

**2017 ANNUAL SEMINAR ON
MUNICIPAL LAW**
*Emerging Issues in Municipal
Finance Law*
October 7, 2017
 Dee Wisor
 Butler Snow LLP



The contents of this presentation reflect the view of the presenter, not of CML.

TOPICS TO BE COVERED TODAY


- Litigation
- Legislation
- TABOR
- Gallagher
- Federal Matters



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LITIGATION

- TABOR
- Fee vs. Tax
- Tax Increment
- Dealing with citizen threatened litigation
- Moving a political subdivision




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LITIGATION

Landmark Towers Association, Inc. v. UMB Bank, N.A., Colorado Court of Appeals, 2016 COA 61, 14CA2099, 14CA2463.

Whether the court of appeals erred in holding that the ten-day period in which to contest an election under section 1-11-213(4), C.R.S. (2016), of the Election Code does not bar the respondents' challenge to the special district's TABOR election in this case.




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LITIGATION

Landmark Towers Association, Inc. v. UMB Bank, N.A., Colorado Court of Appeals, 2016 COA 61, 14CA2099, 14CA2463.

- Whether the court of appeals erred in holding that the thirty-day limitations period in section 11-57-212, C.R.S. (2016), of the Supplemental Public Securities Act does not bar the respondents' challenge to the special district's TABOR election in this case.




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LITIGATION

Landmark Towers Association, Inc. v. UMB Bank, N.A., Colorado Court of Appeals, 2016 COA 61, 14CA2099, 14CA2463.

- Whether the court of appeals erred in holding that the special district's TABOR election in this case was invalid because the special district's organizers' contracts did not make them eligible electors under section 32-1-103(5)(b), C.R.S. (2016), of the Special District Act.



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LITIGATION

Landmark Towers Association, Inc. v. UMB Bank, N.A., Colorado Court of Appeals, 2016 COA 61, 14CA2099, 14CA2463.

- Oral Argument was held on September 20, 2017

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LITIGATION

Colorado Union of Taxpayers Foundation v. City of Aspen, Colorado Court of Appeals, 2015COA162, 14CA1869, November 5, 2015

Whether Aspen's levying of a \$0.20 charge on every disposable paper bag provided by a grocer, which was imposed for the primary purpose of affecting customers' behavior and to fund services available to all Aspen residents, is a tax subject to TABOR.

What standard of review a court should apply when deciding whether the levying of a charge by a local government, without voter approval, violates TABOR.

Oral argument was on June 7, 2017.

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LITIGATION

National Federation of Independent Business v. Wayne Williams, Colorado Department of State, and the State of Colorado, Colorado Court of Appeals, 2015 CA 2017.

Are the business licensing charges imposed by the Secretary of State a fee or a tax since the monies are appropriated to defray general expenses of the Department?

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LITIGATION

TABOR Foundation v. Colorado Department of Healthcare Policy and Financing et al, Denver District Court, 2015CV32305.

Whether the hospital provider fee is a tax or a fee?

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LITIGATION

Tabor Foundation v. Regional Transportation District, Colorado Court of Appeals, 2016COA102, 15CA0582.

Whether H.B. 13-1272, which permits the Regional Transportation District and the Scientific and Cultural Facilities District to levy sales taxes on items previously exempt from sales taxes, requires voter approval under the Taxpayer's Bill of Rights (TABOR), Colo. Const. Art. X, § 20(4)(a).

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LITIGATION

Tabor Foundation v. Regional Transportation District, Colorado Court of Appeals, 2016COA102, 15CA0582.

Whether a taxpayer must prove "beyond a reasonable doubt" that a district's levying of taxes without voter approval violates the Taxpayer's Bill of Rights (TABOR), Colo. Const. art. X, § 20(4)(a).

Oral Argument scheduled for November 14, 2017.

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LITIGATION

Kerr et al v. Hickenlooper, Civil Action No. U.S. District Court, No. 11-CV-1350-WJM-BNB.

Does TABOR violate Article IV, Section 4 of the US Constitution which guarantees to all States a republican form of government?

Current status is District Court has granted the motion to dismiss and the plaintiffs have appealed to the 10th Circuit.

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LITIGATION

M.A.K. Investment Group LLC v. City of Glendale and Glendale Urban Renewal Authority, United States District Court for the District of Colorado, 15-CV-02353.

Challenge to the constitutionality of Colorado's Urban Renewal Law, both facially and as applied, arising out of a blight determination made by the city of Glendale and the Glendale Urban Renewal Authority concerning Plaintiff's property.

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LITIGATION

Longs Peak Metropolitan District v. City of Wheat Ridge, Jefferson County District Court, 2017CV30542.

Challenge to the constitutionality of City Charter amendment which required voter approval for many TIF arrangements.

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LITIGATION

South Metro Fire Rescue Fire Protection District v. Parker Authority for Reinvestment, Douglas County District Court, 2017CV30549.

Challenge that TIF may not be collected unless bonds or other indebtedness are issued. Assertion is that redevelopment agreements are not sufficient.

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LITIGATION

Eric Sutherland v. Poudre School District R-1, Colorado Court of Appeals, 2017CA1178.

School District is attempting to resolve threats of litigation by community activist challenging District's bond issue by way of declaratory judgment action and a companion *in rem* proceeding pursuant to C.R.S. § 11-57-213.

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LITIGATION

Public Service Company of Colorado v. City of Boulder, Colorado Court of Appeals, 2016COA138, 15CA1371

Whether the court of appeals erred in concluding that two Boulder municipal ordinances were not final actions for the purpose of judicial review under C.R.C.P. 106.

Whether the court of appeals erred in vacating the district court's judgment rather than remanding the case for further findings regarding subject matter jurisdiction.

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LITIGATION

Bill Barrett Corporation v. Sand Hills Metropolitan District, Colorado Court of Appeals, 2016COA144, 15CA0765

"We must determine whether the district modifications at issue here - the 2009 addition of the 70 Ranch property (outside of Lochbuie and within Weld County) and the 2011 complete geographic shift to the 70 Ranch property (removing all Lochbuie property) along with the district's shift from a local focus with the purpose of providing local necessities for the construction of the Altamira Development to a regional focus providing services beyond Lochbuie's boundaries - exceeded the scope of the 2004 plan and constituted material modifications requiring the approval of the Board of County Commissioners of Weld County."



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TABOR

Tourism Improvement Districts-City and County of Denver

City Council passed an ordinance to enable the creation of Tourism Improvement Districts with the power to levy taxes, fees or assessments on lodging businesses (with 50 or more rooms), or upon persons purchasing lodging, to fund tourism improvements and services.


Compare to Aurora's Gaylord financing plan which was held to violate TABOR by Judge Tow in *Bishop et al. v. City of Aurora et al.*, Adams County District Court, 2104CV30384.


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TABOR

Why this provision of TABOR might mean that a refund is due to taxpayers even for a government which is debreduced:


- "Except by later voter approval, if a tax increase or fiscal year spending exceeds any estimate in (b) (iii) for the same fiscal year, the tax increase is thereafter reduced up to 100% in proportion to the combined dollar excess, and the combined excess revenue refunded in the next fiscal year."


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LEGISLATION

SB 17-267-The Grand Bargain


- Constitutional issues
 - Single subject
 - Is the Hospital Provider fee really a tax?
 - Is the Hospital Provider Enterprise a TABOR enterprise?
- Drafting error regarding marijuana taxes.


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LEGISLATION

SB 17-279 Applicability of Recent Urban Renewal Legislation


- Cleans up applicability provision of HB 15-1348


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LEGISLATION

HB 17-1349 Residential Assessment Ratio


- Reduces the ratio from 7.96% to 7.20%


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ELECTIONS

How might a government vote to offset the impacts of the residential assessment ratio?

- Basic tax increase
 - SHALL DISTRICT TAXES BE INCREASED \$_____ IN TAX COLLECTION YEAR 2018 AND BY SUCH ADDITIONAL AMOUNTS AS MAY BE COLLECTED ANNUALLY THEREAFTER BY AN ADDITIONAL MILL LEVY OF __ MILLS....




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ELECTIONS

How might a government vote to offset the impacts of the residential assessment ratio?

- An evergreen question to allow mill levy increases to offset residential ratio adjustments.
 - SHALL DISTRICT TAXES BE INCREASED BY \$_____ IN TAX COLLECTION YEAR 2018, AND BY SUCH ADDITIONAL AMOUNTS AS MAY BE COLLECTED ANNUALLY THEREAFTER BY INCREASING THE DISTRICT'S MILL LEVY TO RECOVER TAX REVENUE LOSSES CAUSED BY DECREASES IN THE STATE-WIDE RESIDENTIAL ASSESSMENT RATIO (ARTICLE X, SECTION 3 OF THE COLORADO CONSTITUTION, COMMONLY KNOWN AS THE "GALLAGHER AMENDMENT")?




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ELECTIONS

Fair Campaign Practices Act


- *Keim v. Douglas County School District*, Colorado Supreme Court, 2017 CO 81, 397 P.3d 377 (2017)
 - Compare to *Skruch v. Highlands Ranch Metropolitan Districts Nos. 3 and 4*, Colorado Court of Appeals, 107 P.3d 1140, (2004)



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ELECTIONS


No agency, department, board, division, bureau, commission, or council of the state or any political subdivision of the state shall **make any contribution** in campaigns involving the nomination, retention, or election of any person to any public office, nor shall any such entity make any donation to any other person for the purpose of making an independent expenditure, nor shall any such entity **expend any moneys** from any source, or make any contributions, to urge electors to vote in favor of or against any [ballot issue, referred measure, or recall measure]



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FEDERAL GOVERNMENT


- Administration's proposed tax reform plan
 - Tax exempt bonds
 - State and local tax deductibility
- Administration's Infrastructure Plan
 - Increased use of Public Private Partnerships



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FEDERAL GOVERNMENT

- SEC continues to pursue local governments and local government officials in enforcement actions.
 - Public Finance Abuse Unit in Division of Enforcement



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FEDERAL GOVERNMENT

- MSRB has issued advisory about selective disclosure
 - <http://www.msrb.org/~media/Files/Regulatory-Notices/Announcements/2017-18.ashx>

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FEDERAL GOVERNMENT

- IRS proposed regulations on what constitutes a political subdivision for federal tax purposes.

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QUESTIONS?

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