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ANNUAL SEMINAR ON MUNICIPAL LAW

2022

A Case of Cases

Process for Determining THE Cases

- Special thanks to many of the “Deans” of Colorado Municipal Law
- Reasonable Minds May Differ
- Criteria for making the List
- Rules for this Presentation



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Home Rule

Case No. 1

This is the preeminent case describing the distinction between matters of statewide concern, local concern, and mixed state and local concern, and corresponding power of home rule municipalities to legislate.

Denver v. State, 788 P.2d 764 (Colo. 1990)



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**Graham Cracker Porter –
Denver Beer Co.** (Denver, CO)



Home Rule (cont.)

Case No. 2

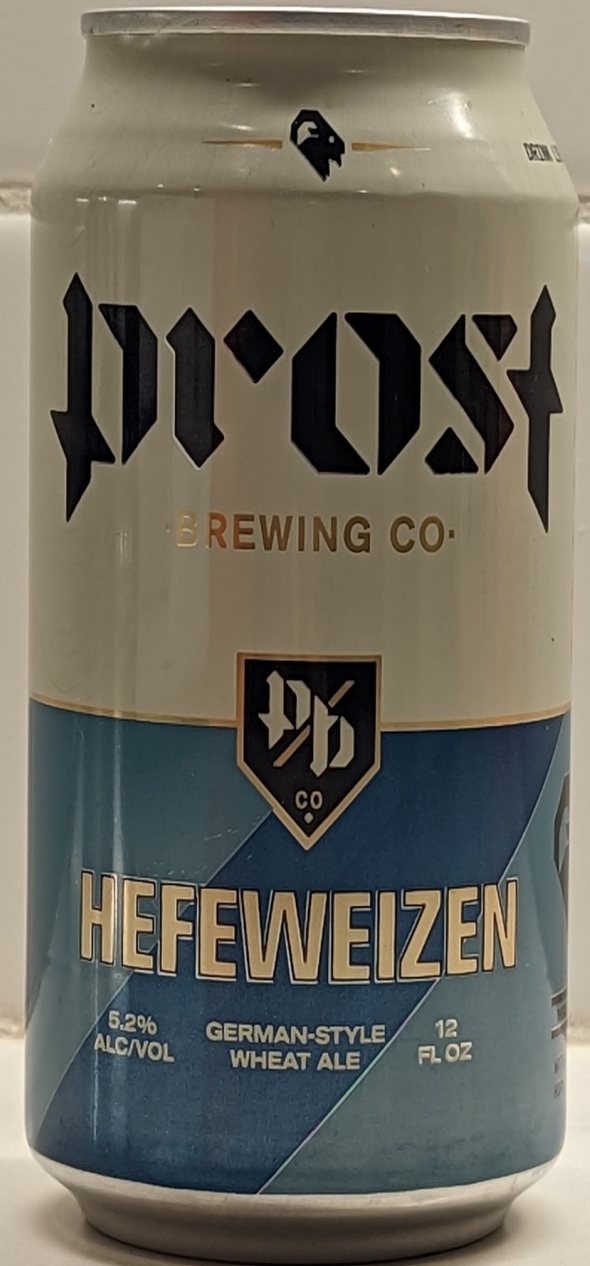
This (perhaps more obscure) case is perhaps the best description of the constitutional parameters of home rule authority – the home rule constitutional amendment provides “... *all the power*” [emphasis original] with relation to local and municipal affairs – it is the best statement regarding the organic nature of constitutional home rule authority with relation to local and municipal affairs.

Four-County Metropolitan Capital Improvement District v. Board of County Commissioners of the County of Adams, 369 P.2d 67 (Colo. 1962)



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**Hefeweizen – Prost Brewing
Co.** (Moving to Northglenn/Adams Co.)



Home Rule (cont.)

Case No. 3

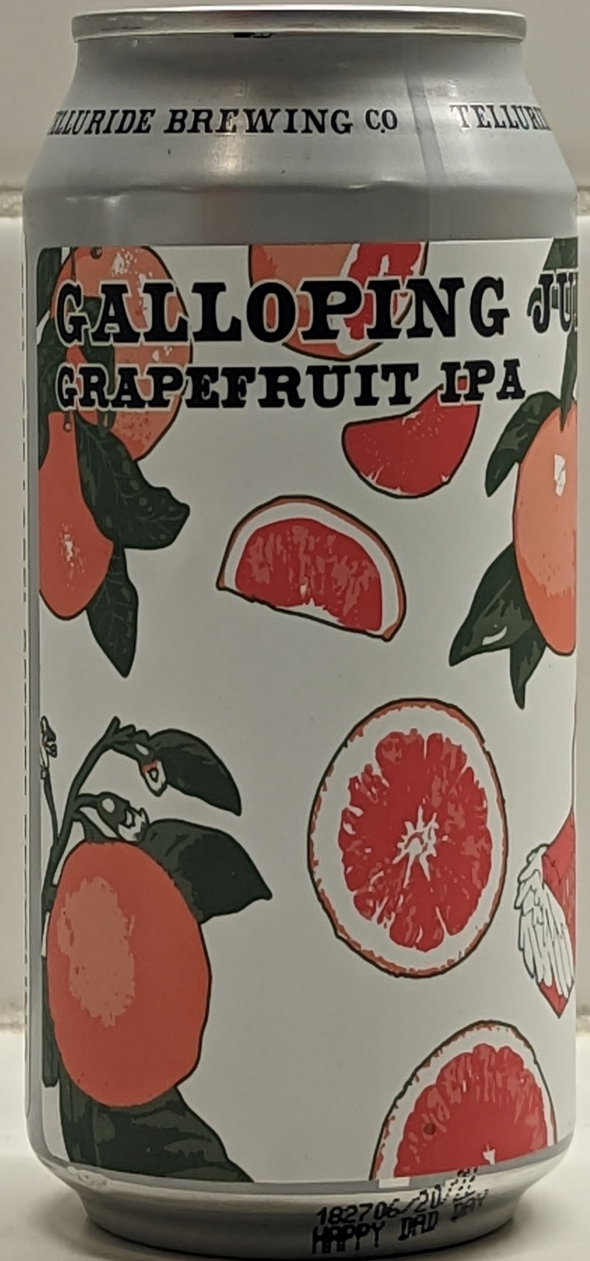
Building on previous home rule cases, this eminent domain case found that home rule authority extended to extraterritorial condemnation for parks and open space based on the language in the Colorado Constitution stating that a home rule municipality's eminent domain authority includes "...the power within or without its territorial limits, to ... condemn ... works or ways local in use and extent ... [including] taking land for public use by right of eminent domain." Statute purporting to limit such extraterritorial condemnation was inapplicable to home rule municipalities.

Town of Telluride v. San Miguel Valley Corp., 185 P.3d 161 (Colo. 2008).



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Galloping Juice Grapefruit IPA
– Telluride Brewing Co. (Telluride, CO)



TABOR

Case No. 4

This case specifies that TABOR is not a grant of new power, but a limitation on the power of the people's elected representatives. Therefore, standard can be one of substantial compliance. In addition, the court found that incurring debt and the adoption of taxes as the means with which to repay the debt can be in a single ballot issue.

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



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**White Rascal – Avery
Brewing Co.** (Boulder, CO)



TABOR (cont.)

Case No. 5

This is one of the building block TABOR cases....The court recognized three separate types of ballot questions that allow local governments to keep revenues in excess of TABOR's limitations and the court found that there is no explicit requirement that proposed revenue changes be articulated as a dollar amount. The holding in this case is the basis for the wording used on most TABOR questions.

City of Aurora v. Acosta, 892 P.2d 264 (Colo. 1995)



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**Apricot Blonde – Dry Dock
Brewing Co.** (Aurora, CO)



Fee v. Tax

Case No. 6

Pre-TABOR, this is the original case differentiating between a fee and a tax. A fee is reasonably designed to defray the cost of a service provided by the municipality as compared to a tax defrays the general expenses of government. The amount of such special fee must be reasonably related to the cost of the service.

Bloom v. Fort Collins, 784 P.2d 304 (Colo. 1990)



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**Rupture Fresh Grind IPA –
Odell Brewing Co.** (Fort Collins, CO)



Fee v. Tax (cont.)

Case No. 7

Post-TABOR, building on and consistent with the *Bloom* case, the primary purpose of Aspen's bag fee was not to raise revenue related to general government expenses (which would have made it subject to TABOR's election requirement as a tax); instead, it defrayed the direct and indirect costs of administering Aspen's waste reduction scheme and was a fee.

Colorado Union of Taxpayers v. City of Aspen,
418 P.3d 506 (Colo. 2018)



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**Cloud 9 Saison – Aspen
Brewing Co.** (Aspen, CO)



Initiative and Referendum

Case No. 8

Building on previous cases addressing the constitutional power of initiative and referendum reserved to the people, this case summarized the nature of the reserved power, and discusses the distinction between legislative matters (subject to the reserved power) versus administrative matters. This case also effectively summarizes prior Colorado Supreme Court decisions, including *City of Aurora v. Swerdlinger*, 571 P.2d 1074 (Colo. 1977); *Margolis v. District Court*, 638 P.2d 297 (Colo. 1981); *Witcher v. Cañon City*, 716 P.2d 445 (Colo. 1986); and *City of Idaho Springs v. Blackwell*, 731 P.2d 1250 (Colo. 1987).

Vagneur v. City of Aspen, 295 P.3d 493 (Colo. 2013)



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**Independence Pass Ale IPA –
Aspen Brewing Co.** (Aspen, CO)



Initiative and Referendum (cont.)

Case No. 9

Three cases consolidated and addressed the question of whether zoning and rezoning are legislative acts subject to referendum and initiative. Zoning and rezoning decisions, regardless of size, are legislative for purposes of being subject to the powers of initiative and rezoning.

Margolis v. District Court, 638 P.2d 297 (Colo. 1981)



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**40 West – Westfax
Brewing Co.** (Lakewood, CO)



Open Records

Case No. 10

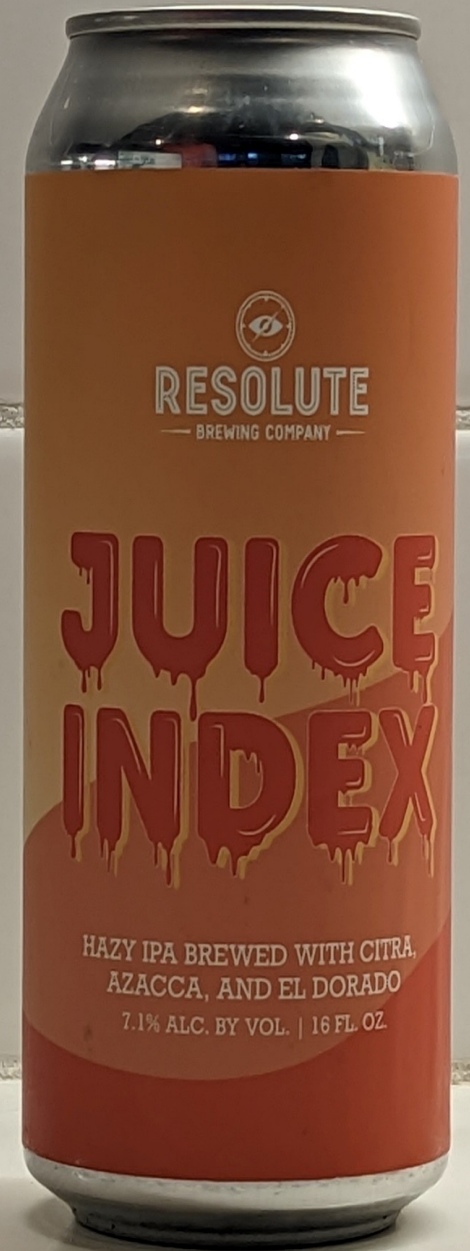
This case is a detailed analysis of what makes a record “public” under the Colorado Open Records Act. Records are not public just because they are made, maintained, and kept by a public entity. The records at issue must concern public business. Who decides? Local government attorney’s full employment act!

Denver Publishing Co. v. Board of County Commissioners of Arapahoe County, 121 P.3d 190 (Colo. 2005)



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**Juice Index – Resolute
Brewing Co.** (Centennial/Arapahoe Co.)



Annexation

Case No. 11

Under the Municipal Annexation Act of 1965, annexation is purely consensual as it relates to both the government and the property owner seeking to annex. A municipality is under no legal obligation to annex territory and may reject a petition for annexation for no reason at all. Likewise, if the party seeking annexation does not wish to annex under the conditions imposed, it is free to withdraw its petition to annex and remain outside the City.

City of Colorado Springs v. Kitty Hawk Development Co., 392 P.2d 467 (Colo. 1964)



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**Beehive Honey Wheat – Bristol
Brewing Co.** (Colorado Springs, CO)



Annexation (cont.)

Case No. 12

This is a Court of Appeals decision ... (but deference is given to Jerry Dahl). The court explains the meaning and interpretation of the contiguity requirement and includes analysis addressing when streets are part of the area to be annexed.

Board of County Commissioners of Jefferson County v. City of Lakewood, 813 P.2d 793 (Colo. App. 1991)



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**Colfax Cream Ale – Westfax
Brewing Co.** (Lakewood, CO)



Governmental Immunity

Case No. 13

This case defines what is now known as a “_____ Hearing” for determining whether an entity is immune from liability pursuant to the Colorado Governmental Immunity Act. The trial court is the finder of fact under C.R.C.P. 12(b)(1) regarding the application of the defense of sovereign immunity.

Trinity Broadcasting of Denver v. City of Westminster, 848 P.2d 916 (Colo. 1993)



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**Mister Rebel German Kolsch –
Kokopelli Beer Co.** (Westminster, CO)



Governmental Immunity (cont.)

Case No. 14

Recent Colorado Supreme Court decision on the application of section 24-10-106(1)(d)(1) regarding the dangerous condition of a public road. Court held that the road did not constitute an unreasonable risk of harm to the health and safety of the public, nor did it physically interfere with the movement of traffic. Good analysis of reasonable and unreasonable risk related to maintenance activities. The road, while cracked and rutted, did not contain potholes or sinkholes; the road was deteriorated but not unreasonably risky. The court found that a “government’s duty to maintain a road is triggered only after the road becomes unreasonably dangerous” and not when the road is no longer “like new.”

City and County of Denver v. Dennis, 418 P.3d 489 (Colo. 2018)



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Deadlights – TRVE Brewing Co.
(Denver, CO)



Taxation/Local Authority

Case No. 15

Municipal sales tax is a local and municipal concern in the context of local collection and audit (but this holding is limited by later cases).

Berman v. City and County of Denver, 400 P.2d 434 (Colo. 1965)



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**Son of a Baptist Coffee Stout–
Epic Brewing Co.** (Denver, CO)



Urban Renewal

Case No. 16

This remains the most important case in the context of urban renewal, and describes the meaning of property tax increment, and the fact that such increment would not exist but for the redevelopment activity.

Denver Urban Renewal Authority v. Byrne, 618 P.2d 1374 (Colo. 1980)



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**Mile Hi Hefe – Tivoli Brewing
Co.** (Denver, CO)



General Govt. Authority/ Police Power

Case No. 17

This case identifies the distinction between vested contractual rights and vested property rights in the context of a municipal development agreement.

City of Golden v. Parker, 138 P.3d 285 (Colo. 2006)



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**Colorado Native Amber –
Golden Brewing Co.** (Golden, CO)



General Govt. Authority/ Police Power (cont.)

Case No. 18

Where property is furnished to a municipality under an unenforceable contract, and the municipality has not paid for the property, then the seller may, upon equitable terms, recover it. However, there are certain limitations including that party dealing with municipality must have acted in good faith, the contract must be one not contrary to governmental authority, as opposed to deficient based on improper statutory procedure, and property must still be in existence/identifiable.

*Normandy Estates Metropolitan Recreation
District v. Normandy Estates, Ltd.*, 553 P.2d 386
(Colo. 1976)



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**Lariat Lodge India Pale Ale –
Lariat Lodge Brewing Co.** (Littleton, CO)



General Govt. Authority/ Police Power (cont.)

Case No. 19

The remedy of specific performance is not available if the contract involved an exercise of a core governmental power such as the power to condemn property. Thus, a contractual promise to exercise governmental authority in a certain manner is void. This is ultimately in many respects a separation of powers case.

*Wheat Ridge Urban Renewal Authority v.
Cornerstone Group XXII LLC*, 176 P.3d 737
(Colo. 2007)



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Quicher Bichen – Rickoli (Wheat
Ridge, CO)



General Govt. Authority/ Police Power (cont.)

Case No. 20

This case upholds the common law rule that a mechanics lien cannot be filed against public property. Mechanics lien statutes are inapplicable to a lien and thereby prevent any operation of the “relate back” provisions to establish a priority date prior to dedication and acceptance of property.

City of Westminster v. Brannan Sand and Gravel Co., 940 P.2d 393 (Colo. 1997)



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**Bonehead Hefeweizen –
Kokopelli Beer Co.** (Westminster, CO)



General Govt. Authority/ Police Power (cont.)

Case No. 21

This is another Court of Appeals decision. This case distinguishes between a city acting in its governmental versus its proprietary capacity. The rules are different, and a municipality cannot use its status as a governmental entity to nullify a contractual obligation entered into in its so-called proprietary capacity.

Colowyo Coal Co. v. City of Colorado Springs,
879 P.2d 438 (Colo. App. 1994)



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**Beehive Honey Wheat – Bristol
Brewing Co.** (Colorado Springs, CO)



General Govt. Authority/ Police Power (cont.)

Case No. 22

This is another Court of Appeals decision. Quite simply, this is the case most frequently cited for the proposition that one city council cannot bind future city councils.

Keeling v. City of Grand Junction, 689 P.2d 679
(Colo. App. 1984)



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**Coors Light – Molson Coors
Brewing Co.** (Not Grand Junction)



General Govt. Authority/ Police Power (cont.)

Case No. 23

One last Court of Appeals decision. The government cannot contract away its police power.

Crossroads West Ltd. Liability Co. v. Town of Parker, 929 P.2d 62 (Colo. App. 1996)



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**Newling Gulch Gold - Barnett &
Son Brewing Co.** (Parker, CO)



Land Use/Statutory Municipalities

Case No. 24

This is one of the building block cases on the authority of a statutory municipality regarding the broad legislative discretion afforded to such a municipality, as it relates to zoning.

Nopro v. Town of Cherry Hills Village, 504 P.2d 344 (Colo. 1972)



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**Kinda Italian Ice: Cherry
Limeade – Peculiar Brewing
Co.** (Not Cherry Hills [but cherries])



Honorable Mentions



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Thank You!

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