SUPREME COURT, STATE OF COLORADO

Case No. 97SA303

BRIEF OF THE COLORADO MUNICIPAL LEAGUE AS *AMICUS CURIAE*

CHARLES L. CAMPBELL, HARRY C. TALBOTT, RONALD R. CRIST, WILLIAM R. ELMBLAD AND GARY CRIST,

Plaintiffs,

v.

ORCHARD MESA IRRIGATION DISTRICT, MUTUAL MESA LATERAL ENTERPRISE, FARM SERVICES ADMINISTRATION (formerly Agricultural Stabilization and Conservation Service), an agency of the United States Department of Agriculture, the NATURAL RESOURCES CONSERVATION SERVICE (formerly Soil Conservation Service), an agency of the United States Department of Agriculture, and the COLORADO WATER CONSERVATION BOARD, an agency of the State of Colorado,

Defendants.

CERTIFIED QUESTIONS OF LAW
UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO
CIVIL ACTION NO. 97-S-526, HON. DANIEL B. SPARR

COLORADO MUNICIPAL LEAGUE
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Comes now the Colorado Municipal League (the "League") as an *amicus curiae* and submits this brief in support of the position of the defendants, the Orchard Mesa Irrigation District (OMID), *et al.*

I. Interests of the League

The League is a voluntary non-profit association representing 262 of the 269 municipalities in Colorado, including all municipalities with a population in excess of 1000 people. The League has for many years appeared before this court as an *amicus curiae* to present the perspectives of Colorado municipalities and to highlight for the court the larger statewide ramifications of decisions that may extend beyond the interests of the parties in the case at bar.

The instant case represents yet another opportunity for municipalities and other government entities in Colorado to decipher the meaning and applicability of the Taxpayer's Bill of Rights (TABOR), Colo. Const. art. X, § 20. As perhaps the most conventional form of "local government," municipal corporations, both statutory and home rule, have obviously considered themselves to be "districts" within the meaning of TABOR § 20 (2)(b) and as such are fully subject to the requirements and limitations of this constitutional amendment since its adoption in 1992. Nevertheless, a host of collateral questions about the basic applicability of TABOR have simply festered in the past five years. Municipalities can and often do find themselves affiliated with a wide variety of entities which have their own separate, corporate existence, but which may or may not be deemed to be "local governments" in their own right under TABOR. Such entities are often creatures of statute. Sometimes they are creatures of contract between governmental

entities or between public and private parties. They may be considered some sort of subsidiary of a municipality, established to carry out a particular public purpose, but not to provide general purpose "government" in any conventional sense of the word. Municipalities have struggled mightily to determine the status of such entities under TABOR since 1992 for obvious reasons: (1) If such entities are considered somehow to be a part of the municipality with which they are affiliated, then revenue and spending associated with the entity must be included within the municipality's own calculation of its "fiscal year spending limitations" under TABOR § 7. (2) If, on the other hand, such entities are considered to be independent "local governments" under TABOR, then the whole spectrum of TABOR fiscal limitations would have to be calculated and applied separately to the entity.

This case squarely presents the court with a fundamental question of first impression: "What is a 'local government' for purposes of TABOR?" Depending on how the court chooses to answer this question, it could have important consequences for how municipalities understand and treat various entities with which they may be affiliated.

Of equal if not greater importance to municipalities in this case are the apparent attempts by the plaintiffs to blur the distinction between "taxes" and "assessments" for purposes of asserting that OMID is indeed a local government or, in the alternative, that the enterprise created by OMID may be illegitimate. To municipalities, it is absolutely critical for this court to maintain the historical distinction between the definition of "tax" and "assessment" because, among other reasons, TABOR § 20 (3)(a) requires advance voter approval to impose or increase the former but not the latter.

II. Issues Presented for Review

The League will focus its arguments in this case entirely on the first issue certified by the United States District Court and accepted by this court:

> 1. Is an irrigation district originally formed pursuant to the act of April 12, 1901, entitled "An Act to provide for the organization and government of irrigation districts . . . ," and currently operating under the provisions of the Irrigation District Law of 1921, Colo. Rev. Stat. §§ 37-42-101 to 141, a "District" as the term is defined at Colo. Const. Art. X, Sec. 20, cl. 2(b) which is required to comply with the provisions of Article X, Section 20 of the Colorado Constitution?

The League would, however, concur with the arguments of OMID and other *amici* in this case that the answer to this first question may resolve all of the issues certified to the court. If the court determines that OMID is not a "district" subject to TABOR, then the second and third questions are moot. If, on the other hand, the court determines that OMID is a TABOR "district," then the answers to the second and third question are self-evident. By the very terms of TABOR itself as well as the Water Activity Enterprise statute, §§ 37-45.1-101, *et seq.*, C.R.S., all districts are capable of owning enterprises, and enterprises are clearly not subject to TABOR. A simple answer to these straightforward questions of law does not require the court to address at this time whether or not the particular enterprise that is being contested in this case was properly created under the constitution and statutes.

III. Statement of the Case

The League hereby adopts and incorporates by reference the statement of the case contained in OMID's Response Brief.

IV. Summary of Argument

The League concedes that the questions of whether or not OMID is a "district" or a "local government for purposes of TABOR can and probably should be decided narrowly based upon

the body of statutory and decisional law that applies uniquely to irrigation districts and similarly situated entities. According to prior law, the answer to the first certified question would be "no" because OMID is not a "district" in that it is neither the "state" nor a "local government." If the court determines to employ a broader, functional analysis of what is or is not a "local government" under TABOR (as the plaintiff's are apparently encouraging the court to do), then the answer to the first certified question should still be "no." OMID does not have the characteristics of a "local government" as that term is commonly understood. In particular, OMID derives its revenue from assessments based upon services rendered to a discrete group of private individuals, and not upon general taxation. Any attempt by the plaintiffs to blur the well-established distinction between assessments and taxes should be rejected by the court. Only those entities which derive their revenue from general taxation should be considered "districts" or "local governments" within the meaning of the Taxpayer's Bill of Rights.

V. Argument

A. OMID is not "the state" for purposes of TABOR.

TABOR applies to "districts" which are defined by § 20 (2)(b) to include "the state or any local government." Neither the term "state" nor "local government" are further defined by the amendment. In the absence of any more precise definitions in TABOR itself, this court has tended to apply standard rules of construction, first and foremost defining words according to the "natural and popular meaning usually understood by the people who adopted them." *City of Wheat Ridge v. Cerveny*, 913 P.2d 1110, 1114 (Colo. 1996). When a term is determined to be inherently ambiguous, however, the court has deemed it appropriate to analyze words in the overall context of TABOR, its relationship to other laws, and the likely intent of the voters who

adopted it. This approach was most vividly demonstrated in *Zaner v. City of Brighton*, 917 P.2d 280 (Colo. 1996) (construing the definition of the term "ballot issue").

If this court is to apply TABOR to OMID and other irrigation districts, the court would have to clearly find that an irrigation district is either "the state" or a "local government." The fact that irrigation districts are not a part of state government has already been decided when this court announced over fifty years ago, "in Colorado, the property of irrigation districts is not state property, and irrigation districts are not agencies of the state." *Logan Irrigation District v. Holt*, 110 Colo. 253, 260, 133 P.2d 530 (1943).

Nevertheless, in asserting that OMID should be considered to be a "district" under TABOR, the plaintiffs place great reliance on one paragraph in this court's original TABOR decision, *Submission of Interrogatories on Senate Bill 93-74*, 852 P.2d 1 (Colo. 1993), a case involving the *state* government. In that case, the court agreed with the General Assembly's impending legislative determination that a portion of the revenue and spending associated with the Great Outdoors Colorado Trust Fund (i.e. lottery proceeds) should be deemed to be a part of "state" revenues for purposes of calculating and applying TABOR's fiscal year spending limitations. However, it is important to note that, in contrast to the instant case, the holding in *Submission of Interrogatories* was based more on the characteristics of the monies that were at issue in the case, and less on the fundamental definition of "district." The court said, "we believe that excluding net lottery proceeds from Amendment 1 on the basis of a characterization of the (Great Outdoors Colorado Trust Fund) Board as a 'district' or a 'non-district' is erroneous." Instead, the court focused on the fact that lottery funds passed through the state treasury and disbursed for state purposes and concluded, "All net lottery proceeds are therefore paid into the

state, and the technical characterization of the 'district' or 'non-district' is not dispositive." 852 P.2d at 10. Notwithstanding the fact that the court went on to observe that "the best reading of Amendment 1 is to exclude from state fiscal year spending limits only those entities that are non-governmental, and the Board is essentially governmental in nature,"[1] it is fair to say that *Submission of Interrogatories* did not really reach the fundamental question that is now before the court: What is a "district" under TABOR?

In *Submission of Interrogatories*, the court did hint, however, at a possible test for distinguishing the "state" from a "local" entity. In holding that the Great Outdoors Colorado Trust Fund Board could not be considered a local government, notwithstanding the fact that it is denominated a "political subdivision of the state" under Colo. Const. art. XXVII, § 6(3), the court noted:

> It is not a local government under Amendment 1 because its activities and authority *are not confined to a specific geographical area within the state*, it addresses matters of statewide concern, and it was created by a statewide vote of the electorate. (Emphasis supplied.)

852 P.2d at 10. The converse of this analysis would be that an entity such as OMID which is confined to a specific geographic area, which addresses matters of local concern, and which was formed pursuant to a local vote, could not and should not be considered to be a part of "state" government.

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[1]Ironically, in the same bill that was the subject of *Submission of Interrogatories,* the General Assembly carved out a number of quasi-independent "special purpose authorities" (e.g. the Colorado Housing and Finance Authority, the Colorado Water and Power Development Authority, the Public Employees Retirement Association, the Colorado Compensation Insurance Authority, etc.) and declared that these would not be considered to be a part of the "state" for TABOR purposes. § 24-77-102 (15) C.R.S. This determination begged the question of what the actual status of these entities might be (enterprises? local governments?) but it created the implication that there may be some entities that are neither fish nor fowl and therefore fall beyond the purview of TABOR.

Finally, if the court deems the term "state" to be ambiguous in any way, the court should defer to the detailed interpretation given to that term by the General Assembly itself just after TABOR was adopted at § 24-77-102 (16), C.R.S. For purposes of TABOR compliance, the statute defines the term "state" to mean, "the central civil government of the state of Colorado" and goes on to provide considerable detail as to what may or may not be included within the term. Conspicuously absent from this definition is any reference to political subdivisions of the state, let alone any locally created entities such as irrigation districts that were never considered political subdivisions or governments in the first place.

In several ways, particularly at § 20 (7) where it imposes disparate fiscal year spending limitations on state and local districts, TABOR definitely bifurcates government in Colorado into two levels. Suffice it to say that any holding by this court that would now, five years after the adoption of TABOR, deem any local entity to be a part of the "state" for TABOR purposes would send shock waves through both state and local governments, and would precipitate a major reevaluation of fiscal year spending calculations for purposes of compliance with TABOR § 20(7).

B. OMID is not a "local government" for purposes of TABOR.

If an irrigation district is not considered to be a part of "state" government, then the only way TABOR could apply to it at all would be for it to be considered a form of "local government." In their opening brief, plaintiffs casually suggest that TABOR should be deemed to apply broadly to "governmental entities" or any entity that may "function like a government." Opening Brief, p. 4, 7. This, of course, is not what TABOR says. TABOR pointedly refers to "local government," a term of art which should not be read as broadly as plaintiffs are suggesting.

This court long ago declared, "While an irrigation district is a public corporation, we do not think that it is in any true sense a branch or subdivision of the sovereignty. Its purposes are chiefly private, and for the benefit of private landowners." *Holbrook Irrigation District v. First State Bank of Cheraw*, 84 Colo. 157, 268 P. 523, 526 (1928). Moreover, the court went on to distinguish the essentially private nature of an irrigation district from the public nature of a water conservancy district in *People ex rel v. Letford*, 102 Colo. 284, 79 P.2d 274 (1938). The League therefore joins OMID in their argument that they should not be considered a "local government" for TABOR purposes because irrigation districts have not been treated as being governmental in nature for other purposes in the past.

Although, by its own terms, TABOR purports to "supersede conflicting state constitutional, state statutory, charter, or other state or local provisions," § 20 (1), the court has repeatedly endeavored to harmonize it whenever possible with prior law. For example, when confronted with another undefined term in TABOR, the court presumed that the term was included in TABOR "in reference to the pre-existing law" governing the same subject matter. *Bickel v. Boulder*, 885 P.2d 215 (Colo. 1994), citing 2-4-203 (d), C.R.S. (in construing ambiguous statutes, courts may consider the "common law or former statutory provisions, including laws upon the same or similar subjects.") Similarly, the court compared an undefined term in TABOR to the manner in which that term was used in various statutes in order to glean its true meaning in *City of Wheat Ridge v. Cerveny*, 913 P.2d at 1114. The court has announced its intention to harmonize TABOR with pre-existing law and other constitutional provisions in many

other cases. *Romer v. Board of County Commissioners*, 897 P.2d 779, n. 6 (1995); *Bolt v. Arapahoe County School District Number Six*, 898 P.2d 525, n. 21 (1995); *Zaner v. City of Brighton*, 917 P.2d at 285-86.

The plaintiffs have pointed to no authority for the proposition that, in referring to "local government," TABOR was intended to imbue the term with some broad or unique meaning, or to sweep in any entities that may happen to operate at the local level but were not considered to be governmental in nature under prior law. If TABOR had been intended to impose some new and unusually inclusive definition of the term local government, "it could have been drafted to state precisely that." See: *City of Aurora v. Acosta*, 892 P.2d 264, 269 (Colo. 1995). Therefore, the court should not assume that somehow, by implication, TABOR can be read to have altered the common law understanding of what an irrigation district is or is not.

The League also joins OMID in refuting several of the alleged indicia of governmental status that are asserted by the plaintiffs. The power of eminent domain does not make an entity a local government; private utility companies among others enjoy this power. §§ 38-5-101, *et seq.*, C.R.S. The holding of elections does not make an entity a local government; private corporations routinely conduct elections using procedures prescribed by state statute. §§ 7-4-111 to -119, C.R.S. The exercise of assessment authority does not make an entity a local government; private common interest ownership communities routinely impose assessments for improvements. § 38-33.3-315, C.R.S.

C. The term "local government" under TABOR should be deemed to apply only to entities that derive their revenue from general taxation.

If the court is searching for the *sine qua non* of a "local government," both the letter and

the spirit of TABOR as well as prior case law would suggest that the court should focus on one factor and one factor only–the power of general taxation and the question of how or whether the entity in question independently asserts such power to fund its operations.[2] There are several cogent reasons to support this test of "local government" status under TABOR.

This constitutional amendment was, after all, billed as the "*Taxpayer's* Bill of Rights." (Emphasis supplied.) This court noted early on that, "As presented to the electorate, it was designed to protect citizens from unwarranted *tax* increases." *Submission of Interrogatories on Senate Bill 93-74*, 852 P.2d at 4 (emphasis supplied). It is enshrined in the constitution in Article X which concerns itself almost exclusively with government revenue that is derived from general purpose taxation. The court has previously held that the location of TABOR in the constitution is indicative of its scope and intent. *Zaner v. City of Brighton,* 917 P.2d at 284. In contrast with other similar initiated constitutional amendments that had been submitted at prior statewide general elections, the centerpiece of TABOR was a requirement for a vote on new or increased taxes, with no such restriction on fees, assessments or other non-tax sources of revenue.[3] Finally, this court has acknowledged that while a particular issue may be deemed to affect local

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[2]This court has previously addressed the power of general taxation as being "inconsistent with the characteristics of a business" and thus something that would disqualify an "enterprise" under TABOR. *Nicholl v. E-470 Public Highway Authority*, 896 P.2d 859, 869 (Colo. 1995.) In that case, however, the court was not called upon to address the related question of whether general taxing authority automatically rendered the Authority a "local government" under TABOR because it was undisputed in that case "that the Authority is a governmental entity and thus qualifies as a district unless it is an enterprise." 896 P.2d at 867.

[3]For example, at the 1990 general election, the voters rejected a prior "Amendment 1" that would have required advance voter approval not only for tax increases, but also "before any license, permit or fee is enacted" or before certain government "charges" were increased by an amount greater than the rate of inflation. See: Legislative Council of the General Assembly, *An Analysis of 1990 Ballot Proposals*, 1-10.

government revenues in some way, it nevertheless may not be subject to TABOR election requirements. *Zaner v. City of Brighton*, 917 P.2d at 288. In sum, although TABOR § 20 (1) expresses disfavor for the "growth of government" in general, if read in context this prejudice could be read as applying particularly to any growth of government that is caused by general taxation.

Expressed another way, TABOR could be understood to favor entities that may provide a public or quasi-public service through assessments or user fees, thus relieving the burden on the general taxpayers who would otherwise be called upon to fund such services. The most obvious example of this predilection in the text of TABOR itself is the broad exception for "enterprises" as defined at § 20 (2)(d). TABOR appears to favor the provision of fee-for-service arrangements through "government-owned businesses" which can grow and flourish without any limitation by TABOR whatsoever. But what of other independent or quasi-independent local entities that do not possess or exercise any taxing authority, that often provide services largely through non-tax sources of revenue, but that may not meet the technical definition of an "enterprise"?[4] Should such entities be defined as "local governments" and thus subjected to the rigid limitations of TABOR, even though their very existence may provide some benefit to taxpayers by mitigating the need for taxes to fund public services? A construction of the term "local government" that

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[4]Examples would include: (1) Municipal housing authorities which are bodies corporate and politic, but which have no taxing authority. Such entities exist primarily to deal in and manage residential real estate, but they may not qualify as an enterprise because they regularly receive substantial "grants" from the state or local governments. §§ 29-4-201, *et seq.*, C.R.S. (2) So-called "E-911 Authorities," a type of entity which is formed pursuant to inter-governmental agreement to provide emergency telephone services, but which subsist purely off of locally adopted telephone surcharges, not taxes. Such an entity may not qualify as an enterprise because it lacks express statutory authority to "issue its own revenue bonds." § 29-11-102 (1)(b).

would include entities that do not depend on taxation would seem to be contrary to the very spirit of TABOR.

As OMID argues in this case, the fact that irrigation districts have historically depended upon assessments rather than general taxes has provided the litmus test for determining that these entities are essentially non-governmental in nature.[5] Significantly, the line of cases supporting OMID's position includes one construing the status of irrigation districts under another constitutional provision, Colo. Const. art. X, § 4, and holding that, since irrigation districts exist essentially to provide a private benefit, they are not exempt from ad valorem taxation. *Logan Irrigation District v. Holt*, 110 Colo. 253, 133 P.2d 530. If this court now determines that irrigation districts are "local governments" for purposes of TABOR, they will suffer the worst of both worlds, considered to be private for some purposes but public for others.

Whether irrigation districts are ultimately determined in this case to be private or public in nature, in neither event should they be deemed "local governments" under TABOR because they do not derive their revenue from general taxation.

D. Assessments are not taxes.

Apparently, the plaintiffs agree that the question of taxation is a key to determining whether or not an entity is truly a government. In their opening brief, the plaintiffs repeatedly assert that OMID derives its revenues from "taxes" and that this alleged fact makes them a district under TABOR, or in some way renders OMID's enterprise illegitimate. In accordance with a

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[5]The League acknowledges that certain provisions of the irrigation district statutes may now appear to grant such districts general taxing authority, particularly §§ 37-43-132 through -138. Nevertheless, the League supports OMID in their argument (Response Brief, pp. 15-17) that districts formed prior to 1934 do not enjoy such authority and their revenues continue to be derived from assessments, not taxes.

consistent line of cases beginning with *Interstate Trust Co. v. Montezuma Valley Irrigation District*, 66 Colo. 219, 181 P. 123 (1919), OMID has responded that it derives its revenue from assessments, not general purpose taxes.

The distinction between "taxes" and "assessments" is well drawn in Colorado, and was clearly established on November 3, 1992 when the voters decided to require advance voter approval for all "tax" increases (but did not mention increases in special assessments or other non-tax sources of revenue). TABOR itself did not attempt to expand upon the meaning of the word "tax" and indeed contains no definition of the term whatsoever. The League is concerned that the plaintiffs in this case may be attempting to blur the distinction between the two in order to make their argument that the OMID is a "district" under TABOR. If some forms of revenue that have heretofore been understood to be "assessments" are now redefined as "taxes," it could have serious and unanticipated ramifications for local governments throughout Colorado.

Since Colorado municipalities have been dealing with the difference between taxes and assessments for over a century, the League would offer the court a review of the law on this subject from a municipal perspective.

While it is true that the Colorado courts have repeatedly held that the fundamental power to charge special assessments is "derived from the sovereign power to tax," most recently in *Reams v. City of Grand Junction*, 676 P.2d 1189 (Colo. 1984), and while the courts often use the terms "special assessment" and "special tax" somewhat interchangeably, *e.g.* in *Englewood v. Weist*, 520 P.2d 120 (Colo. 1974), whenever the court has squarely faced the question, "Are assessments considered to be taxes for purposes of applying general laws related to taxation?" the court has consistently answered that they are not.

Arguably, *Bloom v. City of Fort Collins*, 784 P.2d 304 (Colo. 1989) is completely dispositive on this point. Not only is *Bloom* one of the more recent cases defining the nature of special assessments, it also stands as perhaps this court's most systematic analysis of the fundamental differences between taxes, special assessments and fees. After defining *ad valorem* taxes and excise taxes, and characterizing the latter as "virtually any tax which is not an *ad valorem* tax," the court went on to say that "distinguished from both a property tax and an excise tax is a special assessment." If there was ever any doubt that the court was indeed differentiating taxes, assessments and fees in *Bloom*, the court reiterated these distinctions in a case decided after the adoption of TABOR, *City of Littleton v. State*, 855 P.2d 448 (Colo. 1993).

The distinction between taxes and assessments has a long history in Colorado. Of special importance is the fact that courts have consistently held that special assessments are not taxes "in the constitutional sense." This concept is reflected in two separate lines of cases involving municipal assessments.

First, special assessments are not subject to constitutional provisions which require uniformity of "taxation." This rule was first enunciated in *Denver v. Knowles*, 17 Colo. 204, 30 P. 1041 (1892), wherein the court also acknowledged "the distinction between local assessments and taxes levied for general purposes." The court stated, "There is certainly reason for saying that the word 'tax,' when used in the constitution, refers to the ordinary public taxes, and not to the assessment for benefits in the nature of local improvements." Among other things, the court observed that a "tax" is a type of "burden" which may be unilaterally imposed by the governing body, while an assessment is more in the nature of a *quid pro quo* for benefits conferred upon and received by the person paying the assessment. *Knowles* was the seminal case in a series which

goes on to explore the fundamental differences between assessment and taxation, including: *Pomroy v. Board of Public Works*, 55 Colo. 476, 136 P.78 (1913); *Denver v. Tihen*, 77 Colo. 212, 235 P. 777 (1925); *Gordon v. Wheat Ridge Water District*, 107 Colo. 128, 109 P.2d 899 (1941); *Ochs v. Hot Sulphur Springs*, 407 P.2d 677 (Colo. 1965); *Cherry Hills Farm v. City of Cherry Hills Village*, 670 P.2d 779 (Colo. 1983); *Zelinger v. Denver*, 724 P.2d 1356 (Colo. 1986). In the *Tihen* case this court said in no uncertain terms, "Taxation and assessment are not synonymous terms."

In a second line of cases, the court has held that special assessments are not taxes within the meaning of constitutional provisions which limit taxation on certain classes of property. For example in *Denver v. Tihen*, above, the court noted that a constitutional provision which exempted non-profit cemeteries from "general taxation" would not necessarily prohibit the imposition of municipal special assessments on such property. In *Board of County Commissioners v. City of Colorado Springs*, 66 Colo. 111, 180 P. 301 (1919), this court first held that county property which may be exempt from municipal taxation may nevertheless be subject to a municipal special assessment. See also: *Board of County Commissioners v. Town of Castle Rock*, 97 Colo. 33, 46 P.2d 747 (1935).

These Colorado decisions conform to the law in many other states, as reflected in McQuillan, *Municipal Corporations*, 38.01, *et seq.* The treatise notes that special assessments "differ also from general taxes, since most are not a tax at all in the constitutional sense, or as taxes are generally understood" although they may derive from the taxing power. Moreover, "Provisions relating to taxation generally are not applicable to local assessments or special taxation for improvements." The treatise cites cases from numerous jurisdictions in support of

these propositions.

Neither the Colorado Constitution nor the statutes use the terms "tax" and "assessment" interchangeably. On the contrary, the laws generally delegate the authority to tax and assess separately, recognizing that they are two distinct powers. For example, for home rule municipalities, the power of taxation and special assessment are separately recited in the constitution. Colo. Const. art. XX, sec. 6 (g). In the statutes, enabling authority for municipalities to impose taxes is derived from a completely different body of law[6] than that which authorizes special assessments.[7] If the concept of assessment and taxation were synonymous the separate and distinct delegation of authority on these subjects would have been unnecessary.

Once again, TABOR itself did not purport to expand the definition of "tax" to include assessments. On the contrary, TABOR could be read to favor the use of special assessments as a way to relieve the general tax burden on the community as a whole, thus further securing the "rights" of "taxpayers."

The League strongly urges the court not to overturn or modify the extensive body of law distinguishing assessments and taxes as the court determines the status of OMID under TABOR.

Conclusion

Because the OMID is neither a part of the "state" nor is it a "local government" in its own right, it does not qualify as a "district" under TABOR, and therefore the court should answer the

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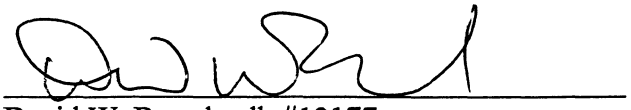
[6]For example, § 31-20-101, C.R.S., authorizes municipal property taxes; § 31-15-501 (1)(c), C.R.S., authorizes municipal occupation taxes; §§29-2-101, *et seq.*, C.R.S. authorizes municipal sales taxes; etc.

[7]For example, § 31-25-501, *et seq.*, C.R.S. authorizes municipal assessment of property through a special improvement district; § 31-25-1201, *et seq.*, C.R.S., authorizes municipal assessment of property through a business improvement district; etc.

first certified question in the negative.

Respectfully submitted this 20th day of February, 1998.



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Certificate of Mailing

I hereby certify that a true and correct copy of the foregoing Brief of the Colorado Municipal League as *Amicus Curiae* was placed in the U.S. Postal System by first class mail, postage pre-paid, on the 20th day of February, 1998, addressed to the following:

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