/budget directors implement computerized accounting and financial information systems. The finance/budget directors ensure that generally accepted accounting principles are being used. The Colorado Government Finance Officers Association (CGFOA) is their statewide association.

County Human/Social Services Director

The county human/social services director administers a wide number of human service programs on behalf of eligible clients, including the following: Old Age Pension, Aid to the Needy Disabled, Temporary Assistance to Needy Families (TANF), Supplemental Nutrition Assistance Program (SNAP, aka Food Stamps), Child Support Enforcement, Foster Care, and Long-Term Care. Human/social service directors help the BOCC develop goals and objectives for serving these clients and allocate federal, state, and local program funds. Most directors have a background in social work or public administration. In some of the smaller or more sparsely populated counties, a human/social services director may work for more than one county. The Colorado Human Services Directors Association (CHSDA), formerly known as Colorado Social Service Directors Association (CSSDA), is their statewide association.

County Planning Director/Land Use Administrator

The county planning director/land use administrator directs all aspects of the county's current and long-range planning goals. The planning director/land use administrator oversees preparation of, updates to, and the day-to-day administration of the county's comprehensive plan, subdivision regulations and zoning ordinances. The Colorado Chapter of the American Planning Association (APA Colorado) is their statewide association.

County Road and Bridge Supervisor/Engineer

The county road and bridge supervisor/engineer organizes and directs county road crews in road and bridge construction and maintenance, as well as maintenance of signs and rights-of-way. They are also responsible for preparing a road budget, determining the extent and cost of needed maintenance and construction, and conducting road and bridge inspections. In rural counties, it is not unusual for the county commissioners themselves to serve as road and bridge supervisors. In some counties, each commissioner serves as the road and bridge supervisor for his/her district. Road and bridge supervisors have their own statewide association, The Colorado Association of Road and Bridge Supervisors and Engineers (CARSE).

Public Health Directors

Local public health directors may serve for a single county public health agency or a district public health agency. These individuals oversee the provision of core public health services and additional services customized to their community needs and resources. They are the front line of public and environmental health in Colorado and serve at the pleasure of the local board of health. Public health directors have their own statewide association, The Colorado Association of Local Public Health Officials (CALPHO).

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 creations 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.

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.

The municipalities and towns in Colorado deal with mandates from the Legislature but usually not in the programmatic way counties must. The mandates municipalities and towns deal with are usually regulatory in nature. The Clean Water Act, which requires sewer treatment systems to meet federal and state standards, is a good example.

Municipalities, cities, and towns are formed by election. They have council members plus a mayor. Statutory towns are strictly organized, while statutory cities have slightly more flexibility. Home rule cities have the most flexibility of all. There are options in home rule charters allowing a strong mayor-council form or a strong city manager-council system.

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, sales tax revenues are, generally speaking, far less important to counties than to 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.

The Colorado Municipal League (CML) is the statewide association for municipal leaders.

BROOMFIELD AND DENVER: THE UNIQUE CITY AND COUNTY DESIGNATION

The cities and counties of Broomfield and Denver are very unusual local governmental entities. The City and County of Denver is over a century old, while the City and County of Broomfield officially came into existence on November 15, 2001. The City and County of Denver was created by the voters in 1902, in Article XX of the Colorado Constitution. Pursuant to the adoption of Article XX, in 1904 Denver citizens adopted the first municipal home rule charter in Colorado, and a mayor-council government was adopted at that time. Because they are cities and counties, Denver and Broomfield must provide county-level services and facilities in addition to their municipal responsibilities. These county functions include the provision of an assessor, treasurer, sheriff, and district attorney as well as a county court system and social services.

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 generally 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 they 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.

The general process for forming an independent special district is fairly straightforward. The first step in the process entails the drafting of a service plan. The plan must be approved by the BOCC or city council. A funding mechanism for the district, either a mill levy or fee structure, must be proposed. The court then sets an election for the affected residents on the question of formation and, if necessary, the addition of a mill levy. If the vote is favorable, the special district is authorized. Over the past several years, this process of formation has been tightened considerably. County commissioners perform critical roles in the review and approval or rejection of service plans.

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. Within their specific type of function, they may have considerable power to control growth and land use, although there is no land use authority conveyed to special districts. For example, if a sewer district refuses to expand its treatment capacity, it can effectively restrict growth. Conversely, if a district allows large numbers of water and sewer taps, it can stimulate growth. In this way, a special district may have significant impact upon land use and, indirectly, upon county land use powers, even though it has no land use powers per se.

The Special Districts Association (SDA) of Colorado is their statewide membership association.