



Municipal League takes positions on three ballot measures

By Robert Sheesley, CML general counsel, and Meghan Dollar, CML legislative and policy manager

The CML Executive Board met Sept. 9 to consider several upcoming ballot measures. After robust discussion, the CML Executive Board took positions on three ballot measures listed below.

Proposition 122

Access to Natural Psychedelic Substances

This citizen-initiated statute permits the supervised use and personal use by persons over 21 of “natural medicine,” but initially only psilocyn and psilocybin until 2026. A statewide regulatory and licensing structure is created. The measure is funded by licensing fees after an initial general fund loan. The measure lets municipalities regulate the “time, place, and manner” of natural medicine facilities, but expressly limits municipal authority to regulate “natural medicine” in a way that would conflict with the statute and cannot prohibit healing centers (unless required by a federal grant). As a result, the CML Executive Board voted to **oppose** Proposition 122.

Proposition 123

Dedicate Revenue for Affordable Housing Programs

This citizen-initiated statute creates a dedicated “state affordable housing fund” primarily funded through the existing tax on 1/10% of federal taxable income. A local government must do the following for funding to be provided directly or to a project in its jurisdiction: 1) commit to increasing, starting December 31, 2026, the combined number of affordable units (new and converted existing units) in the jurisdiction by 3% annually over a baseline amount; and 2) establish an optional “fast-track approval process” to enable a final decision within 90 days for development applications (excluding subdivisions) in which 50% or more of the residential units



are affordable housing. Municipalities seeking to construct affordable housing in their communities will benefit from the funding and planning opportunities provided through this statute. The statute does not impose any mandate directly on municipalities except as conditions to receipt of affordable housing funds by the local government or by affordable housing developers with projects in the municipality. CML members have voiced the importance of a dedicated source of affordable housing funding. For this reason, the CML Executive Board voted to **support** Proposition 123.

Proposition 126

Third-Party Delivery of Alcohol Beverages

This citizen-initiated statute allows third-party companies to deliver alcohol from liquor licensed businesses to persons 21 years of age or older beginning March 1, 2023. Deliveries would be subject to state licensing. This statute also changes current law to permanently allow takeout

and delivery of alcohol from bars and restaurants. A liquor licensee will not need to obtain a delivery permit if the delivery is made by an employee who is at least 21 years old and, for off-premises licensed retailers, utilizes a vehicle owned or leased by the licensee. Once alcohol is transferred to a third-party delivery company, the liquor-licensed retailer is not responsible for the actions of the third-party, which may make it more difficult for municipalities to enforce liquor laws, especially given that the permits will be issued solely by the State. As a result of these changes, there may be an increased need for enforcement efforts, which could increase workload and costs to local licensing authorities. The CML Executive Board voted to **oppose** Proposition 126.

UPCOMING EVENTS



● Small Communities Workshop

Oct. 11-12

The workshop will discuss important issues facing Colorado's small communities and showcase how some are approaching them. <https://bit.ly/3ysHffV>

● Grant WRITING WORKSHOP

Oct. 17-18

A two-day workshop in Thornton. It will cover how to write grant proposals from start to finish and how to locate grant opportunities. <https://bit.ly/3BUy2O1>

● EDCC Conference

Oct. 19-20

Drive, Lead, Succeed conference provides the knowledge, tools, and connections vital to foster a growing Colorado economy by gathering the industry's top influencers and thought leaders. <https://bit.ly/3BWrOgI>

● CML ANNUAL MAYORS' SUMMIT

Oct. 20-21

At our annual Mayors' Summit, CML is bringing together mayors from across the state to discuss critical issues facing their communities and share new and unique ideas. This is a wonderful opportunity to network with colleagues, share your successes, and learn from others. Register at <https://bit.ly/3Secltp>.

● Reducing emissions in your Community Webinar

Oct. 27

This webinar will provide information on the Colorado Clean Diesel Program, a state-wide grant program to help Colorado businesses, municipalities, and individuals electrify their non-road equipment including construction equipment, mowers, airport ground support equipment, terminal tractors and more. Attendees will

learn about the funding, eligibility requirements, application details, and technologies. Register at <https://bit.ly/3BSXX8T>.

● Effective Governance Workshop

Dec. 1

CML is excited to bring back our in-person Effective Governance Workshop! This one-day workshop will provide elected officials with important tools to be effective leaders. From open meetings to effectively engaging with the media, the workshop is an educational opportunity you will not want to miss. Registration opens soon. More information is available at <https://bit.ly/3diVD2W>.



COLORADO MUNICIPAL LEAGUE **NEWSLETTER**

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Get this newsletter by email. The CML Newsletter is available by email three days before it arrives in the mail! Sign up at bit.ly/CMLNewsletter.

IN MEMORIAM

Oscar Riley

CML recently learned of the passing on Sept. 7 of Oscar Riley, Lamar city councilman, at the age of 82. Riley served on council for 10 years after originally being appointed to fill a vacancy.

Lamar Mayor Kirk Crispin reflected on Riley's service in the Lamar Ledger. "Oscar was very active in the community and always willing to assist whenever and wherever he was able to," says Lamar Mayor Kirk Crispin. "His experience and his knowledge was very helpful to the council. He will be greatly missed not only as a council member but as a dear friend."

CML staff extends our condolences to Oscar's family and his friends and colleagues with the City of Lamar.



Tom Kristopeit

The League mourns the passing of Tom Kristopeit, who served for several years as a Littleton Councilmember, DRCOG chair, executive director of Littleton's urban renewal authority, and a planner for the City of Edgewater.

"Tom was quite active with CML on urban renewal matters, and I valued his insights and good humor," said Sam Mamet, retired League executive director.





Tour visits Boulder, Longmont to study downtown redevelopment

On Sept. 15, the Colorado Municipal League, Downtown Colorado, Inc., and the American Planning Association Colorado were pleased to host the fifth annual financing mechanism mobile tour visiting Business Improvement Districts, Downtown Development Authorities, and Urban Renewal Authorities in Boulder and Longmont.

Participants included a variety of Colorado communities and some private sector partners curious about districts and authorities that can focus on redevelopment, reuse, and place management in downtown or commercial areas. The tour spent the day with a great group of people exploring these tools, how they work in collaboration, and what their plan is for the future. The first stop was downtown Boulder where attendees were hosted at the Museum of Boulder and heard from Boulder leaders on “how” and “why” Boulder chose to support its downtown, and they shared a preview of their newly developed vision plan.

Following breakfast, attendees enjoyed a tour of Pearl Street to see outdoor dining, street closures, the civic area master plan, supporting people with no fixed address, and multimodal transportation. The tour group walked the mall and celebrated 45 years of Pearl Street.

The tour headed to Longmont for a working lunch downtown at The Times Collaborative, a new co-working space. Longmont Mayor Joan Peck gave a warm welcome before

jumping into a panel discussion about regional activities accomplished through collaboration.

The Longmont tour included two sections, the downtown tour and Sugar Mill urban renewal project. Attendees had the great pleasure of hearing the history of the Longmont Downtown Development Authority and affordable housing on South Main Street, presented by Kimberlee McKee, executive director of the Longmont Downtown Development Authority, and Lauren Cely of the Boulder County Housing Authority.

The walking tour demonstrated the role of businesses, property owners, and developers in linking public improvements and private investment.

To showcase some recent urban renewal work in Longmont, the tour discussed the history of urban renewal and a current project with the Longmont Sugar Mill, highlighted by Tony Chacon, Longmont Urban Renewal Authority director, and Charlie Woolley of St. Charles Town Company. Participants toured the site and met the owners. It was a great day filled with “ah-ha” moments and lots of great discussion. We were thrilled by the municipal representation we saw on the tour, and we look forward to doing it again next year.

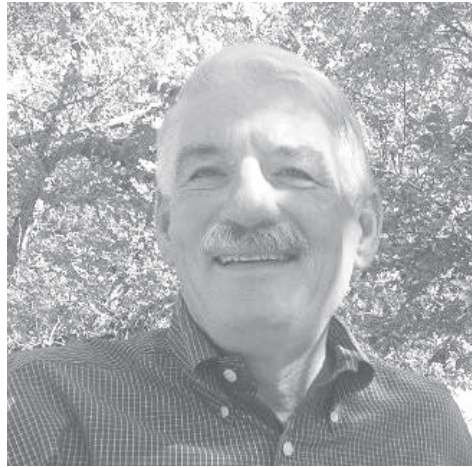
More photos of the tour are available on DCI’s LinkedIn, <https://bit.ly/3y2Tm2R>.

CML past President Gary Sears honored

By Kevin Bommer, CML executive director

At its recent conference in Columbus, Ohio, the International City/County Management Association honored former Colorado Municipal League president and longtime city manager Gary Sears with its Distinguished Service Award. The award is presented to an individual who has made a lasting impact on the community and the profession. ICMA honors only a few individuals each year and recognizes their influential contributions to local government management and how the profession enhances the quality of life in cities and towns.

Sears began his career in 1971 as assistant to the city manager in Loveland. From 1977-1980, he served as human resources director for the City of Greeley before becoming city manager of Silverthorne from 1980-1986. He then became the city manager of Glendale until 1997, during which time he served on the CML Executive Board and was CML president from 1993-1994. In 1997, he started as city manager of Englewood and retired after 17 years. After retirement through the



present, Sears continues to advance the profession and pass on his knowledge and experience to others through his work as an instructor and adjunct professor for the University of Colorado at Denver.

“Gary was one of the first to welcome me to CML when I started in 1999,” said Kevin Bommer, CML executive director. “His record of service to Colorado municipalities, the Colorado Municipal League, and the city management profession will be a lasting legacy.”

DOLA announces local match program for Bipartisan Infrastructure Law projects

The federal Infrastructure Investment and Jobs Act, also known as Bipartisan Infrastructure Law, was signed into law by President Joe Biden on Nov. 15, 2021, and authorizes \$1.2 trillion for transportation and infrastructure spending. This funding will be available to local governments through competitive grants and will assist municipalities in funding essential infrastructure needs, including improving energy and power infrastructure, increasing broadband access, and making improvements to transportation and water systems.

Most of the grants available to local governments will require a funding match, and in anticipation of this requirement the General Assembly passed Senate Bill 22-215, the Infrastructure Investment and Jobs Act Cash Fund. This bill allocates \$80 million from the state’s general fund for local match support for the non-federal match requirements included in the infrastructure act.

Through an interagency agreement, the Department of Local Affairs, Office of

Economic Development and International Trade, and Governor’s budget office, have created a local match grant program. The program will be used for local governments to support their non-federal match requirement when they apply directly to the federal government for infrastructure funding.

Eligible entities include Colorado counties, municipalities, special districts, and federally recognized tribes. In Fiscal Year 2022-23, \$6 million will be available to local governments, and additional funds will be allocated in the following fiscal year.

Applications for the program opened on **Sept. 26**, and the program will remain open until all the funds are spent. The minimum request for local match funds is \$250,000. Applications are made through the Division of Local Government Online Grants Portal, and you can find more information about the program at <https://bit.ly/3UPczi9>.

NLC City Summit in Kansas City, MO

Mark your calendar! This November the NLC is headed to Kansas City, Missouri, to highlight how cities are leading the future.

Communities depend on forward-thinking leaders to take bold action to build a brighter future. NLC’s peers, public and private sector stakeholders, and subject matter experts will share how to best use impact, action, and service as tools for a better tomorrow.

Visit <https://bit.ly/3CmMFeM> to register. See you soon at City Summit 2022!

Equity, diversity, and inclusion article reprinted in NH

An article on workplace diversity first published in Colorado Municipalities is being reprinted in New Hampshire Town and City magazine.

The article, “Equity, Diversity, and Inclusion: Workplace Possibilities,” was written by Rosina McNeil-Cusik, an equity, diversity, and inclusion specialist for Colorado Springs. The article highlights the city’s efforts to create a more inclusive workplace, including the creation of an employee resource website and developing training programs.

The article originally ran in the April, 2021, issue of Colorado Municipalities, which was dedicated to the topic of equity, diversity, and inclusion. Read the article at <https://bit.ly/3fxWAFc>.

State Demography Office Annual Summit

The 2022 State Demography Office Annual Summit will take place **Nov. 4**. This year’s summit will be virtual, and there is no cost to attend.

This summit marks the 40th anniversary of the State Demography Office, which tracks the demographic trends that shape Colorado. Sessions will take a comprehensive look at the latest demographic and economic data, with a special look at the demographic impacts of the COVID-19 pandemic.

Registration begins **Oct. 4**. More information at <https://bit.ly/3UQysOk>.

Applications open for Producer Responsibility Advisory Board

The new Producer Responsibility Program for Statewide Recycling is accepting applications from recycling experts for 13 voting members on the Producer Responsibility Advisory Board. The Advisory Board can include representatives from the following sectors:

- A municipality (or city and county)
- County
- Non-Front Range local government
- Materials recovery facility
- Recyclable materials hauler
- Compost facility

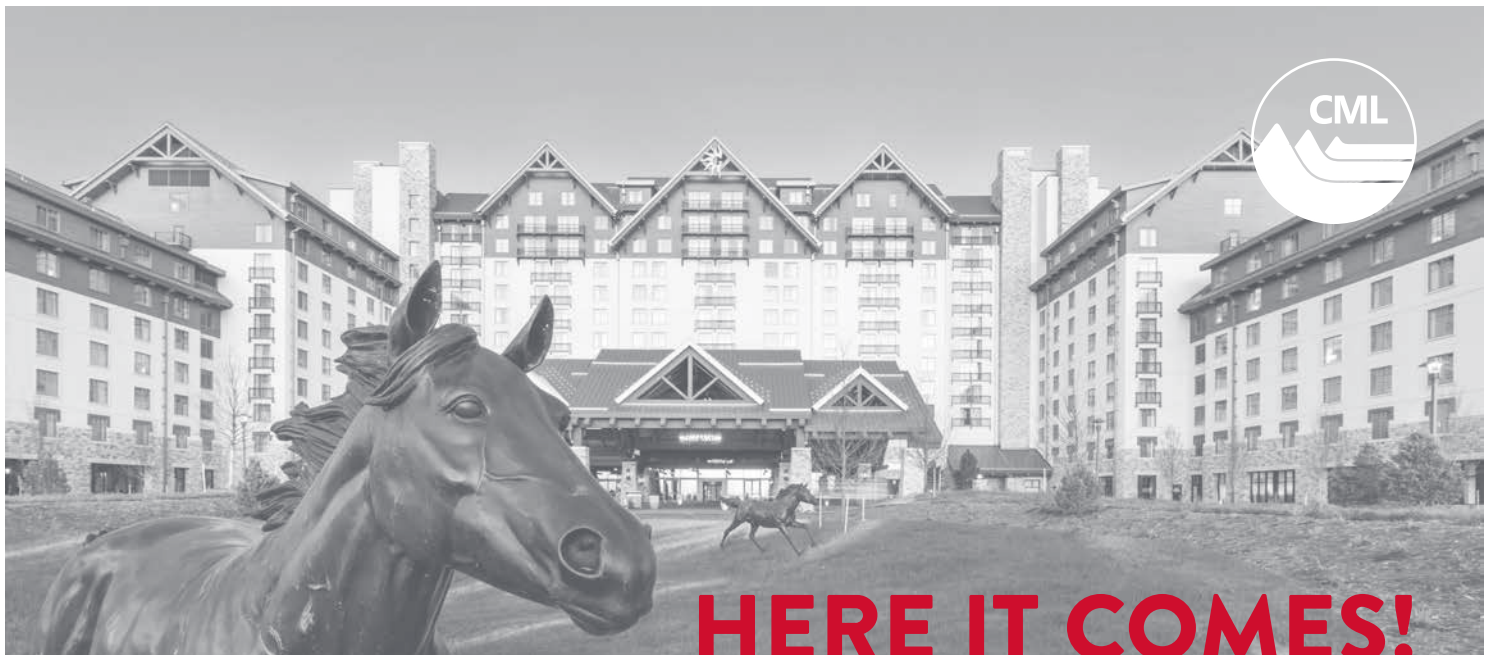
- Environmental or community-based non-profit
- Packaging supplier (not a producer)
- Manufacturer of recycled paper products (not a producer)
- Trade association/chamber of commerce
- Retailers association
- Environmental justice group
- Solid waste landfill with recycling.

The appointments for initial terms are staggered so that some members serve initial two-year terms and other members serve initial three-year terms, and all

members serve subsequent terms of three years.

Board members must have relevant knowledge and expertise in recycling programs or the impacts of covered materials on the state and the environment. To apply, please visit <https://bit.ly/3BKjq3L> to access the advisory board application.

Applications will be accepted through **Oct. 21**. Appointments will be made by **Dec. 31** by the Department's executive director. For questions, contact Darla Ariens, Producer Responsibility lead, 720-263-1219 or email darla.ariens@state.co.us.



HERE IT COMES!

COLORADO MUNICIPAL LEAGUE

2023 ANNUAL CONFERENCE

June 25-28 at the Gaylord Rockies Resort & Convention Center

<https://bit.ly/3Eom9Dd>

CML LEGAL CORNER



Municipal responsibility for tree maintenance

By Ashlyn DuThorn, CML law clerk

After enduring a long, sweltering summer, many Colorado residents are welcoming the relief that fall is starting to bring. But with cooler temperatures and gorgeous autumn colors, there also comes dying trees, falling leaves, and the task of tree maintenance. This raises several questions for municipalities to consider. Who is responsible for maintaining trees, and who is liable for damages that result from downed trees and fallen limbs?

Liability for tree damage

A property owner can be liable for damage caused to another's property by a tree on their property if the property owner is negligent in maintaining a clearly degraded or dangerous tree. Municipal codes may address tree maintenance requirements on private property.

Municipalities, unlike other property owners, may own many trees on public property, like rights-of-way and parks, and can incur liability for damage caused by those trees. Municipalities' obligations to maintain trees on public property and the risks of liability are complicated by the immunity waivers in the Colorado Governmental Immunity Act, so it is important for municipalities to understand how this impacts tree maintenance programs.

Governmental immunity

To protect citizens from the excessive costs of unlimited tort liability, the CGIA provides governmental immunity to public entities and employees in tort claims. However, it waives that immunity in certain specified circumstances. While municipalities should be careful to prevent and remedy hazardous tree conditions, they are afforded some protection from liability when hazards are not "unreasonable" and where the CGIA does not specify that immunity is waived.

Colorado case law provides some guidance on government liability related to trees, but some questions remain unanswered, including whether a municipality would be entitled to immunity in certain situations such as damage resulting from trees planted by a municipality alongside roadways or sidewalks, or on other municipal property. In *Burnett v. State Department of Natural Resources*, the Colorado Supreme Court held that the state was immune from suit for injuries suffered by a camper when a branch from one of the naturally existing trees bordering a state park campsite fell on her. The Court explained that the state was entitled to immunity even though it undertook incidental maintenance of the trees because, under the CGIA's waiver at C.R.S. § 24-10-106(1)(e), liability for a "public facility located in a park or recreation area" does not include natural objects, such as trees, on unimproved property.

Although not at issue in *Burnett*, note that C.R.S. § 24-10-106(1)(f) waives governmental immunity for injuries resulting from "the operation and maintenance of any public water facility, gas facility, sanitation facility, electrical facility, power facility, or swimming facility," which expands the likelihood of liability regarding dangerous conditions in those specific facilities. Subsection (1)(e), in contrast, does not impose the same affirmative maintenance duty on public facilities located in a park or recreation area.

In *Wheeler v. County of Eagle*, a pedestrian was forced to walk in the road and struck by a car because trees and bushes extended to the edge of the roadway. The pedestrian's parents sued, alleging that the County was negligent in failing to maintain the road in a reasonably safe condition for pedestrian use. While not addressing an immunity issue directly, the Colorado Supreme Court opined

that the county could potentially be held liable for a failure in its duty to exercise reasonable care to ensure safety of motorists and pedestrians who traveled on the road.

Sharing responsibility with adjacent property owners

To lessen the financial burden of tree maintenance, some municipalities have ordinances that require adjacent landowners to maintain public sidewalks as well as trees along the street. In Denver, for example, trees along most streets are regulated by the city forester, but their maintenance is a responsibility shared by adjacent property owners. Property owners are responsible for pruning, as well as clearing debris like fallen leaves or limbs from trees within the public right-of-way adjacent to their property.

While Colorado courts are generally disinclined to find that property owners owe a duty to those injured on abutting public property (the "no duty" rule), in *Andrade v. Johnson* the Colorado Court of Appeals explained that abutting property owners may be held liable for injury on a municipal sidewalk. Specifically, an ordinance can overcome the "no duty" rule if it clearly and expressly states that a property owner will be civilly liable for violating the ordinance. Although municipal ordinances can impose civil penalties and related liability on property owners who fail to comply, it does not eliminate the possibility of municipal liability.

This column is not intended and should not be taken as legal advice. Municipal officials are always encouraged to consult with their own attorneys.

RESEARCH CORNER

First week in October is Public Power Week

Public Power Week is an annual national observance coordinated by the American Public Power Association, the voice of not-for-profit, community-owned utilities that power 2,000 towns and cities nationwide. Its members strengthen their communities by providing superior service, engaging citizens, and instilling pride in community-owned power. More at <https://bit.ly/3DX32Qc>.

Colorado municipal utilities are represented by the Colorado Association of Municipal Utilities. Municipal utility systems are self-supporting (not funded through municipal taxes). Learn more at <https://bit.ly/3SEeUe8>.

NATIONALLY

45 million

Served by community-owned electric utilities

\$60 billion

Annual revenue from electricity sales

96,000

People employed by public power utilities

COLORADO

29

Municipal utilities

22

Rural electric cooperatives

2

Investor-owned electric utilities

DID YOU KNOW?

Aside from major adverse events (e.g., storms), customers of a public power utility are likely to be without power for **62** minutes a year, compared to **150** minutes a year for customers of private utilities.

AVERAGE RESIDENTIAL BILL

\$96.90

Municipal utility

\$107.90

Rural electric cooperative

\$110.11

Investor-owned utility

AVERAGE SMALL COMMERCIAL BILL

\$255.69

Municipal utility

\$252.98

Rural electric cooperative

\$267.82

Investor-owned utility

COLORADO'S ELECTRIC UTILITY TIMELINE

1882 Nation's first commercial electric distribution system began operations in Appleton, Wisconsin

1893 Colorado General Assembly passes legislation authorizing municipal electric services

1913 Colorado adopts Public Utilities Law, creating the Public Utilities Commission (PUC)

1926 *City of Lamar v. Town of Wiley*. Colorado Supreme Court rules that a public utility providing service to customers beyond municipal limits is subject to regulatory jurisdiction by the PUC

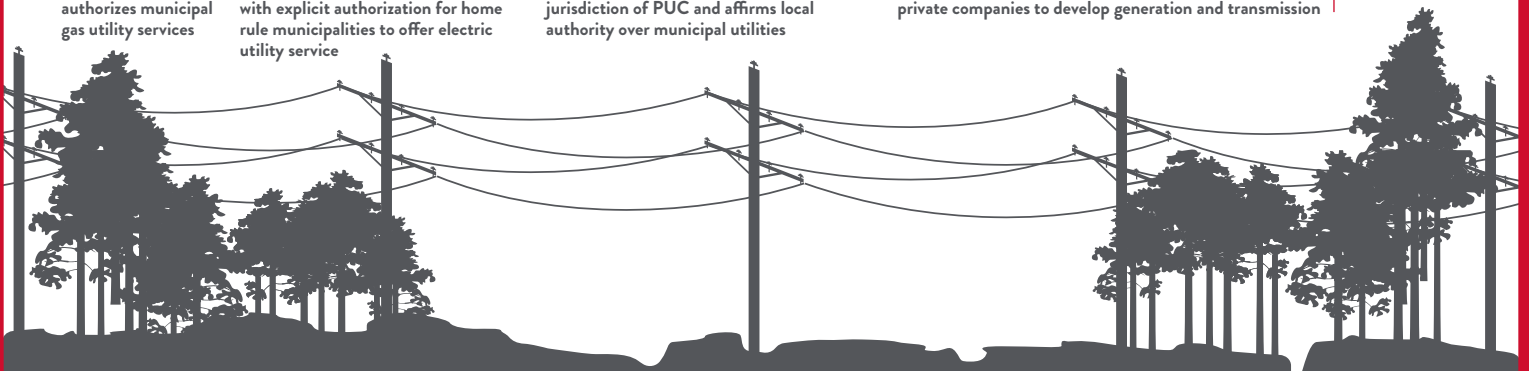
1983 Colorado General Assembly limits PUC regulatory jurisdiction in instances in which the municipal utility charges identical rates within and outside municipal boundaries

1887 Colorado General Assembly authorizes municipal gas utility services

1902 Colorado voters approve municipal home rule amendment, with explicit authorization for home rule municipalities to offer electric utility service

1924 *Town of Holyoke v. Smith*. Colorado Supreme Court limits jurisdiction of PUC and affirms local authority over municipal utilities

1974 Amendment to Colorado Constitution authorizing municipalities to act jointly with other municipalities or private companies to develop generation and transmission



Timeline source: CAMU, *A Brief History of Municipal Electricity in Colorado*, Joe Wilson, Esq



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- DOLA OFFERS MATCHING GRANTS FOR BIPARTISAN INFRASTRUCTURE LAW PROJECTS
- RESEARCH CORNER: COMMUNITY-OWNED UTILITIES KEEP COLORADO POWERED UP
- LEGAL CORNER: MUNICIPAL RESPONSIBILITY FOR TREE MAINTENANCE

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NEWSLETTER

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