

COLORADO COURT OF APPEALS

No. 81-CA-0377

CITY OF GREELEY, COLORADO, et al.,)	
)	
Plaintiffs-Appellees,)	APPEAL FROM THE DISTRICT COURT
)	OF THE
)	COUNTY OF WELD, STATE OF COLORADO
v.)	
)	
)	
BOARD OF COUNTY COMMISSIONERS,)	HONORABLE
COUNTY OF WELD, STATE OF)	JONATHAN W. HAYS
COLORADO, et al.,)	JUDGE
)	
Defendants-Appellants.)	

BRIEF OF THE COLORADO MUNICIPAL LEAGUE
AS AMICUS CURIAE

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STATEMENT OF THE ISSUES

The Colorado Municipal League ("League") adopts the statement of the issues appearing in the brief of the City of Greeley and other appellees.

STATEMENT OF THE CASE

The Colorado Municipal League adopts the statement of the case appearing in the brief of the City of Greeley and other appellees.

SUMMARY OF THE ARGUMENT

The decision of the District Court should be affirmed. The actions of Weld County at issue not only impair the objectives sought to be achieved by the General Assembly through the road and bridge fund statutes, but also directly violate those statutes and the statutes prohibiting transfers of county general fund money for road and bridge fund purposes.

ARGUMENT

I. SOURCES OF REVENUE TO THE COUNTY ROAD AND BRIDGE FUND ARE LIMITED TO MONEY RECEIVED BY THE COUNTY SPECIFICALLY FOR ROAD AND BRIDGE PURPOSES.

A. Introduction and background.

This case involves an attempt by Weld County to increase county revenue by circumventing a statutory requirement that the county share with its municipalities the proceeds of the county road and bridge mill levy. The reasons for this lawsuit, and for Weld County's actions, can be better understood by reviewing two separate statutes: the county road and bridge fund statutes and the statutes restricting the amount of

annual increases in county property tax revenue.

In 1970, the General Assembly adopted House Bill No. 1037, amending the county road and bridge fund statutes. 1970 Colo. Sess. Laws 320-321 (hereinafter referred to as H.B. 1037). (H.B. 1037 is reprinted in Appendix A of this brief.) The bill required counties to return to their municipalities, fifty percent of the revenue raised by applying the county road and bridge mill levy to property located within the municipalities.

H.B. 1037 resulted from a recommendation of the Highway Revenue Committee ("Highway Committee") of the Colorado General Assembly which met during 1969 to study highway revenues. The evidence received by the Committee and its findings and recommendations are set forth in the "Report to the Colorado General Assembly, Highway Revenue Committee, Research Publication No. 150, December 1969" (Plaintiff's Exhibit 11, hereinafter referred to as "Highway Report"). The Highway Report notes that municipal residents were paying significant amounts of county taxes for road and bridge purposes, but that generally none of the tax money was being returned to the cities for their highway needs. Highway Report at 7 - 8. The Committee found that large increases in the assessed valuations of municipalities resulted in a windfall to the county road and bridge fund since the county road and bridge mill levy applied in both the incorporated and unincorporated areas:

Growth of the cities and towns has resulted in a large increase in their assessed valuations, at a rate fifty percent greater than the increase in valuation of property outside their boundaries. Such increase in municipal valuation has resulted in a windfall to the county road and bridge funds because of the county-wide application of the county road and bridge levy.

Generally, the counties have not shared this windfall with their cities and towns; only in Arapahoe and Jefferson Counties does there exist any

consistent policy of revenue sharing and this procedure (sic) is not sanctioned by law.

There exists a demonstrated need in cities and towns for a larger share of all taxes paid for road and highway purposes.

Highway Report at 9. Based in part on this evidence, the Committee recommended legislation requiring the fifty percent return to municipalities.

Highway Report at 10. The recommendation was embodied in H.B. 1037, and is now found in C.R.S. 1973, 43-2-202 and 43-2-203.

Also particularly applicable is C.R.S. 1973, 29-1-301 (1977 Repl. Vol.), as amended, which imposes on each county and statutory (non-home rule) municipality an annual seven percent limit on property tax revenue increases. The statute requires, in part, that all statutory tax levies of a county be reduced so as to prohibit the levying of a greater amount of revenue than was levied in the preceding year plus seven percent, with certain exceptions from the limit. An increase above the seven percent limit is allowed only if approved by the division of local government or by the electors. C.R.S. 1973, 29-1-301(2) (1977 Repl. Vol.). This seven percent limit applies to home rule counties unless the county home rule charter contains provisions at least as restrictive as the statutes. C.R.S. 1973, 29-1-301(3) (1977 Repl. Vol.). (The League understands that the Weld County home rule charter contains a five percent limit on annual increases.)

By examining these separate statutes -- the fifty percent sharing requirement of the county road and bridge fund mill levy and the annual seven percent (or five percent) property tax revenue limit -- some counties have discovered that if moneys from sources other than the road and bridge mill levy are used for road and bridge purposes, the counties will not have to share any revenue with their municipalities. Instead,

they will receive increased revenue (the municipality's fifty percent share from the road and bridge fund mill levy) without exceeding or affecting the annual seven (or five) percent property tax revenue limit. Assume, for example, a total county mill levy of four mills, with three mills allocated to the general fund and one mill to the county road and bridge fund. Assume further that these four mills raise an annual revenue of \$40,000. As a result of the county road and bridge fund statutes, the county must share a portion of the one mill road and bridge fund levy (a portion of \$10,000) with the municipalities in the county. If, instead, all four mills are allocated to the county general fund, no sharing requirement exists and the county's revenues are automatically increased by the amount previously shared with the municipalities, all without affecting the statutory seven percent limit. The county general fund retains all \$40,000 but has not levied any greater amount of revenue than the prior year. The county may then attempt to transfer or appropriate county general fund money to the road and bridge fund to pay necessary road and bridge expenses, but no municipal sharing requirement applies to that general fund money.

Unfortunately, by this type of county action, the residents in the affected municipalities generally receive no corresponding decrease in the county mill levy applicable to their property or in the amount of taxes they pay to the county. Instead, the municipal residents may be required to pay additional municipal taxes to replace the municipal revenue lost as a result of the county action.

In this case, Weld County¹ sought to circumvent the municipal sharing requirement of the county road and bridge fund statutes as previously described, by transferring or appropriating general fund money to the road and bridge fund and thereby avoiding a road and bridge fund mill levy and the sharing requirement applicable to such a levy. The District Court, however, ruled their action invalid, holding:

That §43-2-202, C.R.S. 1973, as amended, limits the sources of revenue for funding to the end that municipalities receive back a portion of the taxes paid by their residents. To permit the County to fund the Road and Bridge Fund from sources not expressly authorized or designated for the purpose of road and bridge construction, maintenance, or administration to the end that real property tax revenue need not be channeled

¹ Weld County is not the only county to attempt to finance the road and bridge fund with moneys not specified in 43-2-202. In City of Colorado Springs v. Board of County Commissioners, El Paso County District Court No. 80 CV 2999 (1981), the District Court enjoined El Paso County from undertaking a similar course of action. (See Appendix B for a copy of the Court's final order.) Consistent with the District Court of Weld County, the El Paso County District Court held that:

[O]nce the County adopts a road and bridge fund pursuant to Section 43-2-202, C.R.S. 1973, monies for the Road and Bridge Fund can come only from a mill levy pursuant to Section 43-2-202, C.R.S. 1973 and other sources of funding set forth in Section 43-2-202; that Section 30-25-106, C.R.S. 1973 prohibits the use, transfer or appropriation of monies either in or properly accruable to the County General Fund from that fund to the Road and Bridge Fund; that Section 29-1-111.5, C.R.S. 1973 does not permit the transfer of County General Funds to the Road and Bridge Fund after the beginning of the fiscal year.

Appendix B at 3 - 4.

into the fund, is to permit the municipalities of Weld County to be deprived of any portion of the revenue apportioned to the cities by statute, and would permit the County to circumvent what the Court concludes is the clear intent of the Statute. The Court concludes that the term "... any other money ..." applies to sources of revenue or funds which are designated by the source itself, by statute, or by case law, as funds earmarked for road and bridge or highway purposes. The interpretation offered by the Defendants, to the extent that the County may designate any source of revenue as being for the purposes defined in §43-2-202, C.R.S. 1973, as amended, is too broad.

Order of the District Court at 2. The District Court's decision is supported by the language and legislative history of C.R.S. 1973, 43-2-202 and 43-2-203, and by settled rules of statutory construction, and should be affirmed.

B. The language and legislative history of 43-2-202 limit the sources of revenue going into the county road and bridge fund.

The language of the county road and bridge fund statutes expressly limits the source of revenue which may be used to finance the fund to moneys received specifically for road and bridge purposes from the state or federal governments or from other sources:

43-2-202. County road and bridge fund - apportionment to municipalities. (1) A fund to be known as the "county road and bridge fund" is created and established in each county of this state. Such fund shall consist of the revenue derived from the tax authorized to be levied under section 43-2-203 for road and bridge construction, maintenance, and administration, all moneys received by the county from the state or federal governments for expenditure on roads and bridges, and any other moneys which may become available to the county for such purpose.

(These specific revenue sources are repeated in C.R.S. 1973, 43-2-203, which requires each county to adopt annually a county road and bridge budget and authorizes the county to impose the road and bridge fund mill levy.)

Weld County has argued that the phrase used in 43-2-202(1), "other money which may become available to the county for such purposes," is broad enough to encompass the moneys the County transferred into the road and bridge fund. The District Court, however, was correct in narrowly construing the statutory phrase to refer only to moneys specifically earmarked for road and bridge construction, maintenance and administration:

"... [A]ny other money ..." applies to sources of revenue or funds which are designated by the source itself, by statute, or by case law, as funds earmarked for road and bridge or highway purposes. The interpretation offered by the Defendants, to the extent that the County may designate any source of revenue as being for the purposes defined in §43-2-202, C.R.S. 1973, as amended, is too broad.

Order of the District Court at 2. The Court's conclusion is supported by the legislative history of 43-2-202, as it evolved from its original adoption in 1951 by S.B. 146. 1951 Colo. Sess. Laws 732 (hereinafter referred to as S.B. 146, reprinted in Appendix C). S.B. 46 provided:

Section 1. *Fund Created--Consisting of.*
A fund to be known as the "county road and bridge fund" is hereby created and established in each of the counties of the State of Colorado. The county road and bridge fund shall consist of all moneys received from state and federal sources to be expended by a county for road and bridge construction, maintenance and

administration; appropriation by the county commissioners; and all other moneys available for road and bridge purposes.

Section 2. *Tax Levy--Budget.* The county commissioners are hereby authorized to make a tax levy sufficient, when added to the estimated cash balance on hand at the beginning of the next fiscal year and the estimated revenue from all other sources except that derived from county taxation, to provide the necessary funds in accordance with the budget. As a part of the county budget and in conformity with the local budget law, a county road and bridge budget shall be adopted.

The road and bridge fund statutes remained essentially the same until the adoption of H.B. 1037 in 1970.

As previously discussed, House Bill 1037² imposed the fifty percent municipal sharing requirement on the proceeds of the road and bridge fund mill levy. In addition, the bill eliminated "county appropriations" as a source of revenue for the road and bridge fund. These two actions were consistent and necessary to insure that the county assess the road and bridge mill levy if other earmarked road and bridge revenues were insufficient. Had "county appropriations" been included as a means of financing the fund, a county could easily have circumvented the road and bridge mill levy by appropriating other county revenue into the road and bridge fund.

C. Settled rules of statutory construction require limitations on the sources of revenue going into the county road and bridge fund.

Under settled rules of statutory construction, an entire act must

²H.B. 1037, as enacted, pertained only to the calendar years 1971, 1972, and 1973. However, these limits were removed by legislation enacted in 1973. 1973 Colo. Sess. Laws 1230-1231 (S.B. 26, reprinted in Appendix D).

be read as a whole. In Re Interrogatories By the Governor as to Senate Bill No. 121, 163 Colo. 113, 429 P.2d 304 (1967). See also, Wheeler v. Rudolph, 162 Colo. 410, 426 P.2d 762 (1967); Clark v. Fellin, 126 Colo. 519, 251 P.2d 940 (1952); 2A Sands, Sutherland on Statutory Construction §46.05 (4th ed. 1972); and C.R.S. 1973, 2-4-201 (1980 Repl.Vol.). A reviewing court must not look to isolated words and expressions. Public Utilities Commission v. Stanton Transportation Company, 153 Colo. 372, 386 P.2d 590 (1963). See also, In re Webb's Estate, 90 Colo. 470, 10 P.2d 947 (1932).

Applying these rules to the road and bridge fund statutes, it is apparent that the phrase used in section 43-2-202, "any other moneys which may become available to the county for such purposes," must be given a limited construction. If the phrase is interpreted to allow the county broad authority to appropriate or transfer a variety of moneys into the road and bridge fund, the entire statutory scheme would be altered. There would be no reason to establish a specific fund for road and bridge purposes. There would be no reason to specifically designate the revenues which may be used to finance that fund. Furthermore, a broad interpretation destroys any incentive for financing the fund by the road and bridge mill levy. It would render unnecessary the requirement of 43-2-203 that counties share with municipalities the revenues stemming from imposition of the road and bridge mill levy. On the other hand, restricting the phrase, as the District Court did, to those revenues specifically earmarked for road and bridge purposes, renders nothing meaningless and instead furthers the statutory scheme.

Moreover, the rule of ejusdem generis applies to interpret the

meaning of the phrase, "and any other moneys," as used in section 43-2-202, since that phrase follows a listing of specific revenue sources. Lyman v. Town of Bow Mar, 188 Colo. 216, 533 P.2d 1129 (1975). See also. City and County of Denver v. Taylor, 88 Colo. 89, 292 P. 594 (1930); and Climax Dairy v. Mulder, 78 Colo. 407, 242 P. 666 (1926). Under the rule of ejusdem generis, where a statute refers to a particular class, after which it uses general words, the class first mentioned is deemed the most comprehensive and the following general words are treated as referring to matters of the same kind within such class. Sheely v. People, 54 Colo. 135, 129 P. 201 (1913). See also, 2A Sands, Sutherland on Statutory Construction §47.17 (4th ed. 1972).

The importance and purpose of the rule is described by the Supreme Court in Climax Dairy v. Mulder, 242 P. at 669:

This is not merely a technical rule to limit or avoid the grasp of a statute; on the contrary, it is to prevent a stretch of meaning beyond the legislative intent; it is to determine with accuracy what was in its mind; it is a very old rule of interpretation that has long proven indispensable to those engaged in getting at the meaning of what others have written.

In fact, the Court's application of the rule in Climax Dairy v. Mulder, supra, is analogous to this case. The Court was asked to determine whether a particular trade mark statute pertained to milk. The particular statute contained a list of specific beverages followed by the general phrase "other beverages". The Court applied the rule of ejusdem generis and held the phrase "other beverages" did not include milk:

This rule (ejusdem generis) limits the application of the above general words, "or other beverages," to things in the nature of soda or mineral waters, ale, beer, porter, cider, or wine... It (milk) is

unlike any of the particularly enumerated things mentioned in the act; it comes within a wholly different group or class, and in importance may be said to excel all of the things combined in the other classes named in the statute. If it was intended that this law should include milk or dealers in milk, we think that such word would have been one of the first that the lawmakers would have thought of, and that they would have put it in the act, and that they did not intend to conceal the thought of this common and most essential commodity underneath an alias of "other beverages", nor in any "et cetera" clause to the main idea.

Climax Dairy v. Mulder, 242 P. at 669. Similarly, in City and County of Denver v. Taylor, *supra*, the Court held that a "municipal auditorium" was not a "public place" within the meaning of the Denver charter which referred to "streets, avenues, alleys, sidewalks or other public places of the city and county":

The phrase, "or other public places," immediately following the specifically enumerated "streets, avenues, alleys, sidewalks," must be interpreted to include only other such places or other similar places used for animal or vehicular travel, and cannot be held to include public places to which one resorts for entertainment, or amusement, such as a municipal auditorium, pavillion, theater, or amusement park.

City and County of Denver v. Taylor, 292 P. at 596 - 597.

Applying the above principles to this case, the phrase "other such moneys," as used in section 43-2-202, refers only to other revenue sources which have been specifically earmarked for road and bridge purposes, as the District Court in this case found. If the General Assembly had intended county revenues from cigarette taxes, interest earnings, treasurer's fees, clerk and recorder's fees, assessor fees and sheriff's fees to be used to finance the county road and bridge fund, it would not have included them under "the alias" of the phrase "other moneys for

such purposes."

Thus, the language and legislative history of 43-2-202 and 43-2-203, and applicable rules of statutory construction, establish that the county road and bridge fund is to be financed solely by revenues received by the county which are specifically earmarked for road and bridge purposes. The efforts of Weld County to use other money for road and bridge purposes violates the statutory limitations.

II. STATE LAW PROHIBITS ANY TRANSFER OF MONEY FROM THE COUNTY GENERAL FUND TO THE ROAD AND BRIDGE FUND.

- A. The language of C.R.S. 1973, 30-25-106 expressly prohibits the transfer of county general fund money to the road and bridge fund.

The clear intent and effect of the state statutes establishing the county funding scheme is to prevent the use of county general fund money for road and bridge expenditures, and to limit such expenditures to the sources of revenue set forth in the county road and bridge fund statutes, previously described.

Colorado statutes closely and comprehensively regulate county funds and expenditures. Statutory provisions establish a general fund in each county, determine what county revenue goes into the general fund, and regulate the proper expenditures from the the general fund:³

30-25-105. County general fund. A fund to be known as the county general fund is hereby created and established in each of the counties of the state of Colorado. The county general fund shall consist of all county revenue except that specifically allocated by law for other purposes.

³C.R.S. 1973, 30-25-105 (1977 Repl.Vol.), and C.R.S. 1973, 30-25-106 (1980 Cum.Supp.).

30-25-106. Fund - purposes. (1) The board of county commissioners is authorized to appropriate money from the county general fund for all ordinary county expenses, including the administrative expenditures of elective and appointive offices, library, agricultural extension service, fire protection, fairs, advertising, airports, health, rodent control, water conservation, weed control, pest control, predatory animal control, and all other general county purposes authorized by law, except expenditures for public welfare, roads and bridges, debt service, public hospitals, public works, contingencies, and purposes voted by the electors.

(2) The board of county commissioners is authorized to appropriate money from the general fund derived from federal payment in lieu of taxes to public school districts containing lands from which the payment is derived. (Emphasis added.)

The statutes create special funds for most of those types of county expenditures which are excepted from the county general fund (underlined in the above-quoted statute), and the statutes create special sources of revenue for most of those special funds. See, e.g., the road and bridge fund established by C.R.S. 1973, 43-2-202, as amended; the contingent fund established by C.R.S. 1973, 30-25-107 (1977 Repl.Vol.); the public works fund established by C.R.S. 1973, 30-25-202 (1977 Repl.Vol.); and the bond redemption fund in C.R.S. 1973, 30-26-105 (1977 Repl.Vol.).

It is apparent from the language of 30-25-106 and the county funding scheme that road and bridge expenditures are to be made not from the general fund, but only from the special road and bridge fund and from the special sources of revenue properly allocated thereto pursuant to the road and bridge fund statutes, C.R.S. 1973, 43-2-202 and 43-2-203, as amended. Weld County, however, argues that the language of 30-25-106 prohibits only "appropriations" from the county general fund for road and bridge expenditures; that it does not prohibit "transfers" from the general fund

to the road and bridge fund. (Brief for Defendants-Appellants at 9 10) While the County agrees it cannot "appropriate" or "expend" general fund money for road and bridge purposes pursuant to 30-25-106, it argues that it can "transfer" general fund money to the road and bridge fund pursuant to C.R.S. 1973, 29-1-111.5 (1980 Cum.Supp.) and thereafter expend the money for road and bridge purposes. Such an interpretation of the statute is unwarranted, however, as the District Court found.

B. State law permits transfers between county funds only if no substantive limitation on the use of the affected funds otherwise exists.

C.R.S. 1973, 29-1-111.5 (1980 Cum.Supp.) does not authorize the transfer of county general fund money to the road and bridge fund. That section was enacted in 1979 as a part of Senate Bill No. 270, 1979 Colo. Sess. Laws 1123 (hereafter referred to as S.B. 270, reprinted in Appendix E).

S.B. 270 amended the Local Government Budget Law of Colorado, C.R.S. 1973, part 1 of article 1 of title 29 (1977 Repl.Vol.), and established procedures for affected local governments to follow in accomplishing budgetary transfers and adopting supplementary budgets and appropriations during a fiscal year. Local governments which are subject to the Local Government Budget Law, and thus affected by S.B. 270, include statutory (non-home rule) cities and towns, counties, and special districts. C.R.S. 1973, 29-1-102 (1977 Repl.Vol.).

Contrary to Weld County's assertions, S.B. 270 did not repeal the statutory limitations imposed on the use of county general fund money. Instead, the transfer provisions of S.B. 270 must be applied in harmony with the substantive limits placed on county general funds by section

30-25-106, to permit the transfer of money from one fund to another fund of a local government only when no specific substantive limitation on the use of such moneys otherwise exists. The County has argued that this method of harmonizing the statutes blocks the legislature's goal in adopting 29-1-111.5, i.e., to provide local governments greater flexibility and discretion in budgetary matters. That is not correct. If the statutes are so harmonized, the County retains its ability to transfer money among funds where there is no substantive restriction on the use of such funds. This method of harmonizing 30-25-106 and 29-1-111.5 does not grant the County all the flexibility it desires, but it permits additional flexibility in transfers while retaining the effectiveness of each of the applicable statutes.

This method of harmonizing the county general fund and the transfer statutes also is consistent with settled rules of statutory construction. Colorado has consistently followed the rule that specific statutes prevail over general statutes, even though the general statute may have been enacted at a later date. Particularly applicable is Walker v. District Court, Colo., 606 P.2d 70, 73 (1980):

The earlier statute is concerned only with habitual offenders of motor vehicle operation laws. More specifically, the statute determines their punishment if they drive, in a non-emergency situation, after being prohibited from doing so. In contrast, the later statute describes the availability and mechanics of the deferred sentencing process. It is a statute of general application, just as was the probation statute in [People v. Burke, 185 Colo. 19, 521 P.2d 783 (1974)]. Furthermore, as in Burke, the later statute makes no mention of an intent to repeal existing statutes requiring mandatory sentences for their violation. Even though the general expression postdates the specific one, absent a

manifest legislative intent that the later provision prevail, the earlier, specialized expression remains effective. (Emphasis added.)

The similarity between the circumstances of the Walker case and the instant case is apparent. Here, the earlier statute (30-25-106, prohibiting use of county general fund money for road and bridge purposes) speaks only to a county's use of general fund money. As in Walker, the later enacted statute (S.B. 270 permitting all affected local government to transfer money between funds under appropriate circumstances) is of general application and expresses no intent to repeal existing statutes restricting the use of county general fund money. Certainly, there is a total absence of any "manifest legislative intent" that the later general provision prevail over the earlier, specialized expression. See also, Associated Students v. Regents, 189 Colo. 482, 543 P.2d 59 (1975); State v. Dayhoff, Colo., 609 P.2d 119 (1980); Kuckler v. Whisler, 191 Colo. 260, 552 P.2d 18 (1976); 2A Sands, Sutherland on Statutory Construction §51.05 (4th ed. 1972); and C.R.S. 1973, 2-4-205 (1980 Repl.Vol.).

The county suggests that, in a few cases, the courts have not always applied the specific statute, citing Dye Construction Co. v. Dolan, 41 Colo.App. 293, 589 P.2d 497 (1979) and Bagby v. School District No. 1, 186 Colo. 428, 528 P.2d 1299 (1974). Both, however, are consistent with the rule described in Walker. For example, in Dye Construction Co. the Court of Appeals found the required "manifest legislative intent" in the express wording of the more general statute. In Bagby, the Supreme Court found no conflict between the general and specific statute and so both statutes remained applicable.

To hold that the special statute (limiting uses of county general fund money) does not apply to transfers also would violate the rule of statutory construction that implied repeal of statutory provisions are not favored and that general legislation does not repeal conflicting special legislation unless the intent to do so is "clear and unmistakable." People v. District Court, 196 Colo. 249, 585 P.2d 913 (1978); Associated Students v. Regents, supra; People v. Burke, supra; and 1A Sands, Sutherland on Statutory Construction §23.15 (4th ed. 1972). As previously stated, there is no "manifest intent" or "clear and unmistakable" language in S.B. 270 evidencing any intent to repeal the statutes prohibiting use of county general fund money for road and bridge fund purposes.

Moreover, in construing a statute, a court should consider the effect and consequence of an interpretation, and a construction that transfers a statute into an absurdity should be avoided. See, Bachicha v. Municipal Court, 41 Colo.App. 198, 581 P.2d 746 (1978). Interpreting S.B. 270 and 30-25-106 to allow "transfers" of money but not "appropriations" of money from the county general fund would lead to just such an absurd result.⁴ It would allow the county to accomplish indirectly (by transfer) what it cannot accomplish directly (by appropriation).

⁴The county argues that these statutes must be read literally to avoid a conflict. But it is a settled rule of statutory construction that a literal application of statutory words ~~must~~ be avoided when absurd consequences would result or the application would lead to a result not contemplated by the legislature:

[W]here a statute would operate unjustly, or absurd consequences would result from a literal interpretation of terms and words used that would be contrary to its

(continued on next page)

III. THE MUNICIPALITIES HAVE STANDING TO BRING THIS ACTION.

The Colorado test for standing is set forth in Wimberly v. Ettenberg, 194 Colo. 163, 570 P.2d 535, 539 (1977): "The proper inquiry on standing is whether the plaintiff has suffered injury in fact to a legally protected interest as contemplated by statutory or constitutional provisions." This test has been met by the municipal plaintiffs.

The plaintiff municipalities are direct beneficiaries of the statutorily created road and bridge fund, and are significantly injured

obvious and manifest purposes, the intention of the framers will prevail over such a literal interpretation.

People v. Silvola, 190 Colo. 363, 547 P.2d 1283, 1288 (1976), cert. denied, 429 U.S. 886 (1976). See also, 2A Sands, Sutherland on Statutory Construction §46.07 (4th ed. 1972); Weybright v. Klein, 104 Colo. 590, 92 P.2d 734 (1939); and C.R.S. 1973, 2-4-201(1)(c) and (d) (1980 Repl.Vol.).

The county favorably quotes from U.S. v. Dunn, 545 F.2d 1281 (10th Cir. 1976) that separate statutes must be interpreted "in a manner which avoids 'violence to the terms of either but brings both into correlation'..." (Brief for Defendants-Appellants at 13). But the County's assertion that "appropriation" means "appropriation" and "transfer" means "transfer", and consequently a "transfer" is not an "appropriation", not only lacks logic and reason, but also violates the very rules of construction upon which it relies. That assertion does direct violence to the statutory limitations placed on the use of county general fund money by rendering those limitations a nullity. The limitations imposed by 30-25-106 on appropriation and expenditures from the general fund of moneys for road and bridge purposes could be avoided by the mere expedient of a so-called "transfer" under 29-1-111.5.

Notably, in one case (although the particular facts differ from those presented here) it was held that a particular transfer was in fact an appropriation and merely calling the transaction a "transfer" did not make it any less an appropriation. See, Arizona Teachers' Retirement System v. Frohmler, 140 P.2d 615, 616-617 (Ariz. Sup.Ct. 1943). Cf., Beshoar v. Board of County Commissioners of Las Animas County, 7 Colo.App. 435, 43 P. 912 (1896).

when the road and bridge fund is not legally financed. In the present case, the municipalities of Weld County lost their share of the road and bridge fund mill levy which would have been assessed if the County had not illegally financed the road and bridge fund. The extent of this injury can be appreciated by comparing the proposed county budget with the final budget. In the proposed budget, revenue from the road and bridge fund mill levy was estimated at \$2,748,488, revenue which would have been shared with the municipalities of Weld County. Plaintiff's Exhibit 1. In the final budget, this revenue was reduced to zero. Plaintiff's Exhibit 3.

Notably, the district courts of Weld County and El Paso County had no difficulty in holding that the municipalities of their respective counties had standing to challenge attempts on the part of the county to finance the road and bridge fund from revenues not specified by 43-2-202. The District Court in the instant case ruled:

"That under the evidence and allegations, the Plaintiffs have sufficiently demonstrated an injury in fact to a legally protected interest to support their standing to sue."

Order of the District Court at 2. In City of Colorado Springs v. El Paso County, supra (Appendix B at 1), the Court stated: "Plaintiffs have a direct economic benefit in the County Road and Bridge Fund and thus have a ~~direct economic~~ interest in the outcome of this controversy. Consequently Plaintiffs have standing to bring this action."

In arguing that the Plaintiff municipalities lack standing, the County relies on cases decided outside of Colorado which are not factually similar to the instant case. Contrary to certain of the cases cited, the Plaintiff municipalities in this case are not seeking to act on

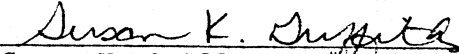
behalf of taxpayers within their boundaries, but instead act as direct beneficiaries of the road and bridge fund. Moreover, in none of the cases relied upon by the County did a municipality allege an injury due to failure of a governing body to legally finance a fund in which, under particular circumstances, the municipality was entitled to share.

Finally, the County ignores recent Colorado Supreme Court decisions which specifically recognize the standing of municipalities where they can show injury to a legally protected interest. Denver Urban Renewal Authority v. Byrne, Colo., 618 P.2d 1374 (1980); City of Colorado Springs v. State of Colorado, Colo., 626 P.2d 1122 (1981); and Board of County Commissioners v. City of Thornton, V The Brief Times Reporter 593 (1981).

CONCLUSION

Based upon the foregoing arguments and authorities, the decision of the District Court should be affirmed.

Respectfully submitted,



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ROADS AND HIGHWAYS

COUNTY ROAD AND BRIDGE FUNDS

(House Bill No. 1037. By Representatives Burch, Edmonds, Jackson, Ed McCormick, Arnold, Baer, Braden, Bryant, Koster, Lamb, H. McCormick, Mullen, Newman, Sack, Sanchez, Shore, Showalter, Singer, Sonnenberg, and Younglund; also Senators Jackson, MacManus, Ohlson, and Stockton.)

A N A C T

CONCERNING COUNTY ROAD AND BRIDGE FUNDS AND THE APPORTIONMENT OF CERTAIN REVENUES ACCRUING TO SUCH FUNDS.

Be it enacted by the General Assembly of the State of Colorado:

Section 1. 120-1-2, Colorado Revised Statutes 1963, is REPEALED AND REENACTED, WITH AMENDMENTS, to read:

120-1-2. County road and bridge fund—apportionment to municipalities.—(1) A fund to be known as the “county road and bridge fund” is hereby created and established in each county of this state. Such fund shall consist of the revenue derived from the tax authorized to be levied under section 120-1-3 for road and bridge construction, maintenance, and administration, all moneys received by the county from the state or federal governments for expenditure on roads and bridges, and any other moneys which may become available to the county for such purpose.

(2) For the calendar years 1971, 1972, and 1973 only, each municipality located in any county of this state shall be entitled to receive from the county road and bridge fund of the county wherein it is located an amount equal to fifty percent of the revenue accruing to said fund from extension only of the levy authorized to be made under section 120-1-3 against the valuation for assessment of all taxable property located within its corporate boundaries; except, that by mutual agreement between such municipality and the board of county commissioners, such municipality may elect to receive the equivalent of such amount in the value of materials furnished, or work performed on roads and streets located within its corporate boundaries, by the county during the calendar year in which such revenue is actually collected; and except, that in all cases where the annual amount of revenue receivable by a municipality from the county road and bridge fund is estimated to be less than two thousand dollars, such estimated amount shall be receivable by such municipality only in the equivalent value of materials furnished, or work performed on roads and streets within its corporate boundaries, by the county during the calendar year in which such revenue is actually collected.

(3) In all cases where a municipality has not elected to receive its share of the county road and bridge fund in equivalent value of materials furnished or work performed by the county, under mutual agreement, it shall

be the duty of the county treasurer, beginning April 15, 1971, and on the fifteenth day of each July, October, January, and April thereafter, but not subsequent to January 15, 1974, to pay over to the treasurer of such municipality, out of the county road and bridge fund, the amount to which such municipality shall have become entitled during the preceding three calendar months.

(4) All moneys received by a municipality from the county road and bridge fund shall be credited to an appropriate fund, and shall be used by such municipality only for construction and maintenance of roads and streets located within its corporate boundaries.

Section 2. 120-1-3, Colorado Revised Statutes 1963, is REPEALED AND REENACTED, WITH AMENDMENTS, to read:

120-1-3. County road and bridge budget—tax levy.—(1) As a part of the total county budget, and in conformity with the "Local Government Budget Law of Colorado", each county shall annually adopt a county road and bridge budget for the ensuing fiscal year, which budget shall show: The aggregate amount estimated to be expended for county road and bridge construction, maintenance, and administration, and the aggregate amount estimated to be paid from the county road and bridge fund to municipalities located within the county, either in cash or in equivalent value of materials to be furnished or work to be performed under mutual agreements with such municipalities, during said fiscal year; the estimated balance in said fund at the beginning of said fiscal year; the aggregate amount estimated to be received from state, federal, or other sources during said fiscal year; and the amount necessary to be raised during said fiscal year from the levy authorized in subsection (2) of this section.

(2) The board of county commissioners in each county is authorized to levy such rate of tax on all taxable property located within the county as shall be required, when added to the estimated balance on hand at the beginning of said ensuing fiscal year and the amount of all revenues, other than property tax revenue, estimated to be received during said fiscal year, to defray all expenditures and payments estimated to be made from the county road and bridge fund during said fiscal year.

Section 3. **Safety clause.**—The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: April 10, 1970

APPENDIX B--EL PASO COUNTY
DISTRICT COURT, FINAL ORDER

DISTRICT COURT, EL PASO COUNTY, STATE OF COLORADO

Civil Action No. 80CV2999, Division 6

FINAL ORDER

THE CITY OF COLORADO SPRINGS, THE CITY OF MONUMENT, THE CITY OF PALMER LAKE, THE CITY OF MANITOU SPRINGS, THE CITY OF RAMAH, THE CITY OF CALHAN, THE CITY OF GREEN MOUNTAIN FALLS, THE CITY OF FOUNTAIN, Plaintiffs,

v.

THE BOARD OF COUNTY COMMISSIONERS OF EL PASO COUNTY, LEO VERVERS, TERRY HARRIS, TOM COLLIER, JR., CHARLES HEIM, TERRY SALT, as members of the Board of County Commissioners of El Paso County, SHARON L. SHIPLEY, as Treasurer of El Paso County and WILLIAM FENCE as El Paso County Budget Officer, Defendants.

THIS MATTER comes on for entry of Final Order and the Court having considered the statements of Counsel, the Briefs, and the previous orders for preliminary injunction entered in this matter and being fully advised in the premises makes the following Findings, Conclusions and Order:

1. Plaintiffs have a direct economic benefit in the County Road and Bridge Fund and thus have a direct economic interest in the outcome of this controversy. Consequently Plaintiffs have standing to bring this action.

2. On December 17, 1979, the Board of County Commissioners of El Paso County (hereinafter "Board") adopted a Road and Bridge Fund budget for Fiscal Year 1980 which contemplated no revenues from the imposition of a mill levy pursuant to Section 43-2-202, C.R.S. 1973 but instead contemplated transfer of non-property tax-derived revenues such as specific ownership tax, cigarette tax, interest earnings, Treasurer's fees, public trustees fees, Sheriff's fees, and other miscellaneous fees accruable to the County General Fund from that fund to the Road and Bridge Fund.

3. On January 24, 1980, by Resolution 80-26, Budget-1, the Board proceeded to transfer the following amounts of money accruable to the County General Fund from that fund to the Road and Bridge Fund for Fiscal Year 1980:

"...of specific ownership tax revenues,
not to exceed \$1,202,215"

"...of cigarette tax revenues not to
exceed \$95,000"

"...of interest earnings revenues not to exceed \$1,200,000"

"...of the aggregate amount of Treasurers, Public Trustees, Sheriffs, and Planning/Zoning fees, not to exceed \$645,000"

4. On December 22, 1980, the Board adopted a budget for the Road and Bridge Fund for Fiscal Year 1981 of \$6,090,235. At the same time, the Board adopted a mill levy of 1.384 mills for the Road and Bridge Fund pursuant to Section 43-2-202, C.R.S. 1973 for Fiscal Year 1981. That mill levy is calculated to raise \$1,486,043 for the Road and Bridge Fund.

5. On December 22, 1980, the Board also adopted Resolution No. 80-336, Budget-24, directing the transfer of \$860,000 from the County Contingency Fund to the County Road and Bridge Fund for use in the 1981 budget year. Pursuant to Section 30-25-107, 29-1-114 and 29-1-115, C.R.S. 1973, counties may establish a contingency fund to take care of emergencies.

6. In order for the Court to rule on this matter, the Court must interpret the following statutes:

A. Section 30-25-106, C.R.S. 1973 which states that the Board of County Commissioners may not appropriate money from the County General Fund for roads and bridges.

B. Section 43-2-202, C.R.S. 1973 provides for the establishment of the County Road and Bridge Fund. Under this Statute, the Fund shall consist of monies derived from the tax authorized to be levied under Section 43-2-203, C.R.S. 1973 for road and bridge construction, maintenance, and administration, all monies received by the County from State or Federal governments for expenditures on roads and bridges, and any other monies which may become available to the County for such purpose.

C. Section 29-1-111.5, C.R.S. 1973 provides that if during the fiscal year, the local governing body deems it necessary in view of the needs of the various departments of the local governing body, it may transfer budgeted and appropriated monies from one or more spending agencies in a fund to one or more spending agencies in another fund.

7. The purpose of Section 29-1-111.5 is to allow all governmental subdivisions with the power to tax, to transfer monies from one fund to another fund if they run short in one fund and have an overage in another fund. Since this transfer cannot take place until after the beginning of a fiscal year, this does not alleviate the necessity of the County setting a budget and providing proper funding for a particular fund before the start of the fiscal year.

8. There is a conflict between Section 29-1-111.5, C.R.S. 1973 which is general in nature, and Section 30-25-106, C.R.S. 1973 which is

specific and which expressly prohibits the transfer of monies from the County General Fund to the Road and Bridge Fund.

9. The Court concludes that it was not the intent of the State Legislature insofar as counties are concerned that Section 29-1-111.5, C.R.S. 1973, allowing transfers between funds after the beginning of the fiscal year repeals the specific express provisions of Section 30-25-106 prohibiting transfers of monies from the County General Fund to the Road and Bridge Fund. Section 29-1-111.5, C.R.S. 1973 does not authorize the transfer of County General Funds to the Road and Bridge Fund after the beginning of a fiscal year. 20 C.J.S., Section 230, Counties, states that where the Legislature expressly designates a particular mode of raising certain funds for a certain purpose, all other modes are excluded. In addition, the Court is of the opinion that Section 29-1-111.5, C.R.S. 1973 permits the transfer of money from one fund to another fund of a local government only when no specific substantive limitation on the use of such monies otherwise exists. This conclusion not only harmonizes the application of the two statutes, but it is also consistent with settled rules of statutory construction. Colorado has consistently followed the rule that specific statutes prevail over general statutes, even though the general statute may have been enacted at a later date. Particularly applicable is the Supreme Court's opinion in Walker v. District Court, ____ Colo. ____, 606 P.2d 70 (1980).

10. There is no question that the Road and Bridge Fund is a special fund, and in establishing this special fund, the Legislature has stated in clear language that each municipality within a county is entitled to share in the proceeds from the mill levy pursuant to Section 43-2-202, C.R.S. 1973 for the construction and maintenance of roads and bridges within the municipality. If the County were permitted to fund the Road and Bridge Fund from sources other than the mill levy, such as the County General Fund, the municipalities would be deprived of the monies which were intended to be raised by this particular legislative act. Section 43-2-202, C.R.S. 1973 is clear on this point.

11. The Court is of the opinion that the County is the trustee for one-half of the funds received from the mill levy pursuant to Section 43-2-202, C.R.S. 1973 for the benefit of the Plaintiff-Municipalities and if the municipalities do not receive their share of funds from the Road and Bridge Fund, they will be irreparably injured.

12. It is clear that the County's source of revenue for roads and bridges must be raised at least partially from a mill levy pursuant to Section 43-2-202, C.R.S. 1973 which will allow the Plaintiff-Municipalities to obtain funds for roads and bridges. The Court is not telling the County what mill levy to set, but only that the statutes in question must be followed.

13. The Court concludes that once the County adopts a road and bridge fund pursuant to Section 43-2-202, C.R.S. 1973, monies for

the Road and Bridge Fund can come only from a mill levy pursuant to Section 43-2-202, C.R.S. 1973 and other sources of funding set forth in Section 43-2-202; that Section 30-25-106, C.R.S. 1973 prohibits the use, transfer or appropriation of monies either in or properly accruable to the County General Fund from that fund to the Road and Bridge Fund; that Section 29-1-111.5, C.R.S. 1973 does not permit the transfer of County General Funds to the Road and Bridge Fund after the beginning of the fiscal year.

14. While evidence presented at the hearing on Motion for Preliminary Injunction regarding the transfer by the County of \$860,000 from the County Contingency Fund to the County Road and Bridge Fund was not sufficient for the Court to enjoin the transfer, the Court states that the County may not establish a large contingency fund each year with the intention of transferring the balance of said fund to the Road and Bridge Fund at the end of each fiscal year. Where it can be shown that the intent of the County is to establish a large contingency fund in order to avoid setting an adequate mill levy for the Road and Bridge Fund, under which the County must share the proceeds with the Plaintiffs, such action by the County will be permanently enjoined by this Court.

15. The Court has been advised by the Plaintiffs that the Plaintiffs do not desire to proceed with the issue of whether the Board must refund to each municipality within El Paso County its proportionate share of the revenue that would have accrued to the Road and Bridge Fund for Fiscal Year 1980 by the imposition of a proper mill levy but for the illegal transfer of County General Funds. That claim by the Plaintiffs is, therefore, dismissed.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Board of County Commissioners, the El Paso County Treasurer, and the El Paso County Budget Officer are permanently enjoined from:

1. Adopting a budget for the Road and Bridge Fund that contemplates no revenues from the imposition of a mill levy but instead contemplates transfers of funds either in or properly accruable to the County General Fund from that fund to the Road and Bridge Fund.

2. From using, transferring, or appropriating monies, either in or properly accruable to the County General Fund from that fund to the Road and Bridge Fund, whether or not the use, transfer or appropriation takes place after the beginning of a fiscal year.

6-9-81

BY THE COURT

Hunter D. HARDEMAN

District Judge

CHAPTER 260

ROADS AND HIGHWAYS

COUNTY ROAD AND BRIDGE FUND

(Senate Bill No. 146. By Senators Gill and Theobald)

A N A C T

RELATING TO THE CREATION OF A COUNTY ROAD AND BRIDGE FUND, AND AUTHORIZING A TAX LEVY FOR THE SAME, AND TO REPEAL SECTION 4, CHAPTER 143, 1935 COLORADO STATUTES ANNOTATED.

Be It Enacted by the General Assembly of the State of Colorado:

County Road
and Bridge
Fund Created

Section 1. *Fund Created—Consisting of.* A fund to be known as the "county road and bridge fund" is hereby created and established in each of the counties of the State of Colorado. The county road and bridge fund shall consist of all moneys received from state and federal sources to be expended by a county for road and bridge construction, maintenance and administration; appropriation by the county commissioners; and all other moneys available for road and bridge purposes.

Tax Levy

Section 2. *Tax Levy—Budget.* The county commissioners are hereby authorized to make a tax levy sufficient, when added to the estimated cash balance on hand at the beginning of the next fiscal year and the estimated revenue from all other sources except that derived from county taxation, to provide the necessary funds in accordance with the budget. As a part of the county budget and in conformity with the local budget law, a county road and bridge budget shall be adopted.

Budget to
Be Adopted

Section
Repealed

Section 3. Section 4 of Chapter 143, 1935 Colorado Statutes Annotated, and all other Acts and parts of Acts in conflict herewith are hereby repealed.

Safety Clause

Section 4. The General Assembly hereby finds, determines and declares that this Act is necessary for the immediate preservation of the public peace, health and safety.

Approved: March 16, 1951.

CHAPTER 342

ROADS AND HIGHWAYS

COUNTY HIGHWAYS

SENATE BILL NO. 26. BY SENATORS Jackson, Garnsey, Kinnie, MacManus, Wunsch, Darby, Johnson, Minister and Stockton; also REPRESENTATIVES Strang, Arnold, Kirscht, McNeil, Moore, Showalter, Southworth, Baer, Bishop, Fentress, Frank, Hamlin, Herzberger, Koster, Lloyd, Quinlan, Sonnenberg, and Younglund.

AN ACT

CONCERNING COUNTY ROAD AND BRIDGE FUNDS AND THE APPORTIONMENT OF CERTAIN REVENUES ACCRUING TO SUCH FUNDS.

Be it enacted by the General Assembly of the State of Colorado:

Section 1. 120-1-2 (2) and (3), Colorado Revised Statutes 1963 (1971 Supp.), are amended to read:

120-1-2. County road and bridge fund — apportionment to municipalities.
(2) ~~For the calendar years 1971, 1972, and 1973 only,~~ Each municipality located in any county of this state shall be entitled to receive from the county road and bridge fund of the county wherein it is located an amount equal to fifty percent of the revenue accruing to said fund from extension only of the levy authorized to be made under section 120-1-3 against the valuation for assessment of all taxable property located within its corporate boundaries; except, that by mutual agreement between such municipality and the board of county commissioners, such municipality may elect to receive the equivalent of such amount in the value of materials furnished, or work performed on roads and streets located within its corporate boundaries, by the county during the calendar year in which such revenue is actually collected; and except, that in all cases where the annual amount of revenue receivable by a municipality from the county road and bridge fund is estimated to be less than two thousand dollars, such estimated amount shall be receivable by such municipality only in the equivalent value of materials furnished, or work performed on roads and streets within its corporate boundaries, by the county during the calendar year in which such revenue is actually collected.

(3) In all cases where a municipality has not elected to receive its share of the county road and bridge fund in equivalent value of materials furnished or work performed by the county, under mutual agreement, it shall be the duty of the county treasurer, ~~beginning April 15, 1974 and on the fifteenth day of each July, October, January, and April thereafter, but not subsequent to January 15, 1974,~~ to pay over to the treasurer of such municipality, out of the county road and bridge fund, the amount to which such municipality shall have become entitled during the preceding three calendar months.

Section 2. **Effective date.** This act shall take effect July 1, 1973.

Section 3. **Safety clause.** The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: July 6, 1973

GOVERNMENT — LOCAL

BUDGETS AND SERVICES

SENATE BILL NO. 270. BY SENATOR Barnhill; also REPRESENTATIVES McElderry, DeFilippo, Erickson, Powers, Spelts, Traylor, and Witherspoon.

AN ACT

CONCERNING FISCAL POLICIES OF LOCAL GOVERNMENTS, BY ADDING SECTIONS 29-1-111.5 AND 29-1-111.6 AND AMENDING SECTION 29-1-113, COLORADO REVISED STATUTES 1973.

Be it enacted by the General Assembly of the State of Colorado:

Section 1. Part 1 of article 1 of title 29, Colorado Revised Statutes 1973, 1977 Repl. Vol., as amended, is amended BY THE ADDITION OF THE FOLLOWING NEW SECTIONS to read:

29-1-111.5. Budgetary transfers. (1) If, during the fiscal year, the governing body of such local government deems it necessary in view of the needs of the various offices, departments, boards, commissions, or other spending agencies, it may:

(a) Transfer budgeted and appropriated moneys from one or more spending agencies in a fund to one or more spending agencies in another fund;

(b) Transfer budgeted and appropriated moneys between spending agencies within a fund.

(2) (a) Any such budgetary transfer shall be made only by ordinance or resolution duly adopted, at a public meeting after publication of the proposed ordinance or resolution in full one time in a newspaper having general circulation within the limits of the governmental subdivision, by majority vote of such governing body, and, if passed, shall act as an amendment to the budget and appropriation of the governing body. The requirement of publication provided in this paragraph (a) shall not apply to any local governmental unit whose annual budget is ten thousand dollars or less, but the governing body of such unit shall post a copy of the proposed ordinance or resolution in three public places within the limits of the governmental subdivision no later than twenty-four hours prior to consideration of the proposed ordinance or resolution.

(b) Such ordinance or resolution shall set forth in full the amounts to be transferred between funds and spending agencies and shall be spread at length in the minutes of the meeting of such governing body at which such ordinance or resolution was adopted. A certified copy of such ordinance or resolution shall be transmitted immediately to the affected spending agencies and the officer or employee of the local government whose duty it is to draw warrants or orders for the payment of money. A certified copy of such ordinance or resolution shall be filed with the division of local government in the department of local affairs.

29-1-111.6. Supplementary budgets and appropriations. (1) If, during the fiscal year, the governing body or any spending agency of such local government receives unanticipated revenues or revenues not assured at the time of the adoption of the budget from any source other than the local government's property tax mill levy, the governing body of the local government may authorize the expenditure of these unanticipated or unassured funds by enacting a supplementary budget and appropriation.

(2) (a) Any such supplementary budget and appropriation shall be made only by ordinance or resolution duly adopted, at a public meeting after publication of the proposed ordinance or resolution in full one time in a newspaper having general circulation within the limits of the governmental subdivision, by a majority vote of such governing body. The requirements of publication provided in this paragraph (a) shall not apply to any local governmental unit whose annual budget is ten thousand dollars or less, but the governing body of such unit shall post a copy of the proposed ordinance or resolution in three public places within the limits of the governmental subdivision no later than twenty-four hours prior to consideration of the proposed ordinance or resolution.

(b) Such ordinance or resolution shall set forth in full the source of such revenue, the amount of such revenue, the purpose for which such revenue is being budgeted and appropriated, and the spending agency and fund which shall be expending the moneys being supplementarily budgeted and appropriated. A certified copy of such ordinance or resolution shall be filed with the division of local government in the department of local affairs.

Section 2. 29-1-113, Colorado Revised Statutes 1973, 1977 Repl. Vol., is amended to read:

29-1-113. No contract to exceed appropriation. During the fiscal year, no officer, department, board, commission, or other spending agency shall expend or contract to expend any money, or incur any liability, or enter into any contract which, by its terms, involves the expenditure of money for any of the purposes for which provision is made in the appropriation ordinance or resolution, INCLUDING ANY LEGALLY AUTHORIZED AMENDMENTS THERETO, in excess of the amounts appropriated in said ordinance or resolution for such officer, department, board, commission, other ~~expending~~ SPENDING agency, or purpose for such fiscal year. Any contract, verbal or written, made in violation of this section shall be void as to the local government, and no moneys belonging thereto shall be paid thereon. Nothing contained in this section shall prevent the making of contracts for governmental services or the capital outlay for a period exceeding one year in school districts or if such contracts are allowed otherwise by law. Any contract so

made shall be executory only for the amounts agreed to be paid for such services to be rendered in succeeding fiscal years.

Section 3. **Safety clause.** The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: May 18, 1979

APPENDIX F
TEXT OF RELEVANT COLORADO STATUTES

2-4-201. Intentions in the enactment of statutes. (1) In enacting a statute, it is presumed that:

(a) Compliance with the constitutions of the state of Colorado and the United States is intended;

(b) The entire statute is intended to be effective;

(c) A just and reasonable result is intended;

(d) A result feasible of execution is intended;

(e) Public interest is favored over any private interest.

Source: R & RE, L. 73, p. 1423, § 1; C.R.S. 1963, § 135-1-201.

2-4-205. Special or local provision prevails over general. If a general provision conflicts with a special or local provision, it shall be construed, if possible, so that effect is given to both. If the conflict between the provisions is irreconcilable, the special or local provision prevails as an exception to the general provision, unless the general provision is the later adoption and the manifest intent is that the general provision prevail.

Source: R & RE, L. 73, p. 1424, § 1; C.R.S. 1963, § 135-1-205.

29-1-102. Applies to local subdivisions - exceptions. This part 1 applies to all subdivisions of the state which have power to appropriate money or levy taxes except home rule cities and cities and counties, cities operating under a charter, school districts, and junior college districts.

Source: L. 33, p. 666, § 2; CSA, C. 103, § 2; L. 45, p. 455, § 2; CRS 53, § 88-1-2; C.R.S. 1963, § 88-1-2; L. 64, p. 625, § 18.

29-1-111.5. Budgetary transfers. (1) If, during the fiscal year, the governing body of such local government deems it necessary in view of the needs of the various offices, departments, boards, commissions, or other spending agencies, it may:

(a) Transfer budgeted and appropriated moneys from one or more spending agencies in a fund to one or more spending agencies in another fund;

(b) Transfer budgeted and appropriated moneys between spending agencies within a fund.

(2) (a) Any such budgetary transfer shall be made only by ordinance or resolution duly adopted, at a public meeting after publication of the proposed ordinance or resolution in full one time in a newspaper having general circulation within the limits of the governmental subdivision, by majority vote of such governing body, and, if passed, shall act as an amendment to the budget and appropriation of the governing body. The requirement of publication provided in this paragraph (a) shall not apply to any local governmental unit whose annual budget is ten thousand dollars or less, but the governing body of such unit shall post a copy of the proposed ordinance or resolution in three public places within the limits of the governmental subdivision no later than twenty-four hours prior to consideration of the proposed ordinance or resolution.

(b) Such ordinance or resolution shall set forth in full the amounts to be transferred between funds and spending agencies and shall be spread at length in the minutes of the meeting of such governing body at which such ordinance or resolution was adopted. A certified copy of such ordinance or resolution shall be transmitted immediately to the affected spending agencies and the officer or employee of the local government whose duty it is to draw warrants or orders for the payment of money. A certified copy of such ordinance or resolution shall be filed with the division of local government in the department of local affairs.

Source: Added, L. 79, p. 1123, § 1.

29-1-301. Levies reduced - limitation. (1) Except as otherwise provided, all statutory tax levies when applied to the total valuation for assessment of the state, each of the counties, cities, and towns not chartered as home rule, and each of the fire, sanitation, irrigation, drainage, conservancy, and other special districts established by law shall be so reduced as to prohibit the levying of a greater amount of revenue than was levied in the preceding year plus seven percent, except to provide for the payment of bonds and interest thereon or for the payment of pension funds by fire protection districts organized pursuant to part 3 of article 5 of title 32, C.R.S. 1973.

Source: Amended, L. 80, p. 678, § 2.

(2) If an increase over said seven percent is allowed by the division of local government in the department of local affairs or voted by the electors of a taxing district under the provisions of section 29-1-302, the increased revenue resulting therefrom shall be included in determining the seven percent limitation in the following year.

(3) The limitations of this part 3 shall apply to home rule counties unless provisions are included in the county home rule charter which are, as determined by the division of local government, equal to or more restrictive than the provisions of this part 3.

Source: L. 13, p. 560, § 11; L. 15, p. 403, § 1; L. 17, p. 429, § 1; C. L. § 7214; L. 29, p. 546, § 1; L. 31, p. 701, § 1; CSA, C. 142, § 39; L. 52, p. 142, § 1; CRS 53, § 36-3-2; L. 55, p. 253, § 1; C.R.S. 1963, § 88-3-1; L. 69, p. 1053, § 24; L. 70, p. 378, § 3; L. 71, p. 957, § 1; L. 76, p. 685, § 1.

30-25-105. County general fund. A fund to be known as the county general fund is hereby created and established in each of the counties of the state of Colorado. The county general fund shall consist of all county revenue except that specifically allocated by law for other purposes.

Source: L. 51, p. 294, § 1; CSA, C. 45, § 7(1); CRS 53, § 36-2-5; C.R.S. 1963, § 36-2-5.

Am. Jur. See 56 Am. Jur.2d, Municipal Corporations, Etc., § 582.

C.J.S. See 20 C.J.S., Counties, § 230.

30-25-106. Fund - purposes. (1) The board of county commissioners is authorized to appropriate money from the county general fund for all ordinary county expenses, including the administrative expenditures of elective and appointive offices, library, agricultural extension service, fire protection, fairs, advertising, airports, health, rodent control, water conservation, weed control, pest control, predatory animal control, and all other general county purposes authorized by law, except expenditures for public welfare, roads and bridges, debt service, public hospitals, public works, contingencies, and purposes voted by the electors.

(2) The board of county commissioners is authorized to appropriate money from the general fund derived from federal payment in lieu of taxes to public school districts containing lands from which the payment is derived.

Source: Amended, L. 79, p. 1152, § 1.

30-25-107. Contingent fund. The board of county commissioners is authorized to establish a contingent fund to provide for expenditures caused by an act of God, or the public enemy, or some contingency that could not have been reasonably foreseen at the time of adoption of the budget, to redeem outstanding warrants lawfully issued, and shall fix rates of levy annually for such fund.

Source: L. 51, p. 295, § 4; CSA, C. 45, § 7(3); CRS 53, § 36-2-7; C.R.S. 1963, § 36-2-7.

30-25-202. Public works - fund - tax levy - purpose. (1) For the purpose of providing and accumulating funds for the development, maintenance, and operation of mass transportation systems, the construction or acquisition of public buildings or additions thereto or to supplement bond issues for the same purposes, the board of county commissioners of each county is authorized to create, by resolution, a public works fund, setting forth in such resolution the description and location of the mass transportation system or building to be constructed or acquired, the estimated cost of the same, the annual tax levy required, and the number of years such a levy should be made and fixing the time for a public hearing.

(2) If the amount needed does not require a tax levy in excess of three mills, the board of county commissioners is authorized, after a public hearing, to make such a levy without putting the proposition to a vote, as provided in this subsection (2). If a special levy in excess of three mills for any one fiscal year is required, the board of county commissioners, by resolution, in its discretion may submit the question of making such a special levy to a vote of those persons qualified to vote on authorization of bonded indebtedness of the county. Such election shall be held, and the results thereof determined, in the manner required for authorization of bonded indebtedness in accordance with part 3 of article 26 of this title. Said election may be held on the same day as any other special or general election.

(3) In submitting the question to the voters, a ballot shall be printed giving the general description of the mass transportation system and the description and location of the public buildings to be constructed or acquired, the estimated maximum amount to be expended for each single purpose, and the maximum mill levy required for each specified year. All projects involving an expenditure in excess of ten thousand dollars shall be printed separately on the ballot.

(4) The money derived from the special levy authorized shall be credited by the county treasurer to a special fund to be known as the public works fund. Such fund shall be used only for the public works authorized; however, the board of county commissioners may change the purpose for which the fund may be expended after holding a public hearing. When the public works have been constructed or acquired and paid for, any unexpended balance in this special fund shall be transferred to the county general fund.

(5) The conflicting provisions of this section shall not apply to any county that, prior to January 1, 1952, had created a building fund from the proceeds of a building levy and has by resolution of the board of county commissioners specified the building to be constructed, the estimated cost of the same, and other pertinent facts.

Source: L. 51, p. 295, § 5; CSA, C. 45, § 7(4); CRS 53, § 36-3-3; C.R.S. 1963, § 36-3-2; L. 69, p. 229, § 1; L. 70, p. 135, § 1; L. 73, p. 466, § 2.

30-26-105. Form of bonds - redemption fund. The board of county commissioners is authorized to prescribe the form of such bonds, and the coupons thereto, and to provide for the half-yearly interest accruing on such bonds actually issued and delivered; they shall levy annually a sufficient tax to fully discharge such interest; and, for the ultimate redemption of such bonds, they shall levy annually, after nine years from the date of such issuance, such tax upon all the taxable property in their county as shall create a yearly fund equal to ten percent of the whole amount of such bonds issued, which fund shall be called the redemption fund. All taxes for interest on and for the redemption of such bonds shall be paid in cash only and shall be kept by the county treasurer as a special fund to be used in payment of interest on and for the redemption of such bonds only; and such taxes shall be levied and collected as other taxes.

Source: L. 1881, p. 87, § 3; G. S. § 678; R. S. 08, § 1388; C. L. § 8849; CSA, C. 45, § 201; CRS 53, § 36-4-3; C.R.S. 1963, § 36-4-3.

43-2-202. County road and bridge fund - apportionment to municipalities.

(1) A fund to be known as the "county road and bridge fund" is created and established in each county of this state. Such fund shall consist of the revenue derived from the tax authorized to be levied under section 43-2-203 for road and bridge construction, maintenance, and administration, all moneys received by the county from the state or federal governments for expenditure on roads and bridges, and any other moneys which may become available to the county for such purpose.

(2) Each municipality located in any county of this state is entitled to receive from the county road and bridge fund of the county wherein it is located an amount equal to fifty percent of the revenue accruing to said fund from extension only of the levy authorized to be made under section 43-2-203 against the valuation for assessment of all taxable property located within its corporate boundaries; except that, by mutual agreement between such municipality and the board of county commissioners, such municipality may elect to receive, in part or in full, the equivalent of such amount in the value of materials furnished or work performed on roads and streets located within its corporate boundaries by the county either during the calendar year in which such revenue is actually collected or by mutual agreement during any succeeding calendar year. A board of county commissioners may, at its option, provide additional money, furnish additional materials, or perform additional work for a municipality located in the county in excess of the money or equivalent materials or work entitled to be received by such municipality under this section.

Source: Amended, L. 75, p. 1573, § 1.

(3) In all cases where a municipality has not elected to receive its share of the county road and bridge fund in equivalent value of materials furnished or work performed by the county, under mutual agreement, it is the duty of the county treasurer, on the fifteenth day of each July, October, January, and April, to pay over to the treasurer of such municipality, out of the county road and bridge fund, the amount to which such municipality has become entitled during the preceding three calendar months.

(4) All moneys received by a municipality from the county road and bridge fund shall be credited to an appropriate fund and shall be used by such municipality only for construction and maintenance of roads and streets located within its corporate boundaries.

Source: L. 51, p. 752, § 1; CSA, C. 143, § 9(1); CRS 53, § 120-1-2; C.R.S. 1963, § 120-1-2; L. 70, p. 320, § 1; L. 73, p. 1230, § 1.

43-2-203. County road and bridge budget - tax levy. (1) As a part of the total county budget and in conformity with the "Local Government Budget Law of Colorado", each county shall annually adopt a county road and bridge budget for the ensuing fiscal year, which budget shall show: The aggregate amount estimated to be expended for county road and bridge construction, maintenance, and administration and the aggregate amount estimated to be paid from the county road and bridge fund to municipalities located within the county, either in cash or in equivalent value of materials to be furnished or work to be performed under mutual agreements with such municipalities, during said fiscal year; the amount being carried over for equivalent materials to be furnished or work to be performed from any prior fiscal year for any municipality within the county pursuant to section 43-2-202 (2); the estimated balance in said fund at the beginning of said fiscal year; the aggregate amount estimated to be received from state, federal, or other sources during said fiscal year; and the amount necessary to be raised during said fiscal year from the levy authorized in subsection (2) of this section.

Source: Amended, L. 75, p. 1574, § 2.

(2) The board of county commissioners in each county is authorized to levy such rate of tax on all taxable property located within the county as required, when added to the estimated balance on hand at the beginning of said ensuing fiscal year and the amount of all revenues, other than property tax revenue, estimated to be received during said fiscal year, to defray all expenditures and payments estimated to be made from the county road and bridge fund during said fiscal year.

Source: L. 51, p. 732, § 2; CSA, C. 143, § 9(2); CRS 53, § 120-1-3; C.R.S. 1963, § 120-1-3; L. 70, p. 321, § 2.
