SUPREME COURT, STATE OF COLORADO

Case No. 92SC40

AMICI CURIAE BRIEF OF THE CITIES OF AURORA, BOULDER, AND FORT COLLINS, THE CITY AND COUNTY OF DENVER, AND THE COLORADO MUNICIPAL LEAGUE IN SUPPORT OF PETITIONER CITY OF LITTLETON

THE CITY OF LITTLETON, COLORADO, a home-rule municipal corporation of the State of Colorado,

Petitioner,

vs.

THE STATE OF COLORADO; THE BOARD OF LAND COMMISSIONERS OF THE DEPARTMENT OF NATURAL RESOURCES OF THE STATE OF COLORADO; and THE STATE BOARD FOR COMMUNITY COLLEGES AND OCCUPATIONAL EDUCATION,

Respondents.

Appeal from the District Court of the City and County of Denver
Honorable John Brooks, Judge Trial Court Case No 88 CV 3085

CERTIORARI TO THE COLORADO COURT OF APPEALS, Case No. 90 CA 0388
Opinion By: Judge Smith, Pierce and Davidson, JJ., concur

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COME NOW the Cities of Aurora, Boulder, and Fort Collins, the City and County of Denver, and the Colorado Municipal League, by their undersigned attorneys and file the following brief as amici curiae in support of Petitioner, City of Littleton.

I. STATEMENT OF THE CASE

Amici adopt and incorporate herein the statement of the case from the brief of the Petitioner, City of Littleton. The Respondents shall be collectively referred to as "State" herein.

II. SUMMARY OF THE ARGUMENT

The ruling of the Court of Appeals invalidating Littleton's storm drainage fee as imposed against the State as lacking statutory authority and an improper special assessment rather than a fee contradicts the language of §31-35-401 and rulings of this Court. The construction by the Court of Appeals of §31-35-101 renders a nullity the portion of the definition of consumer which includes public users such as the State. The distinction made between Littleton's storm drainage fee and the Fort Collins transportation fee approved by this Court in Bloom v. City of Fort Collins, 784 P.2d 304 (Colo. 1989) and the storm drainage fee upheld by this Court in Zelinger v. City and County of Denver, 724 P.2d 1356 (Colo. 1986) has no legal basis. The classification of Littleton's storm drainage fee as a special assessment ignores the clear distinction between a special assessment and a user fee set forth by this Court in Bloom, supra, and Reams v. City of Grand

Junction, 676 P.2d 1189 (Colo. 1984). The award of attorneys fees against Littleton for presenting a position in accordance with existing Colorado law as determined by this Court is contrary to the purposes and intent of §§13-17-101, et seq., C.R.S.

III. ARGUMENT

A. THE COURT OF APPEALS ERRED IN FINDING, AS A MATTER OF LAW, THAT LITTLETON'S STORM DRAINAGE FEES CONSTITUTE SPECIAL ASSESSMENTS AND, AS SUCH, DO NOT APPLY TO THE STATE.

1. Statutory authority exists for municipalities to own and operate storm drainage utilities and facilities, and to collect rates, fees, tolls and charges for services provided thereby to public users including as the State.

The General Assembly specifically provided that municipalities may construct, operate and maintain "water facilities" and/or "sewerage" facilities and provide water and sewer utility services by means of those facilities. In providing such water and sewer services, municipalities may collect rates, fees, tolls and charges from any "consumer." §31-35-402, C.R.S. Section 31-35-401(1), C.R.S., defines "consumer" as being "any public or private user of water facilities or sewerage facilities or both." "Sewerage facility" is defined in §31-35-401(6), C.R.S., to include "devices used in the collection, treatment or disposition of . . . storm, flood or surface drainage waters." The storm drainage utility of Littleton fits within the statutory definition of a sewerage facility and the State falls within the definition of consumer.

The Court of Appeals, on page 4 of its opinion, stated that:

> In §31-35-401, the General Assembly, while defining "consumer" broadly, declined to extend that term to include the State and its various subdivisions. And, in

> instances in which the State has been made subject to legislative schemes, the applicability of the legislation to the State and its subdivisions has been express. (Emphasis added.)

First, there is no legislative history in the record that the legislature considered and "declined" to include the State in the definition of consumer. Second, this ruling makes a nullity of the words "any public . . . user" in the §31-35-401 definition of consumer. Such a result is contrary to the rules of statutory construction that all words in the statute are intended to have effect, Section 2-4-201(1)(b), C.R.S., and that courts should give effect to all parts of a statute so as not to make meaningless any words therein. People v. Terry, 791 P.2d 374 (Colo. 1990); 2A Sutherland, Statutory Construction, §46.05, §46.06 (4th Ed. 1992).

When the General Assembly defined the term "consumer" to include **"any public** or private **user,"** it is difficult to imagine what entities other than the state and its political subdivisions it was referring to. It is also difficult to imagine how the General Assembly could have been more "express" in its inclusion of public users such as the State and its political subdivisions without listing, by name, every type and manner of public entity. Therefore, by defining "consumer" to include any public user, the intent of the General Assembly is that all public entities, including the State, would come under the purview of §§31-35-401 and 31-35-402, C.R.S.

The Court of Appeals concluded that the property in question was not intended to be subject to Littleton's fee because of its "unique characteristics." On pages 2 and 3 of its decision, the

Court of Appeals describes these unique characteristics as the constitutional and statutory mandates that the State is limited to using funds exclusively to support schools. This presumes that the payment of drainage and other utility fees is not "in the interests of education" or does not somehow "exclusively support the common schools" and would result in the "diversion of revenues from the public school funds." In reality, in most, if not all instances, the provision of all utility services authorized by §31-35-402, C.R.S., including storm drainage, water, and wastewater services, to schools is in the interest of education. As the issue relates to the provision of storm drainage services, the support of the common schools and the interest of education generally would not be well-served if the schools were subject to frequent flooding.

If municipalities are not permitted to charge fees to reimburse costs incurred in delivering water, wastewater, and storm drainage services to state schools, municipalities can either refuse to supply such services to schools or increase rates to other users to subsidize school users. The State and its subdivisions then would be forced to manufacture their own utility services for State property, or negotiate an agreement to receive utility services with each municipality for every school and state property. Such a result is a substantial detriment to the State and its political subdivisions and does not allow for efficient provision of government services by all governmental entities to the public. The interpretation of §31-35-401 and 402, C.R.S. by the Court of Appeals is not in accord with the principles of

statutory construction which include that "in enacting a statute, it is presumed that . . . a just and reasonable result is intended." §2-4-201, C.R.S.

2. Prior decisions of this Court and courts of other jurisdictions support a finding that the Court of Appeals erred in ruling that municipal utility costs may not be imposed on the State.

Questions concerning the ability of one level, or part, of state or local government to affect another part of government are always difficult. Frequently, resolution of such questions turns on the consent of the state to do what a local government requires in a particular area. Here, the question is whether or not §31-35-402(1)(f), C.R.S., provides sufficient indication of a legislative intent to require the State to pay storm drainage utility fees imposed by municipalities for such services.

Previously, this Court held in Associated Students of the University of Colorado v. Regents, 189 Colo. 482, 543 P.2d 59 (1975), that language specific to the University was required to subject it to an otherwise general statute. Colorado's sunshine law was deemed general in nature and therefore lacked the specificity of reference to bind the University. Later, in Uberoi v. University of Colorado, 686 P.2d 785 (Colo. 1984), this Court held, based on the same rationale, that the University was not bound by the open records law. However, in both of these cases, the statutes construed were applicable only to governmental entities and there was specific reference to different types of governmental entities intended to be included within the statute. The statute construed here specifically includes all public and

private users of the utility. In addition, in Colorado Civil Rights Commission v. University of Colorado, 759 P.2d 726 (Colo. 1988), this Court, while not expressly overturning the rule of statutory construction announced in Associated Students and followed in Uberoi, acknowledged that the state legislature "repudiated the holding of both cases," 759 P.2d at 734, and held:

> [W]hile the language in Associated Students might be viewed as far reaching in scope when read in isolation, this language loses much of its force when read against the obvious purpose of Colorado's employment practices legislation, which is to prohibit and eliminate discriminatory employment practices by all public and private employers in the state . . . 759 P.2d at 733.

Section 31-35-402, C.R.S., specifies similar intent to the employment practices law to have all users pay a proportionate share of the cost of the utility provided.

Finally, and perhaps most importantly, in Colorado State Board of Land Commissioners v. Mined Land Reclamation Board, 809 P.2d 974 (Colo. 1991), this Court held that, notwithstanding the constitutional duty imposed upon the State Land Board in the operation and utilization of State school lands for school purposes, requirements that mining activities on State school lands must adhere to county zoning regulations do not unconstitutionally infringe upon the authority of the State Land Board. In that case, this Court held:

> . . . The constitutional scheme, in other words, does not contemplate that the State Land Board can ignore a reasonable legislative regulation for the purpose of carrying out its constitutional responsibility of securing "the maximum possible amount" for public lands. 809 P.2d at 985.

In the same case, this Court also held:

> We are satisfied that the Reclamation Act's requirements with respect to the county zoning regulations do not divest the State Land Board of its authority to direct, control, and dispose of school lands. . . . So also, the fact that the Reclamation Board adheres to the statutory standards for the issuance of a mining permit does not result in diverting revenue from the public school fund. The constitutional grant of authority to the School [sic] Land Board to dispose of school lands in such manner as will secure the "maximum possible amount therefor," Colo. Const. Art. IX, §10, was not intended as a license to disregard reasonable legislative regulations simply because compliance with such regulations might reduce the amount of revenues otherwise available from the leasing of school lands.
>
> . . . We thus conclude that the provisions of the Reclamation Act requiring compliance with county zoning regulations represent nothing more than the type of legislative regulation contemplated by Article IX, sections 9 and 10 of the Colorado Constitution.
> 809 P.2d at 987 (Emphasis added).

If State school lands may be regulated in the context of local zoning requirements, it follows that local fees properly enacted pursuant to express statutory authority for the purpose of compensating the local government for the provision of utility services directly to schools are also applicable to State school lands. Just because a statute deals with a different issue than the issue addressed in Articles VIII and IX of the Colorado Constitution does not make that statute in "contravention" of the constitutional provision. Only a strained and erroneous interpretation would find contravention in harmonious, albeit different, provisions of law. Therefore, we submit that, although the Colorado Constitution may require that the proceeds of land held in trust by institutions for educational purposes must be faithfully applied to promote such purposes, the application of a

portion of those proceeds for the purpose of purchasing utility services for schools does not violate that fiduciary duty, particularly if the utility services are found to be useful to the school and to the students therein.

Support for the position of amici may also be found in a decision of the United States Court of Appeals for the 8th Circuit. In United States v. City of Columbia, Missouri, 914 F.2d 151 (8th Cir. 1990), the court held that the federal government was required to pay the City of Columbia, Missouri, for utility services provided to the United States Veterans Administration Hospital. The court applied the principle that when the United States purchases utility services, it does so as a vendee, and that the city's imposition of utility charges is not done in its capacity as a sovereign, but rather as a vendor or provider of those utility services. See also, Eckman, "Local Zoning and Building Regulations of Other Governmental Entities," 20 The Colorado Lawyer 2287 (Nov. 1991).

3. By determining that the Littleton storm drainage fee was a special assessment rather than a user fee, the Court of Appeals misapplied Colorado law.

The Court of Appeals, in reaching the conclusion that Littleton's storm drainage fee was a special assessment rather than a fee, misconstrues the two decisions of this Court upon which it relies,[1] and ignores the distinction between special assessments and fees set forth by this Court in other cases. The undersigned,

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[1]Bloom v. City of Fort Collins, 784 P.2d 304 (Colo. 1989) and Zelinger v. City and County of Denver, 724 P.2d 1356 (Colo. 1986).

and particularly Denver and Fort Collins as the party in interest in each of these cases, are concerned that the State and the Court of Appeals have misinterpreted this Court's decision in Zelinger and Bloom in such a way as to lead to an incorrect result here, as well as to befoul the established law in this area for some time in the future.

It has been correctly noted that Littleton's ordinance resembles the situation in Zelinger v. City and County of Denver, 724 P.2d 1356 (Colo. 1986). Indeed, except for the manner of calculation of the service charge, a reading of the portions of Denver's ordinance quoted in Zelinger (724 P.2d at 1358-9) with Littleton's ordinance discloses the similarities. However, the Court of Appeals appears to have relied on a headnote by West Publishing Company rather than the ruling of this Court when it stated that Zelinger represents the proposition that "a special assessment, unlike a special fee, is a charge imposed upon the users of a local improvement to finance the maintenance, operation, or development of the improvement." Slip Opinion at page 7. Nowhere in the Zelinger opinion did the Supreme Court conclude that this service charge was instead a special assessment.

In Zelinger, this Court first defined an "ad valorem" property tax and "special assessment," then ruled on the issue before it: that the charge was not an unconstitutional property tax. It is clear from a review of the entire case, and its reliance on Loup-Miller and §31-35-402(1)(f), C.R.S., that the opposite result than that reached by the Court of Appeals is proper in this case:

> The trial court held that the Ordinance [Denver's storm drainage ordinance] was rationally related to a legitimate state purpose of financing the maintenance and construction of new storm sewers. It also held that the Ordinance was a service charge and not an unconstitutional tax. We affirm.
> . . .
> In Loup-Miller Const. Co. v. City and County of Denver, 676 P.2d 1170 (Colo. 1984), we held that the sanitary sewer charge 'ordinances did not impose taxes, but set fees, as authorized by section 31-35-402(1)(f), C.R.S. (1977, Repl. Vol. 12) and section C4.12 of the Denver Charter. ("The council shall fix the rates of other services to be rendered by each such public utility...)' Id. at 1175-76. Here, the City of Denver relies on precisely the same statute and charter provision as was relied upon in Loup-Miller.
> 724 P.2d at 1358-9. (Emphasis added)

Thus, the identity of the nature of service charges for the sanitary sewer utility and the storm drainage utility was recognized by the Colorado legislature and noted with approval by this Court. Both are service charges for a municipally-owned utility. There never seems to have been a question by the State that a city could recover its costs of construction, reconstruction, operation, and maintenance of a sanitary sewer service utility as in Loup-Miller. That the state legislature has defined sewage facilities to include both storm drainage and sanitary sewerage indicates its determination that they are both to be treated as important utility services by municipalities. The link was recognized by this Court in Zelinger, and has become even more compelling with the onset of municipal responsibility for the quality of storm water discharges pursuant to section 402(p) of the Clean Water Act (added by section 405 of the Water Quality Act of 1987, 33 U.S.C. 1251, et seq.) and 40 C.F.R. 122, 123, and 124.

The Court of Appeals also misconstrued the significance of

this Court's ruling in Bloom v. City of Fort Collins, 784 P.2d 304 (Colo. 1989). The Court of Appeals improperly distinguished between the Fort Collins transportation utility fee and the Littleton storm drainage fee assuming that the use of the collected funds was different. The Court of Appeals incorrectly assumed that only services were intended to be funded by the Fort Collins transportation utility fee. The Court of Appeals stated with respect to Bloom that:

> Indeed, the use of the collected funds [as described in Littleton's ordinance]. . . clearly differs from the use of funds in Bloom . . . where an ordinance intended to defray the expenses connected with the operation and maintenance of city streets was characterized as a fee and not a special assessment. There, unlike here, services rather than physical improvements, was the focus of the ordinance. Slip Opinion page 7. (Emphasis added.)

The Fort Collins transportation utility ordinance which was the subject of the Bloom decision specifically states that fees and charges collected under that ordinance "shall be used solely to pay for the costs of operation, administration, maintenance, repair, improvement, renewal, replacement and reconstruction of the local street network of the city and costs incidental thereto." Section 26-580, Fort Collins City Code (emphasis added). The terms "improvements," "replacements," and "reconstruction" of the local street network from the Fort Collins ordinance is akin to, if not synonymous with, the term "construction" as utilized by Littleton in Section 7-8-6 of its Code. Applying the analysis in Bloom, it should make no difference that the fees collected by Littleton may be used for initial construction of the storm drainage utility

facilities while the fees collected in Bloom may arguably only be used for the construction of "improvements" to the city's existing street network.

Moreover, in Bloom, this Court determined that the Fort Collins transportation utility fee is a "special fee" which is defined as:

> A charge imposed on persons or property and reasonably designed to meet the overall cost of the service for which the fee is imposed.
> 784 P.2d at 310. (Emphasis added.)

The cost of the construction, repair, improvement, maintenance, operation, and renovation of utility facilities are all legitimately part of the "overall cost" of providing a utility service for which a fee is imposed. Under the Bloom analysis, a fee which has been properly formulated to approximate and fairly apportion the costs of providing a municipal service is, in fact, a legally permitted fee and not a special assessment, regardless of whether it reflects the cost of constructing necessary capital improvements or the cost of providing the service itself.

The Court of Appeals posits on page 7 of its decision that if a "special benefit" is conferred, then the fee is somehow magically transformed into a "special assessment." By that logic, it would be difficult to impose any type of utility fee, since all customers of a utility obtain a special, and in some instances, a rather personal benefit from the delivery of utility services. It is difficult to argue that no special benefit accrues to an individual by reason of having fresh, potable water under pressure or the ability to dispose of wastewater in his or her home. Similarly, it

cannot be denied that an individual has received a valuable and personal benefit by not having a flooded basement every time it rains. Just because these benefits are "special," i.e., peculiar to the property, does not mean that the fees charged for the utility service are transformed into "special assessments." Bloom v. City of Fort Collins, 784 P.2d 304 (Colo. 1989).

One of the features of a special assessment which, prior to the decision of the Court of Appeals, had been thought to be essential to its imposition is the necessity of a finding by the local legislative body that special benefit will be conferred on the property assessed as a result of the construction or acquisition of the capital improvement. See, Reams v. City of Grand Junction, 676 P.2d 1189 (Colo. 1984). This finding is the result of a series of special procedures dictated by charter, ordinance, or statute whereby the owners of property within a specific area of the municipality are given notice and an opportunity to protest the formation of an assessment district, the inclusion of their specific properties within such district, and the amounts proposed to be assessed against their properties. This is the procedure found at §§31-25-503 and 520, C.R.S., and similar to the requirements of the charter and ordinances of the Aurora, Boulder, Denver, Fort Collins, and many other cities in this state. See, Orchard Court Development Co. v. City of Boulder, 182 Colo. 361, 513 P.2d 199 (1973); City of Englewood v. Weist, 184 Colo. 325, 520 P.2d 120 (1974). This Court has always found that the finding of a special benefit by the municipality was essential to

the establishment of a special assessment. Bloom v. City of Fort Collins, 784 P.2d 304 (Colo. 1989).

It is clear that Littleton's city council did not set out to create a special improvement district to construct specific, identified improvements next to various parcels of land, to determine special benefit, create an assessment roll, and collect the money to pay for the improvements, or repay bonds, by a "special assessment." The procedure used by Littleton in adopting the ordinance imposing storm drainage fees on users of its service bears no resemblance to the process of notice, hearing, determination of special benefit, construction, further notice and hearing, and final assessment which is involved in imposing a special assessment as contemplated by §§31-25-501 et seq., C.R.S., Littleton's own charter or ordinances, Satter v. City of Littleton, 185 Colo. 90, 522 P.2d 95 (1974), or the procedure which underlay People ex rel. Dunbar v. City of Littleton, 183 Colo. 195, 515 P.2d 1121 (1973). Nowhere in Littleton's ordinance establishing its storm drainage utility and fee is there mention of special benefit. Nevertheless, the Court of Appeals asserts:

> Moreover, the construction and operation of the storm water facilities and drainage systems will confer not simply 'services' upon the affected properties, but rather a 'special benefit' at least equal to the financial burden imposed by the City's ordinance. Slip Opinion at page 7.

While a reviewing court is not required to accept a city's nomenclature at face value, and can determine as a matter of law from the substance of a legislative measure whether the charge that a city labeled a fee is legally a tax, it does not have the

authority to make a legislative finding of a special benefit. This is reserved solely for legislative bodies.[2] No appellate court can make such a finding on the record presented here, which provides no support for this assertion.

Aurora, Boulder, Fort Collins, and numerous other cities in Colorado have adopted storm drainage utility fees similar to those adopted by Denver and upheld by this Court in Zelinger v. City and County of Denver, 724 P.2d 1356 (Colo. 1986). In establishing such fees, none of these municipalities have made findings of special benefit, none have restricted the revenues to improvements providing special benefit to particular properties, and none have followed the procedures needed to establish a special or local improvement district under the applicable statutory, charter, or ordinance provisions relating to formation of such districts. Therefore, the decision of the Court of Appeals has the broad, unintended effect of calling into question all local storm drainage, and possibly other utility, fees which permit the use of a portion of such fees for capital construction.

The issue of whether a storm drainage fee constitutes a valid service fee or a special assessment has been addressed in other jurisdictions. Time after time the result has been the same, namely that storm drainage fees do not constitute special

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[2]Of course, courts can in proper cases strike down a city council's finding of special benefit as unsupported by the evidence in the record, e.g. Town of Fort Lupton v. Union Pacific Railroad Co., 156 Colo. 352, 399 P.2d 248 (1965), but that is another matter entirely. The power to reverse is not the power to initiate.

assessments or taxes, but are valid user fees. Salt Lake County v. Board of Education of the Granite School District, 808 P.2d 1056 (Utah 1991); Long Run Baptist Association v. Louisville and Jefferson County Metropolitan Sewer District, 775 S.W.2d 520 (Ky. App. 1980).

Littleton's, Aurora's, Denver's, Boulder's, and similar municipal storm drainage utility plans, like the Fort Collins plan for maintenance and improvements of its streets at issue in Bloom, are directed toward the municipal utility services required by the properties, and not a special benefit which enhances the value of assessed properties. The fee is based on the use of each property of these services. This method of determining charges to property does not pass muster as a special assessment.

B. THE COURT OF APPEALS ERRED IN FINDING THAT ATTORNEY FEES CAN BE IMPOSED AGAINST THE CITY WITHOUT AN EVIDENTIARY HEARING ON THE CRITERIA SET FORTH IN §§13-17-101 TO -201, C.R.S.

It is no surprise that the award of attorney's fees to the defendants in this action shocks the conscience of legal counsel for these amici. For years, Littleton has received payments for providing water and sewer utility services to the defendants without complaint. Traditionally, all state agencies which use municipal water, sewer, and storm water and flood control utilities have paid utility fees to the municipality providing the service. These amici are not aware of any governmental entity which has asserted that it is entitled to gratuitous municipal utility services. Aurora, Boulder, Denver, Fort Collins, and numerous

other cities in Colorado have adopted storm drainage and other utility fees which have been paid by the state and other governmental entities receiving the benefits of the service. Therefore, Littleton had a reasonable basis for belief that governmental users and reviewing courts would consider its storm drainage utility fee to be a utility service fee, and not a special assessment. No Colorado appellate court had heretofore as much as suggested that utility service fees would be transformed into special assessments if they could be used to pay for capital improvements. No appellate court had heretofore found that municipal services or facilities provided a special benefit at least equal to the fee charged in the absence of any such determination by the municipality. Littleton ably supported its arguments concerning the inapplicability of People ex rel. Dunbar v. Littleton, supra, with voluminous citations to statutes and cases. It does not appear to these amici that Littleton was arguing to change existing law. On the contrary, Littleton's arguments are accurate interpretations of existing law as announced by this Court and worthy of our support. Consequently, Littleton's position was maintained in good faith, and was not frivolous or lacking substantial justification, and therefore, there is no basis to award attorneys fees against Littleton pursuant to §13-17-101 or 102, C.R.S.

III. CONCLUSION

Colorado statutes and rulings of this Court authorize the collection of utility fees, including storm drainage fees, by a municipality against all users of the municipal facility, including public entities such as the State. This Court has made clear that the constitutional provisions regarding school lands do not mean that the schools are not subject to any legislative regulations simply because they may reduce the amount of revenues otherwise available for schools. The effect of the opposite conclusion of the Court of Appeals is the unintended and irrational result that some other person or entity would have to pay for the utilities used by public entities, or each public entity would have to provide for its own utility service. The impracticality of each entity providing its own service is particularly obvious with respect to the numerous state offices and schools located throughout Colorado. Such a result forces inefficiency of government at great cost to taxpayers. The storm drainage fee set by Littleton is not a special assessment, but a fee according to the criteria set forth by this Court in numerous cases. The Court of Appeals ruling to the contrary, and awarding attorneys fees against Littleton for presenting the rulings of this Court, require reversal of the Court of Appeals and the District Court opinions so that Littleton can collect the storm drainage fees lawfully imposed against the State.

Respectfully submitted this 10th day of August, 1992.

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CERTIFICATE OF MAILING

I hereby certify that on this 10th day of August, 1992, I deposited a true and correct copy of the foregoing in the U.S. mails, first class postage prepaid, addressed to:

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§ 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.

(Repealed and reenacted Laws 1973, H.B.1625, § 1.)
Prior Compilations: C.R.S.1963, § 135-1-201.

§ 13-17-101. Legislative declaration

The general assembly recognizes that courts of record of this state have become increasingly burdened with litigation which is straining the judicial system and interfering with the effective administration of civil justice. In response to this problem, the general assembly hereby sets forth provisions for the recovery of attorney fees in courts of record when the bringing or defense of an action, or part thereof (including any claim for exemplary damages), is determined to have been substantially frivolous, substantially groundless, or substantially vexatious. All courts shall liberally construe the provisions of this article to effectuate substantial justice and comply with the intent set forth in this section.

(Laws 1977, H.B. 1210, § 2. Repealed and reenacted Laws 1984, S.B. 182, § 1.)

§ 13-17-102. Attorney fees

(1) Subject to the provisions of this section, in any civil action of any nature commenced or appealed in any court of record in this state, the court may award, except as this article otherwise provides, as part of its judgment and in addition to any costs otherwise assessed, reasonable attorney fees.

(2) Subject to the limitations set forth elsewhere in this article, in any civil action of any nature commenced or appealed in any court of record in this state, the court shall award, by way of judgment or separate order, reasonable attorney fees against any attorney or party who has brought or defended a civil action, either in whole or in part, that the court determines lacked substantial justification.

(3) When a court determines that reasonable attorney fees should be assessed, it shall allocate the payment thereof among the offending attorneys and parties, jointly or severally, as it deems most just, and may charge such amount, or portion thereof, to any offending attorney or party.

(4) The court shall assess attorney fees if, upon the motion of any party or the court itself, it finds that an attorney or party brought or defended an action, or any part thereof, that lacked substantial justification or that the action, or any part thereof, was interposed for delay or harassment or if it

finds that an attorney or party unnecessarily expanded the proceeding by other improper conduct, including, but not limited to, abuses of discovery procedures available under the Colorado rules of civil procedure or a designation by a defending party under section 13–21–111.5(3) that lacked substantial justification. As used in this article, "lacked substantial justification" means substantially frivolous, substantially groundless, or substantially vexatious.

(5) No attorney fees shall be assessed if, after filing suit, a voluntary dismissal is filed as to any claim or action within a reasonable time after the attorney or party filing the dismissal knew, or reasonably should have known, that he would not prevail on said claim or action.

(6) No party who is appearing without an attorney shall be assessed attorney fees unless the court finds that the party clearly knew or reasonably should have known that his action or defense, or any part thereof, was substantially frivolous, substantially groundless, or substantially vexatious; except that this subsection (6) shall not apply to situations in which an attorney licensed to practice law in this state is appearing without an attorney, in which case, he shall be held to the standards established for attorneys elsewhere in this article.

(7) No attorney or party shall be assessed attorney fees as to any claim or defense which the court determines was asserted by said attorney or party in a good faith attempt to establish a new theory of law in Colorado.

(8) The provisions of this section shall not apply to traffic offenses, matters brought under the provisions of the "Colorado Children's Code", title 19, C.R.S., or related juvenile matters, or matters involving violations of municipal ordinances.

(Laws 1977, H.B. 1210, § 2. Repealed and reenacted Laws 1984, S.B. 182, § 2. Laws 1986, S.B. 70, § 4.)

PART 4

SEWER AND WATER SYSTEMS

31-35-401. Definitions. As used in this part 4, unless the context otherwise requires:

(1) "Consumer" means any public or private user of water facilities or sewerage facilities or both.

(2) "Governing body" means the body which is in charge of the municipality's water or sanitation facilities, whether or not the same is a "governing body" as defined in part 1 of article 1 of this title.

(3) "Joint system" or "joint water and sewer system" means water facilities and sewerage facilities combined, operated, and maintained as a single public utility and income-producing project.

(4) "Municipality" means a municipality as defined in part 1 of article 1 of this title and includes any quasi-municipal corporation formed principally to acquire, operate, and maintain water facilities or sewerage facilities or both.

(5) "Net effective interest rate" of a proposed issue of bonds means the net interest cost of said issue divided by the sum of the products derived by multiplying the principal amount of such issue maturing on each maturity date by the number of years from the date of said proposed bonds to their respective maturities. "Net interest cost" of a proposed issue of bonds means the total amount of interest to accrue on said bonds from their date of issuance to their respective maturities plus the amount of any discount below par or less the amount of any premium above par at which said bonds are being or have been sold. In all cases the net effective interest rate and net interest cost shall be computed without regard to any option of redemption prior to the designated maturity dates of the bonds.

(6) "Sewerage facilities" means any one or more of the various devices used in the collection, treatment, or disposition of sewage or industrial wastes of a liquid nature or storm, flood, or surface drainage waters, including all inlets; collection, drainage, or disposal lines; intercepting sewers; joint storm and sanitary sewers; sewage disposal plants; outfall sewers; all pumping, power, and other equipment and appurtenances; all extensions, improvements, remodeling, additions, and alterations thereof; and any and all rights or interests in such sewerage facilities.

(7) "Water facilities" means any one or more works and improvements used in and as a part of the collection, treatment, or distribution of water for the beneficial uses and purposes for which the water has been or may be appropriated, including, but not limited to, uses for domestic, municipal, irrigation, power, and industrial purposes and including construction, operation, and maintenance of a system of raw and clear water and distribution storage reservoirs, deep and shallow wells, pumping, ventilating, and gauging stations, inlets, tunnels, flumes, conduits, canals, collection, transmission, and distribution lines, infiltration galleries, hydrants, meters, filtration and treatment plants and works, power plants, all pumping, power, and other equipment and appurtenances, all extensions, improvements, remodeling, additions, and alterations thereof, and any and all rights or interests in such works and improvements; but, no municipality shall construct or acquire facilities for the sale of electric energy or power, except hydroelectric energy or power for sale at wholesale only, without complying with the provisions of section 31-15-707.

Source: R & RE, L. 75, p. 1250, § 1; L. 81, p. 1540, § 1.

31-35-702. **Powers.** (1) In addition to the powers which it may now have, any municipality, without any election of the qualified electors thereof, has power under this part 4:

(a) To acquire by gift, purchase, lease, or exercise of the right of eminent domain, to construct, to reconstruct, to improve, to better, and to extend water facilities or sewerage facilities or both, wholly within or wholly without the municipality or partially within and partially without the municipality, and to acquire by gift, purchase, or the exercise of the right of eminent domain lands, easements, and rights in land in connection therewith;

(b) To operate and maintain water facilities or sewerage facilities or both for its own use and for the use of public and private consumers and users within and without the territorial boundaries of the municipality, but no water service or sewerage service or combination of them shall be furnished in any other municipality unless the approval of such other municipality is obtained as to the territory in which the service is to be rendered;

(c) To accept loans or grants or both from the United States under any federal law in force to aid in financing the cost of engineering, architectural, or economic investigations or studies, surveys, designs, plans, working drawings, specifications, procedures, or other action preliminary to the construction of water facilities or sewerage facilities or both;

(d) To accept loans or grants or both from the United States under any federal law in force for the construction of necessary water facilities or sewerage facilities or both;

(e) To enter into joint operating agreements, contracts, or arrangements with consumers concerning water facilities or sewerage facilities or both, whether acquired or constructed by the municipality or consumer, and to accept grants and contributions from consumers for the construction of water facilities or sewerage facilities or both. When determined by its governing body to be in the public interest and necessary for the protection of the public health, any municipality is authorized to enter into and perform contracts, whether long-term or short-term but in no event exceeding fifty years, with any consumer for the provision and operation by the municipality of sewerage facilities to abate or reduce the pollution of waters caused by discharges of wastes by a consumer and the payment periodically by the consumer to the municipality of amounts at least sufficient, in the determination of such governing body, to compensate the municipality for the cost of providing, including payment of principal and interest charges, if any, and of operating and maintaining the sewerage facilities serving such consumer.

(f) To prescribe, revise, and collect in advance or otherwise, from any consumer or any owner or occupant of any real property connected therewith or receiving service therefrom, rates, fees, tolls, and charges or any combination thereof for the services furnished by, or the direct or indirect connection with, or the use of, or any commodity from such water facilities or sewerage facilities or both, including, without limiting the generality of the foregoing, minimum charges, charges for the availability of service, tap fees, disconnection fees, reconnection fees, and reasonable penalties for any delinquencies, including but not necessarily limited to interest on delinquencies from any date due at a rate of not exceeding one percent per month or fraction thereof, reasonable attorneys' fees, and other costs of collection without any modification, supervision, or regulation of any such rates, fees, tolls, or charges by any board, agency, bureau, commission, or official other than the governing body collecting them; and in anticipation of the collection of the revenues of such water facilities or sewerage facilities, or joint system, to issue revenue bonds to finance in whole or in part the cost of acquisition, construction, reconstruction, improvement, betterment, or extension of the water facilities or sewerage facilities, or both; and to issue temporary bonds until permanent bonds and any coupons appertaining thereto have been printed and exchanged for the temporary bonds;

(g) To pledge to the punctual payment of said bonds and interest thereon all or any part of the revenues of the water facilities or sewerage facilities or both, including the revenues of improvements, betterments, or extensions thereto thereafter constructed or acquired, as well as the revenues of existing water facilities or sewerage facilities or both;

(h) To enter into and perform contracts and agreements with other municipalities for or concerning the planning, construction, lease, or other acquisition and the financing of water facilities or sewerage facilities or both and the maintenance and operation thereof. Pursuant to any such contracts or agreements, such municipalities may obligate themselves to make payments in amounts which shall be sufficient to enable any municipality which finances such water facilities or sewerage facilities or both to meet its

expenses, the interest and principal payments for its bonds, its reasonable reserves for debt service, operation and maintenance, and renewals and replacements, and the requirements of any rate covenant with respect to debt service coverage contained in any resolution, ordinance, or other security instrument. Such contracts or agreements may contain such other terms and conditions as the municipalities may determine, including but not limited to provisions whereby a municipality is obligated to pay for the output, capacity, or use of any project irrespective of whether such output, capacity, or use is produced or delivered to the municipality or whether any project contemplated by any such agreement is completed, operable, or operating, and notwithstanding suspension, interruption, interference, reduction, or curtailment of the output, use, or service of such project. Subject to local charter and state constitutional limitations, such contracts or agreements may also provide that if one or more of the municipalities default in the payment of its obligations under any such contract or agreement, the remaining municipalities which also have such agreements shall be required to accept and pay for, and shall be entitled proportionately to use or otherwise dispose of, the output, capacity, or use of the project contracted for by the defaulting municipalities. The obligations of a municipality under such contracts or agreements shall either constitute special obligations of the municipality, payable solely from the revenues and other moneys derived by the municipality from its water facilities, sewerage facilities, or both, and shall be treated as expenses of operating such facilities or, in the discretion of such municipality and subject to satisfaction of any requirements of law governing or limiting the incurrence of debt by such municipality, shall constitute a general obligation of such municipality. Notwithstanding the provisions of section 6 (3) of article XI of the state constitution, where such contract or agreement is to constitute a general obligation of such municipality and where such contract or agreement provides that the municipality shall be required to accept and pay for the output, capacity, or use of the project contracted for by a defaulting municipality, such contract or agreement shall not be entered into unless the question of incurring a general obligation for such project has been submitted to and approved at an election conducted by such municipality in accordance with the election laws applicable to such municipality. Any such municipalities so contracting may also provide in any contract or agreement for a board, commission, or such other body as they deem proper for the supervision and general management of the water facilities or sewerage facilities or both and for the operation thereof and may prescribe its powers and duties, including the power to issue revenue bonds pursuant to this part 4, and fix the compensation of the members thereof. For the purposes of this paragraph (h), "municipality" means a municipality as defined in part 1 of article 1 of this title and any other political subdivision of this state, including any entity formed pursuant to intergovernmental contract or agreement, authorized by any law of this state to acquire, operate, and maintain the facilities which are the subject of such contract or agreement.

(i) To make all contracts, execute all instruments, and do all things necessary or convenient in the exercise of the powers granted in this section, or in the performance of its covenants or duties, or in order to secure the payment of its bonds if no encumbrance, mortgage, or other pledge of property, excluding any pledged revenues, of the municipality is created thereby, and if no property, other than money, of the municipality is liable to be forfeited or taken in payment of said bonds, and if no debt on the credit of the municipality is thereby incurred in any manner for any purpose; and

(j) To issue water or sewer or joint water and sewer refunding revenue bonds to refund, pay, or discharge all or any part of its outstanding water or sewer or joint water and sewer revenue bonds issued under this part 4 or under any other law, including any interest thereon in arrears or about to become due, or for the purpose of reducing interest costs, effecting a change in any particular year or years in the principal and interest payable thereon or in the related utility rates to be charged, effecting other economies, or modifying or eliminating restrictive contractual limitations appertaining to the issuance of additional bonds or to any municipal water facilities or sewerage facilities, or both, as provided in section 31-35-412.

Source: R & RE, L. 75, p. 1251, § 1; L. 83, p. 508, § 3; L. 86, p. 1064, § 1.