

2007 Colorado Judicial Decisions Affecting State & Local Tax Matters

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COURTS

Colorado Supreme Court

Income Tax

No cases reported.

Property Tax

No cases reported. Cert was denied in two property tax cases reported upon last year.

See, *S.T. Spano Greenhouses, Inc. v. Jefferson Cnty. Brd. of Com'rs.*, ___ P.3d ___ (Colo. 2007) and *Welby Gardens v. Adams Cnty. Brd. of Com'rs.*, ___ P.3d ___ (2007) (affirming the method used to value the land under a greenhouse operation). Unfortunately for the taxpayers, only Justice Rice voted to accept cert. As reported last year, this author believes those cases were wrongly decided; but, all greenhouse owners must now live with how the value of land under greenhouses will be determined when applying the cost approach to determining actual value.

Sales and Use Tax

No cases reported.

Court of Appeals

Income Tax

Conservation easements granted by tenants in common not aggregated to apply limits on available tax credits. In *Kenna v. Huber*, ___ P.3d ___ (Colo App. 2007) the court essentially denied the DOR's appeal from a district court decision striking down a portion of the DOR's regulation on how to allocate the tax effect of a conservation easement granted by tenants-in-common owners of a parcel. Section 39-22-522 provides for up to a \$100,000 "per

taxpayer” income tax credit for the granting of a qualified conservation easement. This provision was adopted in 1999, effective for tax year 2000 and beyond. The legislature has amended this provision several times in the intervening years.

The DOR adopted Regulation 39-22-522 that includes subsection (2)(e) that provides that where tenants-in-common grant a conservation easement, the \$100,000.00 tax credit must be shared by the taxpayers. In the *Kenna* case, each of the tenants in common sought to take the full \$100,000.00 in tax credits for tax years 2000 and 2001. The DOR disallowed portions of the credits so that the total for all tenants equaled the \$100,000.00 amount, citing its own regulation. The taxpayers unsuccessfully protested to the Executive Director, then appealed to district court. The district court granted summary judgment to the taxpayer and the Executive Director appealed.

The *Kenna* court restated the rule that agency interpretations are given deference; but, the agency regulation must be consistent with the underlying enabling statute. The DOR’s regulation was adopted after tax year 2000, but the regulation was still relied upon by the DOR in disallowing total combined tax credits over \$100,000.00. The 1999 act was amended in 2001 to enumerate several circumstances where the credit must be shared by between taxpayers. Pass through entities such as S corps and limited liability companies are prime examples where sharing is required. The *Kenna* Court held that neither the original 1999 statute nor the 2001 amended version, are ambiguous. The Court also held that DOR’s Income Tax Regulation 39-22-522(2)(e) was an impermissible extension of the statute and that the trial court was correct in striking the regulation. The Court observed that the 2001 amendments addressing credit sharing demonstrated that the legislature knew how to limit the credits where appropriate. The revised statute did not list tenants-in-common as a class of taxpayer that had to share credits. Since the legislature had clearly spoken, the DOR had no authority to enact a tax raising provision by adopting a regulation that exceeds the enabling statute.

However, the Court remanded the matter to the trial court for a determination as to whether subsequent amendments adopted in 2006 were intended to apply retroactively to prior tax years. And, if the 2006 amendments were intended to have retroactive application, would such a provision constitute an unconstitutional retrospective impairment of vested rights. The 2006 legislation was enacted after the district court’s opinion granting summary judgment, but in time for the Executive Director to raise the issues on appeal. Since the trial court had not addressed these issues, the Court of Appeals remanded the matter to the trial court to consider these questions.

Practice pointer- The use of conservation easements to generate tax credits has been tepidly received by the DOR. Perhaps this is so because in a post-TABOR world, finding new replacement sources of revenue is problematic. On the other hand, the use of these easements has been warmly received by land owners, consultants and tax advisors. However, practitioners need to be aware and advise their clients that the Department (and indeed the IRS at the federal level) is likely to challenge any aggressive valuation of the easements. This case demonstrates that the Department may also look for other ways to limit the use of these credits by taxpayers. See also, in the Legislative Section below, the discussion of HB 07-1361 that describes

additional taxpayer filing requirements and the additional review powers granted the Executive Director.

Property Tax

An owner is limited to one abatement request, per parcel, per year. *Red Junction, LLC, v. Mesa Cnty. B.O.C.*, ___ P.3d ___ (2007) involved an owner's second abatement petition for the same property and tax year. The taxpayer operated a golf course in Grand Junction. The taxpayer did not protest the assessor's determination of value for 2003, the first year under the biennial assessment process. The owner did protest the value for tax-year 2004 and received reductions in value before the County Board of Equalization and additional reductions in actual value on appeal to the BAA. Under Colorado law, a taxpayer has a right to seek reductions in the other-year assessment if either year of the biennial assessment is reduced (absent specific physical changes in the property not applicable in this case). The assessments for each of the two years should be the same, but corrections are not automatic.

The taxpayer filed an abatement and refund petition for tax-year 2003 with the County Board of Commissioners following the 2004 reduction by the B.O.E. The petition was granted. The taxpayer later filed a second abatement for the 2003 tax-year with the BOC after the BAA further reduced the 2004 value determination. This time, the BOC denied the abatement petition based on issue preclusion and res judicata and the taxpayer filed an appeal to the BAA. The BAA sustained the County's motion to dismiss based on the doctrine of res judicata. The taxpayer appealed to the Court of Appeals.

The Court of Appeals first determined that the abatement statute, C.R.S. § 39-10-114, is silent on whether or not a taxpayer is limited to one abatement per tax-year. The *Red Junction* Court observed that prior case law holds that res judicata issues can be raised in administrative proceedings.¹ The *Red Junction* Court, citing *Holnam, Inc. v. Indus. Claim App'ls. Ofc.*, 159 P.3d 795 (Colo. App. 2006), then recited the four conditions that must be satisfied to apply the res judicata doctrine: (1) finality of the first judgment; (2) identity of subject matter; (3) identity of claims for relief; and (4) identity of or privity between parties to the actions.

The disputed condition raised in this case is whether the third factor, identity of claims, was satisfied. The taxpayer urged that the first abatement request only dealt with the reduction in value granted by the BOE. The County urged that the taxpayer could have sought a full reduction in actual value before the BOC and since they failed to do that, the redetermination of actual value was now a closed issue. The Court of Appeals agreed with the County and affirmed the BAA. The Court of Appeals opined that the taxpayer in his first abatement petition could have [and hence, should have] informed the County Board of Commissioners that the final determination of value was still pending before the BAA and either asked for partial relief based on the BOE decision and to keep the matter open for additional relief if adjustments were made by the BAA. [Perhaps they also could raise the full actual value question and if denied, file appeals.] Since the abatement petition sought a determination of actual value, the basis for the claim for relief were identical [just not the amount of economic relief sought] and res judicata applies.

Practice consideration. The fact pattern portrayed in this case is not all that uncommon. Taxpayer's often do not protest when new value notices come out in the first year of an assessment cycle. When the taxpayer gets the actual tax statement in the second year (based on the first year's value determination) that awakens their interest in addressing the matter. The taxpayer can then timely protest the second year assessment as was done in *Red Junction*. However, the second year administrative review will likely not be concluded until the summer of that year and it could be that a BAA decision will not arise for 10 to 18 months later. If a district court appeal is pursued instead of a BAA review, the time could be even longer. Then, appeals to the Court of Appeals and/or Supreme Court can interpose an additional passage of time for another year or more. An abatement for 2003 should be filed by December 31, 2005 to be certain it was timely filed. C.R.S. § 39-10-114(1) provides that an abatement petition can be filed within two years of January 1 following the year of levy. Since January 1 is always a holiday, in theory a taxpayer has until the next business day to perfect a filing but this author has been reluctant to dance on the head of that pin and recommends filing by December 31.

This decision presents a potential practice dilemma. If time permits, the best alternative may be to delay filing the abatement request until the second year value decision is final. However, if one must file before the second year is final, then the taxpayer must now preserve all issues within that abatement request and be prepared to appeal a County BOC denial to the BAA. One must try to keep either the BOC or the BAA matter open until the second year matter is concluded. However, C.R.S. § 39-1-113(1.7) requires that a county BOC act within six months of the date the petition was filed. There is no clear precedent about what the effect is if that does not occur. Query, must a taxpayer then appeal within 30 days after the six months expires? In essence deeming the petition to be denied and final for purposes of appeal. Or, can the county and taxpayer agree to waive the six month "speedy trial" provision? An appellate court could take the view an appeal filed after six months plus 30 days is stale and the appellate court has no jurisdiction. Jurisdiction is an issue that can be raised at any level. The safest practice is to assure a timely appeal to the BAA. A matter pending before the BAA can generally be held in abeyance without a final order being entered or some other time sensitive termination, assuming the BAA for its own docket control does not order the parties to act by a date certain. If that occurs, appeals would have to be preserved.

The *Red Junction* taxpayer faced a similar procedural dilemma and at that time, hard decisions had to be made. There were no clear rules or precedent telling the taxpayer that back to back abatement petitions for the same year was not a possible option. That was very likely the lowest cost (legal fees) option. Whether or not the two abatement requests requested identity of relief was a close judgment call in this author's opinion. This case is now instructive as to the res judicata issue at least under the facts of this case. Theoretically, a second abatement petition for a tax-year might be possible where the nature, not the extent, of the relief requested is different. However, practitioners will be well advised to keep alive the first year until the second year is fully adjudicated in a final decision.

A no-facilities reseller of long distance services is a telephone company. *Opex Communications, Inc., v. Property Tax Admin'r.*, ___ P.3d ___ (Colo. App. 2007) addressed the issue of what constitutes a telephone company subject to central assessment procedures for

property tax purposes. Opex did not own or lease any telephone transmission facilities. Opex had contractual agreements with two facilities carriers that allowed Opex to have its customers place long distance calls over the interstate facilities owned by those carriers. The carrier measured the minutes and reported the time used to Opex and Opex billed its customers for the calls and presumably paid a smaller fee to the carrier. Opex did not purchase and resell bulk time, it merely had a favorable fixed price contract at discounted rates that it could broker to its customers. Opex had no facilities in Colorado, but did have over 4,000 Colorado customers/clients. The Property Tax Administrator found that Opex was a telephone company for the purposes of C.R.S. § 39-4-102 and determined the allocable actual value of its operations for Colorado property tax purposes. [Public utilities can be taxed on intangible assets as part of its unit value so no physical assets are required to trigger a tax obligation.] Opex appealed to the BAA. The BAA found that Opex was a telephone company subject to central assessment, but reduced the PTA's determination of actual value by almost 50%. Both parties appealed.

The Court of Appeals concluded that the term "telephone company" was not defined for purposes of the determining the actual value of public utilities. The Court held that the legislature must have intended that the term have its ordinary meaning in the market place, citing *United States Transmission Systems, Inc. v. Board of Assess. App'ls.*, 715 P.2d 1249 (Colo. 1986). The *Opex* Court then discussed cases from several other jurisdictions that held that a telephone company was any business that facilitates communications between two or more parties. The *Opex* Court held that Opex was a telephone company because the company enabled its customers to place long distance telephone calls to third parties. The *Opex* Court rejected Opex's argument that the term telephone company should have the same definition set forth in the statutes regulating the Public Utility Commission's authority. The Court was not persuaded that a definition in one statutory program should be borrowed for the purpose on another statutory program. The *Opex* Court deferred to the definition announced in *United States Transmission*, supra, in holding that Opex was a telephone company.

The *US Transmission* case involved a company that provided long distance services over leased facilities, was regulated by the FCC as a communications company and did have assets in Colorado. Under those accumulated facts, the decision in *US Transmission* is not surprising. However, the *US Transmission* case does appear to rely on the lynchpin that a telephone company facilitates communications between two or more unrelated parties. Based upon only that basic requirement, Opex would appear to meet the definition. However, this definition (litmus test) could prove to be problematic. This author accepts the argument that definitions from one statutory scheme should not necessarily be grafted onto a different scheme. However, it is also very likely that when the legislature carved out "public utilities" for disparate property tax treatment, it had in its collective mind that a public utility was an entity regulated by the PUC or equivalent. It may be time for the legislature to address these issues in light of today's emerging, complex and overlapping communications-technology environment. For example, does a drug store that markets "phone cards" satisfy the definition? What about an internet service provider as we now know that "phone calls" can now be placed via computer over the internet, with or without live video streaming? What about a business that calls itself "Acme Phone Company", but who's business solely consists of the retail sale and servicing of communications equipment purchased by its customers so that the customer can access the

telecommunications services supplied by an FCC regulated carrier. Does this not facilitate that third party communication that seemed so important to the *US Transmission* and *Opex* courts? Query then, is a retail business like Radio Shack® a telecommunications company for Colorado property tax purposes?

The Court then took up the value issue and declined to substitute its judgment for the BAA's determination of actual value. The *Opex* Court held there was sufficient competent evidence in the record to support the BAA's determination of actual value based upon the income approach. However, what is a little disconcerting to a tax practitioner is how the PTA's expert apparently addressed the income tax adjustment required when applying the income approach to determining value. The Court opinion reflects that the expert stated that since the taxpayer was an "S" corporation it did not pay income taxes; therefore, no adjustment is warranted. *Opex* at _____. While that statement on the surface is technically accurate, it is also completely disingenuous and not dispositive. An S corporation is treated as a partnership for income tax purposes and income taxes are paid at the partner's level. That is why many S-corps distribute sufficient cash to enable the S shareholder to cash flow the tax obligation. To conclude that a profitable S corporation's gross income should not be adjusted for income taxes when estimating value by using the income approach is materially false.

Effect of TABOR on pre-TABOR adoption levy limits and excess tax collection. In *Bruce v. Pikes Peak Library Dist.*, 155 P.3d 630 (Colo. App. 2007), the court addressed a TABOR challenge to a mill levy adoption and other budgetary actions by a library district in El Paso County. The plaintiff, a taxpayer, filed a challenge under TABOR² raising several issues regarding the 1993 budget adopted by the Pikes Peak Library District ("PPLD"). PPLD submitted a mill levy proposal that was approved by the voters in 1986 setting a maximum mill levy of 4 mills. TABOR was approved by the voters in 1992. PPLD approved an increase in the Library mill levy for 1993 (the levy was still below the 4 mills limit) but did not submit the increase to voter approval. In addition, the District has excess taxes over its spending limit from the prior year, factoring allowable increases per law.

The district court granted summary judgment for PPLD on all issues. The Court of Appeals affirmed on all issues except the excess tax issue. The *PPLD* Court cited *Bolt v. Arapahoe Cnty. Schl. Dist. No. 6*, 898 P.2d 525 (Colo. 1995) that held that a bond issue proposal approved by the voters prior to TABOR's adoption in 1992, satisfied the voter approval requirement in TABOR and it is unnecessary to resubmit the matter to a second vote. The *PPLD* Court found no meaningful distinction between a vote on a bond proposal and a vote on a mill levy lid. In both cases, the voters approved a tax proposal and merely because the vote was taken prior to the adoption of TABOR did not alter the fact the tax scheme was approved by the voters.

The *PPLD* Court also rejected Bruce's argument that the total value of taxable property was significantly higher in 1993 than in 1986 when the voters approved the levy limit. The Court concluded that since the mill levy limit measure in 1986 was not tied to any particular assessment ratio, it made no difference that the measure actually raised more taxes in 1993, provided the increase in taxes was not limited by any other provision of law.³

Next, the Court also rejected a multiple-fiscal year obligation attack on several District equipment lease obligations. All of the leases in question contain a “non-appropriation” clause. These clauses excuse lease payments if annual appropriations are not made by the taxing districts. The Court held that multi-year leases are a necessary means of conducting governmental business and requiring voter approval every year is wasteful as it could be more expensive to conduct an election than the cost of many of the underlying obligations.⁴

On the last issue, excess tax revenue, the Court of Appeals reversed the district court and remanded the matter for further evidence. The district court had granted summary judgment holding that the small amount of tax in question (\$8,430.00) satisfied the “substantial compliance” standard announced in *Bickel v. City of Boulder*⁵. The Court of Appeals reversed distinguishing *Bickel* on the basis that *Bickel* dealt with election issues not the revenue limitations in art X, Sec. 20(1). That provision requires that “excess revenue . . . shall be refunded with 10% annual simple interest”⁶. The PPLD Court holds that this provision is an absolute requirement, therefore, a *de minimus* or substantial compliance standard is inappropriate. The Court of Appeals remanded the matter to the district court to take evidence to confirm the assertions made in the Library District’s Brief that the amount had already been refunded by adjusting the subsequent year’s budget requirements used to set the next levy rate.

Components of a satellite television transmission system can qualify as consumables and be exempt from property tax. In *Echostar Satellite, L.L.C. v. Arapahoe Cnty. B.O.E.*, the Court upheld a finding by the BAA that set-top converters and signal filters constituted consumables exempt from the property tax. Echostar operates a satellite television transmission system. Its customers purchase the satellite signal receiving dish but Echostar leases signal converters and other items to the customer as part of the agreement to provide its television signal service. Under Colorado law, items held in inventory or to be consumed by the business are exempt from taxation.⁷ The Property Tax Administrator publishes regulations contained in the Assessor’s Reference Manual to implement the provisions regarding consumables. The regulations set forth two criteria, does the item have a useful life (for depreciation purposes) of less than one year; or, if the life is more than one year, does the item cost less than \$250.00.⁸

The Arapahoe County Assessor, supported by the staff of the PTA, rejected the exemption finding that the converters were a component of a system (satellite distribution facility) and the fact that a converter or filter might cost less than \$250 is irrelevant if it’s merely a component of a more expensive system. On appeal to the BAA, the BAA reversed the County Board and rejected the PTA’s argument that the items were components. The BAA concluded that the items were separately sold, separately taxed and served an independent function in the overall system. The Court upheld the BAA finding as supported by the record before the BAA as a whole. The converters and filters served as an interface between the satellite dish and the television set. Both of those items are owned by the customer, not Echostar so they are not part of the service providers integrated system. The converters and filters are purchased from separate manufacturers, are separately identified and recorded on Echostar’s asset ledger and serve a distinct purpose separate from other parts of the overall transmission system.

Sales and Use Tax

Operating a seniors' living facility can be a religious activity. *Catholic Health Initiatives Colorado, d/b/a Villa Pueblo Towers v. City of Pueblo*, ___ P.3d ___, (Colo. App. 2007) held that under the facts of this case, the affiliated Catholic Church entity that operated an assisted living facility was exempt from a city sales and use tax. Catholic Health, a 501(c)(3) affiliated organization of the Catholic Church, was denied an application for a sales tax exemption certificate from the home rule City of Pueblo for any activities not directly related to religious worship. Pueblo then audited the operations of Villa Pueblo Towers which was a residential facility for the elderly including both independent and assisted living facilities. The City issued a sales and use tax deficiency notice that was unsuccessfully appealed to the City Finance Director, then the Executive Director of the Department of Revenue and then to the district court. The last two level of appeals were limited to the sole issue of whether or not the facility's activities constituted a religious function.

The Court of Appeals reversed the district court finding that under the facts of this case, the residential retirement center was operated as a part of the religious activity of the Catholic Church. Therefore it qualified for the city-sales tax exemption. Catholic Health held a certification from the IRS under § 501(c)(3) which was the threshold requirement of the City Code. The Court then construed the requirement of the City Code that the exempt activity must be “in the conduct of their regular religious or charitable functions.”⁹ The Court, notes that the phrase “regular religious function” is not defined in the Code. The Court recited the statutory construction principle that unlike most charitable tax exemptions, a religious exemption provision is broadly construed in order to accommodate the First Amendment. *Id* at _____.¹⁰

The Appeals Court rejected the taxpayer's broader argument that any inquiry by government is prohibited in a religious exemption application. The Court held that some inquiry is permitted and necessary to separate purely secular activities from religious activities. The Court then placed weight on the assertions of Catholic Health that this facility was operated for religious purposes, was operated at a financial loss, had around-the clock clergy available, conducted numerous services and other religious activities for the residents and that the home's employees were directed to apply the directives of the Catholic Church Hierarchy and observe the religious practice and faith of its residents. The Court held that these were all factors supporting the religious function practiced at this residential facility. The Court stated that just because homes-for-seniors services were also available in the secular world, is irrelevant to the overall emphasis on the religious activities practiced at this facility. Therefore, all purchases related to the overall operation of the facility were entitled to exemption from taxation under the City Code.

Other governmental fees and taxes.

Special district fees are like taxes and lien rights and refund requests are controlled by statute. In *Skyland Metro. Dist. v. Mountain West Enterp. L.L.C.*, ___ P.3d ___ (2007), the court addressed several procedural issues involving the enforcement of statutory liens for special district service fees. The case involves two special districts formed to provide water and sewer

service to residential development property located in Gunnison County. In 1989, the districts had assessed availability of service fees (“ASF”) to a tract of land intended for multi-family residences within its boundaries. The land was then partially developed by a prior owner and some of the ASF fees were paid. That developer then successfully requested that the county reduce the approved density, which approval should have lowered the total ASF assessment. That developer ultimately lost the unimproved tract to its lender through foreclosure. The defendants in the instant case acquired the land from the lender and began construction of additional units. The new developer raised questions about the calculation of the ASF with the districts. Some ASF fees remained unpaid. The districts filed foreclosure actions to enforce its statutory liens for the ASF. The trial court concluded that the ASF fees were improperly calculated and reduced the fees. However, the trial court did not give credit for any prior overpayments because there had been no payments made under written protest and the statute of limitations on refunds had expired. The trial court decreed foreclosure. The districts were also awarded attorney fees in excess of \$100,000.00. Both sides appealed various issues raised before the trial court.

The Court of Appeals rejected the developers’ first argument that a special district had to give prior notice before its lien became valid. The Court held that a special district’s lien rights arise from a perpetual statutory lien. See, C.R.S. § 32-1-1001(1)(j)(I). That section then authorizes foreclosure of the lien “in the same manner . . . as mechanics’ liens”. The mechanic liens’ statute requires an advance ten day notice to the property owner before the lien can be filed.¹¹ The Court held that the lien for special district fees is analogous to a tax lien and attaches automatically to the taxpayer’s property by operation of law. A mechanic’s lien is not automatic, the proper procedures must be followed before the lien can be filed and attaches to the property. The timing and nature of the tax lien itself has nothing to do with the subsequent foreclosure process. The foreclosure process occurs after the lien is perfected. Tax (and district fee) liens perfect without actual notice so no advance notice to a property owner is required prior to foreclosure.

The Court of Appeals also affirmed the trial court’s rulings on the voluntary nature of the prior ASF payments. Since special district fees are analogous to taxes, statutory and administrative rules regarding protesting payments and timely requests for refunds must be met in order to allow a payor to seek refunds.

However, the Court of Appeals reversed the trial court’s determination that the developer’s counterclaims for an accounting and recalculation of ASF fees was not timely. The Court held that since the special district had initiated the litigation, the additional one year limitation for “compulsory counterclaims” set forth in C.R.S. § 13-80-109 applies. In order to decree foreclosure, the trial court must properly determine what fees were due. The developers should have the right to open all aspects of the proper calculation of the ASF as it relates to that developer. The Court of Appeals did agree with the trial court and refused to allow the new developers to raise issues or seek credits for prior ASF payments made by the original developer. Those fees could not be refunded or credited under the voluntary payment rule. See, *Prilliman v. City of Canon City*, 360 P.2d 812 (Colo. 1961). If not timely protested, they cannot be later recouped by assignment to the new developer and they do not constitute a compulsory counter-

claim right by these developers. See, *City of Arvada v. City & County of Denver*, 663 P.2d 611 (Colo.1983).

The Court of Appeals also reversed the trial court on a number of related issues dealing with how to calculate the ASF fees. As these issues deal more with real estate matters than taxes, this author will refer the reader to the Chapter on Real Estate for further discussion of the remaining issues raised in the case.

The Court did reverse the award of attorney fees since the developers prevailed on some issues on appeal and remanded the award of fees back to the trial court in light of the opinion as a whole.

1. See, *Holnam, Inc. v. Indus. Claim Appeals Office*, 159 P.3d 795, 797 (Colo.App.2006) (applying claim preclusion in workers' compensation case); *Steamboat Springs Rental & Leasing, Inc. v. City & County of Denver*, 22 P.3d 543, 545 (Colo.App.2000) (applying res judicata in sales and specific ownership tax case); see also, *Von Hagen v. Bd. of Equalization*, 948 P.2d 92, 95 (Colo.App.1997) (applying collateral estoppel principles to bar relitigation of certain issue in property tax case).

2. A referendum commonly known as the Taxpayer Bill of Rights and adopted as Colo. Const. Art X, § 20.

3. *Bruce*, 155 P.3d at 632 and 634.

4. *Id.* at 632-633.

5. *Bickel v. City of Boulder*, 885 P.2d 215 (Colo. 1994).

6. *Bruce* at 634 citing Colo. Const., art X, § 20(1).

7. See, Colo. Const., art X, § 3(1)(c) and C.R.S. § 39-3-119 (2004).

8. See, A.R.L. Vol. 5, § 7.127.13.

9. *Id.* at ___, citing Pueblo Mun. Code § 14-4-77(5).

10. Citing *Prince-Walker v. Industrial Claims Ofc.*, 870 P.2d 588 (Colo. App. 1993), *aff'd.* 883 P.2d 3 (Colo. 1994); *Gen'l Conf. Of the Church of God-7th Day v. Carper*, 557 P.2d 832 (Colo 1976) and *Kemp v. Pilar of Fire*, 27 P.2d 1036 (Colo. 1933).

11. See, C.R.S. § 38-22-109(3).