COLORADO COURT OF APPEALS
Case No. 88CA0747

AMICUS CURIAE OPENING BRIEF OF THE COLORADO MUNICIPAL LEAGUE

CITY OF CRAIG, COLORADO

Plaintiff-Appellant,

vs.

JOY HAMMAT, TREASURER OF
MOFFAT COUNTY, et al.,

Defendants-Appellees.

APPEAL FROM THE DISTRICT COURT
MOFFAT COUNTY

CASE NO. 87-CV-137

HONORABLE REBECCA LOVE KOURLIS
DISTRICT JUDGE

GERALD E. DAHL, #7766
1660 Lincoln Street
Suite 2100
Denver, CO 80264
(303) 831-6411

ATTORNEY FOR AMICUS CURIAE

Dated: September 26, 1988

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

Cases

Colorado Constitutional Provisions

Statutes

Other Authorities

ISSUES PRESENTED FOR REVIEW

Amicus curiae, Colorado Municipal League, adopts and fully incorporates by this reference the list of issues presented for review in the opening brief of plaintiff-appellant, the City of Craig. This amicus curiae brief, however, will discuss only the following issues:

1. Whether collection by the county treasurer of unpaid municipal utility bills is a matter of purely local concern upon which the charter and ordinances of a home rule municipality must control.

2. Whether municipalities are statutorily empowered to require county collection of unpaid utility bills in the same manner as taxes and other assesments.

STATEMENT OF THE CASE

The League adopts and fully incorporates herein by this reference the statement of the case contained within the opening brief of the City of Craig.

SUMMARY OF ARGUMENT

As a home rule municipality under Article XX of the Colorado Constitution, the City of Craig has the authority to establish any and all works and systems local and municipal in nature. The city has done so, among other things, by establishing a water system, a sewer system and a trash collection system. Unpaid utility bills from these systems, by the terms of the city's charter and ordinances, are to be certified to the county treasurer for collection in the same manner as for taxes and other assesments. The imposition of a lien for such charges is an exclusively local matter. The county treasurer is required to collect such unpaid charges, even if such collection conflicts with other state statutes. In this case, no such conflict is even present.

The statutory scheme enacted by the legislature has consistently allowed the collection of unpaid utility charges in the same manner as taxes and other assesments. The district court ignored important statutes specifically authorizing and directing the collection by the county treasurer of unpaid utility service charges, and misconstrued other such statutes in a fashion which, if not reversed by this Court, would frustrate their intent.

ARGUMENT

A. As a home rule municipality, the City of Craig has authority to compel county collection of unpaid utility bills in the same manner as taxes and other assesments.

1. The collection of charges for utility services provided by a municipality is a matter of exclusively local concern.

The City of Craig is a home rule municipality, chartered under Article XX of the Colorado Constitution. Section 6 of Article XX confirms the authority of home rule municipalities in matters of exclusive local and municipal concern:

> It is the intention of this article to grant and confirm to the people of all municipalities coming within its provisions the full right of self-government in both local and municipal matters and the enumeration herein of certain powers shall not be construed to deny such cities and towns, and to the people thereof, any right or power essential or proper to the full exercise of such right.

The Colorado Supreme Court has repeatedly held that in matters of purely local and municipal concern, an ordinance adopted by a home rule municipality supersedes conflicting state statutes. Sant v. Stephens, 753 P.2d 752 (Colo. 1988); City of Greenwood Village v. Fleming, 643 P.2d 511 (Colo. 1982); Pierce

v. City and County of Denver, 565 P.2d 1337 (Colo. 1977).

The City of Craig has adopted charter and ordinance provisions requiring that unpaid utility charges become a lien and must be certified to the county treasurer for collection in the same manner as taxes and other assesments. This matter is one of purely local and municipal concern, upon which the charter and ordinance enactments of a home rule city such as Craig supersede any conflicting state statutes.

This issue has been most recently addressed by the Colorado Supreme Court in Sant v. Stephens, supra. In that case, the Colorado Supreme Court, in responding to interrogatories propounded by the U.S. Court of Appeals for the 10th Circuit, was asked whether a lien created by the City of Glenwood Springs municipal code for unpaid utility services had rights of redemption under section 38-39-103, C.R.S. The Court answered in the affirmative, restating the well established rule of law that in matters of purely local and municipal concern, an ordinance adopted by a home rule city supersedes a conflicting state statute. The Court went on to discuss whether unpaid utility charges were local in nature:

> The parties in this case disagree as to the nature of the Glenwood Springs ordinance. However, so long as the ordinance involves matters of local concern, even if they may also be of statewide concern, and does not conflict with a state statute, it is not superseded by state

> enactments. **There can be no doubt that the collection of charges for utility services provided by a municipality is a matter of local concern.** (emphasis supplied)

753 P.2d at 756.

As a matter of purely local concern, the collection of unpaid utility charges as a lien by the Moffat County treasurer must be carried forward in the manner required by Craig's charter and ordinances. In the event that creation of such a lien and its required collection by the county conflicts with state statutes (although amicus curiae believes there is no such conflict, as described below), those conflicting statutes are superseded by Craig's charter and ordinances. On a local and municipal matter such as utility charge collection, Craig's enactments must control. DeLong v. City and County of Denver, 576 P.2d 537 (Colo. 1978).

2. Article XX, Section 6(g) of the Colorado Constitution empowers the City of Craig to require county collection of unpaid utility charges.

Having established that the creation of a lien for unpaid utility charges is a matter of purely local and municipal concern, it must next be determined whether the city may compel the collection of such a lien by county officials. The district court concluded to the contrary, holding that the imposition of

such a lien is a matter of statewide concern because of its effect upon alienability of real estate titles. Order of the district court, March 3, 1988, page 1.

While the district court, as of March 3, 1988, did not have the benefit of the Colorado Supreme Court's opinion in Sant v. Stephens, supra, (issued on April 11, 1988), it failed to consider Article XX, Section 6(g) of the Colorado Constitution, which grants authority to home rule municipalities "power to legislate upon, provide, regulate, conduct and control:"

> (g) the assesment of property in such city or town for municipal taxation and the levy and collection of taxes thereon for municipal purposes and special assesment for local improvements; such assesments, levy and collection of taxes in special assesments to be made by municipal officials **or by the county or state officials as may be provided by the charter.** (emphasis supplied)

Even assuming, arguendo, that the imposition of a lien for unpaid utility charges is a matter of statewide concern because of its effect upon alienability of real estate titles, the district judge erred in concluding that the charter of the City of Craig did not control nevertheless. When a specific provision of the Colorado Constitution gives cities specific powers, a city may exercise those powers even where the city action involves an area of statewide concern. Sant v. Stephens, 580 F.Supp. 1003 (D. Colo. 1983); City of Thornton v. Farmers Reservoir, 575 P.2d 382 (Colo. 1978). In this case, the quoted portion of Article

XX, Section 6(g) of the Colorado Constitution clearly indicates that the collection of taxes for municipal purposes and special improvements made by municipal officials must be enforced by, among others, county officials. In the case, at bar, the county treasurer may not take refuge behind the district court's conclusion that enforcement of liens is of statewide concern. By virtue of Article XX, Section 6(g) of the Colorado Constitution, the county treasurer may be compelled to enforce the lien created by the City of Craig under the city's constitutional authority.

B. Colorado municipalities are statutorily authorized to rely upon county collection of unpaid utility bills in the same manner as taxes and other assesments.

1. Introduction

In concluding that unpaid utility charges are not collectable in the manner provided for taxes and other assesments, the district court relies upon two assumptions: (1) only charges which "enhance the value of property" are collectable by the county treasurer, and (2) two isolated provisions of statute, which provide an alternative means of collection, are "dispositive," thus, apparently, repealing by implication every other method of collection. Both assumptions are in error.

In preparing this brief, amicus curiae conducted a review of all provisions of statute which allow for the creation of liens for the collection of utility service charges. (Statutes providing for collection of tap fees were ignored, since even the district court admits such fees are collectable by the county.) The statutes providing for collection of utility charges are numerous. Most are not even mentioned by the district court. These statutes form a comprehensive scheme, demonstrating a clear legislative intent to allow and require the collection of unpaid utility charges, rates and tolls by the county treasurer in the same manner as for the collection of taxes and other assesments. It is interesting to note that the statutes also provide for the collection of unpaid utility charges on behalf of county-owned utilities, in the same manner as for municipal utility charges. Amicus curiae's review of the statutes in this section discloses the following principles:

a. The concept of a municipality's sovereignty over all matters relating to its utility system, required for home rule municipalities by the Colorado Constitution, is carried forward by legislation giving similar powers to statutory municipalities.

b. Whether collectable in the manner provided for mechanic's liens, or by certification to the county treasurer for collection in the same manner as taxes and other assesments, the lien itself is created upon the failure of the utility user to pay the billed utility charge.

c. Creation of a utility service charge lien does not depend upon a separate action brought by the utility, although the statutes allow for this as an alternative remedy.

d. The statutes use similar and consistent language to provide for the collection of utility service charges by municipalities, by counties and by special districts, generally through the mechanism of certification of those charges to the county treasurer for collection in the same manner as taxes and other assesments.

e. The statutes neither require nor infer, as a precondition to collectiability as a lien, that utility charges "enhance the value of property."

2. Review of statutory authority for utility charge collection by the county treasurer.

a. General authority

The district court failed to even mention one of the oldest and most fairly applicable statutes requiring the collection of unpaid municipal charges by the county treasurer. Because of its importance to this case, section 31-20-105, C.R.S. is set out in its entirety:

> **31-20-105. Municipality may certify delinquent charges.** Any municipality, in addition to the means provided by law, if by ordinance it so elects, may cause **any or all delinquent charges**, assesments, or taxes made or levied to be certified to the treasurer of the county and be collected and paid over by the treasurer of the county in the same manner as taxes are authorized to be by this title. (emphasis supplied)

This section appears in part 1 of article 20, title 31, which part is entitled "Taxation and Assesment Collection." The mechanism set up by part 1 obligates the county treasurer, in section 31-20-106, to collect the municipal charges described in section 31-20-105:

> **31-20-106. County treasurer to collect municipal taxes - liens - publication.** (1)(a) It is the duty of the treasurer of said county and he is authorized to collect the municipal taxes in the same manner and at the same time as other taxes upon the same tax list are collected . . .

> (2) The county treasurer, at the close of every month and more often if the governing body of said municipality requires, shall pay over to the municipal treasurer all moneys collected by him upon the presentation to him of an order signed by the mayor and clerk of such municipality. Any such county treasurer shall be liable on his official bond for the faithful discharge of all the duties and obligations imposed upon him.

The obligation of the county treasurer to collect the "charges, assesments, or taxes" certified under section 31-20-105, C.R.S. is a mandatory duty. Contrary to the interpretation of the district court (which neither analyzed nor cited sections 31-20-105 or 106, C.R.S.), no distinction is made for charges which "enhance the value of property." The statutory obligation of the treasurer is to collect all charges.

Completing the statutory scheme, section 31-20-107, C.R.S. requires the municipality to pay the county "reasonable and just compensation for the extra labor imposed by this part 1," including a charge for the advertisement of the sale of lands for delinquent taxes.

In 1897 the Colorado Supreme Court had occasion to review the obligations of the county treasurer under section 31-20-101, et seq., C.R.S. in City of Highlands, et al v. Johnson, 51 P.2d 1004 (Colo. 1897). An action was brought against the Arapahoe County treasurer, challenging the authority of the treasurer to certify for collection a delinquent assesment levied by the city

for constructing a sewer. The issue addressed by the Supreme Court was whether the county treasurer had authority to collect the municipal charge. The Supreme Court first noted that the municipality had the option of selecting the manner in which it could proceed to collect the charge by (1) commencing a proceeding at law or in equity, or by (2) certifying the charges to the county clerk for collection in the same manner as taxes. Id., 51 P.2d at 1005. The city had chosen the second option. The Supreme Court next discussed the authority of the county treasurer to certify those charges for collection, confirming the treasurer's authority in these terms:

> A fair construction of that section [currently, 31-20-106, C.R.S] is that when the municipality, by ordinance, so provides, this section and said ordinance together constitute the authority, and the only authority, which the treasurer has for collecting said delinquent municipal assesments, in the same manner as he collects state, county and municipal taxes and that when the municipality furnishes the treasurer (as in this case it properly did through the certificate of its city clerk in accordance with the provision of the ordinance to that effect) with proof of the passage of an appropriate ordinance, the treasurer, without any other warrant, has the authority to collect the delinquent municipal assesment in the same manner as he collects other taxes.

51 P. at 1006.

The Supreme Court noted that the county treasurer had regularly pursued his authority and ordered the complaint dismissed. At no point did the Court rest its justification for the treasurer's obligation and authority to collect the municipal

charge upon the ground that it "enhanced" the value of the property. The district court erred in failing to even consider the impact of section 31-20-101, et seq., C.R.S. on the authority and duty of the county treasurer to collect municipal assesments and charges.

b. Water and sewer utility charges.

Municipalities have specific statutory authority to certify unpaid rates and charges for sewer utility service to the county treasurer for collection under section 31-35-617, C.R.S.:

> **31-35-617. Failure to pay rates and charges-lien.** In the event any user of said sewerage system neglects, fails, or refuses to pay the rates and charges fixed by said governing body for the connection with and use of said sewer, said user shall not be disconnected from said sewerage system or refused the use of said sewer unless the user is outside the municipal limits, **but the rates and charges due therefor may be certified by the clerk or the proper authority of the district to the board of county commissioners of the county in which said delinquent user's property is located and shall become a lien upon the real property so served by said sewer connection. The amount due shall be collected in the manner as though they were part of the taxes.** (emphasis supplied)

The district court could not avoid a discussion of this statute which, on its face, allows charges for "connection with and use of" said sewer to be certified as a lien and requires the county to collect them in the same manner as taxes. In attempting to harmonize this statutory directive with its opinion, the district court states:

> C.R.S. 31-35-617 gives the Court some pause by virtue of its use of the terms "connection with and use of said sewer," the rates and charges for which are statutorily allowed as a lien analogous to a tax lien. Nonetheless the Court will interpret that statute as pertaining to sewer tap fees and not to ongoing usage charges, assesed on a monthly basis.

Order of the district court at page 3.

It is difficult to understand how the phrase "connection with and use of said sewer" can possibly be construed to only refer to "connection;" i.e., a sewer tap. Because the district court had erroneously embraced the concept of "enhancement of value," it is perhaps understandable that it would then be compelled to make such an artifical distinction. However, such is not the clear intention of the statute.

The district court's construction of section 31-35-617, C.R.S., does not comply with the instructions laid down by the legislature for interpreting legislative intent, at section 2-4-201, C.R.S:

> **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.

The district court's construction requires one to ignore the words "and use of," thus failing to give effect to the entire statute. The district court's proposed construction is not reasonable: the legislature has not made an artificial distinction between tap fees and use charges elsewhere; the general statutory scheme has treated them together. The result of the district court's construction of section 36-35-617 would require two different collection actions (one in the courts for use charges and one through the county for tap fees) for different portions of the same sewer bill - certainly a result difficult to execute. Finally, the public interest in maintaining a public utility is not given preference by the district court, as required by section 2-4-201(1)(e), C.R.S.

The district court's interpretation is certainly forced and strained. Such an interpretation should never be resorted to where statutory language is plain, its meaning is clear, and no absurdity is involved. Harding v. Industrial Commission, 515 P.2d 95 (Colo. 1973), Humana, Inc. v. Board of Adjustment, 537 P.2d 741 (Colo. 1975). The only absurdity involved is the district court's forced construction of the phrase "use of" to mean "connection with." Both phrases are used in the statute; both should be given meaning. Harding v. Industrial Commission,

supra; Humana, Inc. v. Board of Adjustment, supra. To follow the reasoning of the district court would be to ignore the words "use of," which clearly refer to ongoing utility charges. The district court erred in failing to give effect to the entirety of the statute. This Court recognized this rule in Thomas v. City of Grand Junction, 56 P. 665 (Colo. App. 1899), in which it stated:

> It is a well-settled rule of statutory construction that all words and phrases used in a statute shall be understood and construed according to the approved and common usage of the language, and that some meaning shall be given to every word used. This rule is expressly recognized by our statute, and declared to be a law of this state. Gen. St. Section 3141.

56 P. at 667.

The extent of the district court's faulty interpretation of section 31-35-617, C.R.S. is enlarged when one considers that the identical language "connection with and use of said sewer" is employed for the benefit of county officials at section 30-20-401, et seq., C.R.S, which authorizes counties to acquire and operate water and sewage facilities. At section 30-20-420, C.R.S., boards of county commissioners are granted the authority to certify delinquent rates and charges for collection in the same manner as taxes:

> **30-20-420. Failure to pay rates and charges - lien.** In the event any user of the system neglects, fails, or refuses to pay the rates, fees, tolls, and charges fixed by the board of county commissioners **for the connection with and use of the system**, said user shall not be disconnected from said system or refused the use of said system unless the user is outside the boundaries of the county, but the rates, fees, tolls, and charges due therefor may be certified by the county clerk and recorder to the board of county commissioners of the county in which said delinquent user's property is located and shall become a lien upon the real property so served by said system and collected in the manner as though they were part of the taxes. (emphasis supplied)

Other than substituting the board of county commissioners for the governing body of the municipality, 30-20-420, C.R.S. is virtually identical to the language of 31-35-617, C.R.S. If the district court's interpretation is confirmed by this Court, not only will municipalities lose their statutorily-granted authority to certify delinquent sewer utility charges under section 31-35-617, C.R.S., but boards of county commissioners will no longer be able to certify delinquent water and sewer utility charges for collection by their own county treasurers under section 30-20-420, C.R.S. This was not the intention of the legislature and violates the rules of statutory construction at section 2-4-201, C.R.S. The intention in enacting both sections was to broaden, not to restrict, the manner in which charges, both for tap fees and for ongoing utility service, might be collected. Finally, sections 31-35-617 and 30-20-420, C.R.S. do not make the artificial distinction that only those charges which "enhance the value of property" should be collectable by the county

treasurer. The district court's interpretation should not be applied by this Court.

The district court fails to address section 31-35-701, et seq., C.R.S., which grants authority to cities and towns to provide and collect for the use of a municipal sewage system outside the boundaries of the city or town. Section 31-35-708, C.R.S., specifically empowers municipalities to certify unpaid charges and requires the county to collect them:

> **31-35-708. Nonpayment-penalty-lien.** In the event any person **using said sewage system** neglects, fails, or refuses to pay when due the **rates and charges** as fixed by said ordinance, the property of such delinquent person shall not be disconnected from said sewerage system or denied the use thereof, but the rates and charges due and unpaid therefor shall be certified by the clerk to the board of county commissioners of the county in which said delinquent user's property is located on or before November 1 of each year and thereupon and until paid shall be a lien upon the real property so served by said sewerage connections. **The lien shall be levied, certified, received, or collected by sale, annually from year to year by the proper county officials, as are county taxes,** and the proceeds thereof shall be remitted each month to such city or town. (emphasis supplied)

Again, the statute does not rely upon a determination of which fees "enhance the value of the property." All charges are to be certified to the county. All charges become an immediate lien. All charges must be collected by the county in the manner provided for taxes.

Finally, at section 30-35-201(9), C.R.S. home rule counties are granted the authority to collect a lien for unpaid sewer and water charges:

> **(9) Charges on land.** . . . Any such charge when assesed, shall be payable by the owners at the time of the assesment, personally, **an also be lien upon lots or parcels of lands from the time of the assesment.** Such charge may be collected and such lien enforced by proceeding in law or in equity, either in the name of such corporation or of any person to whom it shall have directed payment to be made . . . [I]t shall be sufficient to declare generally for work and labor done and materials furnished on the particular street, alley, or highway, **for sewerage, or for water used.** (emphasis supplied)

The district court's insistence that use of a utility system cannot become the subject of a lien for unpaid charges is belied by many statutes, such as 30-35-201(9), C.R.S., which clearly grant lien status to unpaid charges for "sewerage, or for water used." The district court's interpretation, if consistently applied to home rule counties, would deprive them of lien rights granted by statute for utility charges.

c. Special district utility charges.

In reviewing the statutes providing for the collection of municipal and county utility service charges, amicus curiae had the opportunity to also review enabling legislation for the collection of special district service charges. It is

instructive that the same pattern obtains: charges for the use of a utility system, in addition to the charges for connection to such system, are equally entitled to collectablilty as a lien. For example, section 32-1-1001(1)(j), C.R.S., grants power to special districts:

> (j) To fix and from time to time to increase or decrease **fees, rates, tolls, spnalties, or charges for services**, programs, or facilities furnished by the special district; except that fire protection districts may only fix fees and charges as provided in section 32-1-1002(1)(e). The board may pledge such revenue for the payment of any indebtedness of the special district. Until paid, **all such fees, rates, tolls, penalties, or charges shall constitute a perpetual lien on and against the property served,** and any such lien may be foreclosed in the same manner as provided by the laws of this state for the foreclosure of mechanics' liens.

Special districts are also empowered to collect utility charges as liens by section 32-4-113(1)(l)(VI), C.R.S.:

> Until paid, all rates, tolls, or charges shall constitute a perpetual lien on and against the property served, and any such lien may be foreclosed in the same manner as provided by the laws of the state of Colorado for the foreclosure of mechanics' liens . . .

In Wasson v. Hogenson, 583 P.2d 914 (Colo. 1978), the Colorado Supreme Court reversed a district court order which failed to give perpetual lien status to sewer installation charges. While citing Wasson, the district court's reliance upon the phrase "taxes and assesments" as excluding utility charges is

misplaced. For example, the word "assesment" has been construed to mean "assesed amount," and one commentator, in the context of reviewing the statutory basis for liens with respect to rates, tolls, and charges, has noted that the statute construed in Wasson "was quite generally drafted to create a lien for 'all rates, tolls, and charges.'" See, "Survey of Colorado Tax Liens," 14 Colo. Law. 1765 (1985) at pp. 1768. See also North Washington Water and Sanitation District v. Majestic Savings and Loan Association, 594 P.2d 599 (Colo. App. 1979).

More recently, the Colorado Supreme Court upheld the constitutionality of Denver's storm drainage service charge, as a special assesment, in Zelinger v. City and County of Denver, 724 P.2d 1356 (Colo. 1986). Affirming the trial court's holding that the Denver ordinance was a service charge and not an unconstitutional tax, the Court defined "special assesment" as follows:

> Special assesments are charges imposed for the purpose of financing local improvements. To qualify as a special assesment, a charge must be directed against the users of an improvement, and the revenue derived from the charge must be applied only to the maintenance, operation, or development of the improvement.

724 P.2d at 1358. The district court's insistence to the contrary notwithstanding, the term "assesment" carries no special meaning separate and apart from "charges, rates and tolls." This Court should imply no such distinction for the purposes of collectability of such charges.

Regional service authorities, which may be created by counties and municipalities under section 32-7-117, C.R.S., are given specific authority to collect for the services they render:

> **32-7-117. Revenues of service authority-collection.** (1) In any service authority, all **rates, fees, tolls, and charges** shall constitute a perpetual lien on and against the property served until paid and any such lien may be enforced and foreclosed by certification of the delinquent amounts due, within 120 days after the due date of such rates, fees, tolls, or charges, to the board of county commissioners of the county in which said property is located. **The officials of said county shall collect and remit such delinquent amounts to the service authority in the manner provided by law for the collection of general property taxes.** (emphasis supplied)

Again, the district court has failed to consider the impact of it's analysis upon the collectability of utility charges made by a regional service authority. The statute makes such collection mandatory by the county. Nowhere in the regional service authority statute do we find any support for the conclusion of the district court judge that there should be any distinction for charges which "enhance the value of property."

d. Improvement district utility charges.

The district court does not mention the ability of municipalities to collect, in the same manner as mechanic's liens, "rates, tolls or charges," which become delinquent in connection with revenue-producing services provided by a

municipal improvement district under section 31-25-601, et seq., C.R.S. The statutory authority granted in those sections empowers municipalities to create municipal improvement districts for the purpose of "acquiring, constructing or installing therein any public improvement . . ." Section 31-25-602(1), C.R.S. The charges for the revenue producing services or facilities furnished through such districts are collectable in the same manner as mechanic's liens, under section 31-25-611(1)(k), C.R.S.:

> **31-25-611. General powers of district.** (1) The district has the following limited powers:
>
> (k) To fix and from time to time to increase or decrease **rates, tolls, or charges for any revenue-producing services** or facilities furnished by the district and to pledge such revenue for the payment of any indebtedness of the district. Until paid, **all rates, tolls, or charges** shall constitute a perpetual lien on and against the property served, and any such lien may be foreclosed **in the same manner as provided by the laws of the state for the foreclosure of mechanics' liens. . .** (emphasis supplied)

The same language was used by the legislature to empower counties to create similar improvement districts, and to have an immediate, perpetual lien for unpaid "rates, tolls or charges, of such districts" at section 30-20-512(1)(k), C.R.S. The two statutes do not require a determination of which rates, tolls and charges "enhance the value of property." All rates, tolls and charges which become delinquent have immediate status as perpetual liens, without the need for any separate action by the

municipality or the county. The district judge failed to explain why no such determination is inferred or implied in sections 31-25-611(1)(k) and 30-20-512(1)(k), C.R.S.

If, as stated by the district court, section 31-35-617, C.R.S. "gave the Court some pause," it is curious that the court was not similarily compelled to harmonize its unusual decision with the clear requirements of sections 31-20-105, 31-20-106, 31-20-107, 31-25-611(1)(k), 30-20-512(1)(k), 30-35-201(9), 30-20-420 31-35-708, 32-1-1001(1)(j), 32-4-113(1)(l)(VI) and 32-7-117, C.R.S. All of these statutes make provision for the collection, as liens, of utility service charges, not merely tap or connection fees. None of these statutes rely upon, allude to or imply the "enhancement of value" distinction so central to the district court's reasoning. That reasoning should be rejected, and the comprehensive statutory scheme and legislative intent in enacting it should be confirmed.

3. Sections 31-15-302(1)(e) and 31-35-402(1)(f), C.R.S. provide an alternative, rather than the "dispositive" means of collecting unpaid utility service charges.

The district court gave undue importance to one of the alternative methods for collection of unpaid utility charges. The district judge took the following position at paragraph 4 of her order:

> The statutory scheme which has been analyzed and re-analyzed by the Briefs of the parties is, in fact, a convoluted one. It is the finding of this Court that C.R.S. 31-15-302, sub.(1) and sub.(e) and C.R.S. 31-15-402 sub.(1), sub. (f) are the dispositive statutes for purposes of collecting charges incurred from utility services.

The district court erred in concluding that the two statutes cited are "dispositive" for the collection of delinquent utility charges. From the foregoing review, it is clear that there are many alternatives for collecting delinquent service utility charges. Even in examining the two sections upon which the district court relies so heavily, it becomes clear that those sections, providing for the creation of a lien by private action, are only alternative to the mechanism of certifying delinquent charges to the county treasurer. The district court fails to cite City of Highlands v. Johnson, supra, which recognized the alternative nature of the remedies provided:

> To municipalities organized thereunder, as was the defendant city, two remedies are given by our general municipal corporation act for collecting sewer assesments duly levied by them. By subdivision 75 Section 3312, supra [now, section 31-15-302(1)(e)], they may be collected, and the lien thereof enforced, by the city council in a proceeding at law or in equity. The other remedy is found in Section 3351 [currently, Section 31-20-105] which gives the municipality the right by ordinance to cause a delinquent assesment "to be certified to the county clerk of the county, and be collected and paid over by the treasurer of the county in the same manner as taxes are authorized to be by this act."

51 P. at 1005. See also, City of Pueblo et al. v. Robinson, et al, 21 P.899 (Colo. 1889).

The alternative nature of the manner of collecting utility service charges has not changed since 1889. In Sant v. Stephens, supra, the Colorado Supreme Court recognized, five months ago, that these alternatives continue to exist:

> The provision regarding collection of liens "in the same manner as general taxes are collected "simply describes one method for collecting the utility charges. The ordinance also specifies two other procedures for collection of the secured charges. The city may collect the unpaid utility charges by availing itself of the general laws relating to liens, including laws for the sale under redemption of property subject to the lien. Alternatively, the city may institute civil proceedings to collect unpaid arrarages.

753 P.2d at 758.

How can the district court can conclude, in the face of the statutes analyzed above and the the decisions of Colorado Supreme Court from 1897 to 1988, that two single statutes are "the dispositive statutes for purposes of collecting charges incurred for utility services?" Such a conclusion does impermissable violence to the legislative intent and the decisons of the Colorado Supreme Court. It should be rejected by this Court.

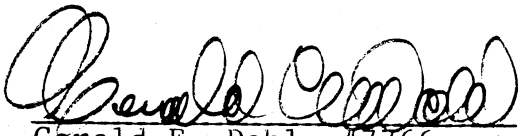
CONCLUSION

The Colorado Constitution and statutes grant broad authority to municipalities, counties and special districts to collect charges and assesments in connection with the utility services they are obligated to provide. As a home rule municipality the City of Craig has constitutional authority to create and cause to be collected a lien for all such charges. As a matter of statutory law, all municipalities in Colorado benefit from a wide range of clear statutory enactments, whose purpose is (1) to allow the creation of a lien for unpaid utility charges by operation of law, and (2) to make available for the collection for such unpaid charges, the system in place for the collection of property taxes by the county treasurer.

The interpretation advanced by the district court is poorly reasoned and fails to recognize the constitutional and statutory provisions applicable to the subject of utility collections. Further, the district court ignores the decisions of this Court and the Colorado Supreme Court.

The decision of the District Court should be reversed.

Respectfully submitted this 26th day of September, 1988.



Gerald E. Dahl, #7766
General Counsel

Colorado Municipal League
1660 Lincoln Street
Suite 2100
Denver, Colorado 80264
(303) 831-6411

ATTORNEY FOR AMICUS CURIAE

CERTIFICATE OF MAILING

I hereby certify that on this 26th day of September, 1988, I placed a true and correct copy of the foregoing in the United States mails, first class postage prepaid at Denver, Colorado and addressed as follows:

Clerk of the District Court
Moffat County
221 W. Vistory Way
Craig, Colorado 81625

Bourtai Hargrove
Attorney at Law
City of Craig
300 W. 4th Street
Craig, Colorado 81625

Thomas C. Thornberry
Attorney at Law
555 Breeze Street
Suite 250
Craig, Colorado 81625

R. H. Peck
Attorney at Law
P. O. Box 9
Craig, Colorado 81626

Becky Pluye