SUPREME COURT, STATE OF COLORADO

Case No. 89 SA60

PRINCIPAL BRIEF OF AMICUS CURIAE, COLORADO MUNICIPAL LEAGUE

CITY AND COUNTY OF DENVER, a Colorado Municipal Corporation; FEDERICO PENA, as Mayor and as a Citizen of the City and County of Denver; ROBERT F. LEDGER, JR., as City Manager and as a Citizen of the City of Durango; and the CITY OF DURANGO, a Colorado Municipal Corporation,

Plaintiffs - Appellees,

vs.

STATE OF COLORADO, a State of the United States of America, and ROY ROMER, as Governor of the State of Colorado,

Defendants - Appellants,

and

DENVER POLICE PROTECTIVE ASSOCIATION, COLORADO PROFESSIONAL FIRE FIGHTERS, ROBERT CLAIR, DEBORAH CLAIR, GERALD MEINEKE, DOROTHY MEINEKE, DANIEL DOYLE, DAVID SPIALEK AND LINDA SMITH,

Intervenors/Defendants/Third Party Plaintiffs-Appellants.

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

ATTORNEY FOR AMICUS CURIAE

Dated: May 15, 1989

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Colorado Constitutional Provisions

Other Authorities

I. STATEMENT OF ISSUES

The League hereby adopts and fully incorporates by reference the statement of issues in the principal brief submitted by the City and County of Denver and the City of Durango. However, the League will address only the second issue set forth by Denver and Durango: whether the findings and the conclusions of the preliminary injunction proceedings and order should have been adopted in toto. Within that context, the League believes that the following questions are relevant:

1. Is there express constitutional authority for regulation of personnel matters by home rule municipalities?

2. Is the regulation of personnel matters of exclusively local concern, upon which conflicting state legislation must be set aside in favor of the enactments of a home rule municipality?

3. Would enforcement of House Bill 1152 (1988) adversely affect home rule municipalities statewide?

4. Do narrow political goals justify impairment of constitutionally guaranteed rights?

II. STATEMENT OF THE CASE

The League hereby adopts and fully incorporates by reference the statement of the case in the principal brief submitted by the petitioners, City and County of Denver and the City of Durango.

III. STATEMENT OF FACTS

The League hereby adopts and fully incorporates by reference the statement of facts in the principal brief submitted by the petitioners, City and County of Denver and the City of Durango.

IV. SUMMARY OF ARGUMENT

The Colorado Constitution at Article XX, Section 6(a) expressly guarantees authority over personnel matters to home rule municipalities. This guarantee is express, complete, clear and detailed on its face, and may not be set aside by state legislative action. Municipal personnel policies and requirements are themselves matters of exclusively local and municipal concern, upon which the enactments of a home rule municipality preempt conflicting state legislation. The Colorado appellate courts, as well as courts throughout the country, have consistently held municipal personnel policies and procedures exclusively local and municipal. The power of a home rule municipality to regulate all aspects of municipal employment has

consistently been shielded from conflicting state enactments.

The attempt by the General Assembly in House Bill 1152 (1988) to transform the subject of municipal personnel policies into one of statewide concern, merely by so declaring, was ineffectual and should be set aside by this Court. When a matter has been both expressly and impliedly given over to home rule municipalities as a matter of purely local concern, any attempt to pronounce it of statewide concern by state legislation is ineffectual, since it is the province of the courts, not the legislature, to determine whether a matter is of purely local, of mixed, or of statewide concern.

The impact of the Court's decision in this case will be substantial, affecting all 68 home rule municipalities in the state of Colorado, 21 of which have adopted residency requirements or preferences. The remaining 47 home rule municipalities will be no less affected, since the decision by this Court will effectively preserve or deny to them the ability to impose such requirements, free from legislative interference. This Court should declare House Bill 1152 (1988) unconstitutional in its purported application to home rule municipalities, because of its attempt to impair constitutionally guaranteed rights in order to encourage passage of the Adams County Airport annexation election question.

V. ARGUMENT

A. Local regulation of personnel matters by home rule municipalities is expressly guaranteed by the Colorado Constitution

Regulation of all aspects of the hiring, firing, and tenure of municipal employees is given over exclusively to home rule municipalities by Article XX, Section 6(a) of the Colorado Constitution:

> . . . all other powers necessary, requisite or proper for the government and administration of its local and municipal matters, including power to legislate upon, provide, regulate, conduct and control:
> (a) The creation and terms of municipal officers, agencies, and employments; **the definition, regulation and alteration of the powers, duties, qualifications and terms or tenure of all municipal officers, agents and employees;** . . .

(emphasis supplied)

This constitutional authority is clear, detailed, and express. Rather than being merely a passing reference, all aspects of municipal employment are given over exclusively to home rule municipalities. It is difficult to imagine what aspects of municipal employment are not covered by "the definition, regulation and alteration of the powers, duties, qualifications and terms or tenure of all municipal officers, agents and employees . . ." The specific and detailed language of the Constitution is controlling in this case. The intent of a Constitutional provision such as Article XX, Section 6(a) must be ascertained from the words thereof when its language is explicit. City and County of Denver v. Sweet, 329 P.2d 441 (Colo. 1958) at

447. The express nature of the Article XX Section (6a) grant of power was addressed in Coopersmith v. Denver, 399 P.2d 943 (Colo. 1965). In that case, a Denver city charter amendment imposing a compulsory retirement age upon firemen and policemen was upheld. Interestingly, the Denver Policemens' Protective Association intervened as the Denver Police Protective Association has done here. This Court held that the retirement age provision was valid, even as against state legislation:

> No state statute, however, sets any standard which this charter amendment interferes with or attempts to overrule in regard to involuntary retirement at age 65, nor could it, because this subject relates solely to power over which is expressly delegated tenure, to home rule cities by Article XX, Section 6 of the Colorado Constitution. (emphasis supplied)

399 P.2d at 947

Over twenty years later, the position advocated by the Denver Police Protective Association is still in error. The Supreme Court in Coopersmith rejected that position in these terms:

> We turn it now to the fifth ground urged by the plaintiffs, viz; whether the mandatory retirement provision is invalid because it allegedly is a question of statewide concern which has been heretofore pre-empted by state action.
>
> As we have previously mentioned, tenure is a subject over which Article XX, Section 6 of the Colorado Constitution, grants the power of regulation to home rule cities. This in and of itself demonstrates that this point is not well taken and is a complete answer to that argument.

399 P.2d at 947

The City and County of Denver and the City of Durango, as well as other home rule municipalities in Colorado, have relied upon and exercised the express constitutional authority of Article XX, Section 6(a) to establish residency requirements for their employees. The power to define and regulate qualifications of employees clearly includes the power to set residency requirements and employment preference policies.

The Denver Charter provision herein at issue, Section C5.12, has previously been challenged and found constitutional, valid and binding. In City and County of Denver v. Industrial Commission, 666 P.2d 160 (Colo. App. 1983), the Court of Appeals considered a challenge to Charter Section C5.12-1, which provides, in pertinent part, that "all permanent and temporary officers and employees . . . shall . . . reside within the corporate boundaries of the City and County of Denver, within three months after acquiring permanent status." After holding that "[e]mployment with the Denver Police Department is governed by the provisions of the Denver City Charter", and that "the charter is part of the employment contract," the Court of Appeals approved and upheld Denver's residency requirement:

> Residence requirements for municipal employment imposed by charters and city ordinances have almost uniformly been held valid and enforceable as bearing a rational relationship to governmental purposes. [citing cases]
>
> One of the purposes cited as supporting such a requirement is "to have those whom [the municipality] helps clothe and feed participate in and contribute support and taxes for its benefit, not for that of

cities elsewhere." Salt Lake City Fire Fighters Local v. Salt Lake City, 22 Utah 2d 115, 449 P.2d 239 (1969).

666 P.2d at 162-163.

B. Municipal personnel matters are of exclusively local and municipal concern

1. Article XX of the Colorado Constitution is a broad grant of authority in all local and municipal matters.

It is important to recognize that the power to enact residency requirements under Section 6(a) is but a small part of the broad powers granted home rule municipalities by Article XX of the Colorado Constitution. This article grants to the residents of the City and County of Denver, and all other home rule municipalities of the state, the full right of self-government in local and municipal matters. After enumerating specific powers in Section 6 of Article XX, the framers of the Constitution added a residual grant reinforcing the broad home rule powers intended to be reserved to home rule municipalities:

> 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.

Colo. Const. Article XX, Section 6, paragraph 5.

In Fishel v. City and County of Denver, 108 P.2d 236 (Colo. 1940), this Court held that the intent of the grant under Article

XX was to assure these rights:

> [A]s we have so many times held, . . . this amendment was designed to give as large a measure of home rule in local municipal affairs as could be granted under a Republican form of government, we have no doubt that the people of Colorado intended to, and, in effect, did thereby delegate to Denver full power to exercise the right of eminent domain in the effectuation of any lawful, public, local and municipal purpose.

108 P.2d at 240

See also, Toll v. City and County of Denver, 340 P.2d 862 (Colo. 1959). In purely local and municipal matters, charter provisions and ordinances of a home rule city supersede conflicting state statutes. City and County of Denver v. Colorado River Water Conservation District, 696 P.2d 730 (Colo. 1985); Gosliner v. Denver Election Commission, 552 P.2d 1010 (Colo. 1976).

2. Municipal personnel matters are of exclusively local concern.

Municipal personnel policies and procedures are one such exclusively local and municipal matter under Article XX, Section 6(a). The Colorado appellate courts have repeatedly upheld this point. In Denver v. Thomas, 491 P.2d 573 (Colo. 1971), Denver's home rule charter Section on disposition of police employee benefits was held to override a state statutory provision on the same subject:

> As to policemen the statutory provision for payment for compensation benefits to the employer is

> overridden by the charter provision. . . . [w]hile the subject of workmen's compensation may be a matter of statewide concern, the disposition made by a home rule city of benefits received is certainly a local and municipal matter. Colo. Const. Article XX, Section 6

491 P.2d at 574.

In Ratcliff v. Kite, 541 P.2d 88 (Colo. App. 1975), a Commerce City charter Section on employee termination rights was upheld:

> Since Commerce City is a home rule city, this provision [the charter requirement on discharge] takes precedence over any statutory provision or common law rule to the contrary. This was solely a matter of local concern. Four County District v. Commissioners, 149 Colo. 284, 369 P.2d 67.

541 P.2d at 90.

In Glenn v. Town of Georgetown, 543 P.2d 726 (Colo. App. 1975), the Court of Appeals relied on Ratcliff v. Kite, supra, for the proposition that general state laws are not applicable "at least on matters of purely local concern such as the appointment and removal of municipal officers and employees." Id, 543 P.2d at 728.

In Denver v. Rinker, 366 P.2d 548 (Colo. 1961), deputy sheriffs and jailers of the City and County of Denver were held to be subject to the career service amendment to the city charter. Despite the fact that the sheriff might be required to undertake certain statewide duties, the issue of the sheriff's tenure was held to be of exclusively local concern to Denver:

> Article XX of the Colorado Constitution was adopted by a favorable vote of all of the people of the state of Colorado. By it, all the people of the state of Colorado gave to the people of Denver the right to name their own officers and determine how they should be selected, their qualifications and tenure. . . . [t]hus the method of selection and tenure of the officer designated to carry out the duties of the position became the concern of the people of Denver by authority expressly granted to them by all of the people of the state under Article XX and this is true even though those officers might be required to perform duties which were of statewide concern such as the duties imposed by constitution upon the County Clerk and Recorder, County Sheriff, Treasurer or Assessor.

366 P.2d at 551.

This Court again had opportunity to address the extent of home rule authority over municipal employees in International Brotherhood of Police Officers v. City and County of Denver, 521 P.2d 916 (Colo. 1974). The deputy sheriffs of the city argued that they were invested with legal authority to arrest under Section 35-5-16 (C.R.S., 1963). This Court held that any authority for deputy sheriffs to make arrests must be found in the Denver city charter, rather than state statute. The Court held the statute inapplicable:

> This Section [35-5-16, C.R.S. 1963] is made inapplicable to Denver by reason of their charter provisions and [Colorado Constitution Article XX, Section 6], which states: "the statutes of the state of Colorado, so far as applicable, shall continue to apply to such cities and towns, except insofar as superceded by the charters of such cities and towns . . ." (emphasis in original)

521 P.2d at 917.

In the same case, this Court was unequivocal in its description of the exclusively local nature of municipal employment:

> Other Sections of Article XX make it clear that Denver's power to determine the limits of their public officer's authority, by charter or amendment to their charter is all exclusive. See, for example, id., Section 4 (exclusive power to revise charter); id. Section 5 (exclusive power to amend or adopt charter); id. Section 6(a) (exclusive control over creation and terms of municipal officers). People ex rel. Fairall v. Sabin 75 Colo. 545, 227 P. 565 (1924). (emphasis in original)

521 P.2d at 917

In City of Colorado Springs v. Industrial Commission, 749 P.2d 412 (Colo. 1988) this Court has distinguished between the statewide nature of certain employee benefit programs (workmen's compensation and unemployment compensation) and the purely local aspect of a municipal decision on termination or reinstatement. In that case, this Court upheld the decision of the Court of Appeals that entitlement to unemployment compensation benefits is a matter of statewide concern, but stated that "the determination of whether a city employee should be reinstated in a City job may be a matter of local concern governed by City policies . . . " Id., 749 P.2d at 416, footnotes 5 and 6.

No state benefits program is even at issue in the instant case. The only issue before this Court on appeal is whether residency qualifications for municipal employment are matters of

exclusively local concern. The Colorado Court of Appeals and this Court have consistently held each and every home rule city imposed employment qualification to be a matter of exclusively local concern under Article XX, Section 6 of the Colorado Constitution.

3. The General Assembly is powerless to transform a purely local and municipal matter to one of "statewide concern" merely by so declaring

With regard to matters which are of exclusively of "local and municipal concern" under Article XX, the electorate of the home rule municipality and its elected town board or city council has ultimate authority, which may not be altered or set aside by state legislative act. This Court, in Four County District v. Board of County Commissioners, 369 P.2d 67 (Colo. 1962) very clearly affirmed this principle:

> . . . We have no hesitancy, however, in asserting that any act of the legislature which is adopted as a means to bring about a solution of . . . local problems must not involve the exercise of legislative power which the people, by constitutional provision, have very clearly stated the General Assembly shall not have.

369 P.2d at 69.

The General Assembly's attempt to declare, in House Bill 1152, that "the right of the individual to work in or for any local government is a matter of statewide concern", is insufficient to deny or limit the constitutional right of home

rule municipalities to set policies and procedures defining and regulating the qualifications of municipal employees. Even laying aside the express constitutional authority at Article XX, Section 6(a), merely because the legislature declares a matter to be "of statewide concern" does not automatically make it so. The courts have been and continue to be the final arbitrator of what is "statewide" and what is "local and municipal" under the provisions of Article XX. Where, as here, state legislation infringes on the ability of a home rule municipality to exercise a specific grant of power under Article XX, Section 6, it may be held invalid. See, "A Primer on Municipal Home Rule in Colorado," 18 Colorado Lawyer 443, at footnote 12.

The passage by the General Assembly of House Bill 1152 is an attempt to limit powers specifically granted by the Colorado Constitution. However, it is not within the power of the General Assembly to deny or modify the rights set forth in the state Constitution in any manner. The sole authority to do so rests with the people, exerciseable only in the form of a constitutional amendment. City and County of Denver v. Sweet, 329 P.2d 441 (1958), at 445, and cases cited therein. The General Assembly cannot "re-invest itself with any portion of the authority it lost to home rule cities upon the adoption of Article XX by the people." Four County Metropolitan Capital Improvement Dist. v. Bd. of County Comm'rs, 369 P.2d 67, 72 (Colo. 1962).

In the Four County case, supra this Court upheld the clear division between the constitutional home rule power and the lesser authority of the General Assembly:

> In numerous opinions handed down by this court . . . it has been made perfectly clear that when the people adopted Article XX they conferred every power theretofore possessed by the legislature to authorize municipalities to function in local and municipal affairs. . . . By the Home rule Amendment the General Assembly had been deprived of all the power it might otherwise have had to legislate concerning matters of local and municipal concern.(emphasis in original)

369 P.2d at 72.

The important distinction in the Four County case, which should be applied by this Court, is that the enactment of constitutional provisions thereby deprives the legislature from further action in that area. To hold otherwise would be to render the supremacy of the state constitution meaningless and subject to untrammeled modification by legislative act. The defendants and intervenors in this case suggest that a home rule municipality is inferior to the General Assembly with respect to local and municipal matters. This Court has repeatedly rejected this argument. Board of County Commissioners v. City of Thornton, 629 P.2d 605 (Colo. 1981) at 609; City of Colorado Springs v. State of Colorado, 626 P.2d 1122 (Colo. 1980) at 1127; DURA v. Byrne, 618 P.2d 1374 (Colo. 1980) at 1381.

4. The decision of the district court is in accord with the majority view of state and federal courts.

It has been consistently held that, where authorized by statute or constitution, municipal residency requirements do not deprive employees of equal protection of the laws or infringe upon their right to travel. See, eg, McCarthy v. Philadelphia Civil Service Commission, 424 U.S. 645, 96 S. Ct. 1154, 47 L.Ed. 2nd 366 (1966); Andre v. Board of Trustees, 561 F.2d 48 (7 Cir. 1977), cert. den. 434 U.S. 1013 (1966); Berg v. Minneapolis, 143 N.W.2d. 200 (Minn. 1978). In the Berg decision, the Minnesota Supreme Court quoted with approval from Kennedy v. City of Newark, 148 A.2d 473 (N.J. 1959):

> We think that the most persuasive authority, and the one which we follow, is Kennedy v. City of Newark, 29 N.J. 178, 148 A.2d 473, where city employees challenged the constitutionality of an ordinance limiting Civil Service Commission selections to city residents. To the argument of unconstitutionality the Court answered (29 N.J. 183, 148 A.2d 476): "The question is not whether a man is free to live where he will. Rather the question is whether he may live where he wishes and at the same time insist upon employment by government. [citation omitted.] If there is a rational basis for a residence requirement in furtherance of the public welfare, the constitutional issue must be issue must be resolved in favor of the legislative power to ordain it."

143 N.W.2d at 204

Article XX of the Colorado Constitution has been held to be one of the broadest and most strong statements of local and municipal authority. Courts across the country, construing home rule provisions not even as express as Article XX Section 6(a), have commonly held that the home rule charter controls even as against a state statute. Mullen v. Akron, 188 NE 2d. 607 (Ohio

App. 1962) (prevailing over conflicting statute was ordinance fixing compensation to be paid municipal employees during leave of absence for service in armed forces); State v. Milwaukie, 373 P.2d 680 (Ore. 1962) (establishment of municipal civil service system for city firemen, providing manner of employing and discharging personnel of municipal fire department is matter of local rather than state concern); Ebald v. Philadelphia, 128 A.2d 352 (Penn. 1957) (local regulation under home rule charter controlled disability compensation of policemen and firemen as against general statute).

The state court opinions in other jurisdictions soundly reject substantially the same arguments as those advanced by the defendants-appellants, intervenor/third party plaintiffs-appellants in this case. For example, the Oregon Supreme Court in State v. Milwaukie, supra, dispensed with the argument that the legislature could, by mere declaration, transform a local matter into one of statewide concern:

> An enactment is not of statewide interest simply because the legislature decides that each of the cities in the state should be governed by the same law. In the appropriate case the need for uniformity in the operation of the law may be a sufficient basis for legislative pre-emption. But uniformity in itself is no virtue and a municipality is entitled to shape its local law as it sees fit if there is no discernable pervading state interest involved.

373 P.2d at 683 to 684

The Oregon home rule charter provision at issue in the case is similar to Colorado Constitution Article XX, Section 6,

paragraph 5 in that it granted general power to home rule municipalities. Even though the Oregon provision lacked the specific mention of employees, as is present in Article XX, Section 6(a), the Oregon Supreme Court still held the municipal civil service system a matter of exclusively local concern. Id, 373 P.2d at 682 - 683, notes 3 and 8.

C. **Enforcement of House Bill 1152 would adversely impact home rule municipalities statewide**

The impact of House Bill 1152 goes far beyond the City and County of Denver and the City of Durango. At least nineteen (19) home rule municipalities, other than Denver and Durango, have residency or employment preference policies. These local decisions have been called into question by House Bill 1152. A recent survey of the League's membership reveals that electors of the following home rule municipalities, or their elected governing bodies, have chosen to enact charter or ordinance provisions or personnel policies, setting forth residency requirements, which would be prohibited or called into question by House Bill 1152: Broomfield; Commerce City; Cortez; Fort Collins; Glenwood Springs; Grand Junction; Littleton; Rifle; Westminster; Yuma; Larkspur; Longmont; Holyoke; Cherry Hills Village; Fort Morgan; Monte Vista; Sterling; Wheat Ridge; Fountain.

While these requirements vary in several particulars (number

of employees affected, geographic scope of residency limitation, etc.), all are an exercise of a power which is local and municipal in nature under Article XX, Section 6(a). It is the exercise of this power which House Bill 1152 attempts to take away from home rule municipalities and the citizens thereof. As an example, the Holyoke residency requirement provides, in part:

> All permanent employees of the City of Holyoke must reside within the corporate limits of the City of Holyoke. Employees and employee applicants shall be given an opportunity to move or change their residences to comply with this policy. Any employee (or applicant) shall have up to six (6) months to come into compliance with this policy.

House Bill 1152 also purports to prohibit employment preferences. Employment preference is as much an exercise of the constitutional power to set residency requirements as the charter and ordinance residency restrictions at issue in this case. For example, the Personnel Policy of the City of Wheat Ridge provides:

> In cases where residents and non-residents are equally qualified for a particular vacant position, the City residents shall receive first consideration in filling such vacancies.

These local residency requirements and employment preferences underscore the effect the legislation could have upon the free exercise of a constitutionally guaranteed right: a chilling effect which the General Assembly has no authority to wield.

There are 68 home rule municipalities in Colorado. Sixty-five percent of the population of the state, or 2,134,145 people,

live in these municipalities. While not all currently have residency requirements, House Bill 1152 is intended to apply to each and every home rule municipality in the state. This conclusion flows from the language of the statute in declaring residency requirements a matter of statewide concern.

Besides invalidating constitutionally granted rights of home rule municipalities, House Bill 1152 would nullify the charters and ordinances enacted locally and described above, thus negating personnel policy decisions made by the citizens directly in their adoption of charter provisions, or indirectly through their city councils' action in adopting ordinances on this subject. In vetoing similar legislation in 1984, Governor Lamm emphasized the importance of local decision making:

> Currently, several jurisdictions have residency requirements in place. In the most celebrated case, the citizens of Denver approved a charter amendment creating residency as a condition of municipal employment. A preemption of that vote by the state is inappropriate. Furthermore, the state has adopted a public policy of employing Colorado labor for state and local public works projects and preferential purchasing of Colorado products in state and local governmental contracts. These policies promote a commitment to the state and strengthen its economic base. Residency requirements also may be viewed by local officials as a means of fostering commitment to their community and strengthening the local economic well-being.

Lamm veto message, House Bill 1322 (1984), April 4, 1984, page 1, attached as Appendix A.

D. Narrow political goals do not justify impairment of constitutionally guaranteed rights.

House Bill 1152 was signed into law by Governor Romer as a means of requiring that Adams County residents be eligible for jobs at the proposed new Denver airport. Similar measures have been proposed in the past and have been consistently defeated. As noted above, Governor Lamm vetoed similar legislation in 1984. In 1986, the state Senate defeated a bill similar to House Bill 1152. Finally, in 1987, Governor Romer vetoed a virtually identical piece of legislation.

In his veto message in 1984, Governor Lamm recognized that residency requirements are a matter of local concern and that any decision to enact or to prohibit such provisions should be made at the local level:

> Article XX, Section 6(a) of the Colorado Constitution vests home rule cities with the authority to regulate and control the qualifications, terms, and tenure of municipal employees. Thus, these residency requirements do not violate the civil rights of an individual. Both the United States Supreme Court and Colorado courts have ruled that imposition of these requirements is a legitimate exercise of municipal power. House Bill 1322 is clearly an abrogation of that power and an intrusion into the local decision-making process.

Lamm veto message, House Bill 1322, April 4, 1984, page 1, attached as Appendix A.

The 1987 General Assembly adopted House Bill 1183, legislation very similar to House Bill 1152. Governor Romer

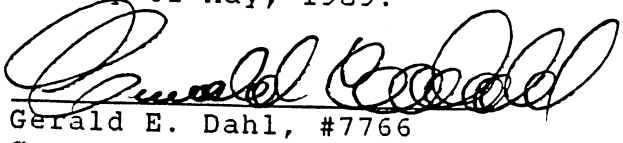
vetoed House Bill 1183 on May 21, 1987. The Colorado Attorney General issued a memorandum concluding that the legislation "may present a constitutional problem centering on the issue of state preemption of home rule cities' residency rules . . . and it is our conclusion that this bill probably transgresses upon a matter of exclusive local concern under Article XX of the Colorado Constitution." See, Appendix B.

When Governor Romer signed the legislation, in 1988, which attempts to eliminate the very same local prerogatives, he issued a statement setting forth two reasons: "First, the residency issue has become a major threat to the successful vote on the airport in Adams County. . . . The second reason . . . [is to] make a partnership work we need to get rid of residency rules that build barriers between jurisdictions." See, Appendix C. These goals are doubtless laudable in the Governor's view. However, neither the legislature nor the Governor can set aside the Colorado Constitution for such reasons. The sole mechanism to do so is an amendment by the same electorate that enacted Article XX, Section 6(a) of that Constitution.

VI. CONCLUSION

The judgement of the District Court should be affirmed.

Respectfully submitted this 15th day of May, 1989.



Gerald E. Dahl, #7766
General Counsel

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

ATTORNEY FOR AMICUS CURIAE

STATE OF COLORADO

EXECUTIVE CHAMBERS
136 State Capitol
Denver, Colorado 80203
Phone (303) 866-2471

Richard D. Lamm
Governor

April 4, 1984

To The Honorable
House of Representatives
Fifty-fourth General Assembly
Second Regular Session
State Capitol
Denver, Colorado 80203

Ladies and Gentlemen:

I hereby return to you House Bill 1322, "Concerning the Prohibiting of Residency Requirements in Employment, and Applying Such Prohibition to Local Governments" which I disapproved and vetoed on April 4, 1984 at 12:51 pm

After careful consideration of this bill I have decided that the issue of residency requirements is a matter of local concern. Any decision to enact or to prohibit such provisions should be made at the local level.

Article XX, section 6(a) of the Colorado Constitution vest home rule cities with the authority to regulate and control the qualifications, terms, and tenure of municipal employees. Thus, these residency requirements do not violate the civil rights of an individual. Both the United States Supreme Court and Colorado courts have ruled that imposition of these requirements is a legitimate exercise of municipal power. House Bill 1322 is clearly an abrogation of that power and an intrusion into the local decision-making process.

Currently, several jurisdictions have residency requirements in place. In the most celebrated case, the citizens of Denver approved a charter amendment creating residency as a condition of municipal employment. A preemption of that vote by the state is inappropriate. Furthermore, the state has adopted a public policy of employing Colorado labor for state and local public works projects and preferential purchasing of Colorado products in state and local governmental contracts. These policies promote a commitment to the state and strengthen its economic base. Residency requirements also may be viewed by local officials as a means of fostering commitment to their community and strengthening the local economic well-being.

I believe this bill is an unjustified intrusion into the affairs of local government. Such decisions, especially as they relate to personnel practices, ought to remain a local prerogative.

For these reasons, House Bill 1322 is vetoed.

Respectfully,

Richard D. Lamm
Governor

REQUEST FOR RECOMMENDATION

TO: Duane Woodard, Attorney General ✓
Ken Salazar, Governor's Legal Counsel
David Johnson, Office of State Planning and Budgeting
Director of the Department (s) of Labor & Employment

FROM: Armand Holmes, Office of the Governor

RE: H.B.1183

DATE: May 7, 1987

YOUR RESPONSE IS DUE ON OR BEFORE NOON ON Monday, May 11, 1987

The attached enrolled bill has been received by the Governor and is awaiting his action. (Please keep the bill for your file.)

Action you recommend:

Approval by Signature (Inaction/No signature OR Veto)

Was your department active in consideration of this bill?

Yes (No)

If so, please attach background documents from your file which may be helpful to the Governor.

Comments/Reasons:
This bill may present a constitutional problem centering on the issue of state preemption of home rule cities residency rules. This issue, if litigated, will be decided upon whether residency requirements are matters of statewide concern. Please see the attached memo from Assistant Attorney General Cheryl Hanson. Although this bill is defensibl and involves a close legal question subject to differing legal viewpoints it is our conclusion that this bill probably transgresses upon a matter of exclusive local concern under Article XX of the Colorado Constitution.

Signature of the Department Director
DEPUTY ATTORNEY GENERAL

May 11, 1987
Date

CHARLES B. HOWE
CHIEF DEPUTY ATTORNEY GENERAL

APPENDIX B: Attorney General Opinion, May 8, 1987

MAY 8 1987

Duane Woodard
Attorney General
Charles B. Howe
Deputy Attorney General
Richard H. Forman
Solicitor General

The State of Colorado

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

STATE SERVICES BUILDING
1525 Sherman Street, 3rd. Fl.
Denver, Colorado 80203
Phone 866-3611 & 866-3621

M E M O R A N D U M

TO: Cheryl Hanson
Assistant Attorney General
Legal Services Section

FROM: Dick Kaufman
Deputy Attorney General

DATE: May 8, 1987

RE: Attached Enrolled Bill
H.B. 1183

Please respond below on the above-captioned matter. Your response is due by Monday, May 11, 1987.

Thank you for your cooperation. Please return with the attachments. DO NOT WRITE ON THE MEMORANDUM FROM THE GOVERNOR'S OFFICE!!!

Please return your response to Pat Connally in the Attorney General Section. Thank you.

TO: Dick Kaufman
Deputy Attorney General

FROM: Cheryl J. Hanson
Assistant Attorney General

DATE: May 11, 1987

RE: H.B. 1183

The constitutionality of this bill depends upon the strength of the arguments which could be raised by the State in support of the legislative determination that residency requirements of local government employers are matters of statewide concern. The Colorado Supreme Court, in a case which did not address the State's right to preempt local governments in this area, upheld Denver's residency requirement as being

rationally related to the legitimate governmental purpose of having "those whom [the municipality] helps clothe and feed participate in and contribute support and taxes for its benefit, not for that of cities elsewhere". City and County of Denver v. Industrial Commission, 666 P.2d 160, 163 (1983). The Court also recognized the city's concern that its police force be readily accessible due to the "unpredictable emergencies inherent in police work". Id.

This bill recognizes and accomodates some of the local concerns which justify a residency requirement by permitting, in sections 2(a) and 4(a), local governments to require residency for certain employees under certain circumstances. The bill does not accomodate the remaining concern that employees pay taxes and otherwise contribute to the support of their local government employer. It is conceivable that the economic needs of the State as a whole could justify preempting local governments with respect to that concern. The Supreme Court has acknowledged that "[w]hat is local, as distinguished from general and statewide, depends somewhat upon time and circumstances" and that "economic forces play their part in any such transition". People v. Graham, 107 Colo. 202, 205, 110 P.2d 256, ____ (1941).

CJH:aa

EXECUTIVE CHAMBERS
136 State Capitol
Denver, Colorado 80203-1792
Phone (303) 866-2471

STATE OF COLORADO

Roy Romer
Governor

COLORADO GOV. ROY ROMER

STATEMENT ON RESIDENCY BILL

Today, I am signing HB 1152 which modifies the residency rule in regard to the City and County of Denver and other Colorado cities.

I have two basic reasons for taking this action, one related to building the new airport and the other, equally important, related to building metropolitan cooperation.

First, the residency issue has become a major threat to a successful vote on the airport in Adams County. Approval of the annexation of the airport land is one of the most important decisions affecting the future of this state that will be made in the four years that I am Governor. We absolutely need that new airport, not just to improve our economy but to keep it as healthy as it is now.

Adams County citizens have expressed substantial concern in recent weeks about the residency issue. In fact, my communications with numerous parties indicate that it may well be a decisive question in the election if it is not removed from the table. Therefore, one of the reasons I am signing this bill is to send a strong and loud signal to everybody in the metropolitan Denver area, but particularly to Adams County residents, that there will be equal access to all jobs related to the new airport.

The second reason I am signing this bill is broader and just as significant. We must have a new partnership in this Denver metropolitan area. That partnership must begin now. To make a partnership work we need to get rid of residency rules that build barriers between jurisdictions.

The time has come for us to remove jurisdictional barriers and to begin to define this metropolitan area as one community of interest.

We need to work together not only to build an airport. We also need to work together in providing quality services in the areas of health care, air quality, transportation, water, cultural services, annexation and land use, economic development, social services and job training. These will benefit Denver and the surrounding suburban counties.

Just as I believe that Adams County residents should have access to every job at the new airport, I believe that Denver residents should have the cooperation of the surrounding area to carry some of the costs of government that Denver has been carrying for the whole of the metropolitan area, such as health care and cultural facilities.

Residency requirements are a barrier to metropolitan cooperation. If we remove them, we will be on the way to providing better service at a lower cost.

If we can get that barrier behind us, we can begin to build a relationship of faith and trust.

CERTIFICATE OF MAILING

I hereby certify that on this 15th day of May, 1989, I placed a true and correct copy of the foregoing in the United States mail, first class postage prepaid at Denver, Colorado, and addressed as follows:

Neil Tillquist
Assistant Attorney General
1525 Sherman St., 3rd Fl.
Denver, CO 80203

Brauer & Buescher, P.C.
Thomas B. Buescher
1563 Gaylord Street
Denver, Colorado 80206

Charles W. Hemphill
5353 W. Dartmouth
Denver, Colorado 80227

George Cerrone
Darlene Ebert
City Attorney's Office
1445 Cleveland Pl., Rm. 303
Denver, CO 80202-5375

Welborn, Dufford, Brown & Tooley, P.C.
Philip G. Dufford
Scott J. Mikulecky
1700 Broadway, Suite 1100
Denver, Colorado 80290-1199

Clerk of the Denver District Court
City & County Building
1437 Bannock Street
Denver, Colorado 80202

Becky Pluye